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Attorney for Petitioner,
EKATERINA STRULYOV

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

In re the Marriage of:
EKATERINA STRULYOV,
Petitioner,
vs.
EUGENE STRULYOV,
Respondent.

Case No.: 19FL001660

**PETITIONER'S POST-TRIAL BRIEF ON
REMAND; DECLARATION OF
STEPHANIE J. FINELLI**

**Trial: 2/27/2024
1:30 p.m.
Dept 72**

Petitioner, Ekaterina Strulyov ("Ekaterina"), hereby provides her post-brief following trial on remand. She will not reiterate the points made in her Trial Briefs regarding the law on remand. Rather, this brief will focus on the evidence presented at trial and how the law applies thereto, given that the Google stocks were an omitted asset under Family Code section 2556, and that Eugene bears the burden of showing good cause for an unequal division of the omitted asset.

I. EVIDENCE AT TRIAL

At trial, much evidence was presented which militates against allowing Eugene to retain the omitted Google stock, including as follows:

- Ekaterina had no access to the stock accounts; Eugene alone handled them.
- Eugene unilaterally decided what securities he gave Ekaterina in the division of the

stock accounts.

1 • As of April 8, 2019, according to Eugene, the community value of the various
2 accounts totaled \$357,838.55, based on Eugene’s explanation of the accounts and values (Exh A
3 at ¶5), as follows:

4	E*Trade	\$66,273.20
5	Schwab brokerage	\$161,107.95
6	Schwab equity	\$43,457.40
7	Partners transfer	\$20,000.00
8	Chase checking account	\$67,000.00
9	TOTAL	\$357,838.55

10 • Even taking into account the approximately \$33,000 in taxes and \$20,000 in credit
11 card debt, the total community property in investment and bank accounts, based on Eugene’s own
12 statements, was approximately \$304,838. If Ekaterina were entitled to one-half of the community
13 accounts plus \$65,000 for the condo, she was actually entitled to \$217,419 (\$152,419 + \$65,000).
14 This is far more than the \$200,947.79 Eugene asserts Ekaterina received. (Exh T-2.) And it is
15 certainly more than he now asserts she was owed. (Exh T-3.)

16 • Eugene transferred the majority of the securities in Schwab 6350 on July 2, 2019,
17 and the remainder on July 10, 2019. (Exh B-4 at p. 7.)

18 • The securities Eugene gave Ekaterina had cost bases as of July 2, 2019 such that
19 she had capital gains of \$13,166.48 on the stocks she received (Exh T-7 [sum of gains column]).

20 • The stocks in Schwab 6350 that Eugene retained had cost bases as of June 30, 2019¹
21 such that he had no capital gains, and in fact was entitled to take a tax loss. (Exh B-3 at p. 6
22 [Honda, Micron and Ford].

23 • After April 8, 2019—the date on which Eugene stated the Schwab 6350 account
24 was worth \$161,107.95 (Exh A, ¶5.2)—Eugene transferred \$10,000 from this account to his Chase
25 account (Exh B-1 at p. 9). He acknowledged in his testimony he had not informed Ekaterina of
26 this, and she testified she had not known about it.

27 • In the month of April 2019, the investments in the Schwab account grew in value
28

¹ / This is the closest date to the July 2, 2019 transfer that can be determined from the account statements.

1 by \$6,574.45 and had accrued income of \$313.09, such that the ending balance of the account was
2 \$154,171.76 (Exh B-1, p. 3); this was after Eugene had withdrawn the \$10,000, meaning the
3 account increased by \$3,063.81 since April 8, 2019.

4 • Although the value of the Schwab 6350 account decreased by \$8,850.29 in May
5 2019 (Exh B-3 at p. 3), it increased by \$13,222.91 in June 2019 (Exh B-4 at p. 3) for a total increase
6 as of June 30, 2019 of \$7,436.43. ($\$3,063.81 + \$13,222.91 - \$8,850.29 = \$7,436.43$).

7 • According to Eugene, on April 8, 2019, the E*Trade account was worth
8 \$66,273.20. (Exh A at ¶5.1.) When he transferred it to Ekaterina in June 2019, the account was
9 worth \$67,425.71. (See Exh E-3.) It thus increased from April 8, 2019 to the time of division by
10 \$1,152.51

11 • Eugene paid Ekaterina based on April 8, 2019 values. (Exh I.) Thus, he alone
12 retained the \$7,436.43 increase in the value of the Schwab 6350 account and the \$1,152.51 in the
13 E*Trade account as of the date of the divisions, for a total of \$8,588.94 in community property he
14 retained for himself based on the increased values of the accounts as of April 8, 2019. He did not
15 share any of this increased value with Ekaterina, as he used April 8, 2019 values in the division.

16 • Eugene received additional Google shares after April 8, 2019: he received an
17 additional 5 shares on April 29, 2019 and another 5 shares on May 30, 2019. (Exh D at p. 3.)
18 Eugene testified that he did not tell Ekaterina about these additional shares.

19 20 **II. LEGAL ARGUMENTS**

21 **A. Eugene Cannot Show Ekaterina Received One-Half of the Community Property, Let** 22 **Alone an Overpayment**

23 The premise of Eugene's argument that the Google stock should not be divided equally—
24 and that he should retain all of it—is his assertion that Ekaterina has already received at least one-
25 half of the community property, and is not entitled to more. Eugene's evidence did not make this
26 showing.

27 With his revised calculations, Eugene sought to show that Ekaterina received more than
28 one-half of the community value of the stock accounts as of July 2, 2019, the date he divided the
majority of the stocks. However, in calculating the value of the Schwab account 6350, he used the

1 \$153,858.47 the account was worth on April 30, 2019. (Exh T-3, T-4.) This was *after* he had
2 unilaterally transferred \$10,000 from that account to his Chase account. (Exh B-1 at pp. 3, 9.) As
3 noted above, absent the transfer, the account would have been worth at least \$163,858.47 given
4 the increased value of the securities. And as of July 2, 2019, the account had increased in value
5 even more. The \$153,858.47 thus has no basis in reality and Eugene’s calculations using this
6 figure should be disregarded.

7 As noted above, Eugene retained the entire \$8,588.94 increased value in the Schwab 6350
8 account and E*Trade account, and he gave Ekaterina securities on which she would have to pay
9 state and federal taxes on capital gains of over \$13,000, while the securities he retained would
10 have net him a loss, and thus a tax benefit. He also failed to even inform Ekaterina of the additional
11 10 shares of Google stock he had received before the division of the assets.

12 Moreover, as set forth above, Ekaterina was actually entitled to \$217,419 as the total of
13 one-half of the community accounts plus at least \$65,000 for the condo, not the mere \$200,947.79
14 Eugene asserts Ekaterina received. (Exh T-2.)

15 Struggling to convince this Court he should keep all of the Google stock for himself,
16 Eugene also claims Ekaterina was awarded a car that was worth more than his motorcycle and
17 trailer, and that his own car was pre-marital separate property. This argument is unmeritorious.
18 First, Eugene waived it long ago by agreeing to the division of the cars; in fact, he was the one
19 who suggested it. (Exh A at ¶7.) Second, Ekaterina testified that she brought a car, a Volkswagen,
20 into the marriage, which was used to purchase another Volkswagen and then the Mercedes.
21 Eugene has provided no evidence of the value of that first car; he thus cannot meet his burden of
22 showing this division was unequal. Third, this matter has already been adjudicated and was not
23 appealed; it is res judicata and not at issue herein.

24 However, if this Court is prepared to review the division of the personal property vehicles
25 to determine if the community property was divided unequally, then Ekaterina urges this Court to
26 also review the division of the condo, on which Ekaterina was added to mortgage in 2012, and
27 which was transmuted to community property in October 2017—1.5 years before separation. As
28 Eugene testified, and his own correspondence showed, this property increased in value, although

1 he asserted such increase was “minimal.” (Exh A at ¶ 3.5.) He demanded Ekaterina sign over the
2 title to him in exchange for \$65,000.00, which is one-half of the \$130,000 he had put into the
3 condo after selling community stock. (Exh A at ¶ 6.) Ekaterina testified she did not know Eugene
4 had sold the stock and putting money into the condo. This is supported by Eugene’s email of April
5 8, 2019, when he explains, “last year I expected a recession so I sold a lot of stocks...(that’s why
6 we have the tax bill).” (Exh A at ¶6.) Why inform her of this if she already knew? Or at least
7 preface the statement with “as we discussed” or even “as you know.” The tenor of this
8 communication is that it is conveying new information.

9 And the community ended up paying an additional \$33,000 in taxes as a result of the sale
10 of these stocks. (See Exh A, before ¶ 6 [“we also have ~33k taxes due...”]; see also Exh 9 at
11 Sched. D [\$132,395 in capital gains].) This is another way in which Eugene benefitted himself at
12 the expense of the community. He was able to increase the value of his condo by \$130,000 using
13 community funds, on which the community paid significant taxes.

14 Ekaterina thus submits that the community value of the car Eugene suggested Ekaterina
15 keep is not even close to the community value of the increased value of the condo from October
16 2017 to April 2019, plus the community-paid taxes Eugene caused the community to incur as a
17 result of his unilateral decision to sell community stocks to put \$130,000 into a condo he insisted
18 was his.

19
20 **B. Eugene’s Breaches of Fiduciary Duty Preclude Him From Showing Good Cause for
an Unequal Division of the Omitted Google Stock**

21 Eugene argues that the division of stock he made without Ekaterina’s input or agreement
22 effectuated an equal division of the community assets because he divided the value of all the
23 community stock, including the value of the Google stock, equally as of April 8, 2019. As set
24 forth above, Eugene did not divide the community assets equally as of April 8, 2019, as he stuck
25 Ekaterina with the capital gains taxes on the securities and did not take into account the \$67,000
26 in the Chase account or the \$20,000 he had transferred to his own account. Moreover, by using
27 the April 8, 2019 date, Eugene deprived Ekaterina of the growth of the securities between that date
28 and the date he decided to transfer them to her, and kept all of this growth for himself. This was

1 not only an unequal division of community assets; it was also a breach of Eugene’s fiduciary duty,
2 especially as he had the superior knowledge as to the value of the securities and the growth thereon.
3 The controlling spouse’s fiduciary duty continues until the assets are actually divided. (Fam.Code
4 §1100(e).) Eugene’s failure to divide the investment accounts 50-50 as of the date of division was
5 not an oversight on his part. It is consistent with his pattern and practice of secreting an
6 advantage—no matter how small—over Ekaterina, in breach of his fiduciary duty.

7 When asked at trial about having given Ekaterina the stocks with the lowest costs bases—
8 and thus the most capital gains, Eugene claimed he did not even consider this in deciding which
9 securities to give her. This defies logic and common sense and is not believable. Eugene had just
10 sold a significant amount of securities and told Katia, “that’s why we have the tax bill.” (Exh A.)
11 He was acutely aware of the tax implications of selling stock that had increased in value. To
12 believe Ekaterina just happened to receive the securities with the lowest cost basis is pure naïveté.

13 This was also a breach of fiduciary duty, in that Eugene benefitted himself at Ekaterina’s
14 expense. Ekaterina testified she did not know what securities Eugene had in the account, and had
15 not seen the statements; she just went by the numbers Eugene had given her, as they were using a
16 mediator and she understood Eugene would be up front about the finances. Eugene testified he
17 had shown Ekaterina the account statements in person “at home.” This testimony was
18 unconvincing. The statements were never mentioned anywhere in their correspondence. More
19 importantly, no statements were provided with the statement of assets & debts.

20 Perhaps the most telling testimony as to why Eugene cannot show good cause to retain all
21 of the Google stock for himself came when he was asked what prevented him from dividing all of
22 the securities, including the Google stocks, equally. After refusing to directly answer the question
23 despite repeated requests, Eugene stated that, because he was given the stocks in increments of
24 five, he would have an uneven number, which could not be divided equally. When reminded that
25 as of April 8, 2019 he had 36 shares and as of May 30, 2019, he had 46 shares, which could be
26 divided equally, Eugene then claimed that, because he had received the shares at different times,
27 they would all have different costs bases. ***And yet he had just testified that the issue of cost basis***
28 ***never entered his mind when he was dividing the securities.*** Eugene never explained how the

1 existence of varying costs bases—which he claims he never thought of—could possibly have
2 prevented him from giving Ekaterina a portion of the shares. Obviously it did not. The real answer
3 is that Eugene wanted to keep the valuable Google stock all to himself. Which is why doing so
4 was a breach of his fiduciary duty for which he should not now be rewarded.

5 The May 2019 stipulation between the parties provided that each of them would receive
6 “A one-half (1/2) interest in Charles Schwab Investment account no. -6350.” Ekaterina testified
7 she believed that she would receive one-half of each of the different securities in the account. She
8 testified that since she did not know what securities were in the account, she did not know that she
9 had not received half of the stocks, plus additional sums since Eugene decided to pay her most of
10 the additional \$65,000 in the form of securities.

11 Nor did Eugene divide the Google stock—or even the value of the Google stock—equally.
12 At the time of the division, Eugene had 46 shares of Google stock, not the 36 he had as of April 8,
13 2019. In its underlying FOAH, this Court stated, “Based upon Petitioner's Exhibit 9, it appears as
14 though there were 36 shares on April 1, 2019. Accordingly, Katia should receive 18 shares.² In the
15 event either party disputes the number of shares, the Court will entertain a RFO.” (FOAH at p.
16 24, fn. 5.) Thus, one-half of 36 shares (which following the 20 to 1 split is now 720 shares) was
17 already an unequal division of the Google stock—in Eugene’s favor.

18 It is doubtful that Eugene’s receipt of vested Google stock on April 29, 2019 was based
19 solely on work he performed over the prior 3 weeks. By not disclosing these shares and the later
20 May 2019 receipt of shares, he failed to account for his receipt of these community funds, and thus
21 breached his fiduciary duty. This should be taken into account when evaluating “good cause” for
22 an unequal division of the omitted asset in Eugene’s favor.

23 If this Court determines that Eugene is entitled to an offset in some amount as against an
24 equal division of the Google stock, Ekaterina requests this Court take into account that the
25 additional 10 shares of Google stock in Eugene’s account as of May 30, 2019 was neither disclosed
26 nor divided, and that any recalculation of the division of assets include these additional 10 shares
27 (now 200 shares following the split) as omitted assets to be divided.

28 ² / Subsequent to this decision, the Google stock enjoyed a 20-1 stock split and the 36 shares became 720, of which Ekaterina was entitled to 360 based on this ruling.

1 **C. Eugene’s Breach of Fiduciary Duty Mandates an Award of Attorney Fees to Katia**

2 While the appellate court’s directive on remand did not include a redetermination on the
3 issue of attorney fees; nothing in that Opinion precluded an award of fees. The appellate court
4 remanded the matter “to determine whether and to what extent sections 2556 and 2550 support a
5 finding that the interests of justice require an unequal division of the Google stock.” Opinion at
6 p. 21.) That Court left this Court to decide whether to take additional evidence. (Opinion at pp.
7 21-22.) Moreover, the appellate court affirmed this Court’s award of \$60,000 in attorney fees as
8 sanctions, finding no abuse of discretion. (Opinion at pp. 23-25.) Although the Opinion states
9 that “The matter is remanded for the limited purpose of a determination by the trial court whether
10 the interests of justice require an unequal division of the Google stock” (Opinion at p. 26), nothing
11 in that Opinion prohibits or precludes a further award of attorney fees.

12 In obtaining the advantages of (1) avoiding capital gains taxes on the shares he retained
13 while burdening Ekaterina with such taxes on the shares he transferred to her; (2) retaining for
14 himself 100% of the increased value of the Schwab -6350 account from April 8, 2019 to July 2019;
15 and (3) retaining for himself 100% of the Google stock he received between April 8, 2019 and
16 May 30, 2019; and (4) forcing the community to pay taxes on the \$130,000 worth of community
17 stock he sold and then put into what he asserted was his separate-property condo, Eugene breached
18 his fiduciary duty to her. These were discrete advantages Eugene took knowingly and without
19 disclosing to Ekaterina, and thus were breaches of fiduciary duty under Family Code sections
20 721(b)(3) and 1100(e).

21 These breaches of fiduciary duty mandate an award of attorney fees to Ekaterina.
22 (Fam.Code §1101(g); *In re Marriage of Gilbert-Valencia & McEachen* (2023) 98 Cal.App.5th
23 520, 526 [“Where there is a breach of fiduciary duty by one spouse, the family court **must** award
24 the other spouse 50 percent of any asset transferred in breach of the fiduciary duty plus attorney
25 fees and court costs.”] Emphasis added.) “Once a breach is shown, the trial court lacks discretion
26 to deny an aggrieved spouse’s request for attorney fees.” (*In re Marriage of Fossum* (2011) 192
27 Cal.App.4th 336, 345.)

1 Eugene's undeniable breaches of fiduciary duty mandate an award of attorney fees to
2 Ekaterina. As noted in the Trial Brief, since the Opinion was issued, Ekaterina has incurred
3 approximately \$17,000 in attorney fees and costs, the vast majority of which has been directly
4 related to the remanded issues. This number increased as of the time of trial. However, given the
5 time constraints, Ekaterina was unable to offer evidence in support of the attorney fees she incurred
6 and to which she is entitled under Family Code sections 271(b) and 1101(g).

7 Ekaterina requests this Court order Eugene to pay attorney fees pursuant to Family Code
8 sections 271(b) and 1101(g), either in the amount of \$17,000, as requested in the trial brief, or in
9 the amount of **\$17,710** as reflected in the attached declaration from counsel re the attorney fees
10 incurred. Also attached hereto and filed herewith is Ekaterina's I&E in support of this request.
11

12 III. REQUESTED OUTCOME

13 Ekaterina requests this Court evaluate the evidence regarding Eugene's unilateral transfer
14 of certain stocks to Ekaterina, using a lower valuation than the accounts were worth as of the date
15 of the transfers, and failure to even disclose the additional Google stock or provide copies of the
16 investment account statements, and affirm its division of the Google stock at 50-50, with Ekaterina
17 receiving one-half of the 36 shares as of July 2019, including any subsequent stock splits.

18 In the alternative, if this Court determines that an unequal division of the Google stock is
19 appropriate in some form, Ekaterina requests that any such offset account for, and divide, the
20 additional 10 shares of Google stock in the account as of May 30, 2019.

21 Ekaterina also requests an award of attorney fees for Eugene's breach of fiduciary duty
22 under Family Code sections 721(b) and 1101(g), in the amount of **\$17,710.00** as reflected in the
23 attached declaration.
24

25 Dated: March 15, 2024

By: Stephanie J. Finelli
STEPHANIE J. FINELLI, Attorney for
Petitioner, Ekaterina Strulyov

1 **DECLARATION OF STEPHANIE J. FINELLI**

2 I, Stephanie J. Finelli, hereby, hereby declare and if called as a witness would competently
3 testify as follows:

4 1. I am an attorney, duly licensed and practicing in the State of California. I represent
5 Petitioner, Ekaterina Strulyov (“Wife”), in this case. I represented her on appeal and am now
6 representing her on remand.

7 2. In preparing for the trial on remand, it became apparent that Respondent Eugene
8 Strulyov (“Husband”) breached his fiduciary duties to Wife in dividing the Schwab 6350 account.
9 Upon review of the division, it became clear that he gave her the stocks that would, if sold at the
10 time of division, elicit the most tax consequences, and that he had not credited her with any of the
11 appreciation in value that the stocks had undergone since the April 2019 valuation. This was not
12 something either I or my client had noticed previously.

13 3. As set forth in my trial brief, I have spent considerable time on this remand issue,
14 including preparing for and appearing at hearings; reviewing Husband’s correspondence,
15 arguments, and briefings; preparing my own arguments and briefs; appearing at the settlement
16 conference; and preparing for and appearing at the trial. Since July 28, 2023, the day after the
17 appellate Opinion was issued, I have billed Wife \$26,360 for my time, as ascertained by review of
18 my billing software. The majority of this time was spent on these remand issues, including
19 opposing Husband’s motions before this Court and before Department 74 seeking clarification on
20 the trial matters. In my trial brief, I provided an estimate that my time on these remand issues was
21 approximately \$17,000.00. My further review of the billings reveal that my time on the remand
22 issue since December 28, 2023, when this was the only issue before this Court, currently totals
23 50.6 hours, including certain discounted time. All of this time was reasonable and necessary on
24 the remand issues. At \$350 per hour, this totals **\$17,710.00**.

25 4. My hourly rate of \$350 is reasonable, if not low, for an attorney of my education
26 and experience. I am a 1994 graduate of U.C. Davis, King Hall, School of Law and have practiced
27 since then. I started my own practice in 2003 where I focus on civil litigation and appeals, mostly
28 family-law appeals. I have tried dozens of cases, including lengthy family-law trials, numerous

1 other bench trials, and nine jury trials. I have had numerous published appellate opinions over my
2 career. Some of my more recent are *Swan v. Hatchett* (2023) 92 Cal.App.5th 1206; *McGee v. State*
3 *Dept. of Health Care Services* (2023) 91 Cal.App.5th 1161; *Fowler v. Golden Pacific Bancorp,*
4 *Inc.* (2022) 80 Cal.App.5th 205; *In re Marriage of Mullonkal & Kodyamplakkil* (2020) 51
5 Cal.App.5th 604, *Bayramoglu v. Nationstar Mortgage LLC* (2020) 51 Cal.App.5th 726; *Pasco v.*
6 *Pasco* (2019) 42 Cal.App.5th 585; *C.A. v. C.P.* (2018) 29 Cal.App.5th 27; and *In re Marriage of*
7 *Davis* (2015) 61 Cal.4th 846.

8 5. On request, I am happy to provide my actual billing statements and invoices.
9 However, I can attest from reviewing my billings, including the software used, that the sum total
10 since December 28, 2023 is \$17,710.

11 I declare under penalty of perjury under the laws of the State of California the foregoing is
12 true and correct.

13
14 Dated: March 15, 2024

By: Stephanie J. Finelli
STEPHANIE J. FINELLI