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6 Mr./Ms.. _____, Esquire
7 _____
8 _____
9 Associating Attorneys for Petitioner
10 OK CHA KIM

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FAMILY LAW DIVISION, FOR THE COUNTY OF ORANGE
13 [OFF-SITE: OFFICE OF PETER FLANAGAN]

11	In Re Marriage of	)	CASE NO. 99 D 003680
12	OK CHA KIM,	)	Judge: _____
13		)	Dept: _____
14	Petitioner,	)	By Appointment:
15	and	)	Peter Flanagan, Temporary Judge
16	DAVID KIM, and DOES 1 THROUGH 50,	)	NOTICE AND MOTION
17		)	FOR SUMMARY ADJUDICATION OF
18	Respondent and Third Party	)	PROPERTY DIVISION, AND FOR
19	Claimants.	)	BREACH OF FIDUCIARY DUTY
20	_____	)	Trial Date Not Yet Set
21		)	Date for Motion: 10/28/02 10a.m

22 TO ALL PARTIES, COUNSEL, CLERKS AND TEMPORARY JUDGE:

23 PLEASE TAKE NOTICE that on October 28, 2002, at 10:00 a.m. a date
24 cleared with and for hearing in the offices of the Temporary Judge at One City
25 Boulevard West, Orange, CA 92868, Petitioner OK CHA KIM will move this
26 Court as follows:

27 For Summary Adjudication of the First Cause of Action for Property
28 Division with turn-over orders, and of the Fifth Cause of Action for Breach of

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Fiduciary Duty, of the Petition and in favor of Petitioner against Respondent DAVID KIM.

For an order adjudicating that there is no defense, as to division of Property (First) and as to the breach of fiduciary obligations (Fifth) causes of action, as contained in the pleadings.

For an order that the final judgment in this action shall, in addition to other matters determined at trial, include and award judgment as established by such adjudication.

The Motion will be made upon the ground that there is no triable issue of material fact as to the Property Division (First Cause) and as to Breach of Fiduciary Duty (Fifth Cause), as a matter of law. Civil Procedure §437.

In addition, it is submitted that since BOTH parties require translation services, the issues involve a series of transactions going back almost twenty years, and therefore a disposition on declarations may save considerable time and achieve greater accuracy and justice.

The Motion will be based upon this Notice, a Separate Statement of Undisputed Facts, a Supporting Evidence compilation, the Points and Authorities served and filed herewith, as well as upon oral argument and evidence presented in the hearing of this matter. A compilation of SUPPORTING EVIDENCE – DEPOSITIONS, DECLARATIONS, ADMISSIONS, AND EXHIBITS is separately bound and concurrently-filed as follows:

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DEPOSITION TRANSCRIPTS: DAVID KIM, VOL. I, II, & III.

DECLARATIONS: Declarations of Thomas George Key (A), Ok Cha Kim (B and C), Dr Julian Lee (D), Steve Wyns (E), Rick DeMeo (F), Ray Anderson (G), Dae Young Cho (H), Bill Mills (I), and Brian Kidwell (J).

ADMISSIONS of David Kim, re-submitted 9/25/01 Motion to request 57 + 1 admissions to be “deemed admitted”; the propoundment is attached as Exhibit 30.

EXHIBITS I - V, and 1 - 30 [of which 1-20 are submitted previously in the Black Binder REPLY as authenticated by Declaration, Document #7],

PENDING MOTIONS. All pending Motions in this matter not yet determined {reference list provided in Document #3, Exhibit 3 consisting of July 7, 2001 Calendaring Memo} , and including the Petitioner’s REQUEST FOR JUDICIAL NOTICE [in Black Binder REPLY, Document #6. The REPLY was submitted to the Respondent’s untimely RESPONSE TO MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND FOR ATTORNEYS FEES.]

The Movant respectfully requests that this Motion be heard and considered by the Judge as noticed, in addition to and not in lieu of the Pending Matters {itemized in the July 2001 Memo}.

Petitioner requests that matters which are not timely noticed and docketed not be heard by this Court on the noticed hearing date.

Date: September 17, 2002

Law Office of Thomas George Key JD-MBA

Thomas George Key, for Petitioner,
In Association with

TABLE OF CONTENTS

1	
2	
3	I. Petitioner Is Entitled to SUMMARY ADJUDICATION as a Matter of Law
4	on Proof that No <u>Property Division</u> Took Place and that Respondent
5	Breached <u>Fiduciary Duties</u> . CP 437c.
6	
7	1. Respondent David Kim failed to produce Evidence. . . . Page 2
8	2. David Kim is in exclusive Possession and Control Page 3
9	3. Burden of Proof is on Respondent. Page 3
10	4. Standard of Proof is Clear and Convincing
11	
12	A. Respondent is a Fiduciary Page 4
13	
14	B. Respondent Violated Discovery Act. Page 6
15	
16	II. NOTICE of Factual Issues For Which Adjudication Is Sought:
17	. . . . . Page 9
18	
19	III. PROPERTY DIVISION. The Parties Never Divided Their Marital Estate.
20	1. Existence of Community Estate. Page 10
21	2. No Division of the Estate. Page 11
22	3. Res Judicata. Page 11
23	4. No Factual Dispute Page 12
24	5. Proof is Clear and Convincing. Page 12
25	6. Summary. Page 13
26	
27	IV. FIDUCIARY OBLIGATIONS. Respondent Breached His Fiduciary Duty
28	of Management, Equal Access, Disclosure, Valuation and Accounting.
	1. Management.
	2. Equal Access. Page 14
	3. Valuation Page 15
	4. Accounting. Page 15
	V. PETITIONER IS ENTITLED TO THE STATUTORY REMEDIES.
 Page 19
	VI. CONCLUSION. Page 25

1
2
3
4
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TABLE OF AUTHORITIES

STATUTES

Civil Code § 3294 Page 30

Civil Procedure § 437c Page 1

Civil Procedure § 2016 ff Page 9

Corporations Code § 5019 Pages 22, 24

Corporations Code § 15020 Pages 22, 24

Corporations Code § 15021 Pages 22, 24

Evidence Code §662 Page 7

Family Code 721 Pages 4, 7, 22, 24, 25

Family Code §1101. Pages 27, 28, 33, 39

Family Code 1100(e) Pages 5, 24, 27, 30

Family Code 2102 Pages 4, 7

Family Code §2104 Page 12, 24

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CASES

Aguilar v. Atlantic Richfield Co. (2001) 25 Cal4th 826 Page 2

Falk v. Falk (1941) 48 CA2d 762 Page 4

Paralift Inc. v. Superior court (1993) 23 CA4th 748 Page 2

Marriage of Brewer and Federici (2001) 93 Cal.App.4th 1334, Page 21

Marriage of Fell (1997) 55 Cal.App.4th 1058 Page 3

Marriage of Hokanson (1998) 68 CA 4th 987 Page 39

Marriage of Jones (1998) 60 Cal.App.4th 685 Page 33

Marriage of Reuling (1994) 23 CA4th 1428 Page 7

Marriage of Rossi (2001) 90 CA 4th 34 Page 33

Marriage of Varner (1997) 55 Cal.App.4th 128 Page 32

Sartor v. Superior Court (1982) 136 CA3d 322 Page 2

Stevens v Torregano (1961) 192 CA2d 105 Page 19

Williams v Wraxall (1995) 33 CA4th 120 Page 32

OTHER AUTHORITIES

Weil & Brown, Civil Procedure Before Trial (Rutter) 10:49.
. Page 1

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POINTS AND AUTHORITIES

1. This Motion is directed to issues raised by the pleadings – the Petition and Response at bar. Movant Ok Cha Kim is the Petitioner in this action sounding in Dissolution of Marriage and for Division of Property, Custody, Support, Fees, Accounting, and Breach of Fiduciary Duty.

2. This Motion addresses only the issue of Property Division (First Cause) and the issue of Fiduciary Duty (Fifth Cause) as pled in the Petition.

3. The Court has the power under Civil Procedure §437c(f) to decide the following matters on Motion for Summary Adjudication:¹

That there is no merit to any defenses stated in the Response, and therefore Plaintiff is entitled to statutory relief. Family Code §1100, 1101.

That Respondent owed a duty to Petitioner and has the burden of proof to show by “clear and convincing” evidence that he satisfied his statutory obligations. Family Code §§ 271, 2100, 2102.

¹ Aguilar v. Atlantic Richfield Co. (2001) 25 Cal4th 826. Lead Summary Judgment case, action against oil companies in conspiracy to restrict output; basically cheating people who depend upon them. The Supreme Court confirms the relatively new standard for the burden of production in Summary proceedings. See also Weil & Brown, Civil Procedure Before Trial (Rutter) 10:49.

1 That any late claim of any 1993 “agreement” or “division” is barred by
2 collateral estoppel/ *res judicata*. Sartor v. Superior Court (1982) 136 CA3d
3 322, 328.

4 That the parties did not “agree”, and that Petitioner did not settle or
5 release the Respondent from liability. Paralift Inc. V. Superior court (1993) 23
6 CA4th 748, 751.

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11 4. Therefore, Petitioner submits Causes One and Five for Summary

12 Adjudication:

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15 I. PETITIONER IS ENTITLED TO SUMMARY ADJUDICATION AS A
16 MATTER OF LAW AS TO THE CAUSES FOR PROPERTY DIVISION
17 AND FIDUCIARY DUTY.

18 Argument:

19 Petitioner proves that the parties owned a marital estate, that no property
20 division has taken place, and that in seizing the marital estate to himself,
21 respondent breached fiduciary duties.

22 Further, as a fiduciary, Respondent has the burden of proof. He has no
23 evidence in support of any property division, or showing compliance or
24 performance of his fiducial duties. He is also estopped from lately claiming
25 excuse, justification, defense or even a putative evidentiary response.

26
27 1. Respondent has failed to produce evidence. The Respondent’s
28 failure to evidence a defense is documented in his testimony in Nevada, and at

1 his (incomplete) Deposition.² His failure to produce, disclose, or account for his
2 admitted failure to divide the Property is highlighted by the fact that he had a
3 statutory obligation to do so under the laws of the Family Fiduciary (Section A
4 below) and the laws of Discovery (Section B below).

5
6 In addition, Respondent has been adjudicated as “lacking credibility”.
7
8 David Kim specifically lied to the Court, twice – at both of his “live” hearings –
9 about the issues now at bar – the Property and his fiducial Obligations.³
10
11 Therefore, the nondisclosure is more than mere omission or discovery
12 defalcation; it is fraud.

13
14 2. David Kim has exclusive Possession and Control. The fact that
15 David Kim was at all times during the marriage, and is, in exclusive
16 management and control of the Property, appears to be well-documented and
17 admitted.⁴
18

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20 _____
21 ² Movant takes the unusual step of including the entire
22 transcript because, as declared in the Declaration of Ok Cha Kim,
23 virtually every page contains responses of David Kim which raise
24 more issues than they dispose of. Nothing is clearly or fully
25 explained, although every opportunity is given to David Kim to do
26 so. **Exhibits I, II, III.** Declaration of Ok Cha Kim **Exhibit C.**

27 ³ **Exhibit 22** 12/16/98 Order, District Court of Nevada.

28 ⁴ David Kim has admitted in deposition that he received the
income and the proceeds from sale of Property that he claimed was
given, by him to Ok Cha Kim, which somehow was always back in his
control. He claims he gave the Alvarez Property to Ok Cha, but he
collected all rents, sold it to Anderson, and made a profit. See
Deposition of David Kim I __. and Declaration of Anderson **Exhibit**
G.

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3. Burden of Proof is on Respondent.⁵ The marital and

commercial partner in admitted control has the burden of accounting for the property. He has the fiducial burden of proving he did not advantage himself at his partners' expense, and the accounting must be adequate to that showing. The lack of an accounting for the marital estate and for each Property seized is therefore conclusive against Respondent.⁶ Petitioner is entitled to adjudication as a matter of law.⁷

4. Clear and Convincing Standard of Proof. Since Petitioner has

asserted and claims favored statutory rights, Respondent must prove that she

⁵ The burden of proof on manager/possessor is expressly stated in the statutes. Family Code § 2102, 2100, 721. Significantly, even more than "proof" is required: "A husband having control of community funds, and investing portion thereof in his own separate property without wife's consent, must account to the community funds for such misappropriation." Falk v. Falk (1941) 48 CA2d 762.

⁶ The law and logic here cohere, for as a practical matter, Ok Cha Kim cannot identify, describe, appraise, or account for an estate she has been prevented from knowing about and denied all access to. The denial is uncontested in the Declarations and is a matter of record before this court. See multiple motions to compel, seeking accounting, appraisal, valuation and information. Declaration of Thomas George Key.

⁷ In Aquilar, the supreme court removed the historical "heavy burden" on movant to conclusively negate all defenses. Further, **the movant may rely upon the opponent's "factually devoid" discovery responses.** Aquilar, infra, note 1, (2001) 25 Cal4th 826. David Kim's evidentiary display is either contradictory or "factually devoid", as documented in the Nevada District court, and the instant discovery proceedings. David Kim has not documented ANY discovery responses in the instant proceedings in spite of 18 motions to compel.

1 waived her marital and discovery rights by “clear and convincing evidence.”

2 Any doubts are decided against waiver.⁸

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5 **A. RESPONDENT CONTINUES TO VIOLATE STATUTORY**
6 **FIDUCIARY DUTIES: Management, Disclosure, Valuation, Equal**
7 **Access, and Accounting Obligation.**

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9 5. Family Code 1100(e) provides that a spouse is governed by
10 rules governing fiduciary relationships “with respect to the other spouse”
11 specifically as to the management of community assets.⁹ These fiduciary rules
12

13
14 ⁸ In Marriage of Fell (1997) 55 Cal.App.4th 1058, 64
15 Cal.Rptr 2d 522, at 526. Citing the public policy findings of
16 Family Code §2100 which expressly fosters “full disclosure and
17 cooperative discovery”, the court set aside a judgement based on a
18 Marital Settlement Agreement containing a waiver of disclosure
19 requirements: “Anyone may waive the advantage of a law intended
solely for his benefit. But a law established for a public reason
cannot be contravened by a private agreement....Waiver of rights
is rarely permitted. A party claiming waiver of favored statutory
rights must prove it be clear and convincing evidence, and
doubtful cases are decided against waiver.”

20 In the case at bar, Respondent continues to assert that in
21 some way, for which there is NO evidence, ALL of Petitioner’s
22 rights to discovery, marital property, and her rights as the sole
beneficiary of Respondent’s fiducial obligations, are not worthy
of court protection, and are waived. There is no waiver.

23 ⁹ § 1100. Community personal property; management and control; disposition
24 (a) Except as provided in subdivisions (b), (c), and (d) and Sections 761 and 1103, either spouse has the
25 management and control of the community personal property, whether acquired prior to or on or after January 1,
26 1975, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.
27 (b) A spouse may not make a gift of community personal property, or dispose of community personal property for
28 less than fair and reasonable value, without the written consent of the other spouse. This subdivision does not apply
to gifts mutually given by both spouses to third parties and to gifts given by one spouse to the other spouse.
(c) A spouse may not sell, convey, or encumber community personal property used as the family dwelling, or the
furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the other spouse or minor
children which is community personal property, without the written consent of the other spouse.
(d) Except as provided in subdivisions (b) and (c), and in Section 1102, a spouse who is operating or managing a
business or an interest in a business that is all or substantially all community personal property has the primary
management and control of the business or interest. Primary management and control means that the managing

1 expressly require an affirmative obligation of “full disclosure”, accounting, and
2 valuation:

3 “This duty includes the obligation to make full disclosure to
4 the other spouse of all material facts and information regarding
5 the existence, characterization, and valuation of all assets in
6 which the community has or may have an interest and debts for
7 which the community is or may be liable, and to provide equal
8 access to all information, records, and books that pertain to the
9 value and character of those assets and debts, upon request.

10 6. Family Code §721 provides that each spouse must render upon
11 request “true and full information of all things affecting any transaction which
12 concerns the community property.”

13 7. Significantly, and as an evidentiary matter, the §721 fiduciary
14 duty prevails over any “presumption” of title from legal deeds. In other words,
15 Evidence Code §662 is trumped by the uncontested fact of the marriage and the
16 existence of the Property. Marriage of Reuling (1994) 23 CA4th 1428, applying
17 Family Code §721.

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21 spouse may act alone in all transactions but shall give prior written notice to the other spouse of any sale, lease,
22 exchange, encumbrance, or other disposition of all or substantially all of the personal property used in the operation
23 of the business (including personal property used for agricultural purposes), whether or not title to that property is
24 held in the name of only one spouse. Written notice is not, however, required when prohibited by the law otherwise
25 applicable to the transaction.

26 Remedies for the failure by a managing spouse to give prior written notice as required by this subdivision are only as
27 specified in Section 1101. A failure to give prior written notice shall not adversely affect the validity of a transaction
28 nor of any interest transferred.

(e) Each spouse shall act with respect to the other spouse in the management and control of the community assets
and liabilities in accordance with the general rules governing fiduciary relationships which control the actions of
persons having relationships of personal confidence as specified in Section 721, until such time as the assets and
liabilities have been divided by the parties or by a court. This duty includes the obligation to make full disclosure to
the other spouse of all material facts and information regarding the existence, characterization, and valuation of all
assets in which the community has or may have an interest and debts for which the community is or may be liable,
and to provide equal access to all information, records, and books that pertain to the value and character of those
assets and debts, upon request.

1 8. Family Code § 2102 requires that the “accurate and complete
2 written disclosure of all assets and liabilities” is an affirmative obligation even
3 without a request, from the “date of separation to the date of distribution of the
4 community asset”.

5
6 9. It is an uncontested fact that at all times during the marriage and
7 to the present date, Respondent was in sole and exclusive management and
8 control of the community estate.
9

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11 10. It is an uncontested fact that Petitioner has formally and
12 informally requested information pertaining to the assets of the community.
13 Respondent has ignored the actual requests.
14

15 11. It is an uncontested fact that Respondent has denied the
16 existence of a community estate, and in 1993 mis-informed both the Petitioner
17 and the District Court of Nevada concerning the extent and nature of the
18 community estate.
19

20 12. It is an uncontested fact that Respondent has failed to disclose
21 accurate or complete information as to the marital estate in his admitted direct
22 possession, management and control.
23

24 13. Not content with simply “failing to disclose”, Respondent has
25 actively and intentionally concealed and prevented Petitioner from having any
26 access to the Business Premises or records. Thus, instead of performing his
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1 obligations, he has elected to evade the statutory and fiducial requirements he
2 brought upon himself by seizing 100% control of 100% of the estate.
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6 **B. RESPONDENT VIOLATES THE DISCOVERY ACT.**

7 14. The Discovery Act¹⁰ is applicable in Family proceedings.
8 Petitioner has given Respondent every opportunity to respond to informal and
9 formal discovery. The “response” has been to evade, delay, confuse and mis-
10 direct.
11

12 15. We note approximately 15 motions to compel brought against
13 Respondent in the course of almost ten years of litigation. Respondent has
14 ignored FOUR court Orders to comply and produce issued by Judge Firmat,
15 Judge Cannon, Judge Hayes, and Judge Bryce.¹¹ All of the underlying motions,
16 and the Orders, have been submitted without opposition on their merits.
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19 16. The appointment of a discovery referee and property appraisal/
20 arbitrator was first sought in 1995, by Petitioner faced with a year of delayed
21 hearings and law & motion maneuvers.
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¹⁰ Civil Procedure, §2016 ff

27 ¹¹ Petitioner provided the Court with copies of all Orders.
28 Reference ORDERS file: Judge Firmat #“17a” and **Exhibit 24** hereto, Judge Cannon #26, Judge Hayes #29, and Judge Bryce #31.

1 17. Only when faced with further motions to compel did
2
3 Respondent “agree” to pay for neutral third party to assist in resolution of the
4 dispute. On December 19, 2000, Respondent **promised in writing** to bear the
5 cost of a “neutral arbitrator” to resolve a motion to compel production of
6 documents, which was pending against the recalcitrant Respondent.¹² However,
7 the promise was false – to this day it has not been performed. The promise has,
8 however, achieved almost two years of additional delay.¹³
9

10
11 18. Thereafter, on January 22, 2001, the Petitioner obtained a
12 **court order** for the appointment, specifically, of a “discovery referee”, at
13 Respondent’s expense.¹⁴ Four discovery motions against Respondent have been
14 pending since October 2000, not including separate pending motions to compel
15 inspection and accounting.
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20 ¹² Provided as Omnibus Exhibit 7, consisting of the December
21 19, 2000 undertaking letter from John York. The undertaking was
22 thereafter breached by the failure to appoint, or pay, any
23 arbitrator” to resolve the discovery dispute within any reasonable
24 time frame.

25 ¹³ From the date of Mr York’s letter of December 2000 to the
26 present anticipated hearing date, a period of almost two years,
27 and no evidence of performance of the promise.

28 ¹⁴ Order#29, in Order File, consisting of January 22, 2001
29 Order signed by Judge Hayes: “2. Counsel will submit dispute to
30 referee...3. David Kim shall pay ½ the expense of referee by
31 2/20/01, and 1/2 or remaining balance within 7 days following
32 discovery hearing date.” A Review hearing to monitor compliance
33 was set for “April 13, 2001”. Respondent failed to perform or pay
34 (or any other act) by the compliance date.

1 19. It is an uncontested fact that even when ordered (by Judge
2 Firmat, by Judge Cannon, and by Judge Bryce) to produce requested discovery,
3 Respondent failed to do so.¹⁵ To date Respondent has offered no evidence of
4 compliance with a single discovery propoundment, motion to compel, or Order.
5

6 20. Respondent has “produced”, without any written response or
7 inventory, various documents. Petitioner has never denied that Respondent has
8 done so. Petitioner took immediate pains to review this “production” carefully,
9 even providing an inventory (which Respondent has never done). The
10 Respondent’s documents on their face are non-responsive and incomplete. As
11 copies of various transactions, they raise more questions than they answer.¹⁶
12

13 21. The documents are not “full and accurate disclosures” and are
14 not dispositive of the issues. Respondent deliberately made empty promises,
15
16

17 _____
18 ¹⁵ Order File #16 signed by Judge Canon, ordering Respondent
19 to produce/appear for deposition on September 22, 2000. He failed
20 to appear or produce. After an OSC for contempt was filed, he
21 appeared for the taking of deposition on October 25, 2000, but
22 failed to produce documents. The deposition was continued, twice,
23 to give him an additional opportunity to appear with the requested
24 documents. He never did so. Finally he elected not to appear (on
25 two final occasions) for his duly noticed deposition. See
26 attached transcripts, and two Notices of Non-Appearance.

27 ¹⁶ See Declaration of Thomas George Key, attached as VI.
28 The Declaration notes that David Kim appeared at his deposition
without having reviewed the list of requested documents, and when
being asked about a particular transaction or property, would
resort to various prevarications and tender unrelated documents to
confuse the issue. He even ignored advice of his own attorney in
continuing to refuse to produce documents. Deposition at II.131.11-
describing subpoenaed documents 1-18 - NONE of which were produced
in spite of Mr York confirming that “you’re entitled to have
discovery that is completed prior to the actual trial [!], and I
will endeavor to accommodate you in that regard. [134.21]”.

1 and provided duplicates of insensical, incomplete, contradictory, disorganized
2 copies of documents, or nothing at all.

3
4 22. The Respondent is accused of failing to disclose, value,
5 equally divide, or account for his seizure of 100% of the community estate. In
6 response to the allegations of concealment, David Kim elected to produce
7 selective, incomplete, confusing, and misleading documents¹⁷. Thus,
8 Respondent proved – precisely, consistently, and without exception – all of the
9 allegations made against him.
10
11

12 23. In summary of the discovery issues, the perjurious
13 interrogatory responses,¹⁸ and selective and misleading production, further
14 inculcates the party with a duty to prove he has fulfilled his fiduciary
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19 _____
20 ¹⁷ Petitioner has at all times submitted that David Kim has
21 selectively produced a few documents. Declaration of Thomas Key.
22 Reference pending Motions to Compel. It appears appropriate to
23 submit the Deposition of David Kim in its entirety to show the
24 extent - virtually on every page - of the pattern of non-
25 disclosure. See **I II III**.

26 It is the burden of this movant to show that once Respondent
27 admitted his possession, the burden shifted to him to disclose,
28 account, value, and equally divide. None of these duties were
performed. Therefore, the burden is not, and cannot be, met.

29 ¹⁸ David Kim's responses to Form Interrogatories, Family
30 Law, claim the parties had "no agreement". This is consistent
31 with his claims to the Nevada District Court in 1993. However, it
32 is contrary to his Deposition testimony - in which he claims
33 numerous "agreement" with Ok Cha as to every conveyance and
34 disposition. In 1998 the Nevada District Court found that his
35 testimony was "not credible". PERJURY in connection with required
36 family law property disclosures is actionable. Family Code §2104

1 obligations: the separate discovery defalcations are compounded evidence of a
2 willful intent to mislead, deceive, confuse and cover up.
3

4
5 **II. NOTICE OF ISSUES FOR WHICH ADJUDICATION IS SOUGHT:**
6

7 Petitioner respectfully submits the following factual issues as matters of
8 proof contained herein:
9

10 1. Respondent obtained a fraudulent Decree of Divorce in Nevada in 1993.

11 2. Respondent controlled and managed a family business and a significant
12 community estate in 1993. [Family Code 1100(c).]

13 3. Respondent violates a continuing fiduciary duty to manage and equally
14 divide the as yet-undivided community estate in his sole management and control. [Family
15 Code 1100, 2550; Corporation Code 16404..]

16 4. Respondent violates a continuing fiduciary duty to make a full disclosure of
17 all material facts concerning the community estate in his sole management and control,
18 including the family Business - Kim's Welding. [Family Code 1100(d)].

19 5. Respondent violates a continuing fiduciary duty to provide equal access to all
20 information pertaining to the community estate remaining in his sole management and control.
21 [Family Code 1100(d); Corporation Code 16403.]

22 6. The fraudulent 1993 Decree obtained and thereafter used by Respondent to
23 delay judicial reckoning for almost ten years has caused a detrimental impact to the Petitioner's
undivided one-half interest in the community estate. [Family Code 1101.]

24 7. Petitioner is entitled to the statutory relief sought in the pleadings for
25 Respondent's breach of fiduciary duties. [Family Code 1101; Corporation Code 16401, 16405.]

26 8. Petitioner is entitled to an award of 100% of the assets taken by Respondent
27 exclusively to himself in breach of his fiduciary duty. [Family Code 1100(h); Civil Code 3294.]
28

1 III. THE PARTIES NEVER DIVIDED THEIR MARITAL ESTATE.

2
3 1. **Existence of Community Estate.** As alleged in the pleadings,
4 never denied, and as proved herein, the Parties are married and have been for
5 19 years. In the course of 9 years and 9 months of cohabitation, they worked
6 together, and owned investment real estate, and a family business operating as a
7 commercial business entity. They acquired an admitted community estate of
8 commercial, residential, and investment property worth over \$3 million dollars.
9 In other words, they acquired a significant estate as a result of their joint efforts
10 during the marriage.
11

12
13 2. **No Division of the Estate.** As alleged in the pleadings, as
14 admitted by Respondent, and as proved herein, the Parties never agreed to any
15 division of the estate.¹⁹ There is no written or oral agreement to divide the
16 estate. Respondent went to Nevada in 1993 and represented to his attorney (Mr
17 Ashman) and the Court in Nevada that the parties had no marital agreement, and
18 no assets.²⁰ Significantly, Respondent never claimed in his Petition or his
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21
22
23
24

25 ¹⁹ August 23, 2000, David Kim's verified answers to Form
26 Interrogatories, Family Law, question 2. "Are there any
27 agreements between you and your spouse made before or during your
marriage or after your separation that affect the disposition of
ASSETS, DEBTS, OR SUPPORT in this proceeding?" NO.

28 ²⁰ Petition, Decree of 1993. See also Declaration of Thomas
George Key.

1 testimony before the Nevada District Court that the parties had “agreed” to any
2 division of any estate.²¹

3
4 **3. Res Judicata.** In December 1998, the District Court in Nevada
5 set aside the 1993 divorce Decree on the grounds that David Kim had
6 fraudulently misrepresented the non-existence of the marital property.²² In fact,
7 after an evidentiary hearing, the Court made judicial findings that a community
8 estate existed and was not divided in 1993. Petitioner has sought Judicial
9 Notice of the judicial findings.²³

10
11
12 **4. No Factual Dispute.** The fact that the parties have a multi-
13 million-dollar community estate in the exclusive control of David Kim, and
14 never agreed to a property division, is proved by the following: (1) Declaration
15 of Ok Cha Kim, (2) verified admission by David Kim in response to discovery,²⁴

16
17
18 ²¹ Respondent had FOUR opportunities to admit the existence
19 of a community estate or claim that the parties had agreed to a
20 division of property: **Exhibit 21** 9/3/93 Complaint for Divorce
21 filed in Nevada by Respondent, **Exhibit 23** 9/23/93 Decree of
22 Divorce, then again, **Exhibit 22** at the hearing underlying the
23 12/16/98 ORDER, 5 years later, and in response to discovery – see
24 denial of any agreement, August 23, 2000, response #2.

25 ²² **Exhibit 22**, 12/16/98 Order, after contested hearing, with
26 findings of fraud and lack of credibility as to the “community
27 assets”.

28 ²³has given notice four times of her request for Judicial
Notice of the Nevada proceedings. Judge Brice granted the
request, but the April 2001 Order was set aside by this Court,
which took the matter under submission. Two additional notices of
the Request have been submitted, without opposition.

²⁴ **Exhibit 29** consisting of Respondent’s responses to Form
Interrogatory #2, which was propounded after the 1993 DECREE was
declared VOID: Interrogatory #2: “Are there any agreements between

1 and (3) judicial findings by the Nevada District Court for which Judicial Notice
2 has been requested without opposition and remains submitted.

3
4 **5. Proof is Clear and Convincing.** This display is at least “clear
5 and convincing” evidence since admissions and judicial findings are the highest
6 quality of evidence.²⁵
7

8 **6. Summary.** The fact that Respondent enjoys exclusive
9 management and control is proved admissions under Deposition and by the
10 Declaration of Ok Cha Kim. Respondent admits making conveyances and
11 transactions on his own and as to each Property. Petitioner further declares that
12 he did so without adequate disclosure to or consent of the Petitioner, and
13 Respondent has no evidence to the contrary. The marital estate was never
14 divided. It remains, 100% in the control and possession of David Kim. He took
15 everything in 1993 and 1994. He thereafter used a Nevada “Divorce Decree” to
16 keep this 100% retention. In 1998 that same Decree was found to be fraudulent
17
18
19
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21

22 _____
23 you and your spouse made before or during your marriage or after
24 your separation that affect the disposition of the ASSETS...?
25 Answer: **NO.**

26 ²⁵ The Movant submits that David Kim has, also, contradicted
27 his admission concerning the complete absence of agreement. In
28 his Deposition, [**Exhibits I, II, III ff.**] when it appeared in his
interest, he would claim Ok Cha Kim “agreed” to a division of
property. It is necessary to note that the District Court of
Nevada also made judicial FINDINGS that David Kim’s testimony was
filled with contradiction. **Exhibit 22.** Such contradictions
however, do not diminish the weight of an admission – the
credibility factor – the perjury – simply gives it even more
weight.

1 by the same District Court of Nevada which declared it to be “VOID ab
2 initio”.²⁶
3

4
5 IV. RESPONDENT BREACHED HIS FIDUCIARY DUTY OF
6 MANAGEMENT, EQUAL ACCESS, DISCLOSURE, VALUATION AND
7 ACCOUNTING.
8

9
10 1. As alleged in the pleadings, never denied, and as proved herein,
11 the Respondent husband and business partner was at all times in sole and
12 exclusive management and control of all of the Community Property. He
13 therefore owed a fiduciary duty of care and loyalty to Petitioner as a result of
14 morality, common law, cultural expectations, ordinary notions of justice and fair
15 play, and as a result of the statutes referenced and set out in the pleadings and in
16 this Motion. The statutes expressly, without limitation, include the duties of
17
18
19

20
21 ²⁶ The sole ground for setting aside the 1993 Decree of
22 Divorce was fraud. **Exhibit 22**, 12/16/98 Order. “VOID Ab initio”
23 is taken to mean that the Decree was improper in 1993 and any use
24 since that date would be also be improper fruit of a poisonous
25 tree since the 1993 fraud was never purged, cured or excused.
26 Respondent’s continuous and current use of the 1993 Decree and the
27 fraudulent claim of property “division” at that time, is as
28 fraudulent today as it was in 1993.

25 If Respondent claims that his testimony was merely
26 contradictory but not fraudulent, we note the FINDINGS as to his
27 “lack of credibility” and the legal standard of deceit: One who is
28 asked for or volunteers information must be truthful; half-truths
or partial disclosures by a fiduciary are deceptive, and deceit is
fraud. Stevens v Torregano (1961) 192 CA2d 105. As a matter of
law, fraud was committed by David Kim, and that fact is *res*
judicata.

1 providing Equal Access, Disclosure, Valuation and Accounting. David Kim
2 provided none of these.

3
4 2. EQUAL ACCESS. David Kim has not provided access – not to
5 mention “equal” access – to his marital and commercial partner. Neither Ok
6 Cha Kim nor her agents – not her lawyer, not her CPA, not her appraiser and
7 not any “discovery referee” long-promised by counsel – have been allowed to
8 have access to the Business premises or records, or even copies of records.²⁷
9

10
11 3. VALUATION. In Marriage of Brewer and Federici (2001) 93
12 Cal.App.4th 1334, the appellate court found *as a matter of law* that the failure
13 to provide a complete, accurate and current “valuation” of a marital asset was a
14 breach of fiduciary duty. The fact that the party in control of a retirement asset
15 did not know the value, was no excuse for the duty to appraise, determine and
16 evaluate.
17

18
19 In the case at bar, David Kim put “unknown” as the value of the Business
20 he operates on Orangethorpe as “Kim’s Welding” and which he admits has
21 earned over \$1.2 million per year since 1990.²⁸ Clearly, the asset value is
22

23
24
25 ²⁷ **Exhibit 25, 26**, consisting of TWO Notices of Non-
26 Appearance for Deposition and for Inspection, documenting David
27 Kim’s refusal to allow duly-noticed inspection of the Business
premises of Kim’s Welding on Orangethorpe. See also Deposition of
David Kim, I, II, III. **Exhibit I - Declaration of Bill Mills.**

28 ²⁸ Schedule of Assets and Debts; Exhibit 17 attached to
Deposition of David Kim I.

1 significant. Under the law of Brewer, David Kim had a duty to appraise and
2 share the appraisal; the “unknown” response is a breach.

3
4 4. ACCOUNTING. Significantly, David Kim’s attorney has
5 repeatedly promised to provide an accounting of the Business since April 2001.
6 He requested and was granted continuances – of two motions to compel
7 accountings of the Business – in order to provide this long-promised accounting.
8 Since David Kim has provided NO accounting, it is not necessary to parse or
9 examine a production. It is not necessary to parse or research the standards of
10 the account as required by the statutes – Family Code §721, and Corporations
11 Code 15019, 15020, 15021, and 15022. The refusal to provide ANY access or
12 any accounting for ANY Property or any part of the acknowledged and admitted
13 Business – demanded in 1993, and steadfastly resisted and refused to the
14 present date – is a breach.
15
16
17
18

19 5. As alleged in the pleadings, and as proved herein by the
20 Declarations of Ok Cha Kim and the Deposition of David Kim, the Respondent
21 seized all of the assets to himself. He did so using assurances and promises of
22 life-time care, by telling Petitioner she did not need to continue working in the
23 family business so that she lost all access to the estates, and thereafter by
24 excluding her from all information or access using a fraudulent 1993 “divorce”.
25 He initially, and from the outset, deliberately forced her into dependence on
26
27
28

1 himself knowing of her cultural and linguistic isolation, her own obligations to
2 her family. Thereafter, he subjected her to physical and psychological abuse if
3 she “disobeyed” his commands. And finally, he used fraudulent legal
4 proceedings to make it appear that his seizure was *fait accompli*, even if not
5 proper.
6
7

8 6. In taking exclusive control of the estate, and forcing Petitioner
9 into dependency, Respondent has at all times since 1993, positioned himself as
10 a fiduciary under Family Code, §§ 721 and 1100(e).
11

12 7. Family Code, § 1100(e) provides that marital partners have a
13 duty of the highest good faith and fair dealing and are forbidden from taking any
14 unfair advantage of the other. In addition, the parties operated a commercial
15 business together.²⁹ As commercial partners, the Parties are also subject to the
16 fiduciary rights and duties of nonmarital business partners under Corporations
17 Code, Sections 15019, 15020, 15021, and 15022, all of which provisions are
18 brought into the Family Code, by reference in Section 721.
19
20
21

22 8. Respondent breached his fiduciary duties as alleged and proved
23 herein by taking all the Property, and Petitioner’s job in the family business, and
24

25
26 ²⁹ **Exhibit I.** Deposition of David Kim, at 192: “Q: Did you
27 disclose...to Ok Cha the financial status of the [Welding]
28 business? A: Yes. We discuss it thoroughl. Sufficiently. Q: What
did you disclose...? A: Okay. Most time Ok Cha come to work with
me so she has most information, and everything else we discussed
thoroughly.” [Admission that Ok Cha worked in the Business.]

1 then by abandoning Petitioner without support, property, security, income,
2 insurance or her own separate property she owned prior to his seizure of it. She
3 never, ever, knowingly or freely consented to the exclusive possession and
4 control of all the Property and all the benefits of the Property by the
5 Respondent.
6
7

8 9. There is no evidence of any actual or express consent by
9 Petitioner and Respondent admits in discovery that no “agreement” was made.
10 Any possible implied “consent”, such as Petitioner’s signature on a deed, is
11 gainsaid by the fact that she is uneducated, does not read English, the document
12 is written in English, and she was denied access to legal advice or information.
13 She was also threatened by force, by physically beatings administered by
14 Respondent when he was questioned by her, by verbal abuse and threat of
15 force. Respondent also made false assurances, and false promises, and has
16 provided disinformation, all playing on the fears and hopes of Petitioner, and
17 preventing any possible “consent” by any implication at law.
18
19
20
21

22 10. As is seen by the documented behavior of the Respondent in
23 this litigation, Petitioner has been prevented, by Respondent [and DOES 1
24 through 50 to be identified in discovery and before trial], of ever having had the
25 opportunity to obtain actual or reliable information about the estate. Without
26 true, complete and accurate information, Ok Cha could never knowingly and
27
28

1 freely consent to any sale, conveyance, encumbrance, or gift to a Third Party.

2 Respondent cannot point to a single document or exchange which is clear or

3 dispositive. His incomplete, partial, and confusing presentation of selected

4 documents [attached for example to his Deposition] hardly do more than to

5 document his usurpation and violence to Petitioner's interests. Each transfer

6 accomplished a further disenfranchisement of Petitioner's efforts and security.

7 Property transfers were performed by Respondent in violation of his fiduciary

8 duties and in violation of his statutory duties under Family Code, Section 1100.

9
10
11
12 11. The result of David Kim's exclusive management has been
13 the complete impoverishment of Ok Cha. As a matter of law, the statutory
14 criteria of "impairment" is well met. Family Code §1101. He used her money
15 and property to develop a multi-million dollar estate he has taken to himself. In
16 doing so with her money, in violation of his own professed religious principles,
17 his statutory fiducial obligations, and the express public policy of this State, he
18 is in breach as a matter of law.
19
20
21

22
23 V. PETITIONER IS ENTITLED TO THE STATUTORY REMEDIES.

24
25 1. Pursuant to Family Code, Section 1101, Petitioner expressly
26 prayed for the statutory remedies provided, including the remedies provided in
27
28

1 subdivisions (a) through (h). The pleadings explicitly referenced and applied
2 each of the statutory remedies to these proceedings as follows:

3
4 **(a) Damages for each breach of each fiduciary duty**
5 **resulting in an impairment of Petitioner's interest in the community estate, and for**
6 **each detrimental impact caused by Respondent's acts, and in an amount not less**
7 **than \$2,500,000.**

8 **(b) For an Accounting of the property and**
9 **obligations of Respondent, and for a determination of ownership rights, beneficial**
10 **enjoyment, access, and classification of all the property of the Parties;**

11 **(c) For the addition of Petitioner's name to all**
12 **community property held in the name of Respondent alone, or reformation of all**
13 **titles to all community property held in some other title;**

14 **(d) Petitioner alleges timely compliance with all**
15 **limitation periods in that (1) she first filed the claim on April 20, 1994, and has**
16 **continued to make the claim at all times since, (2) she still has no "actual**
17 **knowledge", (3) Respondent has actively disguised his acts and prevented finding**
18 **out "actual" information of his usurpations, (4) Respondent continues to fail to**
19 **provide disclosures of any conveyances or acts, or any "notices" as required by**
20 **Family Code, Section 1100(d), and (5) Petitioner makes this claim "in conjunction**
21 **with" the Parties' ongoing divorce proceedings in Nevada and California so that no**
22 **limitation time applies.**

23 **(e)...[not applicable].**

24 **(f) This Subdivision expressly provides that this**
25 **action may be brought independently of, or, in conjunction with, Petitioner's**
26 **continuous efforts to have a proper dissolution of the Marriage.**

27 **(g) For an award of 50 percent, or an amount equal**
28 **to 50 per cent of any asset undisclosed or transferred in breach of the fiduciary**
29 **duty, plus all attorney's fees and costs; Respondent's failure to disclose marital**
30 **assets is already public record in the Courts of Nevada and in California.**

31 **(h) For recovery of 100 percent, or an amount**
32 **equal to 100 percent, of any asset undisclosed or transferred in breach of the**
33 **statutory and common law duty to Petitioner as a domestic and commercial**
34 **business partner.**

35 2. Without waiving the foregoing statutory remedies to be
36 concluded at trial, by this Motion, Petitioner seeks a turnover order as a matter
37 of law under Family Code §1101(h) as to the significant assets admitted to be in
38 the control and possession of David Kim. The undisputed evidence is that the

1 parties have a current interest in the title to the following Properties known to
2 the parties as follows: (1) the land in Menifee, and (2) the Premises and
3 Business on Orangethorpe known as Kim's Welding.
4

5 3. Pursuant to the reference to Civil Code § 3294 [punitive
6 damages] in Subsection (h) [of Family Code, §1101], by way of this
7 adjudication as a matter of law, Petitioner seeks an order entitling her to
8 punitive damages as a matter of law in an amount of at least \$2,500,000 in
9 addition to the foregoing remedies which will be sought in the trial of this
10 matter.
11
12

13 4. The amount comports to the egregiousness of the seizure of
14 property and violation of rights which has continued and been documented since
15 1993 without the slightest mitigation. A multi-million-dollar estate was taken
16 and is enjoyed by Respondent exclusively to himself since 1993. The intensity
17 and duration of the fraud is unique and remarkable, and demonstrates lack of
18 remorse and unlikelihood of voluntary . Respondent knows that Petitioner
19 suffered in poverty, struggled to find employment, and cared for their child, all
20 without benefit of her estate which he retained. He took her job, her estate, her
21 family, and then destroyed her reputation, her health and her dignity.
22
23
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28

1 5. The continued assertion of the 1993 “status quo” obtained by a
2
3 fraudulent DECREE is just as fraudulent as the act of obtaining the DECREE in
4 the first place.

5 6. The Respondent [and DOES 1 through 50 who will be named
6
7 and determined at the future trial of this matter] acted with malice, oppression,
8 and fraud, and actively concealed and denied existence of assets in violation of
9 fiducial obligations, statutes and the public policy of two States. The fraud is
10 *res judicata*, the proof is Judicially-notice-able, and Request for Judicial Notice
11 has been duly-noticed and sought. A Judicial Finding of fraud is “clear and
12 convincing” evidence.
13

14 7. Concealment of material facts concerning the marital estate is
15
16 perjurious where there is a statutory duty to disclose. Family Code §2104.
17 Concealment is fraud as a matter of law if there is a fiduciary duty to disclose it.
18 Williams v Wraxall (1995) 33 CA4th 120, even in the non-marital commercial
19 context. Clearly the refusal to give access, and the failure to produce any
20 valuation, accounting or documentation pertaining to the Business is active
21 concealment.³⁰
22
23

24 _____
25 ³⁰ See Declaration of Bill Mills, regarding the refusal of
26 David Kim to produce even the most reduced records supporting the
27 completely unsubstantiated “REPORT OF DENNIS SPERRY”, for review
28 by Petitioner’s CPA. The Family Code, of course, requires an
accounting and valuation of the Business, not merely a “Schedule
of Gross Known Controllable Cash Flow available for support”.
Sections 721(2), and 1100(d):

“...This duty includes the obligation to make full disclosure

1 8. In Marriage of Varner (1997) 55 Cal.App.4th 128, at page 144,
2
3 the Appellate Court set aside a stipulated judgment where the husband
4 misrepresented the value of substantial assets. While in exclusive control, he
5 prevented wife and her advisors from having access to the information from
6 which the assets could be valued. The trial court refused to set aside the
7 judgment. The appellate court reversed, concluding that the husband's failure
8 to disclose the existence or value of a community asset constituted grounds for
9 setting aside the judgment *as a matter of law*. (*Ibid.*; accord, Marriage of Jones
10 (1998) 60 Cal.App.4th 685, 693.)

11
12
13 9. The Fraud alone is grounds for the forfeiture of 100% of David
14 Kim's interest in the marital estate. Family Code 1101. In Marriage of Rossi
15 (2001) 90 CA 4th 34, the former wife intentionally concealed lottery proceeds,
16 making various arguments about "gifts", partnerships with third parties, and
17 separate income acquisition. In a post-judgment proceeding, however, the
18 former husband was entitled to an award of the entire amount because of the
19 concealment. The fact that she consulted lottery personnel about how to avoid
20 sharing jackpot with husband, that she used a relative's address, and that she
21 failed to disclose the winnings at any time during dissolution proceedings,
22
23
24
25

26
27 _____ to the other spouse all material facts and information
28 regarding the existence, characterization and valuation of
 all assets...equal access...

1 appeared to trump the warranties in the marital settlement agreement, the
2 disclosure schedules, and the stipulated judgment that all assets had been
3 disclosed.
4

5 10. David Kim concealed the existence of the marital estate from
6 the Nevada District Court, and from Ok Cha Kim. The act is done.³¹ Further,
7 he put title on one of the community properties (Alvarez) in his sister's name
8 because he was himself was in a divorce.³² The fraud in Nevada is *res*
9 *judicata*, and the admissions are un-contestable.³³ These facts are not disputed
10 by any credible evidence.³⁴ A pattern of concealment has continued relentlessly
11 and without remission or remorse for almost ten years. David Kim refuses to
12 provide an accounting of the property in his sole control to this day.³⁵ David
13
14
15
16

17 ³¹ The act is done multiple times: On Filing the Petition
18 [**Exhibit 21**] under penalty of perjury claiming a "no asset"
19 estate, on appearing and testifying at the proof hearing [**Exhibit**
20 **23**], and at the 12/16/98 OSC [**Exhibit 22**], and at each subsequent
use of the "no asset" DECREE throughout these proceedings.

21 ³² See Attached Declaration of Anderson, a buyer of the
22 Alvarez Property. See also admission by David Kim that he
23 controlled the Alvarez Property, received all income from it, made
a profit on its sale, and was upset by the *lis pendens* because of
the loss it caused to him. Deposition at ____.

24 ³³ Deposition of David KIM I II III, and Admissions now
25 deemed admitted, **Exhibit V**, on motion pending since 9/25/01
without opposition.

26 ³⁴ Findings of the District Court of Nevada, for which
27 Judicial Notice is and has been sought, **Exhibit 22**, 12/98 Order.

28 ³⁵ Declaration of Bill Mills, CPA. We kindly ask forgiveness
for this repetition of the fact patterns in the different sections
of the Motion.

1 Kim failed to allow inspection or produce any records, multiple times, and twice
2 on occasions monitored by the Temporary Judge at the Judge’s offices.³⁶ The
3 evidence appears to be “clear and convincing” that he breached his fiducial duty
4 to provide an accounting of any family Property or Business.
5

6
7 11. Respondent has long had notice that his outright seizure of the
8 estate would have consequences that could cost him dearly: within four months
9 of his fraudulent 1993 DECREE, Petitioner filed an OSC in California
10 challenging his *bona fides*. Respondent has enjoyed the legal advice of at least
11 seven licensed attorneys.³⁷ Therefore, it appears that the pattern of concealment
12 is enduring, informed, continuing, and almost absolute – the minor “disclosures”
13 and incomplete discovery responses seem intended to deliberately add more
14 frustration and confusion.
15
16
17

18
19 **VI. CONCLUSION.**

20
21 Petitioner is entitled as a matter of law to the remedies provided under the
22 Family Code for willful violations of the public policy of this State, and of the
23 fiduciary duties owed to a commercial and domestic partner, as a matter of law.
24

25
26 _____
27 ³⁶ **Exhibits 25 and 26**, consisting of Notices of Non-Appearance/Production.

28 ³⁷ In known order, Mr Ashman, Ms Graham, Mr Park, Mr York, Mr Mayer, Ms ____ [former associate of Mr York practicing in Nevada and who appeared on David’s behalf 1998], and Mr Carter.

1 Respondent has already breached his duties and the law does not impose further
2 requirements to qualify for the Section 1101 remedies.
3

4 As a matter of law, Petitioner was the beneficiary of David Kim’s fiducial
5 obligations, and was entitled to full and complete disclosure and discovery.
6

7 David Kim has the burden to show he did not advantage himself at her expense.

8 As a fiduciary, his burden must be “clear and convincing”. Having failed to
9 respond adequately and completely to discovery or to make any valuation,
10 accounting or adequate disclosures, he is now estopped to claim a defense or
11 excuse. He has no legal justification, as a matter of law.
12

13
14 Respondent has claimed that his seizure of the marital estate is *fait*
15 *accompli* for almost ten years. During that entire period, Petitioner has never
16 acquiesced to the seizure of 100% of the estate, but timely gave notice of her
17 attempt to obtain a proper divorce with a proper Property division. What is now
18 *fait accompli* as a matter of law is that Respondent’s ten-year usurpation is
19 fraudulent, oppressive and malicious.
20
21

22 The duration of the unmitigated and unrelenting conduct does not
23 exonerate it. Respondent’s conduct is fraudulent “*ab initio*” as a matter of law.
24

25 1. TURNOVER ORDER. As to the First Cause of Action and as
26 pled in the operative pleadings, Petitioner prays for a turnover order conveying
27 all of the interest of David Kim in the assets identified in the proof to Ok Cha
28

1 Kim, for the addition of Petitioner's name in lieu of David Kim's name on all
2 such muniments of title as may be discovered on investigation, and for a
3 temporary injunction against Respondent conveying or transferring any asset of
4 the Welding Business, or any real property or personal property now in his
5 possession or in the possession or control of any person operating under his
6 control. Specifically, and without limitation, Respondent prays for an
7 immediate turnover order on the following Property: (1) Orangethorpe, (2)
8 Meniffee.

12 2. MONEY DAMAGES. As to the Fifth Cause of Action for
13 Breach of Fiduciary Duties, Petitioner prays for monetary damages not less than
14 \$2,500,000 as the value of the undivided property taken by David Kim, for
15 which he never accounted, and which he failed to disclose to Petitioner or the
16 Nevada District Court, and for an accounting of all Property and businesses
17 managed and controlled by Respondent during the marriage to the date of
18 current conveyance to Ok Cha Kim, at his sole expense and by a reasonable
19 date certain of **December 9, 2002**.

23 3. FINDINGS OF FRAUD. For findings of fact sufficient to
24 support punitive damages in an amount appropriate to the ten year period of un-
25 abated oppression and repeated fraud. The level of opprobrium attached to a
26 spouse who cheats his wife is only sharpened by the use of protracted legal
27
28

1 proceedings to first gain, then attempt to secure the advantage, and thereafter
2 shield himself from justice. David Kim has already demonstrated lack of
3 remorse, unwillingness to respond to Court Orders, and even taking pride in the
4 damage he has done.³⁸ Therefore, Petitioner is entitled to Forfeiture Damages
5 and Punitive Damages, by statute.
6
7

8 4. FORFEITURE DAMAGES. The equity value of the estate
9 seized by Respondent is forfeit to Petitioner. The ability of Respondent to pay a
10 large punitive award need go no further than the Preliminary Appraisal of just
11 the California real estate and the admitted family Business operated on
12 Orangethorpe in Fullerton. The documented equity in 1995 exceeds \$1 million.
13 In 1989 “Kim’s Welding” brought in more than \$1.2 million, and he admitted
14 the Business income has increased since. Respondent lives in a million-dollar
15 home in a million-dollar neighborhood, and he controls a multi-million dollar
16 estate seized entirely away from Petitioner. An appropriate figure of not less
17 than **\$2,500,000** is sought by Petitioner.
18
19
20
21

22 5. FEES. For attorney’s fees and costs. The statute provides that
23 the court "shall" award attorney fees, upon the determination that a breach
24
25
26

27 ³⁸ 7-17-01 Notice of Pending Matters and Status; Statement
28 of Counsel, Section III, pages 6-7, David Kim’s “threats of
violence” against Ok Cha and Mr Key documented, without correction
or response.

1 occurred. Family Code §1101(g). Marriage of Hokanson (1998) 68 CA 4th
2 987. Petitioner will prepare a post-hearing declaration.
3

4 6. TRIAL DATE. For a trial date to determine the remaining issues as
5 prayed for in the pleadings, with sufficient time after monetary recovery from Respondent to
6 enable Petitioner to prepare for the trial, and at the convenience of this Court.
7

8 A proposed Order reflecting this prayer will be prepared prior to the hearing of this
9 matter.
10

11 Dated: September 27, 2002

12 _____
13 Thomas George Key, for Petitioner
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 13522 Newport Avenue, Suite 201, Tustin, California 92780.

I served a true copy of the following document:

NOTICE AND MOTION FOR SUMMARY ADJUDICATION OF PROPERTY, BREACH OF FIDUCIARY DUTY; SUPPORTING EVIDENCE – DECLARATIONS, ADMISSIONS, AND EXHIBITS

on the interested parties in this action enclosing such document(s) in a sealed envelope(s) addressed as follows:

Mr. John K. York, Attorney at Law
One City Boulevard West, Suite 1400
Orange, CA 92668

PERSONAL DELIVERY

Performed and Signed on _____ at Tustin, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Thomas George Key

RECEIVED BY:
DATE: