

FILED

APR - 8 2022

Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

J. MOLLO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

<p>10 In re the Marriage of:</p> <p>11 EKATERINA STRULYOV</p> <p>12 Petitioner,</p> <p>13 v.</p> <p>14 EUGENE STRULYOV,</p> <p>15 Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No.: 19FL001660</p> <p>FINDINGS AND ORDER AFTER HEARING</p> <p>APJ: Hon. Brooke A. Blecher</p> <p>Dept.: 74</p> <p>March 8-9, 2022</p>
---	---	--

INTRODUCTION

Petitioner, Ekaterina Strulyov, (hereinafter referred to as "Katia") appeared with her attorney of record, Golnesa Manazamfar and Respondent, Eugene Strulyov, (hereinafter referred to as "Eugene") appeared with his attorney of records, Dale Chen at Trial on March 8 and 9, 2022, all via Microsoft Teams. The following motions were before the Court: Katia's March 8, 2021 Request for Order (RFO) for determination & division of omitted assets (Google Stocks, vacation payout, FCU account), set aside the provisions of November 18, 2019 Judgment granting the Tarzana condominium to Eugene based on fraud, duress and undue influence; award stocks to Katia based on Eugene's breach of fiduciary duty and fraudulent selling of

FINDINGS AND ORDER AFTER HEARING

1 community stocks: and for attorney's fees, pursuant to Family Code §721, in the amount of
2 \$50,000; Katia's July 20, 2020 RFO for an unspecified amount of attorney's fees, pursuant to
3 Family Code §721; Eugene's August 17, 2020 RFO regarding child support, spousal support,
4 vacate the April 21, 2020 Stipulation (based upon fraud by concealment), Katia reimburse
5 Eugene for all monies paid for private school tuition, re-calculate child support retroactive to
6 March 1, 2020 based on Katia's true income, termination of spousal support effective March 1,
7 2020, vacate the spousal support provisions of the November 18, 2019 Judgment and recalculate
8 taking into account Katia's co-habitation (based upon fraud by concealment), vacate child
9 support provisions of the November 18, 2019 Judgment (mistake) & recalculate support taking
10 into account Eugene's true rental income, an order both parties notify the other of changes to
11 income, and sanctions and attorney's fees and costs pursuant to Family Code §271, and CCP
12 §5128.5, the total amount requested is not set forth in the moving papers; Katia's March 16,
13 2021 RFO for attorney's fees, pursuant to Family Code §721, in the amount of \$6,500; Katia's
14 January 13, 2022 Responsive Declaration to Eugene's ex-parte RFO¹ re reconsideration of
15 motion to compel and Katia's RFO for reallocation of the Brief Focused Assessment.
16

17 The Court will only rule on the specific issues raised in the pleadings, set forth above.

18 BACKGROUND

19 The parties married on October 29, 2010 and separated on April 8, 2019. Their Judgment
20 of dissolution was entered on November 18, 2019, and was signed by both parties on May 28,
21 2019. They are parents to one child [REDACTED]. The parties entered into
22 an April 21, 2020 Stipulation and Order re child support, spousal support and private school
23 tuition. These two orders are in dispute as stated above.
24

25

¹ Eugene's RFO was denied for hearing, as untimely, and thus, does not have a file date.

1
2 Katia argues that during marriage, Eugene maintained sole control over the parties'
3 finances. Katia testified that Eugene was abusive to her throughout marriage, which included
4 name calling, belittling, refusal to allow access to all of their accounts and control of all financial
5 decisions.

6 Eugene owned real property in Tarzana California. In about 2012 Eugene added Katia to
7 the mortgage to this property. Through Trial, it was not clear what led to this decision.
8 Presumably, Katia would have had to have consented to this through the refinance application. In
9 2017 as part of the parties' estate planning, the parties signed the transmutation agreement and
10 transferred title of the real property in to both parties' name.

11 In the parties' brief period of mediation (April 8, 2019-May 31, 2019), Katia argues that
12 Eugene advised Katia that the Tarzana property had always been his and that Katia had no
13 interest in this asset. Eugene stated that the only financial debt he owes Katia is \$65,000 (50%
14 of the Apple stocks he sold to pay the mortgage in 2018). Eugene's Schedule of Assets and
15 Debts indicates that the Tarzana property is his separate property. Katia argues that due to
16 Eugene's harassment, lack of financial ability to hire an attorney, she had no other
17 choice but to sign the deed back to him since she had no interest in this property.
18

19 It was undisputed that Katia rented an apartment in San Jose, so she and her daughter
20 could move in. What is in dispute is why she did not do so. Katia testified that immediately after
21 the Judgement was signed, she learned the apartment would not be ready until about June 8.
22 Moreover, Eugene made unwelcomed sexual advances to Katia. Katia decided she and Sophia
23 had to immediately move out and did so on June 1, when Katia moved in with her now husband.
24 Katia testified that she told Eugene about this and he assisted with hiring movers.
25

1 As the parties began dividing their assets, Katia argues Eugene did not disclose
2 all of the community assets including the Google stocks and his vacation buyout. Eugene
3 refused to follow up on Roth IRA account division

4 Prior to filing for a divorce, Sophia was enrolled in and attending a private Kindergarten.
5 She was also enrolled to go to Monticello beginning in the fall 2019, for first grade. In planning
6 for this transition, the parties enrolled Sophia in summer camp at Monticello. The Judgment
7 states the parties will split education costs. After the Judgment, Eugene refused to pay for
8 Monticello.

9 Katia obtained counsel to enforce the terms of the Judgment. Soon thereafter, the parties
10 entered into the April 21, 2020 Stipulation. This set forth that Eugene would pay 50% of
11 Sophia's educational expenses; it modified child support and terminated spousal support.
12 section 3 of the April 21, 2020 Stipulation reflects that "the DissoMaster is based on the
13 settlement of the parties and none of the entries including Visitation times has been verified or
14 accounted for by either party."

15 Eugene argues that Katia was physically and verbally abusive to Eugene during marriage.

16 He contends that since the parties used a guideline spousal support to calculate spousal
17 support in the Judgment, they would continue to do so for modifications. The support printout
18 attached to the Judgment lists Katia income as \$4,389. For the April 2020 Stipulation Katia
19 allowed that same income to be reflected in the support printout attached to the Stipulation,
20 despite the fact that she had received a significant pay increase since that time. Eugene argues
21 that because of Katia's agreement to terminate spousal support, Eugene agreed to pay tuition.
22 Eugene argues that the support calculation reflects she would not be entitled to spousal support
23 and therefore deceived Eugene.
24
25

1 Eugene argues that the education expense provision of the Judgment, which states:
2 “Father and Mother will each be responsible for payment of one-half (1/2) of all educational
3 costs incurred on behalf of SOFIA (through high school graduation for SOFIA)” is silent as to
4 school tuition, choice of schools, discretion, or consent and therefore does not mean he is
5 responsible for tuition.

6 Eugene argues he did disclose his Google stock. His Schedule of Assets and Debts listed
7 Schwab in item 11 with a value of \$205,620.38. The Schwab account was also listed in Eugene’s
8 April 8, 2019 email settlement proposal to Katia, stating: “Schwab brokerage
9 \$161107.95 [sic] Schwab equity awards \$43459.40 (Google stock vests here).” Eugene’s
10 Schedule of Assets and Debts lists one Schwab account, with no account number associated
11 with it.

12 Both parties exchanged their unsigned Preliminary Declarations of Disclosure on May
13 28, 2019, the same day they signed their Judgment. There were no attachments, statements or
14 required backup documentation attached to their Schedule of Assets and Debts.

15 Pursuant to Eugene’s exhibits the Schwab 6230 account, is also referred to as the Schwab
16 brokerage account. The Judgment reflects that the parties each received half of this account. The
17 Schwab GOOG account, contains Google stock, and is referred to as equity awards. As of June
18 30, 2019 there were 46 shares of Google stock. The Judgment is silent as to this account.

19 Further, it appears as though Katia did not receive any Google stock. Eugene emailed
20 Katia on July 12, 2019, stating: “TL;DR: I fulfilled my obligations. Now it's time you fulfill
21 yours. At the time of the divorce filing, the total balance of my investment accounts was
22 \$271895.58 (\$66273.20 in etrade, \$205622.38 in schwab). The mediation agreement entitles
23 you to take \$200947.79 of my money using the 50% + 65K calculation. You have already
24
25

1 received all of my holdings in the following assets: VCAIX 67628.11 FB 38802.00 IAU
2 67225.00 T 1 0641.17 For a total of 184296.28. That leaves a balance of 16651.51 which we
3 can settle in cash if you want. However, I think that it would be more than fair to just call it even,
4 considering that the car that I bought for you is worth far more than my bike & trailer. You are,
5 of course, aware that you have the upper hand in this matter and can force me to give you this
6 money if you so choose, so let me know what you want to do. That only leaves the retirement
7 accounts pending. eTrade Roth IRA: as I have already informed you, I sent them the paperwork
8 but they require divorce decree to release the money. There is nothing more I can do at this time.
9 Vanguard 401k: being discussed in a separate thread; you are aware of what's happening and the
10 ball is in your court. So, I fulfilled my obligation. Now I need you to sign the title documents.
11 As explained above, I'll give you the check for \$16651.51 if you so choose. Eugene.”

12
13 Thereafter on September 25, 2019, Eugene sent Katia an email, stating: “I already
14 transferred ALL non-retirement funds that were due you as per the mediation agreement. Refer
15 back to my July12 email. Specifically you received the following stock/ETF transfers:

16 VCAIX 67628.11 FB 38802.00 IAU 67225.00 T 10641.17

17 For a total of 184296.28. I gave you a check for the remaining amount of 16651.51.

18 The only accounts that are left to settle are retirement accounts:

19 - 50% of e-trade Roth IRA. As explained multiple times previously, I submitted the
20 distribution form to e-trade but they require the divorce decree from the court to release the
21 money to you. - 401k account: being handled by Elizabeth A. Strasen

22 I don't owe you anything else. Eugene”
23
24
25

1 Eugene purchased the condominium before marriage. He contends it was his separate
2 property. During the marriage, the condominium was used as a rental property. The parties did
3 not reside there. Eugene paid all rental property expenses, including the mortgage,
4 from the rent revenue. Eugene refinanced the mortgage in 2012, and Katia's name was included
5 on the refinance loan. Eugene contends that Katia threatened divorce she was not added to the
6 loan. Eugene contends he did not intend to give Katia an interest in the condominium. Her
7 name was not added to title as part of the refinance. Eugene argues that in 2017, Katia pressured
8 Eugene to be added to title. She again threatened to divorce if he did not add her name to title. In
9 connection with the estate planning, Eugene added her name to title and the parties signed a
10 transmutation agreement. Eugene argues that Katia took advantage of Eugene's medical
11 condition and the parties' confidential relationship in unduly influencing Eugene to add her
12 to title.

13 Eugene contends that he managed the parties' investments and kept Katia informed, but
14 she was not interested in hearing it so long as she had money to spend. Eugene sold the stocks in
15 February and March 2018 and made two lump sum payments to pay down the mortgage: a
16 February and March 2018 and made two lump sum payments to pay down the mortgage: a
17 \$70,000 payment on February 27, 2018 and a \$60,000 payment on March 22, 2018 for a total of
18 \$130,000. These transactions occurred more than a year before the divorce.

19 At the commencement of Trial, the parties stipulated that Katia shall receive \$3,315 for
20 half of the vacation pay, which resolved this issue.

21 DISCUSSION

22 1. Set-Aside Authority

23 Family Code § 2122 allows party to move for an order setting aside a judgment, or any
24 part thereof, on the basis of actual fraud, mistake, or failure to comply with the requirements
25

1 regarding preliminary and final declarations of disclosure as described in Family Code § 2100 et
2 seq. (Fam. Code, 2122 (a), (e), (f).) A motion for set aside based on fraud must be brought
3 within one year after the date on which the complaining party either discovered or should have
4 discovered the fraud. (Fam. Code, § 2122 (a).) A motion for set aside based on mistake must be
5 brought within one year after the date of entry of judgment. (Fam. Code, § 2122(e).) A motion
6 for set aside based on duress must be brought within two years year after the date of entry of
7 judgment. (Fam. Code, § 2122, subd. (c).)

8 Eugene also seeks a set aside based upon Family Code §3690, which reflects “The court
9 may, on any terms that may be just, relieve a party from a support order, or any part or parts
10 thereof, after the six-month time limit of Section 473 of the Code of Civil Procedure has run,
11 based on the grounds, and within the time limits, provided in this article. In all proceedings under
12 this division, before granting relief, the court shall find that the facts alleged as the grounds for
13 relief materially affected the original order and that the moving party would materially benefit
14 from the granting of the relief.”

15 Eugene's August 17, 2020 RFO seeks to vacate the April 21, 2020 Stipulation (based
16 upon fraud by concealment), vacate the spousal support provisions of the November 18, 2019
17 Judgment (based upon fraud by concealment), vacate child support provisions of the November
18 18, 2019 Judgment (mistake). Katia's March 8, 2021 RFO seeks to set aside the provisions of
19 November 18, 2019 Judgment granting the Tarzana Condominium to Eugene based on fraud,
20 duress and undue influence. These requests will be addressed herein.

21 As an initial matter Katia's requests for set aside based upon fraud is time barred, as her
22 RFO was filed one and one-half years after the November 18, 2019 Judgment was entered, and
23 she does not allege that the fraud was unknown at the time of Judgment. Katia's legal basis for
24 set aside for undue influence is Cal. Civ. Code §1575. This code section is the legal definition of
25

1 undue influence, and is not a basis for set aside. Thus, Katia's RFO will be analyzed under
2 duress only.

3 **Duress**

4 Duress is generally defined as any threats, pressure, or other form of coercion by one
5 party that "destroys [the other party's] free agency and constrains [them] to do what is against
6 [their] will...to [their] detriment." (*Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1523,
7 quoting *Marriage of Baltins* (1989) 212 Cal.App.3d 66, 84.) It typically arises when a party
8 "intentionally used threats or pressure to induce action or non-action to the other party's
9 detriment." (*Marriage of Stevenot* (1984) 154 Cal.App.3d 1051, 1073.) "The coercion must
10 induce the assent of the coerced party, who has no reasonable alternative to
11 succumbing." (*Marriage of Baltins, supra*, 212 Cal. App. 3d at p. 84.) When determining
12 whether a contract was formed under duress, "the courts look not so much to the nature of the
13 threats, but to their effect on the state of the threatened person's mind." (*Ibid.*)

14 **Undue Influence**

15 Under Family Code §721(b), spouses are subject to the same fiduciary duties between
16 themselves that are imposed on any parties with a confidential relationship with one another,
17 such as business partners. Accordingly, if the parties enter into an agreement during their
18 marriage that provides one spouse with an unfair advantage over the other, a presumption arises
19 that the agreement was procured through undue influence. (*Marriage of Burkle, supra*, 139
20 Cal.App.4th at p. 729.) For example, a spouse obtains an unfair advantage if his position is
21 improved, he obtains a favorable opportunity, or he otherwise gains, benefits, or
22 profits. (*Marriage of Matthews* (2005) 133 Cal.App.4th 624, 629.) Whether one spouse gained
23 an unfair advantage over the other sufficient to raise the presumption is a question of fact for the
24 court. (*Marriage of Burkle, supra*, 139 Cal.App.4th at p. 734.)

1 **Mistake**

2 A mistake can be one of fact (understanding facts to be different than what they are) or
3 one of law (misunderstanding the legal consequences of known facts). (*Hodge Sheet Metal*
4 *Products v. Palm Springs Riviera Hotel* (1961) 189 Cal.App.2d 653, 656.) In determining
5 whether to set aside an order based on mistake, the court evaluates whether “a reasonably
6 prudent person under the same or similar circumstances might have made the same
7 error.” (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 258,
8 citing *Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276.)

9 **Fraud**

10 The type of fraud contemplated by Family Code § 2122 is “[a]ctual fraud where the
11 defrauded party was kept in ignorance or in some other manner was fraudulently prevented from
12 fully participating in the proceeding.” (Fam. Code, § 2122, subd. (a).) Eugene seeks a set aside
13 based upon intrinsic fraud. There is no distinction for various types of fraud. Further, “Actual
14 fraud, within the meaning of this Chapter, consists in any of the following acts, committed by a
15 party to the contract, or with his connivance, with intent to deceive another party thereto, or to
16 induce him to enter into the contract: 1. The suggestion, as a fact, of that which is not true, by
17 one who does not believe it to be true; 2. The positive assertion, in a manner not warranted by
18 the information of the person making it, of that which is not true, though he believes it to be true;
19 3. The suppression of that which is true, by one having knowledge or belief of the fact; 4. A
20 promise made without any intention of performing it; or, 5. Any other act fitted to deceive.”
21 (Civ. Code §1572.)

22 **Tarzana Condominium**

23
24 Throughout Trial the Court heard from both sides regarding the frequent name calling
25 they received from the other party, and an admission of their own name calling. Katia alleges

1 that Eugene controlled all the finances and she had no say. Despite that claim, however, was the
2 parties' October 24, 2017 Transmutation agreement transmuting the Condominium from
3 Eugene's separate property into community property.

4 Eugene was the only witness who testified regarding the value of the condominium. His
5 undisputed testimony was that the condominium did not increase in value from October 24,
6 2017, the date of transmutation, (i.e. giving rise to Eugene's Family Code § 2640 interest in the
7 condominium) to May 28, 2019 (the date the parties' signed the Judgment). In other words, if
8 the condominium had equity of \$500,000 on October 24, 2017 and on May 28, 2019, then
9 Eugene's Family Code § 2640 claim would negate an community interest in the home. As such,
10 Eugene's April 8, 2019 email stating: "My condo. 18350 Hatteras St. #138. I bought it long
11 before i met you and it is rightfully mine. Yes, you were added to the title last year, so you are
12 technically entitled to half of any appreciation since then. But that should be minimal. Also, it is
13 simply not fair for you to assert any claim to the condo. You had no right to demand that I add
14 you to the title in the first place. The rental income went to our joint checking account, so that
15 money is hopelessly commingled and I'm not going to even try disentangling it. But the title
16 should be returned to me." may not be inaccurate. If Eugene did not obtain an unfair advantage
17 over Katia, a presumption does not arise that the agreement was procured
18 through undue influence.

19 November 18, 2019 Judgment

20 Eugene seeks to vacate the child support provisions of the November 18, 2019 Judgment.
21 He contends he made a mistake regarding his rental income, by including the rental income
22 received rather than the adjusted gross rental income. Eugene provided his rental income to the
23 mediator, who prepared the support calculations. The standard is whether a reasonable prudent
24 person would make the same error. The DissoMaster calculation calls for rental income, not rent
25

1 paid. The Court finds that a reasonable person in a similar situation would understand the
2 difference between rent paid and rental income.

3 Eugene seeks to vacate the spousal support provisions of the November 18, 2019
4 Judgment and the April 21, 2020 Stipulation, based upon fraud, contending that Katia concealed
5 the fact that she was going to reside with her significant other. The Court heard testimony from
6 both parties regarding this issue. The Court was provided with emails from Katia's potential
7 landlord, reflecting her intent to live alone with Sophia. The Court finds Katia's testimony
8 credible regarding her change of plans and decision to move in with her significant other on June
9 1, 2019. Though Eugene took a contrary position at Trial, his deposition testimony reflects his
10 awareness at the time of Katia's move. The Court finds that Eugene was aware of Katia's
11 decision to cohabitate, at the time of her move, as Eugene helped her hire the movers and looked
12 at her apartment. (Deposition of Eugene Strulyov, November 5, 2021, page 38.) Eugene's
13 position to the contrary lacks credibility.

14 Eugene was aware of the cohabitation on or about June 1, 2019. He could have filed a
15 motion to modify at that time if he believed that was warranted. Eugene was certainly aware of
16 the cohabitation at the time they entered into the April 21, 2020 Stipulation. The Court does not
17 find that Katia concealed her plans to reside with her significant other and that Eugene was
18 aware of the fact that she was doing so as of June 1, 2019.

19 April 21, 2020 Stipulation

20 Eugene "requests that the "Stipulation and Order Re: Child Support, Spousal Support and
21 Private School Tuition. Etc." be set aside based upon "mistake" and "actual fraud" as described
22 in Family Code §2122 and Family Code §3690." August 17, 2020 Memorandum of Points and
23 Authorities, page 6.

24 Eugene argues that Katia did not disclose her income at the time the parties entered into
25 the April 21, 2020 Stipulation. It appears undisputed that neither Eugene nor his attorneys

1 requested information regarding Katia's income. Katia argues that she did not have an obligation
2 to disclose her income as set forth in the provision in paragraph 3, that "This DissoMaster is
3 based on the settlement of the parties and none of the entries including visitation time has been
4 verified or accounted for by either party."

5 The April 21, 2020 Stipulation also reflects that the parties are stipulating to guideline²
6 child support. (paragraph 6a). In order to set "guideline" child support, parties must use their

7
8
9 ² (a) The statewide uniform guideline for determining child support orders is as follows: $CS = K[HN - (H\%)(TN)]$.

(b) (1) The components of the formula are as follows:

(A) CS = child support amount.

(B) K = amount of both parents' income to be allocated for child support as set forth in paragraph (3).

(C) HN = high earner's net monthly disposable income.

(D) H% = approximate percentage of time that the high earner has or will have primary physical responsibility
11 for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for
12 different children, H% equals the average of the approximate percentages of time the high earner parent spends with
each child.

(E) TN = total net monthly disposable income of both parties.

(2) To compute net disposable income, see Section 4059.

(3) K (amount of both parents' income allocated for child support) equals one plus H% (if H% is less than or
14 equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times the following fraction:

Total Net Disposable Income Per Month	K
\$0-800	$0.20 + TN/16,000$
\$801-6,666	0.25
\$6,667-10,000	$0.10 + 1,000/TN$
Over \$10,000	$0.12 + 800/TN$

18 For example, if H% equals 20 percent and the total monthly net disposable income of the parents is \$1,000, $K =$
19 $(1 + 0.20) \times 0.25$, or 0.30. If H% equals 80 percent and the total monthly net disposable income of the parents is
\$1,000, $K = (2 - 0.80) \times 0.25$, or 0.30.

(4) For more than one child, multiply CS by:

2 children	1.6
3 children	2
4 children	2.3
5 children	2.5
6 children	2.625
7 children	2.75
8 children	2.813
9 children	2.844
10 children	2.86

(5) If the amount calculated under the formula results in a positive number, the higher earner shall pay that
24 amount to the lower earner. If the amount calculated under the formula results in a negative number, the lower
earner shall pay the absolute value of that amount to the higher earner.

[Balance of statute omitted.]" (Fam. Code §4055.)

1 actual incomes. At the time of negotiations, Katia was earning \$11,249³ per month, while she
2 knowingly allowed an incorrect figure of \$4,389 to be used on the calculations. Instead of
3 disclosing the income from her new job obtained on February 4, 2020, she included language
4 that neither party verified the other parties' income. Katia allowed Eugene to believe her income
5 had remained at the same amount despite the fact that her salary had almost tripled. Katia further
6 agreed to use guideline child support, which means she agreed to use her actual income.

7 In evaluating a request for permanent spousal support, the court must consider and weigh
8 the factors prescribed by Family Code section 4320 (See Fam. Code, § 4330, subd. (a); *Marriage*
9 *of Cheriton* (2001) 92 Cal.App.4th 269, 302-04; *Marriage of Tong & Samson* (2011) 197
10 Cal.App.4th 23, 30 [Fam. Code, § 4320 factors apply to permanent support orders].) Permanent
11 spousal support orders that do not reflect an independent consideration and weighing of all of the
12 statutory circumstances are reversible for abuse of discretion. (*Marriage of Geraci* (2006) 144
13 Cal.App.4th 1278, 1297; *Marriage of McTiernan & Dubrow* (2005) 133 Cal.App.4th 1090,
14 1106-07.) Computer programs cannot substitute for the exercise of judicial discretion in
15 considering and weighing the appropriate statutory factors under Family Code section 2030.
16 (*Burlini, supra*, 143 Cal.App.3d at p. 69; *Olson, supra*, 14 Cal.App.4th at p. 5 [“fixing permanent
17 support simply by use of a computer program would be an abdication of judicial responsibility
18 ...”].) Eugene’s position that a Dissomaster calculation should be used is erroneous. Moreover
19 the Court did not receive testimony regarding the marital standard of living and this is not
20 addressed in the November 18, 2019 Judgment. Eugene’s request to set aside the spousal
21 support provision of the April 21, 2020 Stipulation is without merit.

22 Eugene also seeks to set aside the education provision of the April 21, 2020 Stipulation
23 based upon “trading” the spousal support termination for the education expenses. First, the
24 Court has no way to analyze the spousal support termination, as explained above. Moreover, as

25 ³ Katia’s August 3, 2020 Income and Expense Declaration reflects new employment as of February 4, 2020 in the amount of \$2,596 per month (which is \$134,992 per year or \$11,249 per month).

1 detailed below, the Court finds that Eugene was previously obligated to splitting the education
2 expenses in the November 18, 2019 Judgment. Accordingly, the Court finds this argument
3 without merit.

4 With respect to child support only, Katia's failure to disclose her increased and actual
5 income is a grounds for relief which materially affected the April 21, 2020 Stipulation and
6 Eugene would materially benefit from the granting of the relief.

7 **2. Private School Tuition**

8 Eugene argues that the private school provision of the November 18, 2019 Judgment did not
9 include a requirement that he pay for Sophia's tuition. He further argues that Katia's fraudulently
10 induced him into the April 21, 2020 Stipulation (see discussion above).

11 Eugene's argument is without merit. The November 18, 2019 Judgment states: "Father and
12 Mother will each be responsible for payment of one-half (1/2) of all educational costs incurred
13 on behalf of SOFIA (through high school graduation for SOFIA)." Nowhere does the Judgment
14 specify that the education costs are limited to certain categories. Instead, it reflects an obligation
15 for "all educational costs" through high school graduation. Such language is not standard in most
16 agreements. It is reasonable to interpret "all educational costs" as inclusive of tuition.

17 Moreover, at the time, the parties entered into their November 18, 2019 Judgment, they had
18 looked at several private schools for Sophia. They filled out applications and selected Monticello
19 school. They paid a deposit to ensure Sophia's place in school. Eugene did not unenroll Sophia
20 from private school. He did not provide evidence that he attempted to do so, or asked Katia to.
21 At the time the parties agreed to split "all educational costs" Sophia was enrolled in private
22 school.

23 Under both the November 18, 2019 Judgment and April 21, 2020 Stipulation, Eugene is
24 obligated to split the private school tuition with Katia.

1 **3. Spousal Support**

2 An order modifying or terminating a support order may be made retroactive to the date of the
3 filing of the notice of motion or order to show cause to modify or terminate. Fam. Code, §3653.

4 Generally, standardized support schedules or “guidelines” based on the parties’ incomes are
5 used by courts on the question of *temporary* spousal support; indeed, their use is encouraged for
6 that purpose alone. (*Marriage of Winter* (1992) 7 Cal.App.4th 1926, 1933, italics
7 added.) Courts may also calculate temporary spousal support through computer software
8 programs (e.g., Dissomaster), provided the program incorporates temporary spousal support
9 guidelines adopted by local court rule. (*Marriage of Olson (Olson)* (1993) 14 Cal.App.4th 1, 5;
10 *Marriage of Schulze* (1997) 60 Cal.App.4th 519, 526.) However, **neither local court schedules**
11 **nor computer software programs may be used to set *permanent* spousal support.** (*Marriage*
12 *of Burlini (Burlini)* (1983) 143 Cal.App.3d 65, 69; *Marriage of Zywiciel* (2000) 83 Cal.App.4th
13 1078, 1081-82, (emphasis added.))

14 In evaluating a request for permanent spousal support, the court must consider and weigh
15 the factors prescribed by Family Code section 4320 (See Fam. Code, § 4330, subd. (a); *Marriage*
16 *of Cheriton* (2001) 92 Cal.App.4th 269, 302-04; *Marriage of Tong & Samson* (2011) 197
17 Cal.App.4th 23, 30 [Fam. Code, § 4320 factors apply to permanent support orders].) Permanent
18 spousal support orders that do not reflect an independent consideration and weighing of all of the
19 statutory circumstances are reversible for abuse of discretion. (*Marriage of Geraci* (2006) 144
20 Cal.App.4th 1278, 1297; *Marriage of McTiernan & Dubrow* (2005) 133 Cal.App.4th 1090,
21 1106-07.) Computer programs cannot substitute for the exercise of judicial discretion in
22 considering and weighing the appropriate statutory factors under Family Code section 2030.
23 (*Burlini, supra*, 143 Cal.App.3d at p. 69; *Olson, supra*, 14 Cal.App.4th at p. 5 [“fixing permanent
24 support simply by use of a computer program would be an abdication of judicial responsibility
25 ...”].)

1 Accordingly, Eugene's request for a retroactive modification of spousal support prior to
2 the filing of his RFO, and in particular based upon a DissoMaster calculation, cannot be granted.

3 **4. Omitted Asset**

4 Katia seeks a determination and division of omitted assets – Google Stock and FCU account.
5 A court has jurisdiction to effect a post-judgment division of an omitted community asset and/or
6 liability on a party's motion at any time, regardless of whether the prior judgment reserved
7 jurisdiction over property issues. (Fam. Code, § 2556; *Marriage of Thorne*
8 & *Raccina* (“*Raccina*”) (2012) 203 Cal.App.4th 492, 501.) To determine whether an asset is
9 omitted, the court cannot simply look at whether it is mentioned in the judgment but must
10 determine if it was “actually litigated and divided in the previous proceeding.” (*Raccina, supra*,
11 203 Cal.App.4th at p. 501.)

12 Eugene was awarded “a 100% interest in Partners FCU Savings account no. -0157-0000.”
13 November 18, 2019 Judgment, page 11, paragraph 5F. This asset was not omitted and was
14 awarded to Eugene.

15 Eugene's April 8, 2019 email, introduced at Trial states: “5.2. Schwab brokerage:
16 \$161107.95 5.3. Schwab equity awards: \$43457.40 (Google stock vests here).” Eugene's
17 Schedule of Assets and Debts was unsigned and was served the same day the parties signed their
18 Judgment. No vesting schedule or back-up statements were provided as part of Eugene's
19 Schedule of Assets and Debts. Despite the email of April 8, 2019 listing an account for Google
20 shares, Eugene's Schedule of Assets and Debts made no mention of this account. The Schwab
21 GOOG account, contains Google stock, and is referred to as equity awards. As of June 30, 2019
22 there were 46 shares of Google stock. The November 18, 2019 Judgment awards each party one-
23 half of the Schwab 6350 account (brokerage account) and is **silent** as to the Schwab GOOG
24 account.

1 Further, it appears as though Katia did not receive any Google stock. Eugene emailed Katia
2 on July 12, 2019, stating: "TL;DR: I fulfilled my obligations. Now it's time you fulfill yours. At
3 the time of the divorce filing, the total balance of my investment accounts was \$271895.58
4 (\$66273.20 in etrade, \$205622.38 in schwab). The mediation agreement entitles you to take
5 \$200947.79 of my money using the 50% + 65K calculation. You have already received all' of my
6 holdings in the following assets: VCAIX 67628.11 FB 38802.00 IAU 67225.00 T 1 0641.17
7 For a total of 184296.28. That leaves a balance of 16651.51 which we can settle in cash if you
8 want. However, I think that it would be more than fair to just call it even, considering that the car
9 that I bought for you is worth far more than my bike & trailer. You are, of course, aware that you
10 have the upper hand in this matter and can force me to give you this money if you so choose, so
11 let me know what you want to do. That only leaves the retirement accounts pending. eTrade
12 Roth IRA: as I have already informed you, I sent them the paperwork but they require divorce
13 decree to release the money. There is nothing more I can do at this time. Vanguard 401k: being
14 discussed in a separate thread; you are aware of what's happening and the ball is in your court.
15 So, I fulfilled my obligation. Now I need you to sign the title documents. As explained above, I'll
16 give you the check for \$16651.51 if you so choose. Eugene."

17 Thereafter on September 25, 2019, Eugene sent Katia an email, stating: "I already
18 transferred ALL non-retirement funds that were due you as per the mediation agreement. Refer
19 back to my July12 email. Specifically you received the following stock/ETF transfers:
20 VCAIX 67628.11 FB 38802.00 IAU 67225.00 T 10641.17 For a total of 184296.28. I gave
21 you a check for the remaining amount of 16651.51. The only accounts that are left to settle are
22 retirement accounts: - 50% of e-trade Roth IRA. As explained multiple times previously, I
23 submitted the distribution form to e-trade but they require the divorce decree from the court to
24 release the money to you. - 401k account: being handled by Elizabeth A. Strasen I don't owe
25 you anything else. Eugene"

1 The Google RSUs held in Schwab were not divided and not received by Katia. Eugene's
2 testimony confirmed that he did not divide the RSUs but rather unilaterally selected which stocks
3 Katia received. Eugene may not unilaterally decide which assets he keeps or awards to Katia in
4 violation of the November 18, 2019 Judgment.

5 At the time of separation, April 8, 2019, there were 36 shares of Google stock in the
6 Schwab GOOG account.

7
8 **5. Breach of Fiduciary Duty**

9 Katia seeks an award to stocks based upon Eugene's breach of fiduciary duty and
10 fraudulent selling of community property.

11 Family Code § 721 provides that spouses are subject to the same fiduciary duties
12 concerning between themselves that are imposed on any parties with a confidential relationship
13 with one another, such as business partners. (Fam. Code, § 721 (b).) To this effect, each spouse
14 has a duty to provide an accounting regarding any transactions concerning community
15 property. (*Ibid.*) If one party claims the other party breached his or her fiduciary duties, a court
16 may order one spouse to provide an accounting to the other spouse of any community property
17 and obligations. (Fam. Code, § 1101, subd. (b).)

18 In support of her position, Katia argues that Eugene sold shares of his Apple stock,
19 without her knowledge during marriage and it has since increased in value. Eugene testified that
20 he sold the stock at that time as he was concerned it was "dropping" in value. Eugene also
21 testified that he told Katia about the sale. Ultimately, Katia received half the value of the stock,
22 as did Eugene in their asset division. Eugene did not receive an unfair advantage over Katia, as
23 they each received the same value for the stock. Further, Katia has not proven that Eugene sold
24 the stock in order to obtain a lower value. Rather Eugene testified that he was worried the stock
25 was going to decrease in value and sold the shares as an attempt to preserve the asset for the

1 community. The fact that the value has increased, in and of itself, is not a basis to find that there
2 was a breach of fiduciary duty.

3 Katia contends that Eugene's sale of \$20,000 of stock on April 8, 2019 and \$10,000 on
4 April 25, 2019 was a breach of fiduciary duty. The sale occurred through the Charles Schwab
5 account. Eugene testified that he sold \$20,000 of community stocks to have "emergency cash."
6 He also testified that he was to transfer \$10,000 of these funds to Katia, but instead he sold more
7 stocks to complete this transfer. Katia was awarded half of the Schwab 6350 account. If she has
8 not received half of the proceeds of these sales, she should be made whole immediately.

9 The Court does not see this as a basis to find Eugene breached his fiduciary duty.

10 **6. Reallocation of the Brief Focused Assessment**

11 Neither party presented information or argument as to why there should be a reallocation
12 of the equal payment for the Brief Focused Assessment. Accordingly, the Court cannot make an
13 order for reallocation.

14 **7. Disclosure of Income**

15 It is the Court's desire to help the parties minimize their conflict and litigation. The Court
16 sees no value in granting such an order.

17 **8. Attorney's Fees**

18 Both parties are seeking an award of attorney's fees. Under Family Code § 271, the Court
19 may base an award of attorney's fees and costs "on the extent to which the conduct of each party
20 or attorney furthers or frustrates the policy of the law to promote settlement of litigation and,
21 where possible, to reduce the cost of litigation by encouraging cooperation between the parties
22 and attorneys." (Fam. Code § 271, subd. (a).) "The duty imposed by Family Code § 271
23 requires a party to a dissolution action to be cooperative and work toward settlement of the
24 litigation on pain of being required to share the party's adversary's litigation costs." (*Nicholson*
25 *v. Fazeli* (2003) 113 Cal.App.4th 1091, 1102.) No actual injury is required (*In re Marriage of*

1 *Corona* (2009) 172 Cal.App.4th 1205, 1225.), and an award of fees and costs under § 271 “is in
2 the nature of a sanction.” (Fam. Code § 271, subd. (a).) “Some courts have said [§ 271]
3 authorizes attorney’s fees and costs as a penalty for obstreperous conduct.” (*In re Marriage of*
4 *Davenport* (2011) 194 Cal.App.4th 1507, 1524.)

5 As to the amount of a Family Code § 271 sanction, “the court must take into
6 consideration all evidence concerning the parties’ incomes, assets and liabilities” (*Burkle v.*
7 *Burkle* (2006) 144 Cal.App.4th 387, 403.) However, “[t]he party requesting the award ‘is not
8 required to demonstrate any financial need for the award.’” (*Ibid.*) “[T]he only stricture
9 imposed by § 271 is that the sanction may not impose ‘an unreasonable financial burden’ on the
10 party sanctioned.” (*Ibid.*)

11 Family Code § 271 “imposes a ‘minimum level of professionalism and cooperation,’ to
12 effect the policy favoring settlement of family law litigation—and a reduction of the attendant
13 costs. [Citations] § 271 ”authorizes sanctions to advance the policy of promoting settlement of
14 litigation and encouraging cooperation of the litigants” and “does not require any actual injury.”
15 [Citation.] Litigants who flout that policy by engaging in conduct that increases litigation costs
16 are subject to imposition of attorney fees and costs as a § 271 sanction. *Marriage of Davenport*
17 (2011) 194 Cal.App.4th 1507, 1524.

18 Under Family Code § 2107(c), the Court is required to order monetary sanctions
19 against a party who fails to comply with the disclosure requirements, unless the Court finds the
20 party subject to the sanction acted with substantial justification, or that other circumstances make
21 imposition of the sanction unjust. “Sanctions shall be in an amount sufficient to deter repetition
22 of the conduct or comparable conduct, and shall include reasonable attorney’s fees, costs
23 incurred, or both....”

24 Katia’s failure to disclose her increased income resulted in Eugene’s RFO to set aside.
25

1 After receiving the Court's tentative decision, for settlement purposes only Katia agreed
2 to settle and submit on attorney's fees only. However, Eugene wanted to proceed with litigating
3 the one area he deemed to have lost. Even after receiving Court's proposal to have that matter be
4 submitted via the pleadings provided, Eugene demanded other matters to be added on, which
5 frustrated the settlement negotiations.

6 All other settlement negotiations with Eugene including two MSCs, and a JSSC were
7 fruitless. After a 3-hour MSC and agreeing to a global settlement, Eugene's counsel sent an
8 email a few minutes after the conclusion of the meeting that he has changed his mind.

9 Eugene testified that he in fact canceled Sophia's health insurance despite the Judgment
10 and November 2021 both requiring Eugene to maintain health insurance for Sophia. This was
11 also done despite Katia's attorney informing his counsel that Eugene should not remove the
12 minor child's coverage. Through this day, Sophia still does not have any coverage through
13 Eugene, as it is ordered in 3 separate court orders now.

14 Katia had to go through counsel and a formal request for production of documents to
15 obtain a copy of Eugene's life insurance policy naming Katia a beneficiary that he was obligated
16 to maintain per the parties' judgment. Eugene testified that he is unaware if he has added Katia
17 to his life insurance policy after his attorney confirmed that Katia was not the beneficiary of the
18 policy. To this day Eugene failed to provide a copy of the policy naming Katia as a Beneficiary.

19 Eugene testified that the E*Trade Roth IRA was not divided before Katia had to retain an
20 attorney because it was "not convenient" for him to be "on hold for 15 minutes" with E*Trade.
21 He also initially testified that a judgment needed to be submitted for that account to be divided.
22 However, he does not recognize that the judgment was issued on November 18, 2019, and the
23 account was still not divided by February 2020 when Katia was forced to retain an attorney.

24 Katia was forced to file a motion with the Court requesting the trial to be continued due
25 to her father's passing, and having to make the death certificate a part of the public records. This

1 was due to Eugene denying her request to reschedule the trial. Once again in his response
2 Eugene put his approval contingent upon accepting his unreasonable one-way conditions without
3 having any compassion for Katia's loss.

4 Eugene filed an untimely motion for reconsideration with the Court which was denied.

5 Katia was forced to file a motion for disqualification of Eugene's attorney, Joe
6 Camenzind, when it was discovered a conflict of interest exist. Despite proper meet and confer
7 regarding this issue Eugene's then counsel refused to substitute out of the case and the Court had
8 to issue an order regarding this matter.

9 Eugene did not divide the Google RSU. Further, throughout Trial and even in his closing
10 arguments, Eugene takes the position that he may divide assets outside of the terms of the
11 Judgment. In his March 24, 2022 closing statements, he justifies an unequal division by arguing
12 that the Judgment did not equally divide the parties' cars. In other words, Eugene takes this upon
13 himself to remedy. This conduct has frustrated settlement and led to the increase in fees by
14 Katia.

15 The Court finds Eugene's conduct has frustrated the policy of law to promote settlement,
16 and, where possible, reduce the cost of litigation by encouraging cooperation between parties and
17 the attorneys. Eugene has or is reasonably likely to have the ability to pay and the sanction
18 imposed does not impose an unreasonable financial burden.

19
20 **I. ORDER**

21 The Court Orders:

- 22 1. Per stipulation of the parties, Eugene shall pay to Katia half of \$6,630.58, or
23 \$3,315.29 for the vacation pay, on or before May 1, 2022.
- 24 2. The request to set aside the Tarzana condominium provisions of the November 18,
25 2019 Judgment is Denied.

- 1 3. The request for retroactive termination of spousal support effective March 1, 2020 is
2 Denied.
- 3 4. The request to vacate child support provisions of the November 18, 2019 Judgment is
4 Denied.
- 5 5. The request to vacate the spousal support provisions of the November 18, 2019
6 Judgment is Denied.
- 7 6. The request to vacate the April 21, 2020 Stipulation is Denied.
- 8 7. Eugene's request for private school tuition reimbursement is Denied.
- 9 8. The request to set aside child support per the April 21, 2020 Stipulation is Granted.
10 Child support will be modified for the period of March 1, 2020 - September 30,
11 2020⁴, as follows: Eugene shall pay to Katia \$1,195 per month for guideline child
12 support. The parties shall meet and confer on arrears, which may be enforced by the
13 Department of Child Support Services. See Exhibit 1, hereto.
- 14 9. The request for determination and division of the FCU account is Denied.
- 15 10. The request for determination and division of the Google Stock is Granted. Google
16 Stocks: Katia is awarded one-half of the community property⁵ shares of Google stock.
17 Within 10 days of this Order, Katia shall provide Eugene with the account to which
18 she would like the shares transferred. Within 10 days of receipt of the same, Eugene
19 shall transfer the shares to Katia.
20

21
22
23 ⁴ The Department of Child Support Service began enforcement on October 1, 2020 pursuant to the November 24, 2021 Order After Hearing.

24 ⁵ Based upon Petitioner's Exhibit 9, it appears as though there were 36 shares on April 1, 2019. Accordingly, Katia
25 should receive 18 shares. In the event either party disputes the number of shares, the Court will entertain a RFO.
The Court did not receive a vesting schedule and was not made aware if the shares are currently transferrable. In the
event they are not, Eugene shall hold Katia's shares in trust for her until such time as they can be transferred to
Katia.

- 1 11. The request for a finding of breach of fiduciary duty is Denied.
- 2 12. To the extent Eugene has not paid Katia for half of \$20,000 (April 8, 2019 stock sale
- 3 from Schwab 6350) and \$10,000 (April 25, 2019 stock sale from Schwab 6350) for a
- 4 total of \$15,000, he shall do so on or before May 1, 2022.
- 5 13. The request for reallocation of the Brief Focused Assessment is Denied.
- 6 14. The request to order both parties notify the other of changes to income is Denied.
- 7 15. Eugene is ordered to pay \$60,000 as a sanction under Family Code § 271 and related
- 8 sanctions. The sanctions are payable: in full, on or before June 15, 2022.
- 9 16. No interest will accrue so long as payments are timely made. If any payment is 30
- 10 days overdue, the entire unpaid balance will immediately become due with interest at
- 11 the legal rate, which is currently 10% per year, from the date of the default to the date
- 12 payment is finally made.

13

14 April 8, 2022

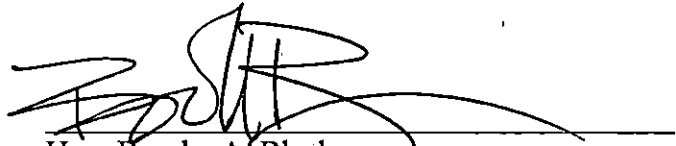
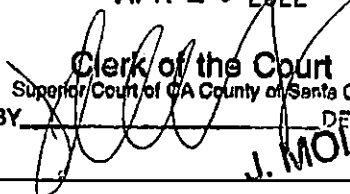
15 
16 Hon. Brooke A. Blecher
17 Judge of the Superior Court

EXHIBIT 1

ATTORNEY (NAME AND ADDRESS): Santa Clara County Superior Court Santa Clara County Superior Court California ATTORNEY FOR: Father	TELEPHONE NO:	Superior Court Of The State of California, County of COURT NAME: STREET ADDRESS: MAILING ADDRESS: BRANCH NAME:
DISSOMASTER REPORT 2020, Monthly		CASE NUMBER:

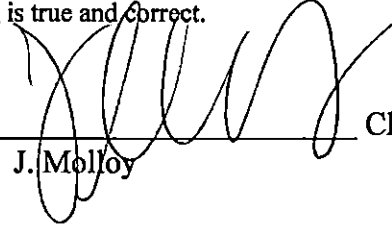
Input Data	Father	Mother	Guideline (2020)	Cash Flow Analysis	Father	Mother
Number of children	0	1	Nets (adjusted)	Guideline		
% time with Secondary Parent	20%	0%	Father	9,382	Payment (cost)/benefit	(1,195) 1,195
Filing status	Single	HH/MLA	Mother	7,682	Net spendable income	8,187 8,878
# Federal exemptions	1*	2*	Total	17,064	% combined spendable	48% 52%
Wages + salary	14,166	11,249	Support		Total taxes	4,710 3,067
401(k) employee contrib	0	0	CS Payor	Father	# WHA	2 7
Self-employment income	0	0	Presumed	1,195	Net wage paycheck/mo	9,350 8,135
Other taxable income	0	0	Basic CS	1,195	Comb. net spendable	17,064
Other nontaxable income	667	0	Add-ons	0	Proposed	
New-spouse income	0	0	Presumed Per Kid		Payment (cost)/benefit	(1,195) 1,195
Wages + salary	0	0	Child 1	1,195	Net spendable income	8,187 8,878
Self-employment income	0	0	User-specified SS	0	NSI change from gdl	0 0
Misc ordinary tax. inc.	0	0	Total	1,195	% combined spendable	48% 52%
SS paid other marriage	0	0	Proposed, tactic 9		% of saving over gdl	0% 0%
Retirement contrib if ATI	0	0	CS Payor	Father	Total taxes	4,710 3,067
Required union dues	0	0	Presumed	1,195	# WHA	2 7
Nec job-related exp.	0	0	Basic CS	1,195	Net wage paycheck/mo	9,350 8,135
Adj. to income (ATI)	0	0	Add-ons	0	Comb. net spendable	17,064
SS paid other marriage	0	0	Presumed Per Kid		Percent change	0.0%
Partner support paid other partnerships	0	0	Child 1	1,195	1 Setting Changed	
CS paid other relationship	0	0	User-specified SS	0	User-specified SS formula: Yes	
Qual. Bus. Inc. Ded.	0	0	Total	1,195		
Health insurance	741	500	Savings	0		
Itemized deductions	0	0	No releases			
Other medical expenses	0	0				
Property tax expenses	0	0				
Ded. interest expense	0	0				
Charitable contribution	0	0				
Miscellaneous itemized	0	0				
Required union dues	0	0				
Mandatory retirement	0	0				
Hardship deduction	0*	0*				
Other gdl. deductions	0	0				
AMT info (IRS Form 6251)	0	0				
Child support add-ons	0	0				
TANF, SSI and CS received	0	0				



<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA</p> <p>Petitioner: EKATERINA STRULYOV</p> <p>Respondent EUGENE STRULYOV</p>	<p style="text-align: center;">FILED</p> <p style="text-align: center;">APR - 8 2022</p> <p style="text-align: center;">Clerk of the Court Superior Court of CA County of Santa Clara</p> <p>BY  DEPUTY J. MOLLOY</p>
<p>PROOF OF SERVICE BY MAIL OF: FINDINGS AND ORDER AFTER HEARING</p>	<p>CASE NUMBER: 19FL001660</p>

CLERK'S CERTIFICATE OF MAILING: I certify that I am not a party to this case and that a true copy of this document was mailed first class postage fully prepaid in a sealed envelope addressed as shown below and the document was mailed at SAN JOSE, CALIFORNIA on 4-8-22. I declare under penalty of perjury that the foregoing is true and correct.

CLERK OF THE COURT

By  Clerk
J. Molloy

Golnesa Monazamfar, Esq.
1821 S. Bascom Ave., #427
Campbell, CA 95008

Dale Chen, Esq.
4655 Old Ironsides Dr., Suite 220
Santa Clara, CA 95054