

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Simon 241501 SIMON LAW 3021 Citrus Circle, Suite 250 Walnut Creek, CA 94598 TELEPHONE NO.: (415) 746-6652 FAX NO. (Optional): (415) 746-6632 E-MAIL ADDRESS (Optional): dsimon@simonlaw.com ATTORNEY FOR (Name): Rosanna Claire Alvero Wauters</p>	<p><i>FOR COURT USE ONLY</i></p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Unified Family Court</p>	
<p>MARRIAGE OR PARTNERSHIP OF PETITIONER: Rosanna Claire Alvero Wauters RESPONDENT: Mathieu Christian Yves Wauters</p>	
<p style="text-align: center;">JUDGMENT</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input checked="" type="checkbox"/> DISSOLUTION <input type="checkbox"/> Status only <input type="checkbox"/> Reserving jurisdiction over termination of marital or domestic partnership status <input type="checkbox"/> Judgment on reserved issues </div> <div style="width: 30%;"> <input type="checkbox"/> LEGAL SEPARATION </div> <div style="width: 30%;"> <input type="checkbox"/> NULLITY </div> </div> <p>Date marital or domestic partnership status ends: June 1, 2023</p>	<p>CASE NUMBER: FDI-21-794666</p>

1. ☐ This judgment ☐ contains personal conduct restraining orders ☐ modifies existing restraining orders.
 The restraining orders are contained on page(s) _____ of the attachment. They expire on (date): _____
2. This proceeding was heard as follows: ☐ Default or uncontested ☐ By declaration under Family Code section 2336
☒ Contested ☐ Agreement in court
 - a. Date: **June 21, Sept 13, 19, 21 25, 2023** Dept.: **403** Room: _____
 - b. Judicial officer (name): **Hon. Russell S Roeca** ☐ Temporary judge
 - c. ☒ Petitioner present in court ☒ Attorney present in court (name): **Selam Gezahegn**
 - d. ☒ Respondent present in court ☐ Attorney present in court (name): _____
 - e. ☐ Claimant present in court (name): _____ ☐ Attorney present in court (name): _____
 - f. ☐ Other (specify name): _____
3. The court acquired jurisdiction of the respondent on (date): **April 28, 2021**
 - a. ☐ The respondent was served with process.
 - b. ☒ The respondent appeared.

THE COURT ORDERS, GOOD CAUSE APPEARING

4. a. ☐ Judgment of dissolution is entered. Marital or domestic partnership status is terminated and the parties are restored to the status of single persons
 - (1) ☐ on (specify date): _____
 - (2) ☐ on a date to be determined on noticed motion of either party or on stipulation.
- b. ☐ Judgment of legal separation is entered.
- c. ☐ Judgment of nullity is entered. The parties are declared to be single persons on the ground of (specify): _____
- d. ☐ This judgment will be entered nunc pro tunc as of (date): _____
- e. ☒ Judgment on reserved issues.
- f. The ☒ petitioner's ☐ respondent's former name is restored to (specify): **Rosanna Claire Alvero**
- g. ☐ Jurisdiction is reserved over all other issues, and all present orders remain in effect except as provided below.
- h. ☐ This judgment contains provisions for child support or family support. Each party must complete and file with the court a *Child Support Case Registry Form* (form FL-191) within 10 days of the date of this judgment. The parents must notify the court of any change in the information submitted within 10 days of the change, by filing an updated form. The *Notice of Rights and Responsibilities—Health-Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

CASE NAME (Last name, first name of each party): Wauters, Rosanna Claire Alvero Wauters, Mathieu Christian Yves	CASE NUMBER: FDI-21-794666
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4. i. ☐ The children of this marriage or domestic partnership are:
- (1) ☐ Name _____ Birthdate _____
- (2) ☐ Parentage is established for children of this relationship born prior to the marriage or domestic partnership
- j. ☐ Child custody and visitation (parenting time) are ordered as set forth in the attached
- (1) ☐ Settlement agreement, stipulation for judgment, or other written agreement which contains the information required by Family Code section 3048(a).
- (2) ☐ *Child Custody and Visitation Order Attachment* (form FL-341).
- (3) ☐ *Stipulation and Order for Custody and/or Visitation of Children* (form FL-355).
- (4) ☐ Previously established in another case. Case number: _____ Court: _____
- k. ☐ Child support is ordered as set forth in the attached
- (1) ☐ Settlement agreement, stipulation for judgment, or other written agreement which contains the declarations required by Family Code section 4065(a).
- (2) ☐ *Child Support Information and Order Attachment* (form FL-342).
- (3) ☐ *Stipulation to Establish or Modify Child Support and Order* (form FL-350).
- (4) ☐ Previously established in another case. Case number: _____ Court: _____
- l. ☒ Spousal, domestic partner, or family support is ordered:
- (1) ☐ Reserved for future determination as relates to ☐ petitioner ☐ respondent
- (2) ☐ Jurisdiction terminated to order spousal or partner support to ☐ petitioner ☐ respondent
- (3) ☐ As set forth in the attached *Spousal, Partner, or Family Support Order Attachment* (form FL-343).
- (4) ☐ As set forth in the attached settlement agreement, stipulation for judgment, or other written agreement.
- (5) ☒ Other (specify): **as set forth in the attached Final Statement of Decision and Order dated December 28, 2023**
- m. ☒ Property division is ordered as set forth in the attached
- (1) ☐ Settlement agreement, stipulation for judgment, or other written agreement.
- (2) ☐ *Property Order Attachment to Judgment* (form FL-345).
- (3) ☒ Other (specify): **as set forth in the attached Final Statement of Decision and Order dated December 28, 2023**
- n. ☐ Attorney fees and costs are ordered as set forth in the attached
- (1) ☐ Settlement agreement, stipulation for judgment, or other written agreement.
- (2) ☐ *Attorney Fees and Costs Order* (form FL-346).
- (3) ☐ Other (specify): _____
- o. ☐ Other (specify): _____

Each attachment to this judgment is incorporated into this judgment, and the parties are ordered to comply with each attachment's provisions. Jurisdiction is reserved to make other orders necessary to carry out this judgment.

Date: _____

JUDICIAL OFFICER

5. Number of pages attached: 23 ☐ SIGNATURE FOLLOWS LAST ATTACHMENT

NOTICE

Dissolution or legal separation may automatically cancel the rights of a spouse or domestic partner under the other spouse's or domestic partner's will, trust, retirement plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar property interest. It does not automatically cancel the rights of a spouse or domestic partner as beneficiary of the other spouse's or domestic partner's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions.

A debt or obligation may be assigned to one party as part of the dissolution of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party.

An earnings assignment may be issued without additional proof if child, family, partner, or spousal support is ordered.

Any party required to pay support must pay interest on overdue amounts at the "legal rate," which is currently 10 percent.

DEC 28 2023

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

CLERK OF THE COURT
[Signature]
Deputy Clerk

In Re Marriage of:

ROSANNA CLAIRE ALVERO
WAUTERS,

Petitioner,

vs.

MATHIEU CHRISTIAN YVES
WAUTERS,

Respondent.

Case No.: FDI-21-794666

STATEMENT OF DECISION

On June 21, 2023; September 13, 2023; September 19, 2023; September 21, 2023; and September 25, 2023, the Court held a long-cause hearing in this matter with the honorable Judge Russell Rosca presiding. Petitioner Rosanna Claire Alvero Wauters ("Alvero") was represented by Selam Gezahegn. Respondent Mathieu Christian Wauters ("Wauters") was in pro per.

During the trial, the court received testimony and evidence from Alvero and Wauters.

On Petitioner's Case in Chief, Alvero called the following witnesses:

- (1) Petitioner Rosanna Claire Alvero Wauters, and
- (2) Donald L. Mowery, expert real estate appraiser.

On Respondent's Case in Chief, Wauters called the following witnesses:

- (1) Jean-Jacques Wauters (Wauter's father);

STATEMENT OF DECISION

- (2) Arnaud Wauters (Wauter's brother);
(3) Gregory Wauters (Wauter's older brother); and
(4) Petitioner Mathieu Wauters.

On rebuttal, the Petitioner called herself.

The following Exhibits from Petitioner have been received and admitted into evidence during the trial:

EXHIBIT NO	DESCRIPTION OF EXHIBIT	# OF PAGES
3	Buyer Final Closing Statement dated 02/20/20	2
4	Grant Deed dated January 22, 2020	4
5 5a	Flag Star Bank - DELINQUENT MORTGAGE STATEMENT dated May 16, 2023; Delinquent Mortgage Statement dated June 15, 2023	2
9	Mathieu Wauters Response to Form Interrogatories, Set One dated April 16, 2023	10
10	2015 Ural Motorcycles specifications and prices	5
12	Petitioner's Property Declaration FL-160 (community) dated 5/24/23	7
14	December 16, 2023, Chase Bank Statement	6
15	E-mail from Selam Gezahegn to Rosey Alvero dated May 24, 2023	1

The Respondent offered multiple documents during cross examination of Petitioner and his own testimony. However, these documents were not authenticated or admitted into evidence. The Court, however, considered the evidence he presented at trial in reaching the findings and conclusions herein. The following were the exhibits marked and identified by Respondent:

EXHIBIT NO	DESCRIPTION OF EXHIBIT	# OF PAGES
A	Whats App messages between Petitioner and	69

	Respondent Also noted as "impeachment evidence"	
A-2	i Messages October 2019 to present	50
A-3	Prenuptial Agreement December 14, 2014	
B	iMessages	
F-1	Financial Reconciliation Rosey and Mat	
F-2	Petitioner's Special Interrogatories Set One	
F-3	Spending Summaries Capital One Card	
f-4	2015 Ural Sport Kelley Blue Book	

RELEVANT DATES AND PROCEDURAL BACKGROUND

The Court finds that the parties were married on December 5, 2014. The parties agree that the date of separation was on August 29, 2020. Alvero filed the within action on March 28, 2021, and Wauters filed his Response on April 28, 2021.

On August 29, 2022, the Court set a 3-day trial on all issues for January 31, 2023. Upon Alvero's counsel's request for continuance of the trial, the Court continued the trial date to June 1, 6 and 8 of 2023. On June 1, 2023, these trial dates were continued to June 21, September 13, 19 and 21 of 2023. The Court also set August 31, 2023, to address Alvero's request to list the home for sale. On September 21, 2023, the Court added September 25, 2023, as the last day of trial.

The issues for trial were (1) termination of marital status; (2) sale and division of the real property located at 3525 8th Avenue, Los Angeles, CA 90018; (3) *Watts* charges against Respondent for exclusive use and possession of a home; (4) division of Ural Motorcycle; 5) division of personal property in the marital residence; and (6) Alvero's request for Attorney's Fees and Cost pursuant to Family Code section 271.

On June 21, 2023, upon the parties' mutual agreement, the Court entered a status-only Judgment for termination of marital status pursuant to Family Code section 2337.

STATEMENT OF DECISION

ISSUES TRIED BEFORE THE COURT

I. Prenuptial Agreement

The parties executed a Prenuptial Agreement that was entered into and executed, one day prior to their marriage, on December 4, 2014. Neither party contested the validity of the Prenuptial Agreement at trial and submitted that the parties Stipulated to the validity of the Prenuptial Agreement on February 3, 2022.

From the Prenuptial Agreement, the following provisions were testified to by Alvero and Wauters.

Alvero testified that she believes the Prenuptial Agreement allows the parties to jointly own a property. Paragraph 4 of the Prenuptial Agreement states, in relevant part:

JOINT PROPERTY. The parties agree and understand that nothing in this Agreement shall preclude them from acquiring property interests during the course of their marriage as joint tenants with rights of survivorship or as tenants in common with undivided interests. Additionally, nothing in this Agreement shall preclude them from making binding transfers of real or personal property to the other at any time during the marriage. (*Emphasis added.*)

Alvero further testified regarding Paragraph 6 of the Prenuptial Agreement. Paragraph 6 states:

DISSOLUTION OF MARRIAGE. Each party to this Agreement understands that the Uniform Premarital Agreement Act and court decisions provide for consideration of a prenuptial agreement by the divorce court if a marriage is dissolved. The parties to this Agreement understand that some courts have disregarded property division provisions in a prenuptial agreement without any way anticipating a dissolution or planning for a dissolution, but recognizing the realities of the world, it is the express intention of

1 Mathieu and Rosey that the following provision shall prevail in the
2 event of a dissolution.

- 3 a. each party shall have a proportionate interest in the increase in
4 value (during the marriage) of the homestead real estate, that the
5 proportion to reflect the relative values of the contributions, both
6 monetary and in-kind, towards the necessary household expenses
7 and childcare/household duties during the course of the marriage.
8 b. All savings, investments, retirement accounts, and all property
9 listed on the attached schedules as separate property (owned by a
10 party prior to the marriage) shall remain the separate property of
11 that party who brought such property into the marriage, including
12 any appreciation, income or other increase to such property.
13 c. All joint property and account shall be divided equally.

14 Wauters testified to Paragraph 1 and 6. Wauters read part of the
15 provision of Paragraph 1 during his testimony which is as follows:

16 SEPARATE PROPERTY. Except as otherwise provided in this
17 Agreement, the following property now owned or later acquired by
18 either party shall remain and be their separate property:

- 19 - All property, including real or personal property, the income
20 from such property, and the investments and re-investments of
21 such property; and
22 - All property acquired by either party by gift, devise, bequest,
23 or inheritance.

24 **II. Petitioner's Request to Sell and Divide the Marital Residence**

25 In February 2020, the parties purchased a real property located at 3525 8th
26 Avenue, Los Angeles, CA 90018 ("marital residence"). The purchase price for the
27 marital residence was \$978,000. Alvero testified that Wauters paid \$29,340 for deposit
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1 and \$208,042 for the remaining down payment. Alvero further testified that the parties
2 jointly acquired a \$740,000 mortgage loan from Quicken Loans LLC to guarantee the
3 full purchase price. The mortgage loan was and remains in both parties' names. In
4 support of her testimony, Alvero offered Petitioner's Exhibit 3- Buyer Final Closing
5 Statement, which was admitted into evidence during her testimony. Despite Wauters'
6 claim that he received over \$300,000 in gift from his father, he admitted that the actual
7 contribution from his separate property was \$237,382 as reflected in Petitioner's Exhibit
8 3.

9 Pursuant to the Grant Deed signed on January 22, 2020, the parties acquired title
10 as follows:

11 Mathieu Christian Yves Denis Wauters, a married man as his
12 sole and separate property, as to an undivided 65% interest and
13 Rosanna Claire Alvero Wauters, a married woman as her sole
14 and separate property, as to an undivided 35% interest, as tenants
15 in common. (*Emphasis added.*)

16 The Grant Deed was offered as evidence as Petitioner's Exhibit 4 during
17 Petitioner's case in chief and has been admitted into evidence.

18 The owner of the legal title to property is presumed to be the owner of the full
19 beneficial title. This presumption may be rebutted only by clear and convincing proof.
20 Evidence Code § 662.

21 "According to the 'form of title' presumption, the description in a deed as to how
22 title is held is presumed to reflect the actual ownership interests in the property." *Carne*
23 *v. Worthington* (2016) 246 Cal.App.4th 548, 556. "The phrase 'clear and convincing
24 evidence' has been defined as 'clear, explicit, and unequivocal,' 'so clear as to leave no
25 substantial doubt,' and 'sufficiently strong to demand the unhesitating assent of every
26 reasonable mind.'" *People v. Caruso* (1968) 68 Cal.2d 183, 190.

1 Alvero testified that her understanding of the Grant Deed is that she would
2 receive 35% interest in net value of the marital residence upon division. She further
3 testified that Wauters interest is 65% because he was being compensated for the down
4 payment he contributed from his separate property.

5 Wauters did not provide any evidence contesting the validity of the Grant Deed or
6 ownership interest described within the Deed. Wauters testified that Alvero's 35%
7 interest was conditioned upon her repayment to Wauter's father a \$30,000 loan. The
8 Deed of Trust does not reflect and there is no documentation of the loan terms or
9 purported conditional ownership based on repayment of the loan.

10 The Court credits Alvero's testimony supported by Petitioner's Exhibit 3 that Mr.
11 Wauter's separate property contribution towards acquisition of the marital residence was
12 \$237,382. Based on the language of the Grant Deed (Petitioner's Exhibit 4), the Court
13 credits Alvero's testimony that Wauters received 65% interest in the home to
14 compensate him for his separate property a contribution of \$237,382.

15 *Division of Marital Residence and Applicability of Paragraph 6 of Prenuptial*
16 *Agreement*

17 With respect to proportional contribution provision of Paragraph 6 of the
18 Prenuptial Agreement, Alvero testified that her understanding of this paragraph is that
19 both parties were permitted to make monetary and in-kind contributions which includes
20 payment of household expense and involvement in household duties during the
21 marriage.

22 Alvero testified that she worked between the time the property was acquired and
23 the day she moved out of the home in December and contributed to payment of the
24 mortgage and household bills by directly depositing a portion of her bi-weekly salary
25 into the joint Chase account ending in 8631. Alvero testified that she did not live in the
26 marital residence for most of October, November and December 2020, but continued to
27 make contributions to the household expenses, including the mortgage. Alvero further
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1 testified that she co-managed the parties' business CloudNine LLC and described her
2 management duties to include accounting, cleaning between renters, and bookings of
3 rental properties.

4 Alvero testified that the parties had two rental properties, which they rented
5 through Air B&B and the funds from the rental income were deposited into CloudNine
6 LLC Chase Bank account ending in 6992. The funds were then transferred into the
7 parties' joint account ending in 8631 to pay for the household expenses. Alvero testified
8 that she considers her co-management of the business and the income earned therefrom
9 as her contribution to payment of household expenses as contemplated by Paragraph 6 of
10 the Prenuptial Agreement. Alvero further testified that her understanding of the in-kind
11 contribution includes household chores which she testified were almost entirely done by
12 her because Wauters thought household chores were "beneath" him.

13 Wauters, during his direct testimony, confirmed that Alvero did the accounting for
14 the CloudNine LLC business during their marriage.

15 The Court credits Alvero's testimony that she has made contribution towards
16 payment of the mortgage and household expenses monetarily and in kind as contemplated
17 by Paragraph 6 of the Prenuptial Agreement.

18 *Request to list the property for sale and Request for buy-out*

19 Alvero is requesting this Court to order the sale of the marital residence. Wauters
20 appears to ask for this Court to allow him to buy-out Alvero's interest in the marital
21 residence.

22 The parties do not have an agreement as to the fair market value of the marital
23 residence. Alvero as an owner testified that she believes the property is worth
24 \$1,500,000. Wauters provided no testimony regarding the fair market value of the marital
25 residence. Wauters filed a declaration attaching an appraisal report, however; this Court
26 cannot consider the declaration because the appraisal report was done by an expert that
27 was not properly disclosed, and the report was never offered or admitted into evidence.
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1 The Court in *Marriage of Cream* defined fair market value as “the highest price on
2 the date of valuation that would be agreed to by a seller, being willing to sell but under no
3 obligation or urgent necessity to do so, and a buyer, being ready, willing and able to buy
4 but under no particular necessity for doing so.” *In re Marriage of Cream* (1993) 13 Cal.
5 App. 4th 81, 88,89.

6 Thus, absent competent evidence or an agreement on value, the Court must allow
7 the marital residence to be listed for sale and for the market to determine the value as
8 defined in *Marriage of Cream*.

9 Alvero also testified that she does not agree to a buy-out because Wauters actions,
10 (namely failure to pay the mortgage for 6 months) have led to damaging her credit and
11 continues to affect her creditworthiness. During her testimony on June 21, 2023, Alvero
12 testified that the mortgage on the marital residence was in delinquent status from
13 February until June of 2023. In support of her testimony, Alvero proffered Petitioner’s
14 Exhibit 5 and 6 - Flagstar Bank mortgage statement dated May 16, 2023 and June 15,
15 2023, which were admitted into evidence. Petitioner’s Exhibit 5 shows account history of
16 an unpaid balance of \$15,389.95 as of the date of the statement May 16, 2023. Alvero
17 also testified that the June 2023 mortgage payment was also outstanding, and the balance
18 had increased to \$18,467.94 at the time of her testimony.

19 Wauters did not dispute the facts testified to by Alvero regarding his delinquency
20 and the unpaid balance of the mortgage as of June 21, 2023.

21 The Court credits Alvero the mortgage account was delinquent from February to
22 June 21, 2023.

23 During her testimony on September 21, 2023, Alvero also testified that Wauters
24 has not paid the SoCal gas bill for the marital residence for the period he lived at the
25 marital residence exclusively. Alvero has also testified that because of the damage to her
26 credit, this was the first year she was unable to co-sign a student loan for her sister and
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1 believes the delinquent payments on the mortgage were the reason why she was no longer
2 able to do so.

3 She further testified that she was informed that Wauters did not qualify for
4 mortgage assistance or forbearance as he represented to the Court on June 21, 2023.
5 While Wauters has since paid the mortgage and brought it current as of September 2023,
6 Alvero has testified that she remains concerned about the mortgage and the damage to her
7 credit.

8 Wauters urges this Court to allow him to buy-out Alvero's interest because her
9 contribution, pursuant to paragraph 6 (a) of the Prenuptial Agreement, is very little and he
10 can pay her the small amount she is owed, and take over the mortgage and ownership of
11 the marital residence. However, Wauters has demonstrated that he is not capable of
12 paying the mortgage, regardless of the amount. Wauters has not provided any evidence
13 that he qualifies to refinance the mortgage on marital residence in his name only and buy-
14 out Alvero's interest.

15 The Court credits Alvero's testimony that she is concerned that allowing Wauters
16 to attempt to buy out her interest would prolong resolution of this matter and pose
17 unreasonable financial risk to her based on Wauters conduct with respect to the mortgage
18 payments.

19 Wauters' Claim that his share of the Marital Residence is Greater than 65%

20 Wauters testified that for approximately 18 months he did not make any mortgage
21 payments. He also testified that he received \$49,000 from California Mortgage Relief
22 Program using the marital residence. He further testified this fund was sent directly to
23 pay for the mortgage which he had not for paid 18 months. In his verified response to
24 Form Interrogatories-Family Law number 8, Wauters states that he received California
25 Mortgage Relief Program monies on November 2, 2022, in the amount of \$49,262.84.
26 Please see page 4 of Petitioner's Exhibit 9, which was admitted into evidence during
27 Alvero's testimony on June 21, 2023.
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1 In addition to the \$49,262.84 relief the parties received for the joint mortgage
2 debt on the marital residence, Wauters rented the property between December 20, 2020,
3 and the date of trial through Peerspace and Gigster.

4 Alvero testified that Wauters rented the marital residence through Peerspace and
5 earned \$87,199.36 between December 20, 2020, and May 2023. During cross
6 examination on September 21, 2023, Wauters estimated that between May 2023 and the
7 date of trial he rented the property for an additional \$2,000 to \$3,000; and agreed the
8 total estimated earnings from Peerspace was over \$90,000.

9 Alvero also testified that Wauters rented the marital residence through Gigster.
10 She testified that she believes Wauters has earned over \$10,000 in income through
11 Gigster renting the marital residence.

12 Wauters testified that he has not provided any proof of the expenses relating to
13 the rent of the marital residence.

14 While Wauters maintains that Alvero has not contributed to the household
15 expenses or mortgage to qualify for the 35% interest as provided in the Deed, he has
16 benefitted from exclusive possession of the home and has received over \$100,000 in
17 rental income and \$49,262.84 in mortgage relief that paid for the mortgage on the
18 marital residence.

19 Alvero testified that she was employed between the date the parties acquired the
20 marital residence and the day she moved out. She testified that 65% of her paycheck was
21 deposited into the joint account bi-weekly to pay for household expenses, which
22 included the mortgage from her salary, and was involved in management of the renting
23 of the marital residence during this period.

24 Wauters attempted to discredit Alvero's testimony regarding her contribution
25 alluding that she did not contribute in December of 2020. Alvero testified that she had
26 not lived in the home since October 2020 but contributed until December 15, 2020. In
27 support of her testimony, Alvero proffered Petitioner's Exhibit 15- Chase Bank account.
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1 statement for the period of November 16, 2020 to December 16, 2020, which was
2 admitted into evidence. Alvero testified that her paycheck was directly deposited into the
3 joint account on December 15, 2020 and Wauters withdrew the funds on the same day.
4 The Court Credits Alvero that she has made contribution to the joint account in
5 December of 2020.

6 The Court also notes the provision at issue is vague and ambiguous and does not
7 alter the fact the parties each have a designated separate property interest in the marital
8 residence as reflected in the deed of trust.

9 Upon sale of the marital residence, Alvero requests that the costs of sale shall be
10 split 65% payable from Wauters share, and 35% payable from Alvero's share. Thereafter
11 the net proceeds from the sale of the residence shall be divided 65% to Wauters and 35%
12 to Alvero, and each party shall receive his/her share from escrow. Alvero is further
13 requesting additional funds be paid to her from escrow as discussed below.

14 *Findings and Order regarding the Marital Residence*

15 Based on the foregoing evidence, the Court finds that

- 16 1. the marital residence is owned by the parties as tenants in common with 65%
17 interest for Wauters and 35% interest for Alvero.
- 18 2. Wauters has already been compensated for his separate property contribution with
19 the 65% interest the marital residence as reflected in the Deed of Trust.
- 20 3. Alvero has contributed to payment of the mortgage and household expenses in
21 compliance with Paragraph 6(a) of the Prenuptial Agreement.

22 The Court orders that

- 23 1. the marital residence shall be listed for sale within 30 days of this Court's
24 order. The parties to cooperate in selecting a realtor, signing all necessary
25 documents, and providing all the necessary documents to enable the sale of the
26 marital residence.
- 27 2. after payment of the existing mortgage the net proceeds shall be divided as
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1 follows:

- 2 i. 65% of the costs of sale to be paid by Wauters and 35% of the costs of
3 sale to be paid by Alvero, and
4 ii. the remaining balance to be divided 65% to Wauters and 35% to Alvero.

5 **III. Petitioner's Request For Watts Charges**

6 Alvero requests for this Court to charge Wauters rent from December 20, 2020,
7 until the home is sold. Alvero testified that she moved out of the marital residence on or
8 about December 20, 2020. Wauters does not dispute that Alvero moved out of the home
9 on December 20, 2020.

10 Pursuant to the holding in *Marriage of Watts* (1985) 171 Cal App 3d 366, a court
11 has authority to order reimbursement to the community for a spouse's post-separation
12 exclusive use and possession of a community asset.

13 Under California law, joint owners have equal right to occupancy of the subject
14 property. When one owner ousts the other, recovery of the imputed rental value by the
15 ousted owner is "just and consonant with equitable principles." *Hunter v Schultz* (1966)
16 240 Cal App 2d 24, 32. Ouster can be established by co-owner's unambiguous conduct
17 manifesting an intent to exclude the other owner from sharing possession of the jointly
18 owned property or by showing that the party in possession has refused to allow the
19 excluded co-owner to use and possess the joint property. *Estate of Hughes* (1992) 5 Cal
20 App 4th 1607, 1612

21 Alvero testified that between August 29, 2020, and December 20, 2020, the parties
22 had an agreement that they would each stay in the house for a few days at a time. Alvero
23 testified that Wauters did not abide by their agreement to separately remain in the marital
24 home and would often be in the home during the time designated for her. Alvero stated
25 that a few days before she returned to the marital residence in December 2020, Wauters
26 moved her personal belongings and locked her out of the marital residence. Wauters
27 admitted during his testimony that he removed property from the home including that he
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1 moved "her clothing and belongings" into a shed and locked the shed. He also testified
2 that he locked the door even though he was aware that she would be coming to the
3 marital residence on a specific date to retrieve her items. Alvero testified that she had to
4 return to the home the next day (December 20, 2020) with police to retrieve her items.
5 Alvero is making a claim for personal property that was left in the marital residence as
6 discussed below.

7 Alvero testified that Wauters was bullying her to make financial commitments that
8 were not in her best interest. She also testified that during a dispute, Wauters physically
9 pushed her. She testified that due to Wauters presence in the marital residence after they
10 agreed he would not be there, his assault, and his repeated bullying to get her to agree to
11 his proposal, she felt unsafe and moved out of the residence as of December 20, 2020,
12 and Wauters began to occupy the marital residence exclusively.

13 Mr. Wauter's own testimony confirmed the acrimony some of which was
14 exacerbated by substance abuse.

15 Rental Income Received by Wauters from the Marital Residence

16 During his exclusive possessions and while residing in the marital residence,
17 Wauters rented the marital residence for various projects using websites such as
18 Peerspace and Gigster. Alvero has testified that she has not received a verified
19 accounting, or a share of the profit from the rent. Wauters has testified that he provided
20 documents regarding the income he received in response to his Special Interrogatories but
21 admits that he did not include any expenses in his "accounting".

22 As discussed above, both parties testified the marital residence was rented for over
23 \$87,000 between December 20, 2020, and April 2023 through Peerspace. Wauters has
24 testified he earned \$2,000 to \$3,000 between May of 2023 and the date of trial (his
25 testimony was on September 25, 2023). During her June 21, 2023 testimony, Alvero
26 testified she believes Wauters has earned \$10,000 in rental income through Gigster.
27 Wauters did not dispute Alvero's testimony with respect to the income he earned through
28

1 Gigster. The Court credits both parties' testimony that Wauters has received over
2 \$100,000 in rental income through Peerspace and Gigster from January 2021 to April
3 2023.

4 Absent evidence of expenses of the rental, the Court credits \$0 for expenses
5 incurred by Wauters as it relates to renting the property through Peerspace and Gigster.

6 In addition to the rent Wauters collected which is well over \$100,000, Alvero has
7 proffered evidence that the property could have been rented for profit and earn consistent
8 rental income.

9 Expert Testimony on Fair Market Rental Value of the Marital Residence

10 Alvero's expert Don L. Mowery testified that his associate has visited the marital
11 residence and Mr. Mowery completed a rental survey on the marital residence. Mr.
12 Mowery was qualified as a certified real estate appraiser since 1992.

13 Mr. Mowery testified that he used the Uniform Standard of Professional Appraisal
14 Practice ("USPAP") to determine the rental value of the marital residence. Based on the
15 standards set forth in the USPAP, Mr. Mowery testified that:

- 16 - Between January and December 2021- the Fair Market Rental Value of the
17 marital residence was \$3,500.
- 18 - Between January and December 2022- the Fair Market Rental Value of the
19 marital residence was \$4,500.
- 20 - Between January to May 2023- the Fair Market Rental Value of the marital
21 residence was \$4,500.

22 Mr. Mowery further testified that there has been "stabilization of the rental
23 income" between 2022 and 2023.

24 Wauters did not provide any evidence relating to the fair market rental value of the
25 marital residence.

26 Alvero testified that she did not receive any funds from the rental income after she
27 moved in December 20, 2020.

1 Alvero is requesting that she receives 35% of the gross rental income the
2 community would have realized had the marital residence been rented. Pursuant to Mr.
3 Mowery's testimony, the gross rental income between January 2021 and September
4 2023, as indicated below, would have totaled \$132,000:

- 5 ○ January 2021 to December 2021= \$42,000 (\$3,500 x 12 months)
- 6 ○ January 2022 to September 2023= \$90,000 (\$4,500 x 20 months)

7 Based on the above, Alvero's interest is \$46,200.

8
9 Calculation of Mortgage, Tax and Insurance Payments by Wauters

10 The mortgage on the marital residence, including interest, is \$3,077.99 per month.
11 Thus, the parties' mortgage obligation between January 2021 to September 2023 would
12 have been \$98,495.68.

13 Alvero estimated that the total paid for homeowner's insurance is approximately
14 \$2,304 (\$72 per month for 32 months), and the total tax paid is approximately \$32,000
15 (\$1,000 per month for 32 months).

16 Therefore, the total cost incurred by Wauters would have been \$98,495.68 +
17 \$2,304 + \$32,000 = \$132,799.68 (January 2021 to September 2023).

18 Mortgage Relief Payment

19 As mentioned above, through his testimony, Wauters has confirmed that he did not
20 pay the mortgage on the marital residence for approximately 18 months after Alvero
21 moved out of the marital residence. This means Wauters did not pay \$55,403.82
22 (\$3,077.99 x 18 months) using any income he earned during the 18 months to pay for the
23 mortgage, including the rental income that both parties testified was earned during this
24 period.

25 According to Wauters statement on page 4 of Petitioner's Exhibit 9, Wauters
26 received \$49,262.84 from the California Mortgage Relief Fund Program, which he
27 testified was paid directly to the lender. Alvero testified that she was not aware of this
28

1 fund being paid to Wauters until his response to the Form Interrogatories-Family Law
2 (Petitioner's Exhibit 9) was served on May 3, 2023.

3 Since the California Mortgage Relief Fund Program was received on the basis of
4 ownership of the marital residence, Wauters' mortgage, tax and insurance payment would
5 be \$132,799.68 minus \$49,262.84 = \$83,537.68.

6 As discussed above, between December 20, 2020, and September 2023, Wauters
7 has earned over \$100,000 by renting the marital residence through Peerspace and through
8 Gigster.

9 Thus, between December 20, 2020, and the date of the trial, Wauters has netted at
10 least \$12,313.

11 Wauters claimed that he incurred costs for improvements and upkeep but has not
12 provided any evidence of the alleged costs. The testimony was limited to testimony of his
13 brother doing landscape and related handyman work while the brother stayed with
14 Wauters at the marital residence. Therefore, this Court assumes his improvement and
15 upkeep costs are \$0.

16 Alvero requests the Court to order Wauters to pay her 35% of the net rental
17 income (after payment of the mortgage, insurance, and property taxes) he realized from
18 Peerspace, Gigster and the California Mortgage Relief Program from December 20, 2020,
19 to September 2023 as calculated below:

20 California Mortgage Relief Program Wauters received: \$49,262

21 Peerspace and Gigster rental income Wauters received: \$100,000

22 LESS Mortgage owed since January 2021: $\$3,077.99 \times 32 = \$98,495.68$

23 LESS Homeowner's insurance Wauters paid: $\$72 \times 32 = \$2,304$

24 LESS Property taxes Wauters paid: $\$1,000 \times 32 = \$32,000$

25 **Net Rental Income Received = \$16,462.32**

26 Alvero's share of the \$16,462.32 net rental income received after payment of
27 mortgage taxes and interests is \$5,761.81.

28
STATEMENT OF DECISION

1 Alvero has further requested for an order for Wauters to pay the mortgage,
2 property taxes, and insurance on the residence and to pay her 35% of the monthly rental
3 profit of \$122 per month commencing October 1, 2023, until the marital residence is sold
4 and escrow has closed.

5 Findings and Order Regarding Watts Charges

6 Based on the foregoing evidence, the Court finds that

- 7 1. Wauters has received \$49,262.84 benefit from California Mortgage Relief
8 Program and \$100,000 from renting the marital residence through Peerspace
9 and Gigster.
- 10 2. Based on the testimony of Alvero's expert Don L. Mowery, the marital
11 residence could have been rented for \$3,500 in 2021, and \$4,500 in 2022 and
12 2023.

13 The Court orders that:

- 14 1. Wauters shall pay \$46, 200 to Alvero for reimbursement for *Watts* charges for
15 Wauters' exclusive use of the marital residence between January 2021 and
16 September 2023 calculated based on her 35% interest ownership interest.
17 Payment shall be made directly to Alvero from escrow relating to the sale of
18 the marital residence.
- 19 2. Wauters shall pay \$5,761.81 to Alvero's 35% interest in the net rental income
20 that Wauters received from December 20, 2020 to September 2023. Payment
21 shall be made directly to Alvero from escrow relating to the sale of the marital
22 residence.
- 23 3. Wauters shall pay \$122 per month to Alvero for reimbursement for *Watts*
24 charges for Wauters' exclusive use of the marital residence from October 1,
25 2023 until the marital residence is sold and escrow is closed. Payment shall be
26 made directly to Alvero from escrow relating to the sale of the marital
27 residence.
28

1 **IV. Petitioner's Request for Division of 2015 Ural Dual Sport Motorcycle**

2 The parties purchased a 2015 Ural Dual Sport Motorcycle during the marriage.
3 Alvero testified that the down payment for the motorcycle in the amount of \$3,500 was
4 from the CloudNine Chase bank account which contains rental income the parties
5 acquired through their co-management of the business.

6 Alvero further testified that the parties paid the remaining balance from their joint
7 accounts.

8 Alvero testified that she researched the value of the 2015 Ural motorcycle online
9 with specification of Ural Gear-up 750. Based on her research, Alvero testified that she
10 believes the value of the motorcycle is \$15,000. Alvero has proffered a web print out of
11 her search result from motorcycle.com which was admitted into evidence as Petitioner's
12 Exhibit 10.

13 Wauters testified as to the Kelly Bluebook value of the motorcycle as reflected in
14 his identified exhibit 10 with a value of \$8,420.

15 The Court credits both parties' testimony regarding the value of the 2015 Ural
16 Gear-up 750 Motorcycle and sets the value at the midpoint of \$11,710.

17 Paragraph 6, subdivision (c) of the parties' Prenuptial Agreement provides that
18 "[A]ll joint property and accounts shall be divided equally". Alvero is requesting for
19 equal division of the value of the Ural motorcycle. \$5,855 would be her share of the
20 jointly purchased Ural motorcycle.

21 **Findings and Order Regarding Division of 2015 Ural Motorcycle**

22 Based on the foregoing evidence, the Court finds that the 2015 Ural Motorcycle is a
23 joint property acquired during the marriage.

24 The Court orders Wauters to pay Alvero \$5,855 for her share of the 2015 Ural
25 Motorcycle. Payment shall be made directly from escrow relating to the marital
26 residence.

1 **V. Petitioner's Request for Division of Household Furniture, Furnishing**
2 **and Art ("household items")**

3 Alvero testified that Wauters removed and hid the personal property they acquired
4 jointly during the marriage. Wauters admits that he removed over 90% of the community
5 property from the home, and removed Alvero's personal belongings and locked them in a
6 shed or a storage space to which she had no access.

7 At the trial on September 13, 2023, to conserve time, the parties agreed that
8 Alvero's direct testimony on matters relating to the motorcycle, personal property and
9 attorney's fees would be by declaration. Her written testimony was filed on September
10 18, 2023, which she confirmed during her live testimony on September 19, 2023.

11 Alvero testified that the properties listed under HOUSEHOLD FURNITURE,
12 FURNISHINGS, APPLIANCES; and JEWELRY, ANTIQUES, ART, COINS,
13 COLLECTIONS on her Property Declaration (community) identified as Petitioner's
14 Exhibit 12 contains the properties that Alvero testified were purchased during the
15 marriage. Petitioner's Exhibit 12 was admitted into evidence during her testimony on
16 September 19, 2023. Alvero testified that she estimates the total value of the items listed
17 on HOUSEHOLD FURNITURE, FURNISHINGS, APPLIANCES; and JEWELRY,
18 ANTIQUES, ART, COINS, COLLECTIONS were \$15,000.

19 Both during her live testimony and in her written testimony, Alvero testified that
20 there were additional items which were left out of the Property Declaration (Petitioner's
21 Exhibit 12). During her testimony on September 19, 2023, Alvero identified the
22 additional household items as follows:

- 23 - Custom made dining table
24 - Wishbone chairs
25 - Large mirrors
26 - Armoires
27 - TV stand
28 - Game consoles
 - Sofa bed couch from Restoration Hardware

1 Alvero estimates the value of the above assets to be between \$2,200 to \$3,000.

2 During cross examination by Wauters, Alvero also testified that the parties used
3 their credit cards to purchase household furniture etc. Wauters testified that the furniture
4 and furnishings were purchased after the parties had paid off their credit card debts prior
5 to the purchase of the marital residence.

6 Wauters alleges that Alvero received \$30,000 loan from his father to pay off credit
7 card owed solely by Alvero. In support of his claim, Wauters presented the testimony of
8 his two brothers (Gregory and Araud Wauters) and his father Jean Jacques Wauters to
9 testify that Alvero received a loan to pay off her separate debt. During cross examination,
10 none of Wauters witnesses or Wauters can state with certainty that the \$30,000 credit
11 card debt was Alvero's debt only. In fact, all four witnesses admitted that they did not
12 verify that the alleged \$30,000 debt was Alvero's debt only. All of Wauters' witnesses
13 also stated that there was no written agreement between Alvero and Wauters' father that
14 she was receiving \$30,000 as a loan. Wauters further testified that he did not go through
15 any credit card statement to verify that any of the alleged \$30,000 debt in Alvero's name
16 was solely her debt and was not incurred for the benefit of the community. Wauters and
17 his father also testified that alleged \$30,000 loan was not directly sent to Alvero.

18 There was no evidence that the \$30,000 alleged loan was paid to Alvero for her to
19 pay her own expenses. The testimony surrounding the "loan" appeared to be the
20 foundation of an argument to support Wauters' theory that Alvero's 35% was somehow
21 conditioned upon her repayment of the purported loan. However, there was a lack of
22 clarity even by the witnesses offered by Wauters as to the amount of the loan and no
23 evidence, written or otherwise, other than Wauter's argument, tying the loan as a
24 condition of the purchase of the property. Even were there found to be a loan, it is not
25 credited to Wauters as he is not owed the funds provided to Alvero.

26 During cross examination, Alvero also testified that she was able to retrieve some
27 of her personal property including a vehicle that was gifted to her by her mother prior to
28

STATEMENT OF DECISION

1 the marriage. Alvero further testified that the items listed on Petitioner's Exhibit 12 and
2 identified during her testimony were left in the home and are in possession of Wauters.

3 Pursuant to Family Code section 760, property acquired during the marriage is
4 community property subject to equal division. Family Code section 2550 requires that
5 absent written agreement or oral stipulation of the parties, the Court "shall...divide the
6 community estate of the parties equally."

7 The parties Prenuptial Agreement specifically states in Paragraph 6, subdivision
8 (c) that "[a]ll jointly acquired property must be divided equally."

9 Wauters has not provided any testimony or documents that any of the household
10 items Alvero identified in Petitioner's Exhibit 12 and testified to on September 19, 2023
11 as additional items left in the marital residence to be his separate property.

12 The Court credits Alvero's testimony with regards to description and valuation of
13 the household items in the marital residence.

14 Alvero is requesting that Wauters pay her \$7,500 for her share of the household
15 items. During his testimony, Wauters did not provide evidence of alternate valuation of
16 the household items acquired during the marriage.

17 *Findings and Order Regarding Division of Personal Property*

18 Based on the foregoing evidence, the Court finds that the total value for the
19 miscellaneous household furniture/furnishing/arts is \$15,000. The Court orders Wauters
20 to pay Alvero \$7,500 for her share of the miscellaneous household items. Payment shall
21 be made directly from escrow relating to the marital residence.

22 **VI. Petitioner and Respondent both Request for Attorney's Fees Pursuant**
23 **to Family Code section 271**

24 Family Code § 271 (a) allows this Court to order a party to pay the other party's
25 attorney's fees and cost on the grounds that "the conduct of each party or attorney
26 furthers or frustrates the policy of the law to *promote settlement of litigation* and, where
27 possible, to *reduce the cost of litigation by encouraging cooperation* between the parties
28

1 and attorneys.” (Italics added) (see also *Menezes v McDaniel* (2019) 44 Cal App 5th 340,
2 347; and *In re Marriage of Falcon & Fyker* (2012) 203 Cal App 4th 964, 995)

3 Family Code §271(b) provides that an award of attorney’s fees and costs sanction
4 “shall be imposed only after notice to the party against whom the sanction is proposed to
5 be imposed and opportunity for that party to be heard.”:

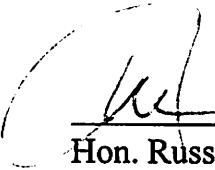
6 In this case, Alvero requested sanctions as one of the issues for trial. Wauters has
7 had the opportunity to present evidence and cross examine Alvero on her request for
8 sanctions.

9 Wauters in his closing brief requests sanctions from Alvero.

10 The Court declines to award sanctions against either party.

11
12 IT IS SO ORDERED:

13
14 DATED: 12/28/23



Hon. Russell Roeca,
JUDGE OF THE SUPERIOR COURT