EXHIBIT "C"

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	
JUAN CARLOS CASTILLO,	§	**Case No. 15-31471**
	§	
Debtor.	§	**Chapter 11**
	§	

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING CREDITOR AMY CASTILLO'S MOTION FOR DIVISION OF DEBTOR'S PROPERTY/DEBTS
[Refers to Docket Numbers 68 & 348]

I. INTRODUCTION

This bankruptcy case stems from a highly acrimonious divorce between Juan Carlos Castillo (the "Debtor") and his wife, Amy Castillo ("Ms. Castillo") (collectively, the "Parties"). After unsuccessful attempts of obtaining resolution in the state family law court (the "Family Law Court"), the Parties are now requesting this Court to resolve at least one aspect of their pending divorce—namely, the division of marital property and debts. This request originated on April 14, 2015 when Ms. Castillo filed her Motion for Division of Debtor's Property/Debts (the "Motion for Division"). [Doc. No. 68]. In the Motion for Division, Ms. Castillo expressly requests this Court to divide the Parties' community property and to allocate responsibility for the debts of the marital estate.[1] Aside from the Debtor and Ms. Castillo, two other parties-in-interest have participated at the hearings on the Motion for Division: the trustee in this case and the Debtor's employer.

[1] The Debtor supports Ms. Castillo's request that this Court—as opposed to the Family Law Court—divide the community property and community debts, but he strongly disagrees on how they should be divided. There is some separate property involved, but the Parties are in agreement on the division of these particular assets.

This Court held a multi-day hearing on the Motion for Division on May 7, 2015; May 8, 2015; May 11, 2015; May 12, 2015; May 13, 2015; May 15, 2015; May 19, 2015; June 1, 2015; June 10, 2015; June 11, 2015; June 25, 2015; June 26, 2015; July 9, 2015; and July 10, 2015, at which point this Court heard closing arguments from all counsel. Moreover, the Court granted all parties time to submit proposed findings of fact and conclusions of law, after which all parties submitted proposed findings and conclusions. [Doc. Nos. 241, 245, 249, 277, 279 & 280]. The Court then held a hearing on September 21, 2015, at which time additional evidence was admitted into the record. The Court then took the matter under advisement.

On November 6, 2015, the Court issued its Findings of Fact and Conclusions of Law (hereinafter "FOF & COL") in accordance with Bankruptcy Rules 9014 and 7052. Thereafter, various parties filed motions to amend findings of fact and conclusions of law (the "Motions to Amend"). [Doc Nos. 371, 386, 394 & 402]. On December 8, 2015, January 20, 2016, and January 26, 2016, the Court held hearings on the Motions to Amend. At the close of the hearing on January 26, 2016, the Court took the Motions to Amend under advisement. Based upon the Court's consideration of the Motions to Amend, this Court now issues these amended findings of fact and conclusions of law. To the extent that any Finding of Fact is construed to be a Conclusion of Law, it is adopted as such. To the extent that any Conclusion of Law is construed to be a Finding of Fact, it is adopted as such. The Court reserves the right to make any additional Findings and Conclusions as may be necessary or as requested by any party.

II. FINDINGS OF FACT

A. Procedural History and Divorce Action

1. On March 12, 2015, the Debtor filed his voluntary petition under Chapter 13 of the Code.[2] [Doc. No. 1].

2. Prior to the filing of the Debtor's voluntary bankruptcy petition, on May 18, 2012, Ms. Castillo filed a divorce petition styled *Amy Castillo v. Juan C. Castillo, and in the Interest of J.C. and A.C., Children*, Cause Number 2012-29264, in the District Court of Harris County, Texas, 309th Judicial District (the "Divorce Action"). [Hr'g Tr. 43:5−7, May 7, 2015].

3. On March 25, 2015, this Court entered an order converting the Debtor's Chapter 13 case to a case under Chapter 7 of the Code. [Doc. No. 22]. Ronald J. Sommers was appointed to serve as the Chapter 7 Trustee (the "Trustee").

4. On April 14, 2015, Ms. Castillo filed her Motion for Division. [Doc. No. 68].

5. On May 7, 2015—the first day of trial—counsel for the Debtor requested on the record that this Court determine post-divorce spousal maintenance for Ms. Castillo. [Hr'g Tr. 16:4−12, May 7, 2015].[3] In response, counsel for Ms. Castillo informed the Court that he had yet to "[get Ms. Castillo's] blessing on it." [Hr'g Tr. 16:18−22, May 7, 2015].

6. Four days later, on May 11, 2015, the Debtor filed his Bench Brief on Standards for: (1) a Just and Right Division of Community Property, and (2) an Award of Spousal Maintenance (the "Bench Brief"). [Doc. No. 139]. In his Bench Brief, the Debtor again

[2] Any reference to "the Code" refers to the United States Bankruptcy Code, and reference to any section (i.e., §) refers to a section in 11 U.S.C., which is the United States Bankruptcy Code, unless otherwise noted.
[3] Any reference to the hearing transcript ("Hr'g Tr.") for May 7, 2015 refers to the **amended** transcript which is assigned Docket Number 319, ***not*** Docket Number 141.

requested this Court to determine not only a "just and right" division of community property but also the amount of spousal maintenance to be paid to Ms. Castillo, if any. [*Id.*]. The Debtor initially did not oppose the Family Law Court's determining the child support payments. [Doc. Nos. 145 & 147]. However, at a subsequent hearing, the Debtor, through his attorney, orally suggested that this Court exercise its jurisdiction to determine an amount for child support. [Hr'g on Sept. 21, 2015, at 3:27:02–3:27:27 P.M.].

7. On June 3, 2015, Ms. Castillo filed her Emergency Motion for Authority to Trade in 2015 Chevrolet Tahoe SUV for Less Expensive Vehicle (the "Emergency Motion") wherein she requested permission from this Court to trade in her 2015 Chevrolet for a less expensive vehicle. [Doc. No. 178].

8. On June 22, 2015, this Court held a hearing on Ms. Castillo's Emergency Motion and counsel for the following parties were present: Ms. Castillo, the Debtor, the Trustee, and San Antonio Federal Credit Union (lienholder on the 2015 Chevrolet Tahoe). None of the parties objected to Ms. Castillo's Emergency Motion and her requested relief. Accordingly, on the same day, this Court entered an order granting Ms. Castillo's Emergency Motion wherein Ms. Castillo was authorized to trade in her 2015 Chevrolet Tahoe for a 2015 Mercedes Benz. [Doc. No. 221]. According to this new contract, Ms. Castillo must make payments of approximately $590.00 each month for 60 months. [*Id.*].

9. More than a month later and after eight days of trial, on June 25, 2015, Ms. Castillo filed her Response to the Debtor's Bench Brief (the "Response to Bench Brief"). [Doc. No. 226]. In her Response to Bench Brief, and also in statements made on the record by her counsel, Ms. Castillo asserts that this Court lacks subject matter jurisdiction to award

spousal maintenance and child support and, therefore, requests that this Court refrain from determining her claim for spousal maintenance and child support. [*Id.*]; [*see* Hr'g Tr. 15:22−16:6, June 26, 2015].

10. On July 9, 2015, Clover Internacional LLC[4] (hereinafter "Clover") filed its proposed findings of fact and conclusions of law. [Doc. No. 245]. On July 10, 2015, the Court heard closing arguments from counsel for the Debtor, Ms. Castillo, the Trustee, and Clover. On the same day, the Debtor filed his proposed findings of fact and conclusions of law. [Doc. No. 249].

11. On July 13, 2015, this Court converted the Debtor's Chapter 7 case to one under Chapter 11 of the Code, [Doc. No. 260], and on July 15, 2015, Ronald J. Sommers was appointed to serve as the Chapter 11 Trustee (Mr. Sommers will continue to be referred to as the "Trustee"), [Doc. No. 265].

12. On July 22, 2015, the Debtor filed his amended proposed findings of fact and conclusions of law, [Doc. No. 277], and both Ms. Castillo and the Trustee filed their own proposed findings of fact and conclusions of law, [Doc. Nos. 279 & 280]. On the same day, Ms. Castillo filed her original Chart of Assets and original Chart of Debts.[5] [Doc. Nos. 281 & 282].

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[4] In 1994, Clover Systems changed its name to "Clover International, Inc." [*See* Hr'g Tr. 159:11−13, May 11, 2015]. Sometime in 2010, Clover International, Inc. changed its name to "Clover Internacional LLC." [*See* Hr'g Tr. 159:11–19, May 11, 2015*]. Clover is in the business of providing procurement management and dispatch/freight forwarding to various petrochemical and oil companies. *Any reference to the hearing transcript for May 11, 2015 refers to the amended transcript which is assigned Docket Number 320, ***not*** Docket Number 152.

[5] At the May 13, 2015 hearing, this Court requested that the Parties each submit a "chart of assets" and a "chart of debts" setting forth certain information including: (1) a description of all community assets that the Parties request this Court to divide; (2) the value of each community asset according to the Debtor, the Debtor's expert (if any), Ms. Castillo, and Ms. Castillo's expert (if any); and (3) who the Parties believe should be awarded a specific asset. [Hr'g Tr. 5:24−8:24, May 13, 2015]. However, Ms. Castillo's original Chart of Assets and original Chart of Debts did not contain the information requested by this Court. Thus, on September 23, 2015, Ms. Castillo filed a second Chart of

13. On July 27, 2015, the Debtor filed his Notice of Filing Asset Schedules ("Notice of Assets") and attached four separate exhibits entitled: (a) Exhibit 1 – Master Asset Chart" ("Notice of Assets Chart 1"); (b) Exhibit 2 – "Amy Castillo's Separate Property" ("Notice of Assets Chart 2"); (c) Exhibit 3 – "Household Furniture, Clothing, Jewelry, Firearms and Motor Vehicles to be Partitioned to JC Castillo" ("Notice of Assets Chart 3"); and (d) Exhibit 4 – "Household Furniture, Clothing, Jewelry, Firearms and Motor Vehicles to be Partitioned to Amy Castillo" ("Notice of Assets Chart 4"). [Doc. Nos. 285, 285-1, 285-2, 285-3 & 285-4]. On the same day, the Debtor filed his Supplemental Brief Regarding Disability wherein he states that this son is not considered "disabled." [Doc. No. 286].

14. On August 5, 2015, the Trustee filed his Expedited Unopposed Motion for Extension of Deadline to Object to Exemptions (the "Trustee's Motion for Extension of Deadline"). [Doc. No. 305]. The next day, this Court entered an Order Granting the Trustee's Motion for Extension of Deadline wherein the Court extended the deadline to object to the Debtor's exemptions until forty-five (45) days after the Court enters its order on the Motion for Division. [Doc. No. 307].

15. On September 21, 2015, this Court held a hearing to obtain clarification from the Parties regarding their proposed findings of facts and conclusions of law as well as other issues related to the Motion for Division.

16. On September 23, 2015, Ms. Castillo filed her second Chart of Assets ("Chart of Assets") and second Chart of Debts ("Chart of Debts"). [Doc. Nos. 333 & 334].

Assets and second Chart of Debts wherein Ms. Castillo set forth her request for partition of certain assets and debts between the Parties. [Doc. Nos. 333 & 334].

17. On October 9, 2015, this Court ordered that the Parties file a joint certificate setting forth the following information: (a) the current *ad valorem* taxes on the Parties' home that are due and owing to the Harris County Taxing Authority; (b) the status on whether insurance is presently in effect on the Parties' home; (c) the status on whether the Debtor is current with all child support payments and spousal maintenance payments; and (d) the current balances on the Parties' joint bank accounts. [Doc. No. 336]. On October 14, 2015, the Parties filed their Joint Certificate Setting Forth Certain Information (the "Joint Certificate"). [Doc. No. 338].

B. Factual Background of the Debtor

History/Background of the Debtor

18. The Debtor was born and raised in Caracas, Venezuela until he was 15 years old. [Hr'g Tr. 157:9–12, May 11, 2015].[6] At such time, the Debtor moved to the United States to attend school. [Hr'g Tr. 157:10–12, May 11, 2015]. He is approximately 52 years old. [*See* Doc. No. 333, p. 24 of 29].

The Debtor's Physical and Mental Health

19. The Debtor has suffered from severe depression, anxiety, and acid reflux. [Hr'g Tr. 173:23–174:1, May 11, 2015]. The Debtor also suffered from dyslexia and Attention Deficit Hyperactivity Disorder (ADHD). [*See* Hr'g Tr. 167:13−25, May 11, 2015].

20. Sometime in July of 2012, the Debtor discovered that Ms. Castillo had sent sexually graphic picture text messages to another man and, upon his discovery, the Debtor attempted to commit suicide by taking sleeping pills. [Hr'g Tr. 40:24−41:1, May 13, 2015]; [Hr'g Tr. 12:20−25; 17:6−12, May 15, 2015]. Later in 2012, the Debtor attempted

[6] Again, any reference to the hearing transcript for May 11, 2015 refers to the amended transcript which is assigned Docket Number 320, ***not*** Docket Number 152.

to commit suicide a second time with a gun. [Hr'g Tr. 298:11−301:2, May 7, 2015]; [Hr'g Tr. 150:7−8, May 12, 2015].

21. However, the Debtor appeared to be in a healthy condition throughout the trial in this Court. [*See* Doc. No. 277, 25 ¶ 44].

The Debtor's History of Employment at Clover

22. In 1991, Clover employed the Debtor as a "Project Manager" in its Miami, Florida office to oversee a particular account in Columbia. [Hr'g Tr. 157:19−158:1, May 11, 2015]. As Project Manager, the Debtor attended to customers' needs, made sure all operations were properly functioning—which included shipping requests from Clover's customers—and ensured that all activities were properly invoiced. [Hr'g Tr. 158:2–8, May 11, 2015].

23. In May of 1994, Clover transferred the Debtor—as Gulf Regional Manager—to its Houston office ("Clover-Houston") to analyze whether this office should continue operating. [Hr'g Tr. 158:20–159:1, May 11, 2015]. As of the date of trial, the Debtor holds this title and position. [Hr'g Tr. 159:20–22, May 11, 2015].

24. As Gulf Regional Manager of Clover-Houston, the Debtor's primary responsibility has been to reclaim clients and accounts that were previously transferred to a competitor by Clover's former general manager. [Hr'g Tr. 160:3–11, May 11, 2015]. In order to fulfill his primary responsibility as Gulf Regional Manager, the Debtor has frequently traveled to countries such as Venezuela, Ecuador, Peru, Columbia, and Brazil. [Hr'g Tr. 160:9–11, May 11, 2015].

25. Indeed, his duties and responsibilities as Gulf Regional Manager keep the Debtor "very busy." [Hr'g Tr. 163:14–15, May 11, 2015]. Due to the demands of his job, the Debtor

spends approximately 60%[7] of his time traveling to other countries to conduct business on behalf of Clover. [Hr'g Tr. 166:1–167:7, May 11, 2015].

The Debtor's Compensation Structure at Clover

26. Currently, the Debtor's base salary is $100,000.00. [Hr'g Tr. 7:15−16; 64:18−19, May 12, 2015]; [Hr'g Tr. 20:5−6, June 11, 2015]. The Debtor receives a paycheck every week. [Hr'g Tr. 18:2−4, June 11, 2015]. At the end of each year, the Debtor receives a bonus amount equal to two weeks' pay—or, approximately $3,850.00. [Hr'g Tr. 32:1–8, May 12, 2015].

27. The Debtor currently receives a "discretionary" 5% commission (the "Discretionary 5% Commission") of the net profits generated from the Houston operations on two particular accounts—Pedevesa[8] (the "5% PDVSA Commission") and CITGO (the "5% CITGO Commission").[9] [Hr'g Tr. 8:24–9:5; 13:14–19; 16:12–25; 23:7–9, May 12, 2015]; [Hr'g Tr. 20:22−23, June 11, 2015]. Whether the Debtor receives such commission depends on whether these two accounts generate profit and whether Clover's clients actually make payments to Clover. [*See* Hr'g Tr. 7:18–23; 8:22−24; 13:14–19, May 12, 2015]; [Hr'g Tr.

[7] The Debtor testified that he spent the approximate percentage of time at the following locations: China (2%), [Hr'g Tr. 166:1−2, May 11, 2015]; Holland (15%), [Hr'g Tr. 166:3−4, May 11, 2015]; Brazil (10%), [Hr'g Tr. 166:5–6, May 11, 2015]; Venezuela (20%), [Hr'g Tr. 166:7–8, May 11, 2015]; Florida (2-3%), [Hr'g Tr. 166:9–12, May 11, 2015]; and Panama (10%), [Hr'g Tr. 166:15−18, May 11, 2015].

[8] Pedevesa ("PDVSA") is the largest Venezuelan petroleum national company. In 2004, Clover entered into a contract with PDVSA. [Hr'g Tr. 8:17−18; 17:2, May 12, 2015]. It is undisputed that PDVSA is Clover's largest client, as Clover receives approximately 60% of its revenues from its business operations with PDVSA. [Hr'g Tr. 23:17–18, May 12, 2015]. Specifically, the gross revenue generated from the PDVSA account "could be anywhere from 30 to 50 million." [Hr'g Tr. 28:1−3, May 12, 2015]. Sometime in either 2007 or 2008, Clover began generating a profit from its business transactions with PDVSA and, as a result, the Debtor began receiving the Discretionary 5% Commission. [Hr'g Tr. 18:13–17; 20:15–21, May 12, 2015].

[9] CITGO is an entity owed by PDVSA, and PDVSA uses CITGO "in order to purchase and do shipments into Venezuela." [Hr'g Tr. 26:15–19, May 12, 2015]. The Debtor testified that Clover receives approximately 20% of its revenues from business operations with CITCO. [Hr'g Tr. 23:7–16, May 12, 2015]. Sometime in 2014, the Debtor began receiving the 5% CITCO Commission. [Hr'g Tr. 26:3–4, May 12, 2015].

36:7−8, June 11, 2015]. As of the date of trial, PDVSA owes Clover approximately $10-15 million. [Hr'g Tr. 26:24−27:3, May 12, 2015].

28. The Debtor's Discretionary 5% Commission is determined by Navidad Trevino ("Trevino"), who is the comptroller at Clover-Houston. [Hr'g Tr. 14:3−14; 19:21−20:19, June 11, 2015]. As comptroller, Trevino is "knowledgeable about the revenue and operating expenses for [the Clover-Houston location]," [Hr'g Tr. 14:17−21, June 11, 2015], and is "familiar with the relationship between [Clover's] entities," [Hr'g Tr. 15:25−16:3, June 11, 2015]. As comptroller, Trevino is also responsible for ensuring employees—including the Debtor—receive their compensation. [Hr'g Tr. 17:24−18:1; 19:21−24, June 11, 2015]. In order to determine the Debtor's 5% PDVSA Commission amount, Trevino reviews a "general ledger" (that is prepared by several individuals on a monthly basis) and identifies the revenue from the PDVSA client. [Hr'g Tr. 30:12−16; 35:24−36:2, June 11, 2015]. In calculating the Debtor's 5% PDVSA Commission, Trevino also looks out for any large discrepancies or irregularities in the general ledger that may affect the calculation. [Hr'g Tr. 31:13−14; 32:4−6, June 11, 2015].

29. In 2010 and 2011, the Debtor received a 5% commission from a third account named EDC (the "5% EDC Commission").[10] [Hr'g Tr. 24:5–8, May 12, 2015]. However, the Debtor did not receive the entire 5% EDC Commission because "[EDC is] broke," [Hr'g Tr. 24:10−11, May 12, 2015], and "still owe[s] [Clover] 2.8 or 3-some million dollars in arrearage," [Hr'g Tr. 24:13–14, May 12, 2015].

30. In addition to the Discretionary 5% Commission resulting from the PDVSA account and the CITGO account, the Debtor receives an "overall" 5% commission (the "Overall 5%

[10] EDC is an electrical company controlled by the Venezuelan government. [Hr'g Tr. 24:5–6, May 12, 2015].

Commission") that is calculated based on Clover-Houston's total revenue generated in that particular year. [Hr'g Tr. 28:18–29:3, May 12, 2015]. The Debtor first received this Overall 5% Commission in 2005 or 2006. [Hr'g Tr. 29:2−5, May 12, 2015].

31. There has never been a written contract between Clover and the Debtor setting forth the terms regarding the Discretionary 5% Commission or the Overall 5% Commission. [Hr'g Tr. 22:5–13; 30:8−13, May 12, 2015]. Indeed, the Debtor found it unnecessary to enter into a written contract because "[Clover takes] care of [him]." [Hr'g Tr. 22:5−11, May 12, 2015].

32. On occasion, the Debtor obtained "advances" and "loans" from Clover that were also not documented in writing. [Hr'g Tr. 32:14–16; 81:9; 187:23–188:1; 189:7–9; 190:25–191:1, May 12, 2015]. Such advances were later deducted from the Debtor's aggregate commissions that he earned in that particular year. [Hr'g Tr. 191:8−16, May 12, 2015].

33. As of May 12, 2015, the Debtor accepted an offer to work for one of Clover's entities—Clover Logistics RL—located in Panama. [Hr'g Tr. 95:23−96:2, May 12, 2015]. Clover will continue to pay him a yearly base salary of $100,000.00 in Panama. [Hr'g Tr. 96:16−17, May 12, 2015]. However, the Debtor will likely not receive the Discretionary 5% Commission once he begins working for Clover Logistics RL, as such commission is reserved for someone who manages the PDVSA and CITGO accounts. [Hr'g Tr. 96:3−97:1, May 12, 2015].

34. During the pendency of the Divorce Action, Clover has paid for the following expenses/bills for the Debtor: (1) a house in Bentwater in Montgomery County, Texas where he resided up until March 2015; (2) a company car that the Debtor drives (i.e., Audi RS-7); (3) gasoline and any required car maintenance services for the company car;

(4) phone bills; (5) health insurance; (6) food; (7) a credit card belonging to the Debtor's adult daughter by a prior marriage; and (8) work-related expenses such as travel expenses and dinner bills for clients. [Hr'g Tr. 97:14−98:12, May 12, 2015]; [Hr'g Tr. 16:16−17:5; 18:21−19:2; 19:20−20:4; 23:16−24:7, May 13, 2015]; [Doc. No. 279, p. 5 of 15]. Without Clover's assistance in covering the above-described expenses, the Debtor would have a "tough time covering expenses." [Hr'g Tr. 25:8−14, May 13, 2015].

The Debtor's Power of Attorney on his Father's Bank Accounts

35. The Debtor holds the power of attorney on his father's (Juan Jose Castillo) two personal Panamanian accounts: an account at MMG Bank (the "MMG Account"), [Hr'g Tr. 54:6–10; 111:15−16, May 12, 2015], and an account at Davos International Bank (the "Davos Account"), [Hr'g Tr. 59:12–14; 86:8–9, May 12, 2015].

36. The Debtor's power of attorney authorizes the Debtor to transfer or wire monies from and to the MMG Account on his father's behalf, [Hr'g Tr. 54:11–15, May 12, 2015], and the Debtor has access to "any of those funds when [he] need[s] it," [Hr'g Tr. 54:21–22; 58:21–22; 72:15−18, May 12, 2015].

C. Factual Background of Amy Castillo

History/Background of Ms. Castillo

37. Ms. Castillo is currently 46 years old. [Hr'g Tr. 122:8, May 7, 2015].

38. As a child, Ms. Castillo grew up as a "farm girl" on a ranch in Collegeport, Texas where she helped her father with cattle ranching. [Hr'g Tr. 21:25−22:24, May 7, 2015].

39. In 1987, Ms. Castillo graduated from Palacios High School. [Hr'g Tr. 24:5–9, May 7, 2015]. After she graduated from high school, Ms. Castillo attended a community college for "court reporting" school in Alvin, Texas. [Hr'g Tr. 24:10–15, May 7, 2015].

40. Mason Standish Holsworth, II ("Holsworth") is from Collegeport, Texas, and is the father of Ms. Castillo. [*See* Hr'g Tr. 124:11−14, May 12, 2015]. Holsworth is 78 years old. [Hr'g Tr. 134:5−6, May 12, 2015]. On at least one occasion, Holsworth "loaned [Ms. Castillo] money to pay lawyers . . . in [the] neighborhood [of $25,000.00]." [Hr'g Tr. 127:14−18; 140:22−25, May 12, 2015].

Ms. Castillo's Physical and Mental Health

41. In 1989, Ms. Castillo was diagnosed with an autoimmune disease called ulcerative colitis and, because of the impact on her physical health, left "court reporting" school. [Hr'g Tr. 24:20–25:6, May 7, 2015]. This disease still affects her everyday life with flare-ups, joint pain, tiredness, low levels of bleeding, and residual infections. [Hr'g Tr. 25:10–16, May 7, 2015].

42. Sometime after April of 2014, Ms. Castillo learned of a state court lawsuit naming her as a defendant; this suit was initiated by Julie Svancara seeking an injunction against Ms. Castillo for, among other things, harassing and stalking her. [*See* Hr'g Tr. 255:1−4, May 7, 2015]; [*see* Debtor's Ex. QQQ]. As a result of this lawsuit and of the ongoing Divorce Action, Ms. Castillo became very depressed and was put on Prozac and Ambien. [Hr'g Tr. 255:1−4; 269:7−11, May 7, 2015]. Shortly thereafter, Ms. Castillo attempted to commit suicide by shooting herself in the stomach. [Hr'g Tr. 269:3−5, May 7, 2015].

Ms. Castillo's History of Employment

43. Prior to her marriage with the Debtor, Ms. Castillo attended the Texas School of Real Estate and Houston Community College while working part-time at Pappasito's Cantina in Houston, Texas. [Hr'g Tr. 25:23–26:3, May 7, 2015].

44. In the early 1990s, Ms. Castillo obtained her real estate license and worked in the real estate business for approximately one year. [Hr'g Tr. 26:4–10, May 7, 2015]. However, Ms. Castillo's real estate license became invalid, as she failed to pay annual dues to the State of Texas. [Hr'g Tr. 26:18–20, May 7, 2015].

45. She holds no bachelor's degree or associate degree. [Hr'g Tr. 26:11–14, May 7, 2015].

46. Prior to her marriage to the Debtor, in the early 1990s, Ms. Castillo held several other jobs where she sold women's merchandise, which included sales positions at Macy's, Fendi Boutique, and Dolce & Gabbana. [Hr'g Tr. 26:21–27:15, May 7, 2015].

47. In 1996, Ms. Castillo worked at Office System of Texas, where she sold copiers. [Hr'g Tr. 27:18−20; 28:21–22, May 7, 2015]; [Hr'g Tr. 160:24−161:9, May 11, 2015].

48. Since filing for divorce, Ms. Castillo has attempted to pursue business opportunities and to build a resume in order to "support [her] children." [Hr'g Tr. 43:17−21, May 8, 2015]. Indeed, Ms. Castillo would like to go back to school to possibly pursue a paralegal degree. [Hr'g Tr. 43:22−44:1, May 8, 2015].

D. The Marriage of the Debtor and Ms. Castillo

49. The Debtor and Ms. Castillo (previously defined as the Parties) first met in September 1996. [Hr'g Tr. 28:18−22; 29:9−13, May 7, 2015].

50. After one week of their initial meeting, on September 21, 1996, the Parties were married in Las Vegas, Nevada, and have been continuously married ever since. [Hr'g Tr. 28:18−22; 29:11–17, May 7, 2015]; [Hr'g Tr. 155:16−17; 156:2−3, 10–11, May 11, 2015]. Therefore, the Parties have been married for approximately 19 years. [Hr'g Tr. 29:14–17, May 7, 2015]; [Hr'g Tr. 155:16−17; 156:2−3, 10–11, May 11, 2015].

51. After the Parties married, Ms. Castillo continued to work for Office System of Texas for an additional six or seven months but decided to quit her job thereafter. [Hr'g Tr. 161:6–11, May 11, 2015].

52. At the time of his marriage—and throughout the pendency of the Divorce Action—the Debtor has worked for Clover as its Gulf Regional Manager. [*See* Hr'g Tr. 158:20–22; 159:20–24, May 11, 2015].

53. Approximately one year after the Parties were married, Ms. Castillo became pregnant with their first child. [Hr'g Tr. 162:1–4, May 11, 2015]. After the birth of their first child, the Parties agreed that Ms. Castillo's job would be as a "stay-at-home" mother. [Hr'g Tr. 175:16–18, May 11, 2015].

54. During the Parties' marriage, Ms. Castillo would frequently visit the Palm Restaurant where she would eventually become acquainted with several different men. [*See* Hr'g Tr. 74:2−17; 77:17−23, June 26, 2015]; [*see* Hr'g Tr. 149:5−10; 150:6−9, June 11, 2015].

55. On several occasions during the marriage, the Debtor used steroids and smoked marijuana in the garage of the Parties' home when their children were present. [Hr'g Tr. 295:1−297:19, May 7, 2015]; [*see* Ms. Castillo's Ex. No. 108]. And, at times, the Debtor would visit Houston restaurants and bars to consume alcohol. [Hr'g Tr. 45:3−11, May 7, 2015].

E. The Parties' Children

<u>The Debtor's Children from a Prior Marriage</u>

56. The Debtor has two adult children—Lauren Castillo and Kristin Castillo—from his first marriage. [Hr'g Tr. 24:20−23; 31:19−25; 34:13−16, May 13, 2015].

The Debtor and Ms. Castillo's Children

57. During the Parties' marriage, Ms. Castillo gave birth to two children—a son, J.M.C., and a daughter, A.G.C. (collectively, the "Children"). [Hr'g Tr. 29:22−25, May 7, 2015]; [*see* Ms. Castillo Ex. Nos. 161, 167, 168 & 169].

58. J.M.C. is 17 years old and currently attends Klein Oak High. [Hr'g Tr. 30:1−2; 38:11−14, May 7, 2015]. Although J.M.C. played football and basketball most of his life, he is not currently involved in any extracurricular activities. [Hr'g Tr. 45:25−46:2, May 8, 2015]; [Hr'g Tr. 167:13–16, May 11, 2015].[11]

59. A.G.C. is 14 years old and attends Ulrich Intermediate School, where she currently participates in the school's drama club. [Hr'g Tr. 37:9−17, May 7, 2015]; [Hr'g Tr. 44:13–14, May 8, 2015]; [*see* Ms. Castillo Ex. Nos. 166 & 167].

F. Ms. Castillo's Relationship and Interaction with the Children

60. The Children currently reside with Ms. Castillo at their home located at 10729 Spell Road, Tomball, Texas 77375 (the "Main House"). [Hr'g Tr. 36:20−22; 83:3−10, May 7, 2015]. The Main House was purchased on or about July 1, 2011. [Hr'g Tr. 173:14−16, May 11, 2015]; [Court's Ex. No. 2 (Deed of Trust)]. Towards the end of 2011, the Parties began building a guest house located on a contiguous lot which is approximately seventy yards from the Main House (the "Guest House") (collectively, the "Homestead").[12] [Hr'g

[11] According to Ms. Castillo, her son has been diagnosed with dyslexia and ADHD and holds a status under the Americans with Disability Act. [Hr'g Tr. 248:25; 249:9−12; 252:4−12, May 7, 2015]; [Hr'g Tr. 167:20–168:3, May 11, 2015]. The Debtor, however, testified that these afflictions do not impair his son's ability to lead a normal life. [*See* Hr'g Tr. 167:13−25, May 11, 2015]. Because Ms. Castillo introduced no medical evidence indicating that her son's afflictions negatively affect his ability to lead a normal life, this Court finds that J.M.C. has no material medical conditions affecting him.

[12] While this Court acknowledges that the Main House and the Guest House are separate and distinct tracts of land, for the purposes of these FOF & COL, the Court will refer to them collectively as the "Homestead."

Tr. 173:17−22, May 11, 2015]; [Hr'g Tr. 173:14−175:2, May 13, 2015]; [Trustee's Ex. ii, p. 3 of 15]. As of the date of the hearing on the Motion for Division, the Homestead has been paid off in full and, therefore, there is no mortgage to be paid. [Hr'g Tr. 86:22−87:1, May 7, 2015]; [Hr'g Tr. 122:2−23, May 8, 2015]; [Hr'g Tr. 172:21−22, May 11, 2015]. The Homestead is valued at approximately $931,434.00.[13] [Doc. No. 285-1, p. 3 of 36]; [Doc. No. 333, p. 2 of 29].

61. The Debtor does not dispute Ms. Castillo having sole custody of the Children. [Hr'g Tr. 115:24−116:3, May 19, 2015].

62. Although the Debtor has driven the Children to school on occasion, Ms. Castillo drives the Children to school approximately "99.9%" of the time. [Hr'g Tr. 40:5–8, May 7, 2015]. Specifically, Ms. Castillo drives A.G.C. to school "nine times out of ten" every morning, [Hr'g Tr. 38:5−6, May 7, 2015], and drives J.M.C. to school every morning at approximately 6:45 A.M., [Hr'g Tr. 38:15−16, May 7, 2015].

63. A.G.C. typically rides the school bus home after school. [Hr'g Tr. 38:7−10, May 7, 2015]. Occasionally, Ms. Castillo picks up A.G.C. from school when she participates in after-school events or tutoring. [*Id.*].

64. The Debtor testified that he is not critical of Ms. Castillo ensuring A.G.C. gets to school on time every morning, [Hr'g Tr. 169:3–8, May 11, 2015], and he acknowledges that Ms. Castillo has "done a good job keeping [A.G.C.] involved in things that a typical young lady like[s]." [Hr'g Tr. 169:12–16, May 11, 2015].

[13] The Debtor and Ms. Castillo are in agreement that the Main House is valued at approximately $795,000.00, and that the Guest House is valued at approximately $136,434.00. [Doc. No. 285-1, p. 3 of 36]; [Doc. No. 333, p. 2 of 29]. Therefore, the Homestead is valued at an aggregate amount of approximately $931,434.00.

65. J.M.C. typically rides the school bus home after school or is driven home by one of his friends. [Hr'g Tr. 38:17−20, May 7, 2015]. However, Ms. Castillo occasionally picks J.M.C. up from school depending on his after-school activities. [*Id.*]. Due to J.M.C.'s dyslexia and ADHD, Ms. Castillo is more involved with J.M.C.'s schoolwork and activities than she is with A.G.C.'s schoolwork. [Hr'g Tr. 252:14−22, May 7, 2015].

66. The Debtor testified that he is not critical of Ms. Castillo for ensuring J.M.C.'s safety getting to school each morning and acknowledges that it's "a wonderful thing." [Hr'g Tr. 168:15−169:2, May 11, 2015].

67. For the past 16 or 17 years, Ms. Castillo has been responsible for making sure the Children completed their homework in a timely manner. [Hr'g Tr. 169:22–25, May 11, 2015].

68. During her marriage to the Debtor, and since the birth of the Children, Ms. Castillo has never held a job outside her role as a "stay-at-home" mom, but rather has dedicated her time to taking care of the Children. [Hr'g Tr. 120:18–25, May 7, 2015]. As a result, the Parties agree that the Debtor has the greater ability to make "good money" than does Ms. Castillo. [*See* Hr'g Tr. 121:17–122:9, May 7, 2015]; [Hr'g Tr. 170:11–13, May 11, 2015].

69. According to the Debtor, Ms. Castillo is a "very good mom." [Hr'g Tr. 170:24−25, May 11, 2015].

G. The Debtor's Relationship and Interaction with the Children

70. The Debtor has shown love and care towards the Children. [*See* Hr'g Tr. 132:6−8, May 12, 2015]. When J.M.C. was five years old, the Debtor would take him Go-Cart racing every weekend in Katy, Texas. [Hr'g Tr. 54:24−55:3, May 13, 2015]. The Debtor and

J.M.C. continued Go-Cart racing for approximately five years. [Hr'g Tr. 55:22−25, May 13, 2015].

71. On occasion, A.G.C. would accompany the Debtor and J.M.C. and participate in riding Go-Carts. [Hr'g Tr. 57:15−58:3, May 13, 2015].

72. When J.M.C. turned 10 years old, the Debtor and J.M.C. began riding motocross bikes together. [Hr'g Tr. 55:25−56:1; 56:15−16, May 13, 2015]. The Debtor and J.M.C. rode motocross bikes "almost on a weekly basis." [Hr'g Tr. 56:23−24, May 13, 2015].

73. When J.M.C. turned 11 or 12 years old, he began riding "side-by-sides, which are [] four-wheeler driveable vehicles." [Hr'g Tr. 58:14−16, May 13. 2015]. J.M.C. and A.G.C. participated in riding these "side-by-sides" almost every weekend. [Hr'g Tr. 58:14−59:6, May 13, 2015].

74. The Debtor, when he was not away on business, would also attend J.M.C.'s basketball games. [Hr'g Tr. 60:21−61:2, May 13, 2015].

H. The Parties' Behavioral Conduct Before and After the Filing of the Divorce Action

75. At least a few times before she filed the Divorce Action, Ms. Castillo would go to the Palm Restaurant, flash large sums of cash, [Hr'g Tr. 92:16−23, June 26, 2015], and offer to buy Lamborghinis for different male individuals whom she met at this restaurant, [Hr'g Tr. 104:19−20; 105:6−8, June 26, 2015].

76. In August of 2012, after the filing of the Divorce Action, Ms. Castillo was driving home intoxicated from Perry's Restaurant and hit a railroad track, which totaled her Lamborghini. [Hr'g Tr. 41:8−42:1, May 8, 2015]. On the same night, after totaling her Lamborghini, she was arrested and spent the night in jail where she was charged with a DWI (Driving While Intoxicated). [Hr'g Tr. 100:13−101:8, May 8, 2015]. The police

also discovered that Ms. Castillo was driving with an expired driver's license. [Hr'g Tr. 101:8−10, May 8, 2015]. Due to her driving while intoxicated and with an expired driver's license, her driver's license was suspended for six months and, therefore, she was required to obtain an occupational driver's license in order to drive any vehicle during that six month period. [Hr'g Tr. 101:15−23, May 8, 2015]. However, Ms. Castillo—deliberately thumbing her nose at the law—continued to drive her vehicle without an occupational license and, as a result, she spent another night in jail for this particular violation. [Hr'g Tr. 102:2−10, May 8, 2015]. As a result of the Lamborghini being totaled, insurance proceeds were paid to the Parties and later split between the Debtor and Ms. Castillo. [Hr'g Tr. 42:1−10, May 8, 2015].

77. After initiating the Divorce Action, Ms. Castillo gave at least one watch that belonged to the Debtor and one watch that was community property to an attorney named Bobby Newman. [Hr'g Tr. 79:10−80:6; 128:6−11, May 8, 2015]. In exchange for these two watches, Ms. Castillo received more than $10,000.00 in credit for legal services rendered by Mr. Newman's firm on behalf of Ms. Castillo. [Hr'g Tr. 80:4−18, May 8, 2015].

78. On May 21, 2012, the Debtor transferred the amount of $60,000.00 from the Parties' joint Chase checking account (-6875) (the "Joint Account") to his personal Chase account (-1803) because he feared Ms. Castillo "was siphoning all the funds out." [Hr'g Tr. 105:10−15; 109:9−110:14, May 12, 2015]; [Ms. Castillo's Ex. No. 131, Bates #27].

79. Within sixty days of Ms. Castillo initiating the Divorce Action, the Debtor attempted to reconcile with her several times and attended a marriage counseling session with Ms. Castillo. [Hr'g Tr. 42:12−43:2, May 13, 2015].

80. On November 25, 2014, the Family Law Court issued an Order for Capias for Arrest of Respondent, which ordered that the Debtor be taken into custody due to the Debtor's failure to appear in court. [Debtor's Ex. Q].

I. Loans, Monies Transfers, Gifts, and Wages Received During the Marriage

Wages, Salaries, Commissions, and Gifts Received During Marriage

81. The Debtor frequently received monetary "gifts" from his father's MMG account in Panama. [Hr'g Tr. 53:25–54:7; 56:21–24, 58:2–4; 58:14–17; May 12, 2015]; [Clover's Exs. C, D, E, F & G]; [Ms. Castillo Ex. No. 131]. Such monies received from the Debtor's father were deposited into the Parties' Joint Account. [Hr'g Tr. 53:8–9; 54:4–5; 54:14–15; 56:19, May 12, 2015]; [Hr'g Tr. 71:7−11, May 13, 2015]. The Debtor and Ms. Castillo both had access to bank statements related to this Joint Account, and both spent money that was deposited into the Joint Account. [Hr'g Tr. 73:11−20, May 13, 2015].

82. In 2008, the Debtor earned $100,846.00 in total wages and salary, with a gross income of $97,308.00. [Hr'g Tr. 134:2−9, May 7, 2015]; [Clover's Ex. c, Bates #44]. Additionally, the Debtor received, by wire transfer, the amount of $345,000.00 in "gifts" from his father's MMG account. [Hr'g Tr. 52:24–53:8; 53:22–24, May 12, 2015]; [Clover's Ex. c, Bates #66]. The Debtor deposited this amount into the Joint Account where both he and Ms. Castillo had access thereto and were able to use such funds. [*See* Hr'g Tr. 73:11−20, May 13, 2015].

83. In 2009, the Debtor earned $97,000.00 in total wages and salary, with a gross income of $94,242.00. [Clover's Ex. d, Bates #70]. Additionally, the Debtor received the amount of $184,720.00 in "gifts" from his father's MMG account. [Hr'g Tr. 58:2–4, 16, May 12,

2015]; [Clover's Ex. d, Bates #94]. The Debtor deposited this amount into the Joint Account where both he and Ms. Castillo had access to the Joint Account and were able to use such funds. [*See* Hr'g Tr. 73:11−20, May 13, 2015].

84. In 2010, the Debtor earned $393,885.00 in total wages and salary, with a gross income of $391,476.00. [Hr'g Tr. 59:24−60:5; 61:23−25, May 12, 2015]; [Clover's Ex. e, Bates #98]. Of the $393,885.00, approximately $293,885.00 accounted for the Debtor's Overall 5% Commission earned in 2010. [Hr'g Tr. 60:6–14; 60:17−19, May 12, 2015]. Additionally, the Debtor received the amount of $639,406.00 in "gifts" from his father's MMG account. [Hr'g Tr. 61:10–13, 23–25; 62:1–6, May 12, 2015]; [Clover's Ex. e, Bates #124]. The Debtor deposited this amount into the Joint Account where both he and Ms. Castillo had access to the Joint Account and were able to use such funds. [*See* Hr'g Tr. 73:11−20, May 13, 2015].

85. In 2011, the Debtor earned $834,690.00 in total wages and salary, with a gross income of $832,801.00. [Hr'g Tr. 63:18−21, May 12, 2015]; [Clover's Ex. f, Bates #128]. Of the $834,690.00 in total wages and salary, $734,690.00 represented total commissions earned from the PDVSA account and the EDC account, [Hr'g Tr. 63:20−64:19, May 12, 2015], and $100,000.00 represented the Debtor's base salary, [Hr'g Tr. 64:18−19, May 12, 2015]. Additionally, the Debtor received the amount of $399,732.00 in "gifts" from his father's MMG account. [Hr'g Tr. 64:20−65:14, May 12, 2015]; [Clover's Ex. f, Bates #153]. The Debtor deposited this amount into the Joint Account where both he and Ms. Castillo had access to the Joint Account and were able to use such funds. [*See* Hr'g Tr. 73:11−20, May 13, 2015].

86. In 2012, the Debtor earned $297,492.00 in total wages and salary, with a gross income of $302,909.00. [Hr'g Tr. 69:8−9, May 12, 2015]; [Clover's Ex. g,[14] Bates #157]. Of the $297,492.00, approximately $197,492.00 represented total commissions earned from the PDVSA account, the Overall 5% Commission, and a two-week bonus. [Hr'g Tr. 69:10−70:1, May 12, 2015]. Additionally, the Debtor received the amount of $565,000.00 in "gifts" from his father's MMG account. [Hr'g Tr. 71:13−17; 72:15−20, May 12, 2015]; [Clover's Ex. g, Bates #183]. The Debtor deposited this amount into the Joint Account where both he and Ms. Castillo had access to the Joint Account and were able to use such funds. [*See* Hr'g Tr. 73:11−20, May 13, 2015].

87. In 2013, the Debtor earned $266,191.00 in total wages and salary, with a gross income of $291,227.00. [Hr'g Tr. 75:3−4, May 12, 2015]; [Clover's Ex. h,[15] Bates #187]. Of the $266,191.00, the amount of $166,191.00 represented total commissions earned from the PDVSA account, the CITGO account, and the Overall 5% Commission. [Hr'g Tr. 75:5−20, May 12, 2015]. The Debtor did not receive any monetary "gifts" from his father in 2013. [Hr'g Tr. 79:1−2, May 11, 2015]; [*see* Clover's Ex. h].

88. Thus, from 2008 through 2012, the Parties received $2,133,858.00[16] in "gifts" from the Debtor's father. [*See* Hr'g Tr. 78:21−25, May 11, 2015]. And, from 2008 through 2013, the Debtor earned an aggregate amount of $1,392,258.00 in commissions and bonuses.

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[14] The hearing transcript, [Doc. No. 158], reflects that "Juan Castillo's Exhibit G [was] received in evidence," [Hr'g Tr. 69:4, May 12, 2015], however, Exhibit "g" is Clover's exhibit. Stated differently, while the Debtor's Exhibit G was admitted into evidence, this particular reference to the 2012 tax return is not based on the Debtor's Exhibit G.

[15] The hearing transcript, [Doc. No. 158], reflects that "Juan Castillo's Exhibit H [was] received in evidence," [Hr'g Tr. 75:1, May 12, 2015], however, Exhibit "h" is Clover's exhibit. The Debtor's Exhibit H was not admitted into evidence.

[16] $345,000.00 (2008 tax return) + $184,720.00 (2009 tax return) + $639,406.00 (2010 tax return) + $399,732.00 (2011 tax return) + $565,000.00 (2012 tax return) = $2,133,858.00

Transfers of Monies by the Parties

89. On occasion, the Debtor transferred monies to his father by depositing monies into his father's Miami, Florida account. [Hr'g Tr. 62:20–63:13, May 12, 2015].

Loans Given to Others During the Parties' Marriage

90. Maria A. Muñoz ("Muñoz") is a cousin of one of PDVSA's directors. [Hr'g Tr. 152:5−7, May 12, 2015]. During the Parties' marriage, the Debtor loaned $10,000.00 to Muñoz in order "to try to keep [PDVSA] happy" and "to keep in good relations with the PDVSA account." [Hr'g Tr. 215:8−15, May 7, 2015]; [Hr'g Tr. 152:8−9; 153:16−17, May 12, 2015]; [Hr'g Tr. 185:4−5, May 13, 2015]. The Debtor and Muñoz entered into a loan agreement whereby Muñoz would make payments of $50.00 starting January 31, 2013. [Ms. Castillo's Ex. No. 55]. The money loaned to Muñoz was taken from the Parties' community funds. [Hr'g Tr. 218:3−6, May 7, 2015]; [Hr'g Tr. 152:12−14; 153:2−5, May 12, 2015]. As of May 13, 2015, Muñoz has not made any payments on the loan agreement and the Debtor has not spoken to her in years. [Hr'g Tr. 185:6−11, May 13, 2015].

91. Omara Valles ("Valles") is an employee at Clover. [Hr'g Tr. 16−18, May 12, 2015]. During the Parties' marriage, the Debtor loaned $2,500.00 to Valles "because her father was extremely sick and she needed to get some medication and some help in Venezuela." [Hr'g Tr. 157:19−22, May 12, 2015]; [Hr'g Tr. 185:15−17, May 13, 2015]. The money loaned to Valles was taken from the Parties' community funds. [Hr'g Tr. 157:25−158:4, May 12, 2015]. The Debtor and Valles did not enter into any written agreement that required Valles to repay him the $2,500.00. [Hr'g Tr. 185:22−24, May 13, 2015]. As of

May 13, 2015, Valles has not made any payments on the loan. [Hr'g Tr. 185:12−15, May 13, 2015].

J. Extramarital Affairs and Relationships of the Parties

Julie Reyes Svancara

92. Julie Reyes Svancara ("Svancara") is an interior decorator/artist. [Hr'g Tr. 8:25−9:1; 11:14−15, May 11, 2015].

93. The Debtor first met Svancara sometime in 2012 at Perry's Restaurant. [Hr'g Tr. 8:7−10; 10:17−18, May 11, 2015]. During their initial meeting, the Debtor stated that Clover "was having a new building that was coming up." [Hr'g Tr. 11:13−14; 13:13−14, May 11, 2015]. Svancara then informed the Debtor that she "needed some work" as she was an interior decorator. [Hr'g Tr. 11:14−15, May 11, 2015].

94. At the end of their initial meeting, the Debtor and Svancara exchanged business cards. [Hr'g Tr. 11:8−19, May 11, 2015]. A few days later, Svancara met with the Debtor where they discussed "the budget" and the "architectural plans" related to the "new building that was coming up." [Hr'g Tr. 11:25−12:1; 13:13−16, May 11, 2015].

95. On either the first or the second meeting, Svancara received a check from Clover in the amount of $4,500.00 as part of the compensation for her interior decorating services. [Hr'g Tr. 15:1−3, May 11, 2015]. Approximately a couple weeks later, Svancara received a second check from Clover in the amount of $2,835.00. [*See* Hr'g Tr. 15:19−25, May 11, 2015].

96. According to Svancara, she entered into a formal contract with Clover where she negotiated the terms of her employment as an interior decorator. [Hr'g Tr. 15:4−7,

12−15, May 11, 2015]. However, such contract was never signed. [Hr'g Tr. 15:12−15, May 11, 2015].

97. On the evening Ms. Castillo initiated the Divorce Action (i.e., May 18, 2012) and after the Debtor learned of the Divorce Action, the Debtor began a sexual relationship with Svancara. [Hr'g Tr. 56:11–17, May 11, 2015]; [Hr'g Tr. 33:6−9, May 12, 2015].

98. According to Svancara, the sexual relationship did not last long and ceased sometime at the end of June 2012. [Hr'g Tr. 17:22–18:4, May 11, 2015].

Celina Beltran

99. Celina Beltran ("Beltran") is a systems engineer in Venezuela. [Hr'g Tr. 82:9−12, May 13, 2015].

100. The Debtor met Beltran in a social setting. [Hr'g Tr. 83:14−16, May 13, 2015].

101. Sometime in 2013, (i.e., several months) after Ms. Castillo initiated the Divorce Action, the Debtor began dating Beltran. [Hr'g Tr. 112:9−11, May 12, 2015].

102. During their relationship, the Debtor took Beltran on trips with him to Holland, Miami, and Houston. [Hr'g Tr. 114:25−115:1, May 12, 2015]. The Debtor used his Clover credit card to pay for such trips with Beltran. [H'r Tr. 115:16−21, May 12, 2015]. The Debtor would then use community funds to reimburse Clover for charges he made on the Clover credit card. [Hr'g Tr. 115:16−24, May 12, 2015].

103. The Debtor is no longer dating Beltran. [Hr'g Tr. 113:19−20, May 12, 2015].

Kyle Scofield

104. Kyle Scofield ("Scofield") is 53 years old and has been working as an industrial piping contractor since 1984. [Hr'g Tr. 70:21−25, June 26, 2015].

105. In July or August of 2011, Scofield first met Ms. Castillo during the lunch hour at the Palm Restaurant located at 6100 Westheimer Road, Houston, Texas. [Hr'g Tr. 74:13−17; 77:22−23, June 26, 2015].

106. Ms. Castillo caught Scofield's attention with her "friendly and flirtatious" demeanor, [Hr'g Tr. 77:2−3, June 26, 2015], which included exposure of her genital area, [Hr'g Tr. 77:12−13, June 26, 2015]. Thereafter, Ms. Castillo and Scofield exchanged names and phone numbers. [Hr'g Tr. 77:24−78:1, June 26, 2015].

107. Sometime in 2011, and prior to Ms. Castillo filing for divorce, Scofield and Ms. Castillo engaged in sexual activity with one another, which included unprotected oral sex in the handicap bathroom at the Palm Restaurant. [Hr'g Tr. 77:19−78:8, 20−25; 79:18−80:13, June 26, 2015]; [Hr'g Tr. 12:9−12, May 15, 2015]; [Doc. No. 279, p. 2 of 15 (Ms. Castillo admitting that "[t]here is no evidence that [Ms. Castillo] had a sexual relationship with anyone other than Mr. Schofield [sic] prior to filing for divorce.")].

108. On at least one occasion, Ms. Castillo and Scofield engaged in sexual activity in a hotel room. [Hr'g Tr. 88:18−19:1, June 26, 2015]. Ms. Castillo spent community funds to pay for the hotel room. [*See* Hr'g Tr. 88:18−21, June 26, 2015].

109. After the affair with Scofield ended, Ms. Castillo left several voice messages to Scofield and threatened to contact his ex-wife and minor daughter. [Debtor's Ex. BBBB].

Ronald Lee White

110. Ronald Lee White ("White") is 62 years old and is currently employed as a trial attorney at the law firm of Lewis Brisbois Bisgaard & Smith, L.P. [Hr'g Tr. 83:19−23; 84:12−13, June 25, 2015].

111. In January of 1977, White graduated from South Texas College of Law and became licensed to practice in the State of Texas on February 14, 1977. [Hr'g Tr. 84:1−9, June 25, 2015].

112. Sometime in July of 2014, White first met Ms. Castillo at Smith & Wollensky, a restaurant in Houston, where he asked Ms. Castillo for her number. [Hr'g Tr. 84:20−22; 85:11−16, June 25, 2015]. Approximately 7-10 days later, White and Ms. Castillo met and had dinner. [Hr'g Tr. 85:17−23, June 25, 2015].

113. For the following three or four months, White and Ms. Castillo engaged in social interactions which included Christmas social events. [Hr'g Tr. 85:24−86:8, June 25, 2015].

114. Sometime in August or September of 2014, White and Ms. Castillo entered into an attorney-client relationship wherein White was to "render legal services as needed." [Hr'g Tr. 90:1−5, June 25, 2015]. White and Ms. Castillo did not enter into or sign a formal contract or engagement letter. [Hr'g Tr. 90:8−9, June 25, 2015]. However, White accepted a $1.00 retainer from Ms. Castillo. [Hr'g Tr. 90:11−16, June 25, 2015].

115. By the end of 2014, White and Ms. Castillo's friendship had evolved into a sexual relationship. [Hr'g Tr. 86:15−19, June 25, 2015]. During this time, White and Ms. Castillo expressed love and affection towards one another. [Hr'g Tr. 87:12−16, June 25, 2015].

116. In March of 2015, White extended a loan to Ms. Castillo in the amount of $25,000.00 by writing her a check. [Hr'g Tr. 88:9−13; 88:24−89:3, June 25, 2015]. However, White and Ms. Castillo did not enter into any written contact or agreement establishing the terms and conditions of repayment. [Hr'g Tr. 92:12−14, June 25, 2015].

117. Although White and Ms. Castillo have not seen each other since April of 2015, the two remain friends. [Hr'g Tr. 92:15−16; 94:10−22, June 25, 2015].

Richard Spitzer

118. Richard Dordy Spitzer ("Spitzer") is 50 years old and operates his own consulting firm where he "advise[s] an investor group on overseas investment." [Hr'g Tr. 146:4−12, June 11, 2015].

119. Sometime in late November or early December of 2012, Spitzer first noticed Ms. Castillo at the Palm Restaurant where the two "[had] a few drinks together and [] started up a conversation." [Hr'g Tr. 149:8−10; 150:4−9, June 11, 2015].

120. He and Ms. Castillo went on approximately ten dates from October 2012 to December of January of 2013. [Hr'g Tr. 60:12−16, May 8, 2015].

K. The Family Law Court's Orders Regarding Child Support and Spousal Maintenance

121. The Family Law Court issued several interim orders setting forth terms and conditions related to child support and spousal maintenance.

122. On September 5, 2012, the Family Law Court issued the Agreed Temporary Orders (the "Agreed Temporary Order") that required the Debtor to pay child support to Ms. Castillo in the amount $1,875.00 per month. [Hr'g Tr. 51:19−24, May 7, 2015]; [Ms. Castillo's Ex. No. 134, Bates #13]. Pursuant to the Agreed Temporary Order, the monthly child support payment is due on the first day of each month, beginning on August 1, 2012. [Hr'g Tr. 52:12−14, May 7, 2015]; [Ms. Castillo's Ex. No. 134, Bates #13]. The Agreed Temporary Order also required that the Debtor pay temporary spousal maintenance to Ms. Castillo in the amount of $8,125.00 per month. [Hr'g Tr. 53:9−12, May 7, 2015]; [Ms. Castillo's Ex. No. 134, Bates #20]. Pursuant to such order, the monthly spousal

maintenance payment to Ms. Castillo is due on the first day of each month, beginning on August 1, 2012. [Hr'g Tr. 54:11−13, May 7, 2015]; [Ms. Castillo's Ex. No. 134, Bates #20]. The parties agreed to reduce Debtor's spousal maintenance obligation to $6,725.00, with the first payment due December 1, 2012.

123. The Agreed Temporary Order required that Ms. Castillo be responsible for paying the *ad valorem* taxes on the Homestead. [Hr'g Tr. 130:21−131:4, May 8, 2015]; [*see* Ms. Castillo's Ex. No. 134, Bates #20 ¶ 8.3]. Ms. Castillo made some but not all *ad valorem* tax payments. As of the first day of the hearing on the Motion for Division, the Parties owed approximately $35,000.00 in *ad valorem* taxes to the taxing authorities. [*See* Hr'g Tr. 84:19−85:6, May 7, 2015]. However, as of October 11, 2015, the Parties owe $13,886.98 in delinquent taxes to the Harris County Tax Assessor for the years 2013 and 2014, and an additional $34,242.88 in delinquent taxes to Klein ISD, totaling $48,129.86. [Doc. No. 338]. Ms. Castillo's failure to pay taxes on the Homestead while residing in it has resulted in the imposition of a tax lien and the filing of a lawsuit by Harris County and Klein ISD against the Parties. [Hr'g Tr. 58:19−20; 84:7−85:4; 87:2−3, May 7, 2015]; [Hr'g Tr. 130:21−131:4, May 8, 2015]; [Debtor's Exs. S & T].

124. On November 10, 2014, the Family Law Court issued an order entitled "Order on Petitioner's Motion for Additional Interim Attorney's Fees, Motion to Increase Spousal Support and Motion to Increase Child Support" (the "Order on Additional Fees and Support"). [Debtor's Ex. N]; [Ms. Castillo's Ex. No. 83]. Pursuant to the Order on Additional Fees and Support, the Family Law Court increased child support payments to Ms. Castillo to $2,137.50 per month, "retroactive to April 1, 2014, beginning on November 1, 2014 and payable on the first day of each month thereafter until further

order of this Court." [Debtor's Ex. N, Bates #139]. The Order on Additional Fees and Support also increased spousal support payments to Ms. Castillo to $10,000.00 per month beginning on November 1, 2014. [Hr'g Tr. 53:24−54:3, May 7, 2015]; [Hr'g Tr. 192:9−18, May 12, 2015]; [Debtor's Ex. N, Bates #139].

125. During the course of the Divorce Action, but prior to the filing of his bankruptcy petition, the Debtor fell behind in making his spousal maintenance payments and child support payments to Ms. Castillo. [*See* Hr'g Tr. 52:15−20; 54:18−24, May 7, 2015]. However, as of October 11, 2015, the Debtor was current with both spousal maintenance payments and child support payments. [Doc. No. 338].

126. The Debtor's current financial obligations and expenses require him to pay the following: (1) child support in the amount of $2,137.50/month, [Debtor's Ex. N, Bates #139]; (2) spousal maintenance in the amount of $10,000.00/month, [*Id.*]; (3) medical and dental insurance (outside of health insurance provided for by Clover) in the amount of approximately $100.00/month, [Hr'g Tr. 20:8−15, May 13, 2015]; (4) dry cleaning in the amount of approximately $25.00/month, [Hr'g Tr. 21:24−22:9, May 13, 2015]; and (5) a car payment for J.M.C. in the amount of $240.00/month, [Hr'g Tr. 22:14−18, May 13, 2015].

127. As of October 11, 2015, the Debtor was current on all spousal maintenance payments and child support payments to Ms. Castillo. [*See* Doc. No. 338]. Specifically, for the months of August 2012 through November 2012, Ms. Castillo has received a total of $32,500.00 in spousal maintenance payments (representing 4 monthly payments of $8,125.00). For the months from December 2012 through October 2014, Ms. Castillo received a total of $154,675.00 in spousal maintenance payments (representing 23

monthly payments of $6,725.00). For the months of November 2014 through October 2015, Ms. Castillo has received a total of $120,000.00 in spousal maintenance payments (representing 12 monthly payments of $10,000,00). For the months of August 2012 through March 2014, Ms. Castillo has received a total of $37,500 in child support payments (representing 20 monthly payments of $1,875.00 from August 2012 through March 2014). For the months of April 2014 through October 2015, Ms. Castillo has received a total of $40,612.50 (representing 19 monthly payments of $2,137.50). Thus, from August 2012 through October 2015, Ms. Castillo has received $307,175.00 in spousal maintenance payments and $78,112.50 in child support payments, totaling an amount of $385,287.50 in both spousal maintenance and child support payments.

L. Attorneys' Fees Claimed by Counsel for Ms. Castillo

128. There is no question that Ms. Castillo has incurred attorneys' fees because of the Divorce Action and several pending lawsuits. On May 15, 2015, in support of Ms. Castillo's reimbursement claim against the Debtor, Jared Woodfill ("Woodfill")—family law counsel for Ms. Castillo—testified about the reasonableness and necessity of his firm's fees incurred during the pendency of the trial on the Motion for Division.

Educational Background of Mr. Woodfill

129. Woodfill grew up in Clear Lake, Texas. [Hr'g Tr. 85:10−12, May 15, 2015].

130. In 1986, Woodfill graduated from Clear Lake High School. [Hr'g Tr. 85:12−13, May 15, 2015]. Thereafter, in 1990, he obtained his Bachelor of Business Administration in Finance and Marketing from the University of Texas. [Hr'g Tr. 85:13–15, May 15, 2015].

131. In 1990, Woodfill entered St. Mary's School of Law in San Antonio, Texas. [*See* Hr'g Tr. 85:16–17, May 15, 2015]. While in law school, Woodfill was involved in several

activities inside and outside of the law school. For example, he served as a Note/Comment editor on the St. Mary's Law Journal. [Hr'g Tr. 85:22–23, May 15, 2015]. He also clerked for the law firm of Fulbright & Jaworski, LLP,[17] the law firm of Jones, Day, Reavis, and Pogue, and the law firm of Beirne, Maynard and Parsons, LLP. [Hr'g Tr. 86:4–6, May 15, 2015].

132. In 1993, Woodfill graduated cum laude and obtained his Doctorate of Jurisprudence from St. Mary's School of Law. [Hr'g Tr. 85:16–17, May 15, 2015].

History of Mr. Woodfill's Legal Career and Professional Experience

133. After he graduated from St. Mary's School of Law in 1993, Woodfill began his legal career at the law firm of Beirne, Maynard & Parsons, LLP and was assigned to the law firm's civil litigation department. [Hr'g Tr. 86:13–17, May 15, 2015].

134. While at the Beirne, Maynard & Parsons law firm, Woodfill worked on a few family law cases, [Hr'g Tr. 86:21−24, May 15, 2015]; however, he focused primarily on civil defense matters, [Hr'g Tr. 86:23–25, May 15, 2015]. Further, with regard to four or five cases, Woodfill conducted trials where he was first chair. [Hr'g Tr. 87:15–20, May 15, 2015]. He also participated in approximately fifteen cases where he was either second chair, third chair, or an assistant. [Hr'g Tr. 87:21–88:1, May 15, 2015]. In October 1995, Woodfill left the Beirne, Maynard & Parsons law firm. [Hr'g Tr. 87:2–3, May 15, 2015].

135. After leaving Beirne, Maynard & Parsons, Woodfill started his own law firm named Frank, Lucas & Pressler where he practiced civil litigation. [Hr'g Tr. 88:2–11, May 15, 2015].

[17] In 2012, Fulbright & Jaworski LLP merged with the law firm of Norton Rose, which resulted in the name change to Norton Rose Fulbright.

136. In 1997, the name of his law firm changed to Lucas, Woodfill & Pressler. [Hr'g Tr. 88:20–22, May 15, 2015].

137. In 2007 or 2008, Woodfill changed his law firm's name to Woodfill Law Firm ("WLF"). [Hr'g Tr. 89:9–10, May 15, 2015]. Woodfill continued to practice civil litigation matters, which included plaintiff's work, defense work, and family law. [Hr'g Tr. 89:10–11, May 15, 2015].

138. Although Woodfill occasionally worked on family law cases throughout his legal career, he began to focus primarily on family law cases in 2010 or 2011. [*See* Hr'g Tr. 90:3–7, May 15, 2015].

139. In sum, Woodfill has conducted approximately one hundred civil litigation trials sitting as first chair, [Hr'g Tr. 90:19−22, May 15, 2015], and approximately fifty to one hundred civil litigation trials sitting as second or third chair, [Hr'g Tr. 90:23−24, May 15, 2015]. With regard to trials in family law court, Woodfill has conducted approximately twenty-five trials sitting as first chair, [Hr'g Tr. 91:2−11, May 15, 2015], and approximately three to five trials sitting as second or third chair, [Hr'g Tr. 91:12−14, May 15, 2015]. It is undisputed that Woodfill qualifies as an expert in the area of family law. [Hr'g Tr. 92:4–11, May 15, 2015].

Woodfill's Involvement and Attorneys' Fees in the Divorce Action

140. In 2014, Ms. Castillo retained Woodfill as her attorney to represent her in the Divorce Action in the Family Law Court. [Hr'g Tr. 100:19−23, June 11, 2015]. Ms. Castillo and Woodfill entered into a written engagement agreement wherein WLF would charge $500.00/hour for Woodfill's services, $300.00/hour for an associate attorney, and $75.00/hour for a paralegal. [Hr'g Tr. 100:1−11, May 15, 2015]. Ken Kennedy handles

WLF's accounting and billing matters. [Hr'g Tr. 105:12−16; 105:24−106:5, May 15, 2015].

141. Upon entering into an employment agreement, Woodfill received a retainer from Ms. Castillo's then-existing counsel, John Schmude ("Judge Schmude"). [Hr'g Tr. 101:11−18, May 15, 2015].

142. In November of 2014, Judge Schmude was elected to be a family law judge in Harris County, Texas, and Woodfill thereafter became Ms. Castillo's primary counsel. [Hr'g Tr. 102:9−15, May 15, 2015].

143. While representing Ms. Castillo, Woodfill worked with the following attorneys: Kristin Coleman, Bud Wiesedeppe,[18] and Wallace Ward.[19] [Hr'g Tr. 95:11−15, May 15, 2015].

144. On May 4, 2015, Ms. Castillo filed a proof of claim in the Debtor's case, which appears as Claim Number 8 on the Official Claims Register. [Debtor's Ex. KKK]. According to her proof of claim, Ms. Castillo claims a total amount of $657,427.85 for "Professional Fees and Expenses in divorce." [*See* Claim No. 8 on Claims Register]; [Debtor's Ex. KKK]. Of the $657,427.85, the amount of $365,330.59 is owed to WLF, which

[18] Bud Wiesedeppe ("Wiesedeppe") has worked with Woodfill during WLF's representation of Ms. Castillo. In 1997, Mr. Woodfill employed Wiesedeppe as an associate attorney. [Hr'g Tr. 95:11−15, 22–23, May 15, 2015]. In the same year, prior to his employment at WLF, Wiesedeppe graduated from Southern Methodist University Law School. [Hr'g Tr. 95:20−22, May 15, 2015]. While employed at WLF, Wiesedeppe has not sat first or second chair in family law trials. [Hr'g Tr. 96:3−10, May 15, 2015]. However, he has primarily worked on "document review, drafting motions, [and] things of that nature." [Hr'g Tr. 96:13−14, May 15, 2015].

[19] Wallace Ward ("Ward") has worked with Woodfill during the representation of Ms. Castillo. Ward graduated from William and Mary Law School sometime around 1972. [Hr'g Tr. 96:23−24, May 15, 2015]. Woodfill first met Ward while they were both working at the law firm of Beirne, Maynard & Parsons. [Hr'g Tr. 97:1, May 15, 2015]. While employed at WLF, Ward has worked on document production as well as depositions. [Hr'g Tr. 97:11−12, May 15, 2015]. Although Ward has no experience sitting as first chair in family law trials, he has significant litigation experience. [Hr'g Tr. 97:12−21, May 15, 2015].

represents all of Woodfill's invoices up to May 4, 2015.[20] [Hr'g Tr. 117:17–22, May 15, 2015]; [Debtor's Ex. KKK]. Thus, WLF seeks the amount of $365,330.59 for services rendered on behalf of Ms. Castillo up to May 4, 2015.

145. When comparing WLF's IOLTA trust ledger (the "IOLTA Ledger") with WLF's IOLTA bank statements (the "IOLTA Bank Statements"), there appears to be certain discrepancies between the two documents including, but not limited to:

- First Example: According to WLF's IOLTA Ledger, the balance in the IOLTA account as of September 23, 2014 was $226,440.00. [Debtor's Ex. DDDD, Bates #1929]. However, according to WLF's IOLTA Bank Statements, the balance in the IOLTA account was $170,131.67 on September 23, 2014 and $161,631.67 on September 24, 2014. [Debtor's Ex. PP, Bates #580]. Thus, as of September 24, 2014, the difference of $64,808.33 remains unaccounted for.
- Second Example: According to WLF's IOLTA Ledger, on September 30, 2014, WLF paid itself an additional $109,290.67 from the IOLTA account, leaving a balance of $110,649.33 as of September 30, 2014. [Debtor's Ex. DDDD, Bates #1929]; [Hr'g Tr. 18:6–14, May 19, 2015]. The IOLTA Ledger reflects that no further transactions occurred in the IOLTA account until October 31, 2014 and, therefore, the balance in the IOLTA account as of October 17, 2014 remained at $110,649.33. [Debtor's Ex. DDDD, Bates #1929]; [Hr'g Tr. 18:20–25, May 19, 2015]. However, according to the IOLTA Bank Statements, the balance on September 30, 2014 was only $78,570.80. [Debtor's Ex. PP, Bates #580].

[20] The invoices attached to Claim Number 8 include **both** paid and unpaid attorneys' fees. [*See* Hr'g Tr. 155:5–8, May 15, 2015]; [Doc. No. 251, 2 ¶ 6]. To the extent the invoices were paid, Ms. Castillo is seeking reimbursement of such payment from the bankruptcy estate. To the extent the invoices were not paid, Ms. Castillo is seeking payment of such invoices from the bankruptcy estate. [Doc. No. 251, 2 ¶ 6].

Thus, as of September 30, 2014, the difference of $32,078.53 remains unaccounted for.

146. On January 7, 2014, WLF received a deposit of $15,000.00 from the Schmude Law Firm and placed this amount into the IOLTA account. [Hr'g Tr. 177:15−17, May 15, 2015]; [Debtor's Ex. DDDD, Bates #1929]; [Debtor's Ex. KKK, Bates #1665].

147. On January 31, 2014, WLF drew down (i.e., paid itself) the amount of $10,000.00. [Debtor's Ex. DDDD, Bates #1929].

148. On February 5, 2014, WLF drew down (i.e., paid itself) an additional amount of $5,000.00. [*Id.*].

149. On April 2, 2014, WLF received a payment of $20,000.00 from the Debtor. [Hr'g Tr. 177:18−19, May 15, 2015]; [Debtor's Ex. DDDD, Bates #1929].

150. On or about April 17, 2014, WLF paid the Schmude Law Firm the amount of $8,000.00. [Hr'g Tr. 182:8−13, May 15, 2015]; [Debtor's Ex. DDDD, Bates #1929]; [Debtor's Ex. KKK, Bates #1665]. However, WLF's invoices do not reflect this payment to the Schmude Law Firm. [Hr'g Tr. 147:5−13, May 15, 2015].

151. On April 22, 2014, WLF received a payment of $21,000.00 from the sale of the Parties' Audi. [Debtor's Ex. DDDD, Bates #1929]; [Hr'g Tr. 179:20−22; 179:2−11, May 15, 2015].

152. On April 25, 2014, WLF paid the amount of $5,000.00 to Ms. Castillo. [Debtor's Ex. DDDD, Bates #1929].

153. On May 8, 2014, WLF paid Stewart & Hurst the amount of $4,060.00. [Hr'g Tr. 147:16−20, May 15, 2015]. Then, on June 9, 2014, WLF paid Stewart & Hurst an

additional amount of $5,000.00. [Hr'g Tr. 147:21−25, May 15, 2015]. However, neither of these payments were listed on WLF's invoices. [Hr'g Tr. 148:1−11, May 15, 2015].

154. On June 2, 2014, WLF paid to "William Stewart, Jr., CPA" the amount of $5,000.00 from its operating account. [*See* Hr'g Tr. 14:2−8, May 19, 2015]; [Debtor's Ex. GGGG, Bates #1933]; [Debtor's Ex. PP, Bates #599]. On June 16, 2014, WLF paid "William Stewart, Jr., CPA" an additional $4,950.00 from its operating account. [*See* Hr'g Tr. 14:2−8, May 19, 2015]; [Debtor's Ex. GGGG, Bates #1933]; [Debtor's Ex. PP, Bates #600].

155. On June 20, 2014, WLF paid the amount of $21,000.00 to the Debtor. [Debtor's Ex. DDDD, Bates #1929].

156. As of July 31, 2014, Ms. Castillo had incurred the following fees for services rendered through July 31, 2014 by WLF:

Date of Invoice	Amount	
06/03/2014	$46,496.26	[Debtor's Ex. KKK, Bates #1577−84].
06/30/2014	$11,014.77	[Debtor's Ex. KKK, Bates #1575−76].
09/05/2014	$34,787.50[21]	[Debtor's Ex. KKK, Bates #1566−69].
TOTAL	**$92,298.53**	

157. Also, as of July 30, 2014, WLF had drawn down the following amounts from Ms. Castillo's IOLTA account, [Debtor's Ex. DDDD, Bates #1929]:

Date	Amount
01/31/2014	$10,000.00
02/05/2014	$5,000.00
05/02/2014	$10,000.00
05/06/2014	$9,000.00
05/20/2014	$5,000.00
TOTAL	**$39,000.00**

[21] The amount of $34,787.50 consists only of time entries only through July 31, 2014.

Based on the above figures, as of July 30, 2014, WLF had received payments from the IOLTA account for services rendered on behalf of Ms. Castillo in the total amount of $39,000.00. Thus, as of July 31, 2014, WLF was owed $53,298.53[22] for services rendered on and through July 31, 2014.

158. However, on July 30, 2014, while attending a hearing in the Family Law Court, Woodfill represented to the Family Law Court that WLF had past due legal fees of $100,000.00, [Debtor's Ex. RR, Bates #669, Lines 16−20], not $53,298.53. Thus, Woodfill, on behalf of WLF, misrepresented to the Family Law Court that WLF was due a higher amount of attorneys' fees than what was actually owed. The misrepresentation was material: he overstated the past due amount by $46,701.47.

159. Then, on September 8, 2014, WLF received a payment of $225,000.00 from Clover (on behalf of the Debtor), which accounted for the amount required to be paid by the Debtor as set forth in the Rule 11 Agreement (the "Rule 11 Agreement"). [Hr'g Tr. 178:1−3, May 15, 2015]; [Hr'g Tr. 25:9−13; 30:11−16, May 19, 2015]; [Debtor's Ex. DDDD, Bates #1929]; [Debtor's Ex. J, Bates #102]. The Rule 11 Agreement, which memorialized an agreement between the Parties, set forth that of the $225,000.00, $50,000.00 should be put aside for WLF and $25,000.00 should be paid to Stewart & Hurst as a retainer for anticipated future forensic accounting work. [Debtor's Ex. J, Bates #102]; [Hr'g Tr. 28:25−29:11, May 19, 2015].

160. However, while WLF did receive the $225,000.00 from the Debtor, it did not pay the amount of $25,000.00 to Stewart & Hurst as required under the Rule 11 Agreement.

[22] $92,298.53 - $39,000.00 = $53,298.53.

[Hr'g Tr. 29:9–11, 20–25; 30:13–16, May 19, 2015]. Thus, the amount of $25,000.00 that should have been paid to Stewart & Hurst is unaccounted for.

161. On September 23, 2014, WLF received a payment of $1,500.00 from the Debtor. [Hr'g Tr. 178:4–13, May 15, 2015]; [Debtor's Ex. DDDD, Bates #1929].

162. On the same day, WLF paid the Schmude Law Firm the amount of $10,000.00. [Hr'g Tr. 183:1–6, May 15, 2015]. However, the IOLTA Ledger does not reflect that WLF transferred this amount to the Schmude Law Firm. [*See* Debtor's Ex. DDDD, Bates #1929].

163. Three days later, on September 26, 2014, WLF paid the amount of $6,500.00 to the Andresen Firm. [Debtor's Ex. DDDD, Bates #1929]; [Hr'g Tr. 151:6–15, 18–22, May 15, 2015]. While this amount is reflected in WLF's IOLTA Ledger, it was left off of WLF's invoices. [Hr'g Tr. 151:10–22, May 15, 2015]. WLF seeks reimbursement from the Debtor's bankruptcy estate for the $6,500.00 paid to the Andresen Firm. [Hr'g Tr. 151:6–9, 18–22, May 15, 2015].

164. On September 29, 2014, WLF paid Stewart & Hurst the amount of $21,000.00 from its operating account. [*See* Hr'g Tr. 14:2–8, May 19, 2015]; [Debtor's Ex. GGGG, Bates #1933]; [Debtor's Ex. PP, Bates #601]. This payment of $21,000.00 is separate and distinct from the $25,000.00 referenced in the Rule 11 Agreement, as WLF never paid the amount of $25,000.00 to Stewart & Hurst. [*See* Finding of Fact No. 160].

165. Then, on September 30, 2014, WLF, in two instances, drew down the total amount of $109,290.67 from the IOLTA account. [Debtor's Ex. DDDD, Bates #1929]. First, WLF drew down $59,280.67; and second, WLF drew down $50,000.00. [*Id.*].

166. On the same day, the following three invoices that were previously submitted to Ms. Castillo for services rendered by WLF were paid in full:

Date of Invoice	Total Amount Invoiced	
06/03/2014	$46,496.26	[Debtor's Ex. KKK, Bates #1577−84].
06/30/2014	$29,577.27[23]	[Debtor's Ex. KKK, Bates #1575−76].
09/05/2014	$64,550.23[24]	[Debtor's Ex. KKK, Bates #1566−74].
TOTAL	**$140,623.76**	

Due to certain errors[25] set forth in the June 30, 2014 invoice, the actual total amount due was $122,061.26. However, at the time the June 30, 2014 invoice was paid (i.e., on September 30, 2014), the error was not yet discovered and, therefore, WLF was paid the original invoiced amount of $140,623.76, not $122,061.26. Thus, on September 30, 2014, WLF was overpaid by the amount of $18,562.50.

167. From September 30, 2014 through October 31, 2014, the IOLTA Ledger reflects that there were no deposits or withdrawals of funds by WLF. [Debtor's Ex. DDDD, Bates #1929].

168. Therefore, as of October 17, 2014 (or any date in between September 23, 2014 and October 31, 2014), WLF had received a total amount of $282,500.00 from deposits and/or payments from other parties.[26] And, as of October 17, 2014, WLF had paid a total

[23] The June 30, 2014 invoice sets forth a total amount owed of $29,577.27. [Debtor's Ex. KKK, Bates #1576]. However, Ms. Castillo is *not* seeking payment of $18,562.50 that is set forth in the June 30, 2014 invoice. [Doc. No. 251, 1−2 ¶ 5]; [Hr'g Tr. 137:5−14; 145:2−4, May 15, 2015]. Rather, the remaining amount sought on this particular invoice is $11,014.77. [*See* Hr'g Tr. 137:13−14, May 15, 2015].

[24] Please note that the amount of $34,787.50 on the 09/05/2014 invoice, as set forth in Finding of Fact No. 156, includes only services rendered through July 31, 2014. For purposes of Finding of Fact No. 166, the total amount billed on the 09/05/2014 invoice includes services rendered before *and* after July 31, 2014 and, thus, the total amount of $64,550.23 is listed on the 09/05/2014 invoice. The amount of $64,550.23 that is set forth in the 09/05/2014 invoice was paid in full on September 30, 2014.

[25] *See supra* note 23.

[26] $15,000.00 + $20,000.00 + $21,000.00 + $225,000.00 + $1,500.00 = $282,500.00.

amount of $59,560.00 to third parties from its IOLTA account.[27] Further, as of this date, WLF had paid a total amount of $30,950.00 to third parties from its operating account.[28] Thus, the total amount paid to third parties (whether paid through WLF's IOLTA account or its operating account) is $90,510.00 (i.e., $59,560.00 + $30,950.00).

169. Also, as of October 17, 2014, the total balance in the IOLTA account was $110,649.33. [Debtor's Ex. DDDD, Bates #1929]. Taking into account the total balance of the IOLTA account (i.e., $110,649.33), WLF had enough funds to reimburse itself for all the fees paid to third parties, leaving a remaining balance of at least $20,139.33 ($110,649.33 – $90,510.00). Thus, as of this date—and having a balance of $110,649.33—WLF was not owed any attorneys' fees and there were no third party payments that needed to be reimbursed. [Hr'g Tr. 27:15−25, May 19, 2015]; [*see* Debtor's Ex. GGGG, Bates #1932]. Stated differently, on October 17, 2014, all of WLF's fees had been paid in full.

170. However, at the October 17, 2014 hearing in the Family Law Court, Kristin Coleman (i.e., an associate attorney at WLF) represented to the Family Law Court that as of October 17, 2014, "[WLF] has been paid $140,000 [. . .] $140,623[,]" not $282,500.00.[29] [Debtor's Ex. TT, Bates #816, Line 20]. Further, despite having a balance of $110,649.33 in its IOLTA account, she informed the Family Law Court that "the [WLF] is currently owed $47,004." [Debtor's Ex. TT, Bates #816, Lines 20−21]. Thus, Kristin

[27] $8,000.00 (the Schmude Law Firm) + $5,000.00 (Ms. Castillo) + $4,060.00 (Stewart & Hurst) + $21,000.00 (the Debtor) + $5,000.00 (Stewart & Hurst) + $10,000.00 (the Schmude Law Firm) + $6,500.00 (the Andresen Firm) = $59,560.00.

[28] $5,000.00 (William Stewart, Jr., CPA) + $4,950.00 (William Stewart, Jr., CPA) + $21,000.00 (Stewart & Hurst) = $30,950.00.

[29] $15,000.00 + $20,000.00 + $21,000.00 + $225,000.00 + $1,500.00 = $282,500.00; *see supra* note 26.

Coleman, on behalf of WLF, misrepresented to the Family Law Court that WLF was owed attorneys' fees when, in fact, it was not.

171. At the same October 17, 2014 hearing, Kristin Coleman, on behalf of WLF, further sought an additional $150,000.00 to compensate various parties. [Debtor's Ex. TT, Bates #817, Lines 23−Bates #818, Line 1]. Specifically, she, on behalf of WLF, requested an additional $150,000.00 in order to pay: (1) a $50,000.00 retainer fee to WLF (to go through a jury trial); (2) the Schmude Law Firm; (3) Bast Amron, LLP, who Ms. Castillo's retained to represent her in a Florida lawsuit; and (4) Elizabeth Hurst at Stewart & Hurst. [Debtor's Ex. TT, Bates #818, Lines 2−23]; [*see* Hr'g Tr. 28:15−24, May 19, 2015].

172. On October 31, 2014, WLF drew down an additional $110,000.00, leaving a balance of $649.33 in the IOLTA account. [Debtor's Ex. DDDD, Bates #1929].

173. On November 10, 2014, as a result of the incorrect information given by Kristin Coleman to the Family Law Court at the October 17, 2014 hearing, the Family Law Court issued the Order on Additional Fees and Support. [Debtor's Ex. N]; [Ms. Castillo's Ex. No. 83]; [Hr'g Tr. 25:24−26:1; 26:24−27:1, May 19, 2015]. According to this Order on Additional Fees and Support, the Debtor was required to pay WLF the sum of $99,500.00 for "past due legal fees and expert fees and reimbursement to the [WLF] for payments made to third parties on [Ms. Castillo's] behalf." [Debtor's Ex. N, Bates #139]. The Order on Additional Fees and Support further required the Debtor to pay WLF and the Schmude Law Firm *each* "the sum of $25,000.00 on or before November 7, 2014 for additional interim attorney[s'] fees." [Debtor's Ex. N, Bates #140]. Thus, this

order required that the Debtor pay a total of $149,500.00[30] for the alleged past due attorneys' fees and additional interim fees that WLF claimed it was owed at the October 17, 2014 hearing even though, in actuality, no fees were owed to WLF on this date.

174. On November 25, 2014, when the Debtor did not make the payment of $149,500.00 to WLF, Woodfill filed a Petition for Enforcement and Order to Appear (the "Petition for Enforcement"). [Debtor's Ex. R]. Pursuant to the Petition for Enforcement, Ms. Castillo requested that the Family Law Court order the Debtor to pay the $149,500.00 for attorneys' fees and, if he refused to do so, to confine him in the county jail for up to 180 days. [Debtor's Ex. R, Bates #196].

175. On March 17, 2015, WLF received a payment from Ms. Castillo's "friend"—Ron White—in the amount of $25,000.00. [Hr'g Tr. 88:12−13; 88:24−89:3, June 25, 2015].

176. On March 25, 2015, WLF made a check payable to "Joseph Indelicato, Jr., P.C."[31] in the amount of $10,000.00, [*see* Debtor's Ex. DDDD, Bates #1927−28]. This amount of $10,000.00 to Mr. Indelicato was paid from WLF's IOLTA account. [Hr'g Tr. 156:23−157:6; 157:17−21, May 15, 2015]; [Debtor's Ex. DDDD, Bates #1927−28].

177. On March 31, 2015, WLF drew down $15,000.00 from the IOLTA account. [Hr'g Tr. 157:22−158:8, May 15, 2015]; [*see* Debtor's Ex. DDDD, Bates #1928].

178. On May 1, 2015, WLF received a payment of $15,000.00 from Ms. Castillo. [*See* Debtor's Ex. DDDD, Bates #1928].

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[30] $99,500.00 (past due legal fees, expert fees, and reimbursement to WLF) + $25,000.00 (additional interim attorneys' fees to WLF) + $25,000.00 (additional interim attorneys' fees to the Schmude Law Firm) = $149,500.00.

[31] Mr. Indelicato was appointed as the Master in Chancery in the divorce proceeding on May 17, 2013. In his capacity as the Master in Chancery, Mr. Indelicato was not representing any of the parties in the divorce proceeding. The services rendered by Mr. Indelicato were pursuant to the order of appointment. Mr. Indelicato has filed a claim in this case, Claim No. 9 on the Claims Register for $6,248.03.

179. Given the transactions described above and the discrepancies between the IOLTA Bank Statements and the IOLTA Ledger, the Court finds that WLF has taken funds from the IOLTA account that have not yet been earned and, thus, several thousands of dollars have been unaccounted for. Indeed, based on the information provided at trial, there is *at least* $140,449.36[32] in unaccounted funds and/or overpayments to WLF.

Kristin Coleman

180. Since May of 2014, Kristin Coleman ("Coleman") has been—and is currently—employed as an associate attorney at WLF. [Hr'g Tr. 99:1−5, June 25, 2015]; [Hr'g Tr. 93:20−24, May 15, 2015].

181. In December of 2002, prior to her employment at WLF, Coleman graduated magna cum laude with her Doctorate of Jurisprudence from South Texas College of Law. [Hr'g Tr. 99:12−15, June 25, 2015].

182. Coleman has practiced family law since at least 2001. [*See* Hr'g Tr. 94:14−16, May 15, 2015]. Specifically, she practiced family law at the law firm of John Nichols and, later, at her own family's firm with an attorney named Michael Sydow. [Hr'g Tr. 94:11–12, May 15, 2015].

183. Since joining WLF, Coleman has conducted approximately three trials sitting as first chair, [Hr'g Tr. 94:17−20, May 15, 2015], and approximately three or four trials as second chair, [Hr'g Tr. 94:24–95:4, May 15, 2015]. Additionally, Coleman has handled

[32] The Court finds that there are *at least* $140,449.36 of funds for which WLF has failed to provide an explanation or has been overpaid. The $140,449.36 is comprised of the following amounts:

$25,000.00 (amount required to be paid to Stewart & Hurst per Rule 11 Agreement, but was not paid)
$18,562.50 (amount overpaid due to errors set forth in June 30, 2014 invoice)
$64,808.33 (difference between IOLTA Bank Statement and IOLTA Ledger as of September 24, 2014)
$32,078.53 (difference between IOLTA Bank Statement and IOLTA Ledger as of September 30, 2014)

approximately fifty evidentiary, non-trial hearings since being employed by WLF. [Hr'g Tr. 95:5–8, May 15, 2015].

184. While working at WLF, Coleman does not typically review accounting information on clients and does not participate in the deposits or distributions of the IOLTA account. [Hr'g Tr. 100:6−18, June 25, 2015]. However, on occasion, Coleman would review invoices and/or checks and ask WLF's office manager, Ken Kennedy, about such invoices and/or checks. [Hr'g Tr. 100:9−19; 102:20−24, June 25, 2015].

185. Coleman helped prepare and execute the Rule 11 Agreement signed by the Parties during the pendency of the Divorce Action. [Hr'g Tr. 104:16−22, June 25, 2015]; [Debtor's Ex. J]. Assisting in the execution of the Rule 11 Agreement, on September 5, 2014, Coleman sent an e-mail to the Debtor's counsel, which confirmed "[Woodfill, Coleman, and Judge Schmude's] acceptance of the [Rule 11] agreement." [Hr'g Tr. 106:14−20; 111:7−8, June 25, 2015]; [Debtor's Ex. J]. Coleman sent the e-mail confirming their acceptance only subsequent to obtaining approval from Woodfill and Judge Schmude. [Hr'g Tr. 106:11−20; 114:12−15, June 25, 2015]. Later, Coleman prepared a withdrawal of consent to the Rule 11 Agreement at the request of Woodfill. [Hr'g Tr. 118:20−23, June 25, 2015]; [Debtor's Ex. AA].

Elizabeth Hardesty Hurst

186. Elizabeth Hardesty Hurst ("Hurst") is currently a partner at Stewart and Hurst, LLC. [Hr'g Tr. 95:24−96:3, May 13, 2015].

187. Hurst graduated from Middlebury College with a bachelor's degree in Chinese and Chinese history. [Hr'g Tr. 94:5−9, May 13, 2015]. Subsequently, Hurst worked as a

Chinese medical interpreter before entering graduate school. [Hr'g Tr. 94:14−16, May 13, 2015].

188. Later, Hurst earned her master's degree in finance from the University of Texas in Austin. [Hr'g Tr. 94:7−9, May 13, 2015]. After graduate school, Hurst worked in various positions for several banks, which included Bank of America, Union Bank of Switzerland, Bank of Yokyo-Mitsubishi, and ABN AMRO Bank in Houston. [Hr'g Tr. 94:14−21, May 13, 2015]. In addition to her master's degree, Hurst also holds the title of Accredited Senior Appraiser from the American Society of Appraisers. [Hr'g Tr. 94:10−13, May 13, 2015].

189. Since 2005, Hurst has worked with William B. Stewart, Jr. "doing business appraisals and forensic accounting type activities." [Hr'g Tr. 95:2−5, May 13, 2015]. Hurst typically conducts such work in primarily the family law litigation and the commercial litigation context. [Hr'g Tr. 95:9−12, May 13, 2015]. Generally, in a family law case, Hurst is hired to work on "valuation, tracing and characterization [of assets as either separate or community property] and sometimes fraud forensic work." [Hr'g Tr. 95:13−20, May 13, 2015].

190. During the pendency of the Divorce Action, Woodfill (on behalf of Ms. Castillo) hired Hurst to conduct forensic accounting work. [Hr'g Tr. 96:13−15, May 13, 2015]. Specifically, Hurst was asked to "look at funds, inflows and outflows, and then to the extent that there might be business assets, to appraise them, [and] put a value on any business interests." [Hr'g Tr. 96:18−21, May 13, 2015].

191. During the pendency of the investigation regarding the Parties' estate, Hurst reviewed "bank statements, [] public statements around the country, Federal Maritime statements,

tax returns, [] some letters and some various other correspondence from the Castillos and different parties – to and from the Castillos." [Hr'g Tr. 97:12−16, May 13, 2015]. However, she was able to access and review only bank statements from 2010 through 2012. [Hr'g Tr. 144:23−145:6, May 13, 2015].

192. During the review of such documents, Hurst (and her staff) determined that certain monies were transferred out of a Chase checking account (-7965) to an entity named "HMG." [Hr'g Tr. 104:5−15; 106:3−10; 144:10−18, May 13, 2015]; [Ms. Castillo's Ex. Nos. 131 & 146, p. 9]. Although Hurst was also able to determine the amount of "gifts" received by the Parties by reviewing the Parties' tax returns, [Hr'g Tr. 111:21−112:16, May 13, 2015], she was unable to determine from which Clover entity the "gifts" originated, if any, [Hr'g Tr. 147:22−148:1, May 13, 2015].

William B. Stewart, Jr.

193. William B. Stewart, Jr. ("Stewart") obtained his bachelor's degree in marketing from the University of Houston and he also had earned post-baccalaureate hours in accounting. [Hr'g Tr. 71:18−22, May 11, 2015].

194. Stewart currently holds the following titles: Certified Public Accountant; Certified Financial Forensic; Certified Fraud Examiner; and Certified Valuation Analyst. [Hr'g Tr. 73:3−10, May 11, 2015]; [*see* Ms. Castillo's Ex. No. 149]. Stewart is also a member of all the societies in which he holds a title as well as the AICPA (i.e., American Institute of CPAs). [Hr'g Tr. 73:11−13, May 11, 2015]; [*see* Ms. Castillo's Ex. No. 149].

195. Stewart frequently speaks on accounting-related issues at seminars such as the Financial Valuation Services conference. [Hr'g Tr. 73:17−23, May 11, 2015]; [*see* Ms. Castillo's Ex. No. 149]. In addition to teaching continuing education courses, [Hr'g Tr. 74:16−17,

May 11, 2015], he also teaches for the American Bar Association as well as the Texas Society of CPAs. [Hr'g Tr. 73:23, May 11, 2015]. Based on his qualifications and experiences, Stewart is considered an expert in forensic accounting.[33] [Hr'g Tr. 75:7−13, May 11, 2015].

196. During the pendency of the Divorce Action, Woodfill (on behalf of Ms. Castillo) retained Stewart to determine the disposition of community estate funds and the ownership of various entities. [Hr'g Tr. 132:25−133:12, May 11, 2015].

197. In his attempt to determine the disposition of community estate funds, Stewart obtained and reviewed numerous documents, banks statements, organization documents, and financial information. [Hr'g Tr. 75:19−76:4, May 11, 2015].

198. While Stewart concluded that the Parties received approximately $2,133,858.00 in "gifts" during the period from 2008 through 2012 by reviewing the Parties' tax returns, [Hr'g Tr. 78:21−25, 93:15−17, May 11, 2015], he was unable to definitively assess or explain the disposition of community funds, [Hr'g Tr. 81:9−11; 82:17−19; 83:7−9; 87:13−14, 19−20; 91:1−5; 100:14−18; 102:25−103:4, May 11, 2015].

199. Stewart's fees incurred by Ms. Castillo have been paid in full. [Hr'g Tr. 107:24−25, May 11, 2015].

The Honorable John Schmude

200. In November of 2013, approximately one year prior to his election as a Harris County District Judge, John Schmude (previously defined as Judge Schmude) began representing Ms. Castillo in the pending divorce matter. [Hr'g Tr. 100:6−7, June 11, 2015].

[33] This Court accepts his testimony as an expert witness.

201. Several months after retaining Judge Schmude as counsel, Ms. Castillo informed him that she wanted to retain Woodfill as co-counsel in the Divorce Action. [Hr'g Tr. 100:19−23, June 11, 2015]. Judge Schmude ceased representing Ms. Castillo at some point in December of 2014. [Hr'g Tr. 100:8−9, June 11, 2015].

202. On January 1, 2015, Judge Schmude assumed his duties as a District Judge of Harris County, Texas. [Hr'g Tr. 101:9−10, June 11, 2015].

203. However, prior to taking the bench, Judge Schmude was involved in the preparation and execution of the Rule 11 Agreement. [Hr'g Tr. 131:8−10, June 11, 2015]; [Debtor's Ex. J]. Specifically, Judge Schmude's involvement included a conference call with Michael Phillips (i.e., the Debtor's family law counsel) and Coleman during which they discussed certain provisions of what eventually became the Rule 11 Agreement. [Hr'g Tr. 131:15−21, June 11, 2015].

204. As of the date of the trial on the Motion for Division, Judge Schmude's invoices had all been paid in full and, therefore, he seeks no payment from Ms. Castillo. [Hr'g Tr. 139:6−7, June 11, 2015].

M. Attorneys' Fees Claimed by Matthew B. Probus

205. In March of 2015, Ms. Castillo retained Matthew B. Probus ("Probus") of the Wauson ♦ Probus law firm as bankruptcy counsel to represent her in the Debtor's pending bankruptcy case. At the time of engagement, Probus received a $5,000.00 retainer. [Hr'g Tr. 135:19−20, May 19, 2015].

206. Probus charges Ms. Castillo an hourly rate of $350.00/hour. [Hr'g Tr. 135:4, May 19, 2015]. There is no dispute with regard to the reasonableness and necessity of attorneys' fees incurred by the Wauson ♦ Probus law firm. [Hr'g Tr. 134:2−11, May 19, 2015].

207. As of April 23, 2015, Ms. Castillo had incurred attorneys' fees and expenses at Wauson ♦ Probus in the amount of $23,208.76 (i.e., $23,115.00 in attorney fees and $93.76 in expenses), as set forth in its invoices attached to Ms. Castillo's proof of claim. [Hr'g Tr. 135:6−8; 136:8−10, May 19, 2015]; [Debtor's Ex. DDDD, Bates # 1528].

208. From April 27, 2015 through May 4, 2015, Ms. Castillo incurred an additional amount of $4,270.00 in attorneys' fees which accounted for unbilled time documented by Probus ($350.00 x 12.2 hours). [Hr'g Tr. 134:23−135:5, May 19, 2015]; [Debtor's Ex. DDDD, Bates #1529]. However, in April of 2015, Ms. Castillo made a payment of approximately $22,209.00 to the law firm of Wauson ♦ Probus. [Hr'g Tr. 135:12−17; 139:1−6, May 19, 2015]. Upon receipt of the $22,209.00, the remaining balance owed to the Wauson ♦ Probus law firm as of May 4, 2015 was $5,269.76.[34]

209. From May 4, 2015 through May 15, 2015, Ms. Castillo incurred an amount of $22,365.00 in attorneys' fees (which accounts for $350.00/hour x 63.9 hours) and $597.10 in expenses for a total amount of $22,962.10. [Hr'g Tr. 136:17−137:10, May 19, 2015].

210. Therefore, as of May 15, 2015, Wauson ♦ Probus was owed $28,231.86 in attorneys' fees and expenses, which was comprised of $22,962.10 (incurred from May 4, 2015 through May 15, 2015) plus the amount of $5,269.76 (remaining balance as of May 4, 2015).

211. On August 12, 2015, Ms. Castillo filed a supplemental proof of claim seeking additional attorneys' fees related to services rendered by the Wauson ♦ Probus law firm. [Claim

[34] The remaining balance of $5,269.76 owed to Wauson ♦ Probus as of May 4, 2015 is derived from subtracting the payment of $22,209.00 from the total fee amount of $27,478.76 (i.e., $23,208.76 + $4,270.00), which accounts for the total of attorneys' fees incurred through May 4, 2015.

No. 10-2, pp. 10−19 of 19]. According to Claim Number 10-2, as of May 31, 2015, the balance owed to the Wauson ♦ Probus law firm was $26,834.18, which accounted for attorneys' fees and expenses. [*Id.*, p. 11 of 19]. The Wauson ♦ Probus law firm provided more services throughout the month of June 2015, and therefore, as of June 30, 2015, Ms. Castillo had incurred an additional $21,914.41 in attorneys' fees and expenses. [*Id.*, p. 17 of 19].

212. However, on June 5, 2015, the Wauson ♦ Probus law firm received payment of $5,000.00 and on June 26, 2015, the firm received payment of $3,000.00. [*Id.*, p. 18 of 19]. Thus, as of June 30, 2015, the balance owed to the Wauson ♦ Probus law firm was $40,748.59.[35] [*Id.*].

213. As of July 10, 2015, Ms. Castillo incurred an additional $9,310.00, which accounted for 26.6 hours at $350.00/hour of attorneys' fees. [*Id.*, p. 19 of 19]. Such fees have been incurred but are *unbilled*. [*Id.*]

N. Attorneys' Fees Claimed by Michael M. Phillips

214. Michael M. Phillips ("Phillips") is an attorney licensed in the State of Texas. [Hr'g Tr. 15:20−23, June 1, 2015]. The Debtor retained Phillips of the Michael M. Phillips Law Firm, P.C. (the "Phillips Law Firm") as his attorney to represent him in the instant Divorce Action.

215. In September of 1969, Phillips graduated from the University of Texas Law School. [Hr'g Tr. 16:3−6, June 1, 2015].

216. In 1975, Phillips became board-certified in the area of criminal law by the Texas Board of Legal Specialization. [Hr'g Tr. 16:11−12, June 1, 2015]. He currently maintains his

[35] $26,834.18 + $21,914.41 - $5,000.00 - $3,000.00 = $40,748.59

board certification in criminal law through the current date. [Hr'g Tr. 16:12−13, June 1, 2015].

217. In 1977, Phillips became board-certified in the area of family law by the Texas Board of Legal Specialization. [Hr'g Tr. 16:13−15, June 1, 2015]. He maintains his board certification in family law through the current date. [Hr'g Tr. 16:15−16, June 1, 2015].

218. Phillips charges the Debtor an hourly rate of $375.00 per hour for services rendered by the Phillips Law Firm relating to the Debtor's Divorce Action and the Debtor's pending bankruptcy case. [Hr'g Tr. 18:19−22, June 1, 2015]; [Claim No. 7-2, p. 52 of 59]. Further, pursuant to the contract of employment, the Debtor agreed to "pay a guaranteed minimum fee for the legal services to . . . [the Phillips Law Firm]." [Claim No. 7-2, p. 51 of 59].

219. On May 4, 2015, the Phillips Law Firm filed a proof of claim, which appears as Claim Number 7-1 on the Claims Register, in the Debtor's case. [Claim No. 7-1]. Pursuant to Claim Number 7-1, the Phillips Law Firm claims the total amount of $172,650.18, which represents attorneys' fees and expenses due and owing from October 2, 2014 through May 1, 2015. [Hr'g Tr. 17:21−24, June 1, 2015]; [Claim No. 7-1, pp. 1 & 3 of 44].

220. On June 22, 2015, the Phillips Law Firm filed an amended proof of claim which appears as Claim Number 7-2 on the Claims Register in the Debtor's case. [Claim No. 7-2]. According to Claim Number 7-2, the Phillips Law Firm claims a total amount of $237,078.69[36] for attorneys' fees and expenses incurred through and including June 12,

[36] According to Proof of Claim 7-2, the total amount claimed by the Phillips Law Firm is $237,038.69. [Claim No. 7-2, p. 1 of 59]. However, according to this Court's calculation of the above invoices, the total amount should be $237,078.69.

2015. [Claim No. 7-2, p. 1 of 59]; [Debtor's Ex. LLLL]. Attached to Claim Number 7-2 are the following invoices and amounts:

Date	Attorneys' Fees
03/13/2015	$75,088.50 (fees from 10/02/2014 through 03/12/2015) [Debtor's Ex. LLLL, Bates #1951].
06/12/2015	$129,995.85 (fees from 03/13/2015 through 06/12/2015) [Debtor's Ex. LLLL, Bates #1972].

Date	Expenses
03/13/2015	$2,332.40 (expenses from 10/16/2014 through 03/11/2015) [Debtor's Ex. LLLL, Bates #1957].
06/12/2015	$29,661.94(expenses from 03/19/2015 through 06/09/2015) [Debtor's Ex. LLLL, Bates #1978].

221. No other amended proofs of claim have been filed since June 22, 2015. Thus, as of the date of these Findings of Fact and Conclusions of Law, Phillips, on behalf of the Phillips Law Firm, seeks to recover a total amount of $237,078.69 for services rendered on behalf of the Debtor.

O. Attorneys' Fees Claimed by Leonard Simon

222. Leonard Simon ("Simon") currently represents the Debtor in his pending bankruptcy case as the Debtor's general bankruptcy counsel. It is undisputed that Mr. Simon is an expert in the area of bankruptcy law. [Hr'g Tr. 36:15−16, June 26, 2015].

223. Simon has charged $450.00/hour for his services and $250.00/hour for services rendered by his associate, Will Haddock. [Hr'g Tr. 28:11−19, June 26, 2015].

224. On May 4, 2015, Simon, on behalf of his law firm, Pendergraft & Simon, LLP, filed a proof of claim for attorneys' fees, which was assigned Claim Number 5-1 on the Claims Register. [Claim No. 5-1]. Claim Number 5-1 set forth a total claim amount of $73,886.98, which includs services rendered through and including April 30, 2015. [Claim No. 5-1, p. 1 of 14].

225. On June 22, 2015, Simon, on behalf of Pendergraft & Simon, LLP, filed an amended proof of claim, which was assigned Claim Number 5-2 on the Official Claims Register. [Claim No. 5-2]. According to Claim Number 5-2, Simon claims a total amount of

$144,906.24,[37] which includes services rendered through and including June 11, 2015. [Claim No. 5-2]; [Hr'g Tr. 27:12−18, June 26, 2015].

226. No other proofs of claim have been filed since June 22, 2015. Thus, as of the date of these Findings of Fact and Conclusions of Law, Simon, on behalf of Pendergraft & Simon, LLP, seeks to recover the total amount of $144,906.24 for services rendered on behalf of the Debtor.

P. Other Pending Litigation Matters

227. There are currently five lawsuits involving Ms. Castillo as a result of the pending Divorce Action. [Hr'g Tr. 62:12−14, May 7, 2015].

228. On September 22, 2014, LAN Rincon, LLC, HA Rincon, LLC, LALO Rincon, LLC, and Rincon Family Holdings, LLC[38] (collectively, the "Rincons") filed a complaint against Ms. Castillo initiating a lawsuit, assigned case number 1:14-cv-23506, in the United States District Court for the Southern District of Florida (the "Rincon Lawsuit"). [Hr'g Tr. 31:16−19, May 8, 2015]; [Ms. Castillo's Ex. No. 65]. After being served the complaint, Ms. Castillo retained Jeremy Hart ("Hart") of Bast Amron, LLP as counsel to represent her in the Rincon Lawsuit. [Hr'g Tr. 35:9−14; 36:5−12, May 8, 2015]. As a result of retaining Hart, Ms. Castillo has incurred attorneys' fees and expenses as a result of the Rincon Lawsuit. [Hr'g Tr. 36:5−12, May 8, 2015]. The Rincon Lawsuit is currently pending. [Hr'g Tr. 31:16−19, May 8, 2015].

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[37] $6,392.26 (pre-petition fees incurred) + $67,494.72 (fees incurred between March 12, 2015 through April 30, 2015) + $71,019.26 (fees incurred between May 1, 2015 through June 11, 2015) = $144,906.24. [Hr'g Tr. 27:25−28:4, June 26, 2015].

[38] LAN Rincon, LLC, HA Rincon, LLC, and LALO Rincon, LLC own and control Rincon Family Holdings, LLC and, further, own the majority of membership interest of Rincon Family Holdings, LLC. [Ms. Castillo's Ex. No. 65]. Rincon Family Holdings, LLC owns 100% of the membership interest in Clover. [*Id.*]. Clover is currently owned and managed by the Debtor's relatives—namely, his aunt and his cousins. [Hr'g Tr. 21:15−23, May 12, 2015].

229. On April 10, 2014, Svancara, who has had an intimate relationship with the Debtor, [*see* Findings of Fact Nos. 97 & 98], filed her original petition against Ms. Castillo, initiating a lawsuit assigned cause number 2014-19907, in the 164th District Court of Harris County, Texas (the "Svancara Lawsuit"). [Hr'g Tr. 8:1−4; 20:23−21:5, May 11, 2015]; [Hr'g Tr. 33:10−12, May 12, 2015]; [Debtor's Ex. QQQ]. The Svancara Lawsuit is currently pending. [Hr'g Tr. 8:1−4, May 11, 2015]. Svancara alleges that Ms. Castillo has (1) intentionally intruded on Svancara's solitude, seclusion, and private affairs; and (2) committed tortious interference with Svancara's prospective business relations; and Svancara seeks the following relief: (1) actual damages; (2) a temporary restraining order; (3) a permanent injunction; (4) exemplary damages; (5) prejudgment and postjudgment interest; and (6) court costs. [Debtor's Ex. QQQ].

230. In 2012, Ms. Castillo initiated a lawsuit against Clover, Clover Systems, LLC, Rincon Family Holdings, LLC, HS Rincon LLC, Luis Angel Rincon, Gulfport Associated Corp, and the Debtor (hereinafter "AC Third Parties") in the 309th District Court of Harris County, Texas (the "Clover Lawsuit"). [Trustee's Ex. ii, p. 12 of 15]. This suit was assigned cause number 2012-29264.[39] [*Id.*]; [Claim No. 10-1, Part 2]. According to her Fourth Amended Petition for Divorce and Additional Claims Against Third Parties (the "Fourth Amended Petition"), Ms. Castillo alleges the following against Clover: (1) negligent misrepresentation, fraud, and constructive fraud; (2) conspiracy to commit fraud; and (3) violation of the Uniform Fraudulent Transfers Act; she seeks the following relief: (1) post-divorce maintenance; (2) attorneys' fees, expenses, and costs; (3) actual

[39] The Court notes that the Clover Lawsuit was filed simultaneously filed with the Divorce Action, as both actions were assigned the same cause number (i.e., 2012-29264), [Finding of Fact No. 2].

damages, pre and post judgment, and exemplary damages; and (4) general damages and relief. [Claim No. 10-1, Part 2, pp. 7−10 of 13].

231. On December 10, 2014, the Harris County Tax Assessor and the Loan Star College System District filed a lawsuit against the Parties for their failure to pay *ad valorem* taxes on the Homestead. [Hr'g Tr. 214:2−5, May 12, 2015]; [Debtor's Ex. S]. On December 16, 2014, Klein Independent School District filed its Intervening Plaintiff's Original Petition naming the Parties as defendants. [Debtor's Ex. T].

Q. Assets Acquired *Prior* to the Marriage of the Parties

232. The following assets were acquired by the Debtor prior to the marriage of the Parties.

- None/Unknown

233. The following assets were acquired by Ms. Castillo prior to the marriage of the Parties.

- Main House, Bedroom 2 Items
  - Queen size bed
  - Dresser
  - 1 Walnut Nightstand

[Hr'g Tr. 231:1−232:14, May 7, 2015].

R. Assets Acquired *During* the Marriage of the Parties

234. The following household items were acquired during the marriage of the Parties and, as such, are community assets of the Parties' marital estate:[40]

Real Property

- "Main House" property located at 10729 Spell Road, Tomball, Texas 77375
- "Guest House" property located at 10731 Spell Road, Tomball, Texas 77375

Clothing

- Personal Clothing of Debtor

[40] The Debtor and Ms. Castillo agree to the approximate values of these items as set forth in their Chart of Assets and Notice of Assets. [*See* Doc. No. 285-1]; [*see* Doc. No. 333].

- Personal Clothing of Ms. Castillo

Household Items in the Main Property and the Guest Property

- Main House, Master Bedroom Items:
  - King Bed (valued at $1,750.00)
  - Night Stands (2) (valued at $1,000.00)
  - Lamps (2) (valued at $500.00)
  - Candelabra (valued at $750.00)
  - Dresser (valued at $1,250.00)
  - 56" TV (valued at $1,000.00)
  - Dressing Benches in Closet (2) (valued at $200.00)
- Main House, Bedroom 1 Items:
  - Queen Bed (valued at $1,250.00)
  - Dresser (valued at $750.00)
  - Night Stands (2) (valued at $500.00)
  - Lamps (valued at $175.00)
  - 46" TV (valued at $325.00)
- Main House, Bedroom 2 Items:
  - Dresser (valued at $750.00)
  - Lamps (2) (valued at $175.00)
  - 46" TV (valued at $325.00)
- Main House, Bedroom 3 Items:
  - Queen Bed (valued at $1,250.00)
  - Dresser (valued at $750.00)
  - Night Stands (2) (valued at $500.00)
  - Lamps (2) (valued at $175.00)
  - 46" TV (valued at $325.00)
- Main House, Media Room:
  - Love Seats (6) (valued at $1,500.00)
  - Large Screen (valued at $750.00)
  - TV Projector (valued at $1,000.00)
  - Stereo & Entertainment Equipment and Speakers (valued at $2,000.00)
  - Race Car Simulator (valued at $2,500.00)
- Main House, Living Room:
  - Sofa (valued at $1,750.00)
  - Chairs (3) (valued at $1,000.00)
  - Coffee Table (valued at $1,000.00)
  - Corner Tables (2) (valued at $425.00)
  - Long Sofa Table (valued at $300.00)
- Main House, Dining Room:
  - Wooden Table for 6 (valued at $1,250.00)
  - Dining Chairs covered in fabric (valued at $600.00)
  - Buffet Table (valued at $750.00)
  - Large Mirror (valued at $500.00)
- Guest House, Bedroom:
  - Queen Bed (valued at $1,250.00)

- Dresser (valued at $750.00)
- Night Stands (2) (valued at $1,000.00)
- 46" TV (valued at $325.00)

- Guest House, Living/Kitchen Room:
  - Sofa (valued at $1,250.00)
  - Arm Chairs (2) (valued at $750.00)
  - Coffee Table (valued at $500.00)
  - End Tables (2) (valued at $500.00)
  - Lamps (2) (valued at $400.00)
  - Entertainment Center (valued at $500.00)
  - 56" TV (valued at $750.00)
  - Surround Sound Equipment & Stereos with Speakers (valued at $2,500.00)
  - Round Dining Table (valued at $1,000.00)
  - Chairs (3) (valued at $600.00)

Property (and Household Items) in Storage

- King Bed (valued at $1,500.00)
- Night Stands (2) (valued at $225.00)
- Night Stand (valued at $175.00)[41]
- Lamps (2) (valued at $125.00)
- Lamps (2) (valued at $175.00)
- Lamp (valued at $75.00)[42]
- Dresser (valued at $275.00)[43]
- Dresser (valued at $375.00)
- 56" TV (valued at $750.00)[44]
- Dining Table with 6 Chairs (valued at $500.00)
- Dining Room Table for 4 (valued at $250.00)
- Buffet Table (valued at $175.00)

[41] The Debtor's Notice of Assets Chart 3 lists three night stands, each valued at $175.00. [*See* Doc. No. 285-3, Items #20, #26 & #31]. It is uncertain whether there are actually three separate night stands (valued at $175.00) or if the exhibit contains two duplicate entries. In the event there are in fact three night stands, these three night stands are part of the "Property (and Household Items) in Storage."

[42] The Debtor's Notice of Asset Chart 3 lists three lamps, each valued at $75.00. [*See* Doc. No. 285-3, Items #21, #27 & #32]. It is uncertain whether there are actually three separate lamps (valued at $75.00) or if the exhibit contains two duplicate entries. In the event there are in fact three lamps, these three lamps are part of the "Property (and Household Items) in Storage."

[43] The Debtor's Notice of Asset Chart 3 lists three dressers, each valued at $275.00. [*See* Doc. No. 285-3, Items #19, #25 & #30]. It is uncertain whether there are actually three separate dressers (valued at $275.00) or if the exhibit contains two duplicate entries. In the event there are in fact three dressers, these three dressers are part of the "Property (and Household Items) in Storage."

[44] The Debtor's Notice of Asset Chart 3 lists two 56" TVs, each valued at $1,000.00. [*See* Doc. No. 285-3, Items #6 & #16]. It is uncertain whether there are actually two separate 56" TVs or if the exhibit contains a duplicate entry. In the event there are in fact two 56" TVs, these two TVs are part of the "Property (and Household Items) in Storage."

- Area Rug (valued at $350.00)[45]
- Sofa (valued at $1,250.00)
- Arm Chair (valued at $375.00)
- Wooden Bench (valued at $425.00)
- Coffee Table (valued at $400.00)
- End Tables (2) (valued at $250.00)
- Queen Bed (valued at $750.00)[46]
- 46" TV (valued at $300.00)[47]
- Iron Base Table with Marble Top (valued at $125.00)
- Xbox with Games, DVD, Small Appliances, Dishes & Glasses, Assorted Sporting Equipment, Laptop Computer (valued at $1,000.00)
- 4 x 5 Painting from Venezuela (valued at $300.00)

235. The following vehicles were acquired during the marriage of the Parties and, as such, are community assets of the Parties' marital estate. At trial, Ms. Castillo testified to the estimated value of the vehicles and, subsequently, the Parties submitted charts that set forth their estimated values of these vehicles. [*See* Trustee's Ex. ii, pp. 12 & 13 of 15]; [*see* Doc. No. 285-1, pp. 28−31 of 36]; [*see* Doc. No. 333].

- 1975 Honda 50 Motorcycle ($1,000.00)[48]
- 2003 Biesse Go Kart ($1,000.00)[49]
- 2004 Biesse 125 Go Kart ($1,000.00)[50]

[45] The Debtor's Notice of Asset Chart 3 lists two area rugs, each valued at $350.00. [*See* Doc. No. 285-3, Items #17 and p. 3 of 12 (entry contains no number)]. It is uncertain whether there are actually two separate area rugs or if the exhibit contains a duplicate entry. In the event there are in fact two area rugs, these two area rugs are part of the "Property (and Household Items) in Storage."

[46] The Debtor's Notice of Asset Chart 3 lists three Queen beds, each valued at $750.00. [*See* Doc. No. 285-3, Items #18, #24 & #29]. It is uncertain whether there are actually three separate Queen beds or if the exhibit contains two duplicate entries. In the event there are in fact three Queen beds, these three Queen beds are part of the "Property (and Household Items) in Storage."

[47] The Debtor's Notice of Asset Chart 3 lists three 46" TVs, each valued at $300.00. [*See* Doc. No. 285-3, Items #22, #28 & #33]. It is uncertain whether there are actually three separate 46" TVs or if the exhibit contains two duplicate entries. In the event there are in fact three 46" TVs, these three TVs are part of the "Property (and Household Items) in Storage."

[48] [Hr'g Tr. 164:6−19, May 7, 2015]; [*see* Doc. No. 285-1, p. 28 of 36]; [*see* Doc. No. 281, p. 16 of 17]; [*see* Doc. No. 333, p. 27 of 29].

[49] [Hr'g Tr. 170:24−171:8, May 7, 2015]; [*see* Doc. No. 285-1, p. 29 of 36]; [*see* Doc. No. 281, p. 16 of 17]; [*see* Doc. No. 333, p. 28 of 29].

- 2004 Hallmark Trailer ($5,000.00)[51]
- 2005 Monza 125 Go Kart ($1,000.00)[52]
- 2007 Bimota Delirio Motorcyle ($10,000.00)[53]
- 2008 KTM 450 Motorcross Motorcycle ($4,000.00)[54]
- 2010 Polaris Razor XP RV Blue ($7,000.00)[55]
- 2011 Polaris Razor XP RV Red ($5,000.00)[56]
- 2010 Porsche GT3 ($73,000.00)[57]
- 2011 14' Trailer ($1,000.00)[58]
- 2011 Yamaha 233 Dirt Bike ($2,000.00)[59]
- 2015 Mercedes Benz ($33,475.00)[60]
- Ducati Motorcycle (Year Unknown) ($9,295.00)[61]

236. In addition to the above-described vehicles, the Parties purchased a 2010 Chevrolet Silverado with an estimated value of $26,185.94 for their son to drive. [Hr'g Tr. 175:22−176:10, May 13, 2015]. The Debtor also purchased a 2011 Audi R-85 with community funds. [Hr'g Tr. 155:19−25, May 7, 2015]. However, the Debtor sold the

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[50] [*See* Doc. No. 285-1, p. 29 of 36]; [*see* Doc. No. 281, p. 16 of 17]; [*see* Doc. No. 333, p. 28 of 29].

[51] [*See* Doc. No. 285-1, p. 29 of 36]; [*see* Doc. No. 281, p. 16 of 17]; [*see* Doc. No. 333, p. 28 of 29].

[52] [Hr'g Tr. 170:4−5, May 7, 2015]; [*see* Doc. No. 285-1, p. 29 of 36]; [*see* Doc. No. 281, p. 16 of 17]; [*see* Doc. No. 333, p. 28 of 29].

[53] [*See* Doc. No. 285-1, p. 29 of 36]; [*see* Doc. No. 281, p. 16 of 17]; [*see* Doc. No. 333, p. 28 of 29].

[54] [*See* Doc. No. 285-1, p. 29 of 36]; [*see* Doc. No. 281, p. 16 of 17]; [*see* Doc. No. 333, p. 28 of 29].

[55] [*See* Doc. No. 285-1, p. 30 of 36]; [*see* Doc. No. 281, p. 16 of 17].

[56] [Hr'g Tr. 162:6−14, May 7, 2015]; [*see* Doc. No. 285-1, p. 30 of 36]; [*see* Doc. No. 281, p. 17 of 17]; [*see* Doc. No. 333, p. 29 of 29].

[57] [*See* Doc. No. 285-1, p. 29 of 36]; [*see* Doc. No. 281, p. 16 of 17]; [*see* Doc. No. 333, p. 28 of 29].

[58] [*See* Doc. No. 285-1, p. 30 of 36]; [*see* Doc. No. 281, p. 16 of 17]; [*see* Doc. No. 333, p. 29 of 29].

[59] [Hr'g Tr. 167:10−21, May 7, 2015]; [*see* Doc. No. 285-1, p. 30 of 36]; [*see* Doc. No. 281, p. 17 of 17]; [*see* Doc. No. 333, p. 29 of 29].

[60] The Parties agree that the value of the Mercedes Benz is $33,475.00. [*See* Doc. No. 285-1, p. 30 of 36]; [*see* Doc. No. 281, p. 17 of 17].

[61] [Hr'g Tr. 181:25−182:19, May 12, 2015]; [*see* Doc. No. 285-1, p. 31 of 36]; [*see* Doc. No. 281, p. 17 of 17]; [*see* Doc. No. 333, p. 29 of 29].

Audi to his cousin, Luis Angel Rincon, for the price of $120,000.00. [Hr'g Tr. 181:22−182:13, May 13, 2015]. While Ms. Castillo acknowledged that the Debtor purchased this vehicle using community funds, she had no details about the whereabouts of the vehicle or what exactly happened to that vehicle. [Hr'g Tr. 156:14−18, May 7, 2015]. Moreover, during the Parties' marriage, the Debtor purchased a 2013 Fiat for his daughter from his first marriage, Lauren Castillo. [Hr'g Tr. 163:4−6, May 7, 2015]. However, it is unknown whether the funds used to purchase the 2013 Fiat were community funds or the Debtor's separate funds. [Hr'g Tr. 163:7−10, May 7, 2015].

237. The following jewelry and watches were acquired during the marriage of the Parties. [Ms. Castillo's Ex. No. 57, Bates #1−3]; [Ms. Castillo's Ex. No. 58].

- GTS Hublot Big Band Watch, Model #301
- GTS Rolex Sea Dweller Watch, Model #11660A30B9821
- GTS Cartier Balloon Blue Watch, Model #W69009Z3
- Anastasia Neck, 18 KT WG MTG with 32 DIAS TW 1.10 CTS, G-H, SI
- Bangle Bracelet, 18 KT WG MTS with 28 RD DIAS TW .60 CTS, G-H, SI
- Bangle Bracelet, 18 KT WG MTG with 33 RD DIAS TW .50 CTS, G-H, SI
- Bangle Bracelet, 18 KT WG MTG with 41 RD DIAS TW .85 CTS, G-H, SI
- Circle Neck Roberto Coin, 18 KT WG MTG with 34 RBC DIAS TW 2.01 CTS and 18" Chain
- LDS Band, 18 KT WG MTG with 25 RBC DIAS TW .14 CTS, G-H, SI
- LDS Chopart Happy Sport Watch, SST, Style #278349-3006
- LDS RG Ritani, PLAT/YG MTG with 2.01 CT OVAL YELLO DIA, VS1 and RD DIAS TW .40 CTS, G, VS PAVE
- LDS Rolex DATE JUST WATCH, OYSTER PERPETUAL DATE JUST, SS/18 KT WG, DIA BZL, MOP DIAL, JBL BRACELET, Model #11624449UB6360
- LDS Rolex Watch Oyster Perpetual, Model #76183
- PR Earrings, 18 KT WG MTG with DIAS TW 1.25 CTS, G-H-, SI
- PR Hoop Earrings, Roberto Coin, 18 KT WG MTG with 44 RBC DIAS TW 3.46 CTS
- PR Stud Earrings, 14 KT WG MTG with 2 RD DIAS TW .20 CTS, I SI
- GTS Rolex Watch, GMT Master II, BL and Red Rotating BZL, Model No. 16710, Serial No. Y393754
- GTS Rolex Watch Oyster Perpetual Dayton Cosmo, SST, Blk Dial, Auto Mvmt, Oyster BRC, Model #116520A30B7859

238. The following firearms were acquired during the marriage of the Parties and, as such, are community assets of the Parties' marital estate, [Ms. Castillo's Ex. No. 57, Bates #4]:

- 12 Gauge Browning Single Barrel Pump Shotgun
- 45 Caliber HNK Automatic Pistol
- 45 Caliber HNK Automatic Pistol
- Sig Sauer AR 15 Assault Rifle
- Kimber .45 Caliber Pistol
- Sig Sauer 9mm Pistol
- 50 Pump Action BB Rifle

239. The following bank accounts were acquired during the marriage of the Parties and, as such, are community assets of the Parties' marital estate:

- Bank of America Checking Account No. xxxx-xx-9610
- Bank of America Savings Account No. xxxx-xx-3970
- Chase Bank Checking Account No. xxxxxxxx6875
- Chase Bank Savings Account No. xxxxxxxx8220
- TD Ameritrade Account No. xxx-xx5044

240. The Parties opened the Bank of America Checking Account (-9610) during their marriage and, therefore, it is a community asset. [*See* Doc. No. 333, p. 1 of 29]; [*see* Doc. No. 285-1, p. 2 of 36]. The Parties agree that the available funds in this account should be turned over to the Trustee. [*See* Doc. No. 333, p. 1 of 29]; [*see* Doc. No. 285-1, p. 2 of 36]. As of October 11, 2015, the total amount of $563.59 remains in this bank account. [Doc. No. 338].

241. The Parties opened the Bank of America Savings Account (-3970) during their marriage and, therefore, it is a community asset. [*See* Doc. No. 333, p. 1 of 29]; [*see* Doc. No. 285-1, pp. 2−3 of 36]. The Parties agree that any funds in this account should be turned over to the Trustee. [*See* Doc. No. 333, p. 1 of 29]; [*see* Doc. No. 285-1, pp. 2−3 of 36]. As of October 11, 2015, no funds remain in this account. [Doc. No. 338].

242. The Parties opened the Chase Bank Checking Account (-6875) (previously defined as the Joint Account) during their marriage and, therefore, it is a community asset. [*See* Doc. No. 333, p. 1 of 29]; [*see* Doc. No. 285-1, p. 3 of 36]. Ms. Castillo requests that this Court award this account completely to her, and the Debtor requests that this Court divide this asset by percentage. [Doc. No. 333, p. 1 of 29]; [Doc. No. 285-1, p. 3 of 36]. As of October 11, 2015, the total amount of $8,854.60 remains in this bank account.[62] [Doc. No. 338].

243. The Parties opened the Chase Bank Savings Account (-8220) during their marriage and, therefore, it is a community asset. [Hr'g Tr. 91:2− 15, May 7, 2015]; [*see* Doc. No. 333, p. 1 of 29]; [*see* Doc. No. 285-1, p. 3 of 36]. Ms. Castillo requests that this Court award this account completely to her, and the Debtor requests that this Court divide this asset by percentage. [Doc. No. 333, p. 1 of 29]; [Doc. No. 285-1, p. 3 of 36]. As of October 11, 2015, the total amount of $8.30 remains in this bank account. [Doc. No. 338].

244. The Debtor opened the TD Ameritrade Account (-5044) during the Parties' marriage and, therefore, it is a community asset. [*See* Doc. No. 285-1, p. 3 of 36]. This account is an investment account that is currently closed. [Doc. No. 338].

245. The following life insurance policies were acquired during the marriage of the Parties and, as such, are community assets of the Parties' marital estate, [Hr'g Tr. 153:4−154:3, May 7, 2015]:

- The Parties obtained a Liberty Mutual Term Life Policy insuring the life of Debtor for $1,000,000.00 where Ms.

[62] The Court notes that as of September 22, 2015, the Chase checking account contained $6,306.18 in community funds. [Doc. No. 333, p. 1 of 29]. However, according to the Joint Certificate filed on October 14, 2015, the Parties agreed that the Chase checking account, as of October 11, 2015, contains an amount of $8,854.60. [Doc. No. 338, p. 2 of 8]. This increase of community funds in the Chase checking account leads this Court to conclude that the Debtor has continued to deposit his weekly paychecks into this Joint Account.

Castillo is named the beneficiary (the "Debtor's Life Policy").

- The Parties obtained a Liberty Mutual Term Life Policy insuring the life of Ms. Castillo for $500,000.00 where the Debtor is named the beneficiary ("Ms. Castillo's Life Policy").

S. Debts and Liabilities Incurred by the Parties During Their Marriage

246. The following liabilities and obligations were incurred during the marriage of the Parties, [*see* Ms. Castillo's Ex. No. 57, Bates #6], and, therefore, are community debts:

- Dillard's Credit Card (xxxx5242) – balance of $1,468.11
- GAP Visa Credit Card (xxx8491) – balance of $9,323.18
- Neiman Marcus Credit Card (xxx9552) – balance of $2,280.99
- Macy's Credit Card (xxx4460) – balance of $1,303.77
- Nordstrom's Credit Card (xxxx8339) – balance of $1,467.15
- Loan from Mason Holsworth (Ms. Castillo's father) – approximately $25,000.00
- Loan from Lynette Keton (Ms. Castillo's mother) – $5,000.00
- Loan from Suzanne Cornett (Ms. Castillo's sister) – $3,000.00

247. The Parties opened a Dillard's credit card account during their marriage. [Hr'g Tr. 202:20−25, May 7, 2015]. As April 30, 2014, the outstanding balance owed on the Dillard's credit card was $1,468.11. [Doc. No. 334, p. 1 of 3]. This debt was incurred during the Parties' marriage and therefore is a community debt. [*See* Ms. Castillo's Ex. No. 57, Bates #6].

248. The Parties opened a GAP Visa credit card account during their marriage. [Hr'g Tr. 203:11−14, May 7, 2015]. As of April 14, 2015, the outstanding balance owed on the GAP Visa credit card was $9,323.18. [Hr'g Tr. 204:25−205:2, May 7, 2015]; [Ms. Castillo's Ex. No. 45]. This debt was incurred during the Parties' marriage and therefore is a community debt. [Hr'g Tr. 205:7−10, May 7, 2015]; [*see* Ms. Castillo's Ex. No. 57, Bates #6].

249. The Parties opened a Neiman Marcus credit card account during their marriage. [Hr'g Tr. 206:18−25, May 7, 2015]. As of April 5, 2015, the outstanding balance owed on the Neiman Marcus credit card was $2,280.99. [Hr'g Tr. 207:3−5, 18−20, May 7, 2015]; [Ms. Castillo's Ex. No. 46]. This debt was incurred during the Parties' marriage and therefore is a community debt. [*See* Ms. Castillo's Ex. No. 57, Bates #6].

250. The Parties opened a Macy's credit card account during their marriage. [*See* Ms. Castillo's Ex. No. 57, Bates #6]. As of March 12, 2015, the outstanding balance owed on the Macy's credit card was $1,303.77. [Hr'g Tr. 207:24−25; 209:13−15, May 7, 2015]; [Ms. Castillo's Ex. No. 47]. This debt was incurred during the Parties' marriage and therefore is a community debt. [*See* Ms. Castillo's Ex. No. 57, Bates #6].

251. The Parties opened a Nordstrom's credit card account during their marriage. [Hr'g Tr. 209:18−210:5; 210:15−16, May 7, 2015]. As of April 10, 2015, the outstanding balance owed on the Nordstrom's credit card was $1,467.15. [Hr'g Tr. 210:3−5, 19−21, May 7, 2015]; [Ms. Castillo's Ex. No. 48]. This debt was incurred during the Parties' marriage and therefore is a community debt. [Hr'g Tr. 210:15−16, 22−24, May 7, 2015]; [*see* Ms. Castillo's Ex. No. 57, Bates #6].

252. Sometime during the pending Divorce Action, Ms. Castillo borrowed approximately $25,000.00 from her father (previously defined as Holsworth) to pay her attorneys' fees. [Hr'g Tr. 210:25−211:9, May 7, 2015]; [Hr'g Tr. 127, 14−18; 140:22−25, May 12, 2015].

253. Additionally, at some point during the Divorce Action, Ms. Castillo borrowed approximately $5,000.00 from her mother, Lynette Keaton, [Hr'g Tr. 211:18−23, May 7, 2015], and approximately $5,000.00 from her sister, Suzanne Coronet, [Hr'g Tr. 212:1−5, May 7, 2015]. [*See* Ms. Castillo's Ex. No. 57, Bates #6].

III. CREDIBILITY OF WITNESSES

Sixteen witnesses testified during the multi-day hearing on Ms. Castillo's Motion for Division: (1) the Debtor; (2) Ms. Castillo; (3) Julie Svancara, an interior decorator who had an extramarital affair with the Debtor; (4) Kyle Scofield, an industrial piping contractor who had an extramarital affair with Ms. Castillo; (5) Mason Holsworth, II, who is Ms. Castillo's father; (6) Elizabeth Hurst, a partner at Stewart and Hurst, LLC; (7) William Stewart, a partner at Stewart and Hurst, LLC; (8) Judge Schmude; (9) Richard Spitzer, an acquaintance of Ms. Castillo; (10) Ronald White, an attorney who had an extramarital affair with Ms. Castillo; (11) Natividad Trevino, the comptroller of Clover; (12) Jared Woodfill, lead counsel for Ms. Castillo in the Divorce Action; (13) Matthew Probus, bankruptcy counsel for Ms. Castillo; (14) Kristin Coleman, associate counsel for Ms. Castillo in the Divorce Action; (15) Michael Phillips, lead counsel for the Debtor in the Divorce Action; and (16) Leonard Simon, general bankruptcy counsel for the Debtor. After listening to the testimony, the Court makes the following observations and findings regarding the credibility of these witnesses.

1. The Debtor

The Debtor, for the most part, was a credible witness. Specifically, the Debtor credibly testified about his role and duties as Gulf Regional Manager at Clover-Houston and about the compensation package that he receives from Clover. He also credibly testified that he spent a fair amount of time Go-Cart racing with his young children—specifically, J.M.C. Moreover, the Court finds that the Debtor's testimony was direct and forthcoming with regard to several aspects of his personal life and intimate relationships. For example:

- The Debtor credibly testified about the existence of his sexual affair with Svancara and the date on which the affair first began. [Hr'g Tr. 33:6−10, May 12, 2015].

- The Debtor credibly testified about his relationship with Beltran, the time frame in which their relationship occurred, and the several trips that Beltran and he took together. [Hr'g Tr. 112:6−113:6; 114:24−115:21, May 12, 2015].

As credible as he may have been with respect to certain aspects of his testimony, the Debtor did not appear to be completely forthright regarding other aspects. For example, when questioned whether the Debtor communicated with Svancara at the time she initiated the Svancara Lawsuit, the Debtor testified that: "You just asked me if I communicated with her during the time that [Svancara] . . . presented the lawsuit against my wife. And I can't recall. That's what I said." [Hr'g Tr. 36:22−37:1, May 12, 2015]. Yet, according to Svancara, she testified that there was in fact communication between the Debtor and herself at or around the time the Svancara Lawsuit was initiated: "I finally had enough of her behavior, and I actually sent [the Debtor] the papers and said, 'I've done it, I finally filed on her, I can't take this anymore. She's got to get away from me.'" [Hr'g Tr. 20:23−21:5, May 11, 2015]. Svancara further testified that the Debtor responded to her plea for help: "[H]is response was basically, 'I'm so sorry, Julie, that she's doing this to you and I'm so sorry you've having to go through this.' He was very sympathetic." [Hr'g Tr. 21:6−9, May 11, 2015]. Further, as evidenced by the AT&T phone records, [*see* Ms. Castillo's Ex. No. 63], there is no question that the Debtor and Svancara frequently exchanged text messages regarding Ms. Castillo's alleged harassment of Svancara, [Hr'g Tr. 34:25−37:24, May 11, 2015]. Under these circumstances, this Court has a difficult time believing that the Debtor could not recall whether he communicated with Svancara during the initiation of the Svancara Lawsuit.

Moreover, at times, the Debtor was somewhat evasive or non-responsive in his testimony. For example, counsel for Ms. Castillo asked the Debtor: "And approximately how much [commission] did you receive [from the 5% CITCO account in 2014]?" [Hr'g Tr.

25:24−26:6, May 12, 2015]. The Debtor responded with: "I don't recall exact amounts," [Hr'g Tr. 26:7, May 12, 2015], and replied in the negative when asked if he had a "ballpark figure." [Hr'g Tr. 26:8−9, May 12, 2015]. And, when asked whether the 5% commission was "less than $10,000 [or] more than $100,000," the Debtor testified with "I don't recall the exact figure, sir." [Hr'g Tr. 26:10−11, May 12, 2015]. Being a successful and sophisticated businessman, this Court is somewhat skeptical that the Debtor could not even provide a "ballpark figure" of his commission in 2014 or confirm whether such commission was less than $10,000.00 or more than $100,000.00.

In sum, the Debtor was less than candid on two sensitive points: his communications with Svancara about her lawsuit against Ms. Castillo and his commission from Clover in 2014. The latter point is actually much more important to Ms. Castillo's financial future than the former, and the Debtor should have been more forthcoming on this particular point. If he had done so, this Court would have found him to be credible and would have given his testimony substantial weight. As it is, this Court finds the Debtor to be credible on most issues and gives his testimony considerable weight.

2. Amy Castillo

Ms. Castillo, the Debtor's wife and a party to the pending Divorce Action, was a somewhat credible witness. The Court finds that Ms. Castillo credibly testified about several topics including: (1) her educational background; (2) her medical history; (3) her employment history; (4) the circumstances leading to the Parties' marriage; (5) the Children's upbringing; and (6) her responsibilities to the Children. *See supra* Part II(C).

However, of particular importance, the Court finds that the Debtor was not credible when testifying about the time period of her extramarital affair with Scofield. Specifically, Ms.

Castillo testified that she and Scofield "started off with friendship around January of 2012 and it crossed the line in May of 2012." [Hr'g Tr. 37:14−17, May 8, 2015]. Thus, Ms. Castillo represented to this Court that she had *not* had a sexual relationship with Scofield prior to her initiation of the Divorce Action; but that, instead, it was only after she filed her petition that she had physical relations with him (presumably believing that it is more acceptable in this Court's eyes to have a physical relationship with someone other than one's husband after a divorce proceeding is initiated). Stated differently, Ms. Castillo attempted to portray herself—to the extent that she could—as the quintessential "Mom" in the expression of wholesome goodness known as "Mom, Apple Pie and the Fourth of July." The credible testimony of Scofield and the Debtor, however, reveals that she does not come within hailing distance of this virtue. First, and most importantly, Scofield himself credibly testified that there is no question in his mind that "by November or December 2011, [he] was acquainted with [Ms. Castillo]," [Hr'g Tr. 74:15−18, June 26, 2015], and that Ms. Castillo and he engaged in sexual activity sometime in 2011—i.e., quite soon after they initially met. [Hr'g Tr. 78:5−8, June 26, 2015].

Second, the Debtor credibly testified that "[a]pproximately a month later, the month of July, if I'm not mistaken, 2012, I found out through her phone text messages that she had been having an affair, carrying on an affair for ***several*** months." [Hr'g Tr. 12:9−12, May 15, 2015] (emphasis added). The Court finds the Debtor's testimony regarding this point to be credible. Indeed, it was the very same night after learning about his wife's affair that the Debtor attempted his first suicide and wound up in the hospital for several days. [Hr'g Tr. 17:6−16, May 15, 2015]. In sum, the credible testimony from these two witnesses clearly contradicts Ms. Castillo's contention that Scofield and she only "crossed the line in May of 2012."

Moreover, even Ms. Castillo herself (through her attorneys, who, as her agents, bind her) contradicts her testimony that she "crossed the line in May of 2012" with Scofield. In her proposed findings of fact and conclusions of law, Ms. Castillo admits (perhaps unknowingly) that Scofield and she engaged in a sexual affair "prior to filing for divorce." [Doc. No. 279, p. 2 of 15] ("There is no evidence that Amy Castillo had a sexual relationship with anyone ***other than Mr. Schofield*** [sic] ***prior to filing for divorce***.") (emphasis added).

In sum, this Court gives considerable weight to Ms. Castillo's testimony with the exception of statements regarding the time frame of her sexual affair with Scofield.

3. Julie Svancara

Svancara is an interior decorator/artist who had a sexual relationship with the Debtor during the course of the Parties' marriage. Of particular importance, Svancara testified that the Debtor and she began their sexual relationship the same day that Ms. Castillo filed her petition initiating the Divorce Action (i.e., May 18, 2012). Although acknowledging that the Debtor was not yet divorced from Ms. Castillo, Svancara made it clear that she had done "nothing wrong" when she began a sexual relationship with the Debtor because, at that time, he was "separated from [Ms. Castillo]." [Hr'g Tr. 47:17−22, May 11, 2015]. Despite her rationale that engaging in sexual activity with a separated (but "married") man is acceptable, Svancara was nevertheless forthright about the existence of her sexual affair with the Debtor—a key point in this dispute. Accordingly, this Court gives substantial weight to Svancara's testimony with respect to her sexual relationship with the Debtor. The testimony that she gave about other issues was also, for the most part, credible—although these issues do not play a significant role in this Court's division of the Parties' community property and debts.

4. Kyle Scofield

Scofield is an industrial piping contractor who engaged in a sexual relationship with Ms. Castillo during the course of the Parties' marriage. Scofield was a very credible witness on key points. Of particular importance, he testified that "at least by November or December 2011, [he was] acquainted with [Ms. Castillo]." [Hr'g Tr. 74:15−18, June 26, 2015]. Scofield also credibly testified that he and Ms. Castillo met in 2011 and engaged in sexual activity by the end of 2011, approximately five months prior to her filing for divorce. [Hr'g Tr. 77:19−23; 80:10−13, June 26, 1015].

And, with respect to interactions with Ms. Castillo, Scofield credibly testified about intimate details of their sexual relationship. For example, when questioned about where such sexual activity between the two would occur, Scofield unequivocally responded with "in the handicap bathroom" at the Palm Restaurant. [Hr'g Tr. 78:18−25, June 26, 2015]. Further, Scofield, without hesitation, testified that during the course of their involvement, Ms. Castillo and he engaged in unprotected oral sex, intercourse, and physical stimulation. [Hr'g Tr. 79:18−80:1; 88:2−89:15, June 26, 2015]. Scofield also credibly testified that he never saw any woman or man accompany Ms. Castillo to the Palm Restaurant, [Hr'g Tr. 93:18−25, June 26, 2015], but he did observe Ms. Castillo displaying large sums of cash, [Hr'g Tr. 92:15−23, June 26, 2015].

The Court notes that, while in the witness box, Scofield displayed signs of dislike towards Ms. Castillo. The Court finds Scofield's apparent resentment towards Ms. Castillo understandable, as a tape-recording of Ms. Castillo revealed that she had physically threatened Scofield's ex-wife and minor daughter. [Hr'g Tr. 101:7−11, June 26, 2015]; [Debtor's Ex. BBBB]. Although it was clear that Scofield and Ms. Castillo did not end their affair on good

terms, the Court finds that Scofield was nevertheless forthright and direct in his testimony related to the sexual activity that took place and the time frame in which such activity occurred. Thus, the Court finds that Scofield's testimony that Ms. Castillo and he engaged in a sexual relationship in 2011 is credible and, therefore, gives substantial weight to this testimony.

5. Mason Holsworth, II

Holsworth is the father of Ms. Castillo; he is unquestionably a senior citizen. Although there is no question that Holsworth was genuine in his testimony, the Court has concern with Holsworth's testimony to the extent that he was unable to recall certain, rather basic, information—such as his granddaughter's name. [Hr'g Tr. 141:22−23, May 12, 2015]. Due to his failure to remember specific information and the fact that Holsworth's testimony does not bear significance on any important points in this dispute, the Court gives little weight to his testimony.

6. Elizabeth Hurst

Hurst is a partner at Stewart and Hurst, LLC. Ms. Castillo hired Hurst to conduct forensic accounting work and, more specifically, to trace and characterize estate assets as either separate or community property. Hurst credibly testified that she was able to determine the amount of "gifts" received by the Parties by examining their tax returns. However, she was unable to determine from exactly which Clover entity the "gifts" originated. [Hr'g Tr. 113:11−17; 147:18−148:1, May 13, 2015]. In fact, Hurst testified that "we have no conclusive evidence [to corroborate a conclusion that the "gifts" were paid by Clover]." [Hr'g Tr. 147:22−148:1, May 13, 2015].

The Court also notes that although Hurst acknowledged that it is crucial to determine which checks were written by Ms. Castillo and which checks were written by the Debtor, Hurst

provided a non-responsive answer when asked whether she made that determination. [Hr'g Tr. 115:20−116:1, May 13, 2015]. Moreover, Hurst testified that she was unable to determine "the total financial size of the estate" due to the "lack of documentation." [Hr'g Tr. 117:13−20, May 13, 2015]. Therefore, although Hurst's testimony concerns a key issue in this case—the Parties' income and finances—the Court finds that her testimony is too inconclusive. Thus, this Court gives little weight to Elizabeth Hurst's testimony.

7. William B. Stewart, Jr.

Stewart is an expert in forensic accounting and a partner at Stewart and Hurst, LLC. Ms. Castillo hired Stewart to determine the disposition of community estate funds. Stewart testified that he was able to determine the amount of "gifts" the Parties received from 2008 through 2012 by examining the Parties' tax returns. [Hr'g Tr. 78:21−25, May 11, 2015]. Stewart also testified that, to the best of his recollection, the Debtor was receiving funds from a Clover account. [*See* Hr'g Tr. 100:14−22, May 11, 2015]; [Ms. Castillo's Ex. No. 146, Bates #5 & 6]. However, while in the witness box, Stewart was unable to explain the disposition of a large portion of the estate funds. [Finding of Fact No. 198]. For example, on cross-examination, Stewart testified that he was unable to determine for certain whether the "gifts" set forth in the Parties' tax returns were actually from the Debtor's employer (i.e., Clover). [Hr'g Tr. 111:21−112:10; 112:21−113:2; 116:20−22, May 11, 2015]. Rather, his testimony that the "gifts" originated from Clover was based on what "several people in [his] office" told him. [Hr'g Tr. 113:24−114:18, May 11, 2015]. Stewart further testified he "never reviewed any document to support [his statement that the "gifts" came from Clover]." [Hr'g Tr. 114:21−23, May 11, 2015].

Although the Court finds Stewart to be forthright in his responses, his testimony is based on either what he was told by another individual or on incomplete or unavailable information.

[Hr'g Tr. 103:12−21; 104:10−16; 113:24−114:20, May 11, 2015]. Thus, the Court gives very little weight to Stewart's testimony due to his failure to persuasively explain the basis resulting in his conclusions and the lack of personal knowledge regarding his statements.

8. Judge John Schmude

Judge Schmude is Ms. Castillo's former family law counsel. Judge Schmude credibly testified about his involvement in the Divorce Action and, more specifically, in the preparation and execution of the Rule 11 Agreement. The Court finds Judge Schmude to be very credible, but does not find his testimony to bear significance on any important points so as to aide this Court in dividing the community property and debts of the Parties.

9. Richard Spitzer

Spitzer is a businessman who operates his own consulting firm and is a frequent patron of the Palm Restaurant. Spitzer testified that although Ms. Castillo and he had "a few drinks together and [] started up a conversation a couple of times," they did not engage in a sexual relationship with one another. However, while in the witness box, he testified that he did not remember the name "Amy Castillo" and only "somewhat" recognized Ms. Castillo's face in the courtroom. His recall of details from the encounter with Ms. Castillo is entirely suspect considering that he did not remember Ms. Castillo's name and he "[did not] recall much of the interactions other than just recognizing [her] face." [Hr'g Tr. 153:2−6, June 11, 2015]. Moreover, his testimony directly contradicts Ms. Castillo's testimony that they went on approximately ten dates between October 2012 to December or January of 2013. [Finding of Fact No. 120]. For the reasons set forth above, this Court finds Richard Spitzer not to be a credible witness. The Court gives no weight to his testimony.

10. Ronald White

White is a trial attorney in Houston who, at the end of 2014, engaged in a sexual relationship with Ms. Castillo during the course of the Parties' marriage. White credibly testified about his first encounter with Ms. Castillo and their relationship that emerged thereafter. He further testified about the $25,000.00 loan he extended to Ms. Castillo and the details surrounding this transaction. [Findings of Fact Nos. 116 & 175]. The Court finds Ronald White to be a credible witness, and gives his testimony considerable weight.

11. Natividad Trevino

Trevino is the comptroller at Clover-Houston. Trevino testified about his role and responsibilities as comptroller at Clover-Houston, the overall compensation structure in place at Clover, and the compensation package that specifically applies to the Debtor. However, Trevino was unable to recall for certain whether the Debtor received the 5% PDVSA Commission in particular years. [Hr'g Tr. 24:25−26:1, June 11, 2015]. Further, the Court finds that Trevino was somewhat evasive and not forthcoming with respect to questions about the method he used to calculate the Debtor's 5% PDVSA commission. [Hr'g Tr. 29:1−9, June 11, 2015]. For example:

- When asked "who prepares the general ledger," Trevino answered: "Part of the general ledger gets information from other modules." [Hr'g Tr. 29:5−7, June 11, 2015].
- When asked "[w]hen you say the owner, who are you referring to[,]" Trevino responded with: "The owners." [Hr'g Tr. 33:11−12, June 11, 2015].

The above responses lead this Court to find that Trevino was not always a very candid witness. Thus, the Court gives some—but not substantial—weight to Trevino's testimony, as it recognizes that his statements were, not surprisingly, aimed at helping the Debtor's case.

12. Jared Woodfill

Woodfill, family law counsel for Ms. Castillo, gave testimony regarding his educational and professional background, his law firm, his attorneys' fees, and his involvement in the pending Divorce Action. Woodfill testified extensively about attorneys' fees incurred by Ms. Castillo and the transactions that occurred in his firm's IOLTA account. To the extent that Woodfill testified about actions he took and pleadings he filed to defend Ms. Castillo in the Divorce Action, the Court finds his testimony to be very credible and gives it considerable weight.

However, as subsequently discussed herein, Woodfill made inaccurate representations in the Divorce Action to the Family Law Court about the amount of attorneys' fees his firm was owed, and his inaccurate statements undermine his credibility. Further, at trial in this court, when responding to certain questions from the Debtor's counsel about his firm's invoices, Woodfill was unable to give substantive responses. For example, certain testimony that he gave when questioned by Debtor's counsel was as follows:

> Q: So the reason why you're not including the eighteen-thousand-dollar number, or the 18,562.50, is because that was a mistake that was made on your invoice.
> A: Right. I'm just asking for reimbursement for the payments actually made to Stewart & Hurst.
> Q: Okay. And that payment was never made.
> A: I don't know.
> Q: Well, sir, who would know?
> A: Well, Ken Kennedy would know.
> Q: Well, aren't you prepared here, today, to testify about your invoices, sir?
> A: To a certain extent.
> Q: What do you mean "to a certain extent"?
> . . .
> A: I'm familiar with -- I am familiar with the system and how things get entered, for the most part, what I do to turn in our time. And then our accountant generates and does all of this. So I'm looking at the documents that you provided to me, and trying to testify as truthfully as possible off these documents.

Further, when asked whether the amount of $15,000.00 paid to WLF was drawn down from the IOLTA account, Woodfill responded with: "It looks right. I mean . . . I didn't generate this, but I'm trying to interpret the – yes, that's what it appears." [Hr'g Tr. 158:4−13, May 15, 2015]. Under these circumstances, the Court finds that Woodfill's testimony about his firm's attorneys' fees is not entirely credible, and the Court gives little weight to his testimony.

13. Matthew Probus

Probus, bankruptcy counsel for Ms. Castillo, gave testimony regarding his firm's attorneys' fees. The Court finds Probus to be very credible, and accordingly, gives substantial weight to his testimony.

14. Kristin Coleman

Coleman, an associate at WLF and family law counsel for Ms. Castillo, gave testimony regarding her educational and professional background and her role in the execution of the Rule 11 Agreement during the Divorce Action. The Court finds Coleman to be very credible with regard to such testimony. However, Coleman testified that she has no knowledge about the finances or accounting of WLF's IOLTA account. [Hr'g Tr. 100:12−24, June 25, 2015]. All in all, the Court finds Coleman to be credible for the most part, but does not find the testimony that she gave in this Court to be significant on any important points. Therefore, the Court finds her testimony in this Court to be of little assistance in helping this Court arrive at a decision on the Motion for Division.

15. Michael Phillips

Phillips, family law counsel for the Debtor, gave testimony regarding his attorneys' fees. The Court finds Phillips to be credible, and accordingly, gives considerable weight to his testimony.

16. Leonard Simon

Simon gave testimony regarding his firm's attorneys' fees and his role as bankruptcy counsel for the Debtor in the pending bankruptcy case. The Court finds Simon's testimony to be credible, and accordingly, gives it substantial weight.

IV. CONCLUSIONS OF LAW

A. Jurisdiction

This Court has jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1334(a) and (b), and § 157(a). This dispute is a core proceeding under 28 U.S.C. § 157(b)(2)(A) because the request to divide the community estate of the Parties affects the administration of the Debtor's bankruptcy estate. This dispute is also a core proceeding under 28 U.S.C. § 157(b)(2)(O) because Ms. Castillo's request for this Court to divide community assets and liabilities will necessarily adjust the relationship between the Debtor and his creditors. Finally, this dispute is core under the general "catch-all" language of 28 U.S.C. § 157(b)(2). *See Southmark Corp. v. Coopers & Lybrand (In re Southmark Corp.)*, 163 F.3d 925, 930 (5th Cir. 1999) ("[A] proceeding is core under section 157 if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case."). Here, the Motion for Division involves a substantive right in this respect: it requests this Court to divide the community estate of the Parties, and pursuant to § 541(a)(2), this Court has exclusive jurisdiction over the community assets. Thus, this Court must be the final arbiter of how community property is divided between the Debtor and Ms. Castillo.[63]

[63] In most divorce actions involving a debtor, the bankruptcy court typically lifts the automatic stay to allow the non-filing spouse to return to state court to request the family law judge to divide the community property. The order lifting stay usually contains language to the effect that the family law court's division of community property is subject to final approval by the bankruptcy court (which typically is never given in writing because the parties never request it; they simply abide by the family law court's order). Thus, bankruptcy courts, by lifting the stay, essentially

B. Venue

Venue is proper under 28 U.S.C. § 1408(1) because the Debtor, on the date that he filed his bankruptcy petition, had resided in the Southern District of Texas for the 180 days preceding the filing of his petition.

C. Constitutional Authority to Enter a Final Order

In the wake of the Supreme Court's issuance of *Stern v. Marshall*, 131 S. Ct. 2594 (2011), this Court is required to determine whether it has the constitutional authority to enter a final order in any dispute brought before it. In *Stern*, which involved a core proceeding brought by the debtor under 28 U.S.C. § 157(b)(2)(C), the Supreme Court held that a bankruptcy court "lacked the constitutional authority to enter a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim." *Id.* at 2620. The pending dispute before this Court is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) because the division of the Debtor's community property certainly has an effect on the administration of the Debtor's Chapter 11 estate: how much property the Debtor is awarded unquestionably affects the administration of the estate. Indeed, given the fact that there is a Chapter 11 Trustee involved in this case—who himself will be administering the estate—there is no question that the division of the Debtor's community property affects the administration of this estate. Moreover, the pending dispute is a core proceeding under 28 U.S.C. § 157(b)(2)(O) because dividing up the community property of the Debtor and Ms. Castillo necessarily affects the adjustment of the relationship that the Debtor has with his creditors.

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abstain from dividing the community property. In this case, however, the non-filing spouse (Ms. Castillo) has expressly requested this Court to divide the community assets, and the Debtor also wants this Court to do so. Under these circumstances, this Court will not abstain, but rather will exercise its jurisdiction and divide the community property of the Parties.

Because *Stern* is replete with language emphasizing that the ruling is limited to the one specific type of core proceeding involved in that dispute, this Court concludes that the limitation imposed by *Stern* does not prohibit this Court from entering a final order here. A core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (b)(2)(O) is entirely different than a core proceeding under 28 U.S.C. § 157(b)(2)(C). *See, e.g.*, *Badami v. Sears (In re AFY, Inc.)*, 461 B.R. 541, 547–48 (8th Cir. B.A.P. 2012) ("Unless and until the Supreme Court visits other provisions of Section 157(b)(2), we take the Supreme Court at its word and hold that the balance of the authority granted to bankruptcy judges by Congress in 28 U.S.C. § 157(b)(2) is constitutional."); *see also In re Davis*, 538 F. App'x 440, 443 (5th Cir. 2013) *cert. denied sub nom. Tanguy v. W.*, 134 S. Ct. 1002 (2014) ("[W]hile it is true that *Stern* invalidated 28 U.S.C. § 157(b)(2)(C) with respect to 'counterclaims by the estate against persons filing claims against the estate,' *Stern* expressly provides that its limited holding applies only in that 'one isolated respect.' . . . We decline to extend *Stern*'s limited holding herein.").

Alternatively, even if *Stern* applies to all of the categories of core proceedings brought under 28 U.S.C. § 157(b)(2), *see In re Renaissance Hosp. Grand Prairie Inc.*, 713 F.3d 285, 294 n.12 (5th Cir. 2013) ("*Stern*'s 'in one isolated respect' language may understate the totality of the encroachment upon the Judicial Branch posed by Section 157(b)(2) . . ."), this Court still concludes that the limitation imposed by *Stern* does not prohibit this Court from entering a final order in the dispute at bar. In *Stern*, the debtor filed a counterclaim based *solely* on state law and the resolution of this counterclaim was not intertwined with the claims adjudication process. In the case at bar, the division of the Debtor's community property—while based upon application of state law—is done by virtue of the fact that this Court has exclusive jurisdiction over community property of the Debtor and Ms. Castillo pursuant to § 541(a)(2), [*see In re Robertson*,

203 F.3d 855, 862 (5th Cir. 2000)], and this Court's division of this property necessarily involves the claims adjudication process. This is so because the Court's division of the community property will necessarily affect the amount of spousal maintenance and child support that Ms. Castillo will be awarded in the Divorce Action, and these two types of support are so-called "domestic support obligations (DSOs)" under the Code that constitute claims against the Debtor's bankruptcy estate.[64] Under these circumstances, this Court concludes that it is constitutionally authorized to enter a final order on the Motion for Division.

Finally, in the alternative, this Court has the constitutional authority to enter a final order because all of the parties in this contested matter have expressly consented to this Court's adjudication of the Motion for Division. *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1947 (2015) ("Sharif contends that to the extent litigants may validly consent to adjudication by a bankruptcy court, such consent must be expressed. We disagree. Nothing in the Constitution requires that consent to adjudication by a bankruptcy court be expressed. Nor does the relevant statute, 28 U.S.C. § 157, mandate express consent . . . ."). Indeed, Ms. Castillo filed the Motion for Division on April 14, 2015, [Finding of Fact No. 4], expressly requesting this Court to divide the community property; the Debtor thereafter filed pleadings consenting to this Court dividing the community property, [*see* Doc. Nos. 239, 240, 241, 277 & 285]; and the parties proceeded to make a record in a multi-day hearing without ever objecting to this Court's constitutional authority to enter a final order on the Motion for Division. If these circumstances do not constitute consent, then nothing does.

[64] As subsequently discussed herein, the Court, at this time, abstains from the Debtor's request for this Court to determine the amount of spousal maintenance and child support. Rather, the Parties will return to the Family Law Court to obtain final rulings from that court on these issues.

D. Division of Community Property and Community Debts Under Texas Law

There is no question that this Court must apply Texas state law in dividing community assets and liabilities of the Debtor and Ms. Castillo. *See Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581 (1979) ("Insofar as marriage is within temporal control, the States lay on the guiding hand . . . State family and family-property law must be 'major damage' to 'clear and substantial' federal interests before the Supremacy Clause will demand that state law be overridden."). A court must first determine (pursuant to state law) which property constitutes separate property and which property constitutes community property. *See In re Levi*, 183 B.R. 468, 472 (Bankr. N.D. Tex. 1995) ("The determination of the character of each item of property must be made pursuant to Texas law."). Section 15, Article XVI of the Texas Constitution "declares that a wife's property, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent shall be the separate property of the wife. By reason of legislation, the husband's property is classified the same way." *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137, 140 (Tex. 1977) (footnotes omitted). The Fifth Circuit further states that "divorce does not create a new property interest with respect to separate property; that property continues unaltered after the divorce." *Matter of Parrish*, 7 F.3d 76, 78 (5th Cir. 1993).

"A spouse is only entitled to a division of property that the community owns at the time of the divorce." *Loaiza v. Loaiza*, 130 S.W.3d 894, 908 (Tex. App.—Fort Worth 2004, no pet.) (citing *Smith v. Smith*, 836 S.W.2d 688, 692 (Tex. App.—Houston [1st Dist.] 1992, no writ.)). Absent clear and convincing evidence, under Texas law, there is a presumption that any property held by either spouse on the date of divorce is community property. Tex. Fam. Code Ann. § 3.003. The spouse claiming certain property as separate has the burden to trace and clearly identify the property claimed to be separate. *See Estate of Hanau v. Hanau*, 730 S.W.2d 663,

667 (Tex. 1987) (citing *Tarver v. Tarver*, 394 S.W.2d 780, 783 (Tex. 1965)). However, Texas courts hold that "the testimony of an interested party, when not corroborated, does not conclusively establish a fact even when uncontradicted." *Robles v. Robles*, 965 S.W.2d 605, 616 (Tex. App.—Houston [1st Dist.] 1998, pet. denied) (citing *Kirtly v. Kirtly*, 417 S.W.2d 847, 853 (Tex. App.—Texarkana 1967, writ dism'd)).

After determining which assets and liabilities are identified and characterized as community property, the community assets and liabilities must be divided between the spouses in a "just and right" manner, taking into the account the rights of each spouse and any children of the marriage. Tex. Fam. Code Ann. § 7.001. In making a "just and right" division, the court is vested with broad discretion. *Jacobs v. Jacobs*, 687 S.W.2d 731, 733 (Tex. 1985); *Massey v. Massey*, 807 S.W.2d 392, 398 (Tex. App.—Houston [1st Dist.] 1991). A "just and right" division of the community estate can be a 50/50 split or a disproportionate split depending on the circumstances. *Tarin v. Tarin*, 605 S.W.2d 392, 394 (Tex. App.—El Paso 1980, no writ); *Corrick v. Corrick*, 2011 WL 664007, at *4 (Tex. App.—Houston [1st Dist.], Feb. 17, 2011) ("A 'just and right' division does not require a trial court to divide the marital estate into equal shares."); *Murff v. Murff*, 615 S.W.2d 696, 698−99 (Tex. 1981) (concluding that a division of the community estate need not be equal, and that the trial court may weigh many factors in reaching its decision). However, although the property need not be divided equally, it must be divided equitably. *Zieba v. Martin*, 928 S.W.2d 782 (Tex. App.—Houston [14th Dist.] 1996, no writ).

Further, each case must be examined on its own merits to determine whether or not equal distribution is justified. *Dawson-Austin v. Austin*, 920 S.W.2d 776 (Tex. App.—Dallas, 1996), *rev'd on other grounds*, 968 S.W.2d 319 (Tex. 1998), *cert. denied*, 119 S. Ct. 795 (1999).

Finally, courts dividing assets in a divorce must also divide the couple's debts. *Taylor v. Taylor*, 680 S.W.2d 645, 648 (Tex. App.—Beaumont 1984, writ refused, n.r.e.). A debt created by a spouse during the marriage is presumed to be an obligation of the community. *Id.*

1. Factors That This Court May Consider in Making a Just and Right Division

In making a division of the property, there are many factors that this Court may consider (the "Just and Right Division Factors"). These include, but are not limited to, the following:

- Education of the parties
- Parties' respective earning power
- Parties' business and employment opportunities
- Disparity in the parties' income or earnings ability
- Parties' physical health
- Disparity in the parties' ages
- Parties' probable need for future support
- Award of custody of the parties' children
- Relative sizes of the parties' separate estates
- Parties' relative financial condition and obligations
- Length of the marriage
- Fault in the break-up of the marriage
- Either spouses' dissipation of the estate, including excess of community property gifts to others or waste of community assets
- Benefits the party not at fault would have received from the continuation of the marriage
- Nature of property to be divided
- Tax consequences
- Attorneys' fees

See Murff, 615 S.W.2d at 698−99; *Vannerson v. Vannerson*, 857 S.W.2d 659, 669 (Tex. App.—Houston [1st Dist.] 1993, writ denied). In the case at bar, this Court has thoroughly considered the above-referenced factors, and it now concludes that a disproportionate division of the community property is necessary. The Court discusses its analysis of the Just and Right Division Factors below in order to explain why it has reached this conclusion.

Education of the Parties

The Parties did not provide any testimony about the Debtor's educational background. Meanwhile, Ms. Castillo graduated from high school, but has no college degree. [Findings of Fact Nos. 39 & 45]. She attended a community college for "court reporting" school, but left when she was diagnosed with ulcerative colitis. [Findings of Fact Nos. 39 & 41]. Given that the Debtor's background is unknown and Ms. Castillo graduated from only high school, this factor does not favor either party with regard to division of property.

Parties' Representative Earning Power

The Debtor has substantially more earning power than does Ms. Castillo. The Debtor has, for several years, commanded an annual salary of $100,000.00, plus a year-end bonus equal to two weeks' pay (which totals approximately $3,850.00). [Finding of Fact No. 26]. Moreover, for several years, the Debtor has received substantial commissions, as shown on the Parties' tax returns. [*See* Findings of Fact Nos. 84, 85, 86, 87 & 88]. Meanwhile, Ms. Castillo has virtually no earning capacity at this time. She has not been employed for approximately 18 years, as she has been a "stay-at-home" mother who has been raising two children that she has borne the Debtor. [Findings of Fact Nos. 53 & 68]. The Debtor and Ms. Castillo expressly agreed that when she gave birth to their son in 1998 she would not seek employment outside of the house but rather would be a stay-at-home mother. [Finding of Fact No. 53]. However, based on the testimony presented at trial, Ms. Castillo has at least the potential to generate income in the future—although not to the degree of the Debtor—in either sales of real estate or retail sales. [*See* Findings of Fact Nos. 43, 44, 46, 47 & 48]. Given the significant discrepancy in the Parties' earning power, the Court finds that this factor weighs in favor of Ms. Castillo with regard to the division of property.

Parties' Business and Employment Opportunities

The Debtor has considerable business and employment opportunities. First, he—for approximately 20 years—has been working for a privately-held company owned by his relatives (i.e., Clover), who, in his own words, "will take care of [him]." [Finding of Fact No. 31]. Clover has an international customer base, and the Debtor has been traveling throughout the world for several years developing and enhancing Clover's clients. [*See* Findings of Fact Nos. 24 & 25]. Therefore, he could probably be employed by any of a number of companies with international business. [*See id*.]. Indeed, the Debtor has been offered the opportunity to move to Panama to be in charge of Clover's Panama office. [Finding of Fact No. 33]. He has accepted this offer. [*Id.*].

Conversely, Ms. Castillo has virtually no business and employment opportunities at this time. She has no college degree and she has been unemployed for 18 years, as she has been a "stay-at-home" mother. [Findings of Fact Nos. 45, 53 & 68]. She did obtain her real estate license in the early 1990s, but let this license lapse because she did not pay the annual fees required by the State of Texas. [Finding of Fact No. 44]. Ms. Castillo testified that she is concerned about how she will be able to care for the Children and herself because she is 46 years old, has no resume, and will need to be retrained, [Hr'g Tr. 119:4−9, May 7, 2015]; however, the fact that Ms. Castillo was able to previously obtain her real estate license indicates to this Court that she is capable of pursuing opportunities in the real estate business once she reinstates her license.

In any event, this Court agrees that Ms. Castillo will have a much more difficult time than the Debtor in obtaining a job in the next few months, as she has been a "stay-at-home" mother for the past 18 years and has not been able to develop any special skills during the time that she has cared for the Children. However, the Court reiterates that it is not impossible or impractical

for Ms. Castillo to begin developing skills at her age, especially when she is in relatively good health[65] and the Children—nearing the legal age for adulthood—require a lot less attention than they did when they were younger. The Court finds that if Ms. Castillo is determined and focused on finding a sustainable career to provide for herself and the Children, she will be able to do so. Nevertheless, there is no question that the Debtor's business and employment opportunities are significantly greater at this time. Accordingly, this factor weighs in favor of Ms. Castillo with regard to the division of property.

Disparity in the Parties' Income or Earnings Ability

There is no question that there is a wide disparity between the Debtor's earning ability and his wife's earning ability. He commands, at a minimum, a salary of $100,000.00 per year, [Finding of Fact No. 26], and will continue to earn that salary at his new position in Panama, [Finding of Fact No. 33]. Because of his past experience and working skills, there is also a reasonable likelihood that the Debtor has the ability to earn an annual income of several hundred thousand dollars either at Clover or at another employer. Conversely, Ms. Castillo's ability to generate income—at least an income that is similar in size to the Debtor's—is slim. However, the Court reiterates that Ms. Castillo is in fairly good health and that she should be able to generate some amount of income in the future to support herself and the Children. Nevertheless, the Court finds that this factor weighs in favor of Ms. Castillo with respect to the division of property.

[65] During trial, the Court heard testimony from Ms. Castillo concerning certain afflictions that she has (such as ulcerative colitis). It may well be that some or all of these afflictions would lead a medical doctor to conclude that she is not in "good health." However, this Court heard no testimony from any physician, nor were any medical records introduced into evidence about any current medical problems that Ms. Castillo has. The Court observed Ms. Castillo in the courtroom, and she appears to be good physical and mental condition. The Court makes the same observation about the Debtor (who also gave testimony about his own afflictions, but who also introduced no medical testimony or documentation).

Parties' Physical Health

The Debtor's present physical health appears fine. However, from time to time, he has experienced physical ailments such as severe acid reflux and anxiety. [Finding of Fact No. 19]. Ms. Castillo suffers from ulcerative colitis, with which she was first diagnosed in 1989; she, on rare occasions, endures the symptoms of this disease. [Finding of Fact No. 41]. However, as previously discussed, this Court heard no testimony from any physician, nor were any medical records introduced into evidence about any current medical problems that Ms. Castillo has. The Court observed Ms. Castillo in the courtroom, and she appears to be good physical and mental condition. The Court makes the same observation about the Debtor (who also gave testimony about certain afflictions, but who also introduced no medical testimony or documentation). Because neither the Debtor nor Ms. Castillo testified that their physical ailments prevent them from pursuing future career opportunities, the Court finds that this factor does not favor either party with regard to division of property.

Parties' Mental Health

Ms. Castillo has had some mental health problems. In 2014, she shot herself in the stomach because she became depressed, and she was on Prozac and Ambien due to the allegations made against her in the various lawsuits in which she is a party. [Finding of Fact No. 42]. Meanwhile, the Debtor has also had some serious mental health problems. He has twice attempted to commit suicide, both times in 2014. Further, he suffers from severe depression and anxiety from time to time. [Finding of Fact No. 19]. However, both parties appeared to be mentally competent and sane as of the date of trial.[66] As the Parties' mental health and

[66] Again, this Court heard no testimony from any physician, nor were any medical records introduced into evidence about any current mental problems that the Parties have. The Court observed Ms. Castillo in the courtroom, and she

conditions appear to be parallel, the Court finds that this factor does not favor either party with regard to division of property.

Parties' Behavioral Misconduct

The Court finds that the Debtor and Ms. Castillo have displayed some questionable behavior—Ms. Castillo more so than the Debtor. During the Parties' marriage, Ms. Castillo has frequently visited the Palm Restaurant, among others, where she has met several different men, some of whom she has had sexual relationships with. [Findings of Fact Nos. 105, 106, 107, 108, 112, 113, 115, 119 & 120]. Indeed, in order to initiate sexual relationships with these men, Ms. Castillo exposed her genital area and flashed large amounts of cash. [Findings of Fact Nos. 75 & 106]. Further, Ms. Castillo's testimony adduced at trial revealed that after the initiation of the Divorce Action, she was arrested twice—once for driving while intoxicated and once for driving without a valid driver's license. [Finding of Fact No. 76]. In both instances, she was required to spend the night in jail. [*Id.*]. Her irresponsible behavior resulted in the Parties' Lamborghini being totaled and her being charged with a DWI. [*See id.*]. Moreover, the evidence introduced at trial reveals that Ms. Castillo repeatedly left voice messages to Scofield (after their sexual relationship ended) and threatened to contact his ex-wife and his daughter. [Finding of Fact No. 109].

On the other hand, the Debtor has occasionally used drugs and smoked marijuana in the garage of the Parties' home. [Finding of Fact No. 55]. And, at times, the Debtor has visited several restaurants and bars where he consumed alcohol. [*Id.*]. He also engaged in extramarital relationships (after the filing of the divorce petition) with women he met while conducting business. [Findings of Fact Nos. 93, 94, 97, 98 & 101].

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appears to be good physical and mental condition. The Court makes the same observation about the Debtor (who also gave testimony about certain afflictions, but who also introduced no medical testimony or documentation).

Given the above-described circumstances, the Court finds that while both parties have misbehaved, Ms. Castillo's misbehavior outweighs that of the Debtor. Thus, the Court finds that this factor weighs in favor of the Debtor.

Disparity in the Parties' Ages

The Court finds that the Parties are approximately the same age. This factor does not favor either party with regard to division of property.

Parties' Probable Need for Future Support

There is no question that Ms. Castillo will need financial support from the Debtor in the near future. This is so for the following reasons. First, she will retain custody of the two minor children, who are presently 17 years old and 14 years old, [Findings of Fact Nos. 58, 59 & 61]; she will therefore need to receive child support payments to help take care of the Children until they reach the age of at least 18. *See* Tex. Fam. Code Ann. § 154.001. Second, she will need to receive some financial support from the Debtor to help pay her own living expenses while she attempts to gain employment. Indeed, she has not been employed for approximately 18 years, [Finding of Fact No. 53 & 68], and therefore will have difficulty generating any measurable income—at least in the near future. Thus, this factor favors Ms. Castillo with regard to the division of property.

Award of Custody of the Parties' Children

The Debtor has agreed that Ms. Castillo will retain custody of the Children. [Finding of Fact No. 61]. Indeed, the Debtor has acknowledged that Ms. Castillo has always been an exemplary mother. [Findings of Fact Nos. 66 & 69]. Thus, there is no dispute here: Ms. Castillo will be awarded custody of the Children. While it is fortunate that there is no dispute regarding custody of the Children, the Court keeps in mind that the Debtor has voluntarily accepted a

position in Panama where he will no longer have regular contact with his children. The Court finds that this factor weighs in favor of Ms. Castillo.

Relative Sizes of the Parties' Separate Estates

The Court finds that neither the Debtor nor Ms. Castillo's separate estate is significant and, therefore, this factor does not favor either party with regard to the division of the community property.

Parties' Relative Financial Condition and Obligations

There is no doubt that Ms. Castillo's present financial condition is much worse than the Debtor's financial condition. As detailed above, the Debtor not only has a stable job earning a salary of at least $100,000.00 a year, but he has a significantly higher earning ability. [*See* Findings of Fact Nos. 26 & 68]. The Court finds that the Debtor presently has a steady income and will continue to have a steady income at his new job in Panama. [Finding of Fact No. 33]. The Court cannot say the same about Ms. Castillo. Indeed, Ms. Castillo testified that their home "didn't have water for a month and [a] half . . . because [the Debtor] wouldn't give [her] extra money to pay the $1,600 to get the water pump fixed." [Hr'g Tr. 122:13−17, May 7, 2015]. She also testified that she had to borrow $25,000.00 from her father to pay attorneys' fees. [Findings of Fact Nos. 40 & 252]. However, the Court finds that Ms. Castillo is not currently living in poverty. Specifically, Ms. Castillo recently traded in her 2015 Chevy Tahoe (with many "upgrades" or "extras") for a Mercedes Benz, [*see* Findings of Fact Nos. 8 & 235]; although the Mercedes Benz contract demands a lower monthly payment amount, it is by no means the most cost-effective vehicle she could have purchased. Nevertheless, all in all, it is clear that the Debtor's financial condition is significantly better than that of Ms. Castillo's.

The Court finds that the Parties have a rather significant amount of financial obligations, much of which constitutes attorneys' fees. On the one hand, the Debtor testified that during the pendency of the ongoing divorce proceeding, Clover pays (or has paid) for several living expenses for the Debtor including: (1) a home in Bentwater where the he resided up until March 2015; (2) a company car that the Debtor drives (i.e., Audi RS-7); (3) gas and any required car maintenance services for that company car; (4) phone bills; (5) health insurance; (6) food; (7) a credit card belonging to the Debtor's daughter; and (8) work-related expenses such as travel expenses and dinner bills for clients. [Finding of Fact No. 34].

On the other hand, the Debtor's current financial obligations and expenses require him to make payments on the following: (1) child support in the amount of $2,137.50/month; (2) spousal maintenance in the amount of $10,000.00/month; (3) medical and dental insurance (outside of health insurance provided for by Clover) in the amount of approximately $100.00/month; (4) dry cleaning in the amount of approximately $25.00/month; and (5) car payment for J.M.C. in the amount of $240.00/month. [Finding of Fact No. 126]. There is no doubt that the Debtor also owes a significant amount of attorneys' fees for his family law attorney and his bankruptcy counsel. [*See* Findings of Fact Nos. 220, 221, 225 & 226]. Considering the Debtor's new job in Panama—which pays a base salary of $100,000.00 with no current bonus structure—the Debtor's obligation to pay child support and spousal maintenance (i.e., $10,000.00) may in itself make it difficult for the Debtor to pay for any other living expenses (excluding the attorneys' fees) that would allow for a normal lifestyle.

Ms. Castillo also has financial obligations to her Children on a more regular basis, as they are still presently under her sole care. [Findings of Fact Nos. 58, 59, 60 & 61]. However, it is uncertain as to the amount of living expenses required for the Children, as no testimony

regarding this subject was presented to this Court. She also remains responsible for the *ad valorem* taxes—currently in the approximate amount of $48,129.86—that have accrued on the Homestead, as set forth by the Agreed Temporary Order. [Finding of Fact No. 123]. Lastly, Ms. Castillo has a financial obligation to her car lender, as she recently purchased a Mercedes Benz, which requires her to make monthly payments of $590.00 for 60 months. [Finding of Fact No. 8].

Given the facts set forth above, the Court finds that while the Debtor is in a much better financial condition than Ms. Castillo, the Debtor has more financial obligations. This factor therefore favors the Debtor with regard to division of community property.

Length of the Marriage

The Parties were married on September 21, 1996, and therefore have been married for approximately 19 years. This factor does not weigh either in favor of the Debtor or Ms. Castillo with regard to division of community property.

Fault in the Break-up of the Marriage

There is no question that trial courts must look to a husband or a wife's conduct during marriage in determining "fault in the breakup of the marriage." *See, e.g., Williams v. Williams*, 1998 WL 175691, at *1 (Tex. App.—Dallas, Apr. 16, 1998, no pet.) (trial court made a finding of fault when, during the marriage, the husband committed adultery, abused drugs and alcohol, and committed family violence); *see also Faram v. Gervitz–Faram*, 895 S.W.2d 839, 844 (Tex. App.—Fort Worth 1995, no writ) (in affirming a 72.9% award of community property, the court noted that "[a] key factor was [the husband's] abusive and violent nature, which ultimately contributed to the divorce"). However, there is at least one Texas court that has determined that a spouse could not be held at "fault" because of an extramarital affair she had with another

individual several months ***after*** filing for divorce. *Martel v. Martel*, 2001 Tex. App. LEXIS 6025, at *7 (Tex. App.—Dallas Aug. 31, 2001). In *Martel*, on appeal, the husband argued that the trial court erred in failing to find that his wife was at fault on the ground of adultery. *Id.* The appellate court disagreed and overruled the husband's contention on the basis that the "[w]ife cannot be faulted for the breakup of the marriage on this ground where the adultery did not occur until ***after the separation***." *Id.* (emphasis added). Another Texas court also appears to suggest that it should only consider actions taken prior to the filing of divorce when determining fault in the breakup of the marriage. *See Winkle v. Winkle*, 951 S.W.2d 80, 90−91 (Tex. App.—Corpus Christi 1997, writ denied) ("The evidence presented in this case demonstrated that [the husband] had committed adultery long before [the wife], and that [the wife] began her adulterous relationship only after she and [her husband] had separated and she had learned of [her husband's] adultery. The trial court therefore had a legitimate basis for finding [the husband's] adultery cruel treatment toward [the wife].").

Here, this Court agrees with the analyses set forth by the courts in *Martel* and *Winkle*. This Court also considers this factor to be a very important consideration in determining how to divide the community property, especially when both parties in this case are at fault.

The testimony adduced at trial leads this Court to conclude that Ms. Castillo is slightly more at fault in the breakup of the marriage than the Debtor. First, prior to her filing for divorce, Ms. Castillo developed a habit of visiting restaurants (e.g., the Palm Restaurant) at the lunch hour, displaying large amounts of cash to patrons at these restaurants, exposing her genital area, and meeting new "friends" such as Scofield, White, and Spitzer. [Findings of Fact Nos. 54, 75, 105, 106, 112 & 119]. Second, and most importantly, based on the testimony of Ms. Castillo and two credible witnesses, there is no question that Ms. Castillo was involved in an adulterous

relationship with Scofield *prior* to her filing her petition initiating the Divorce Action. [Finding of Fact No. 107]. Ms. Castillo testified that Scofield and she did not "cross[] the line" until May 2012—a statement that this Court finds not to be credible. *See supra* Part III(2). The Court therefore finds that Ms. Castillo's sexual relationship with Scofield—which occurred prior to the filing of the Divorce Action—is the factor most responsible for the break-up of the Parties' marriage. *Martel*, 2001 Tex. App. LEXIS 6025, at *7; *see Winkle*, 951 S.W.2d at 90−91.

However, the Debtor is not by any means without culpability. First, he, on occasion, would smoke marijuana in the garage of the couple's home—and the Children became aware of this activity. [Finding of Fact No. 55]. Second, the Debtor developed a habit of frequenting restaurants and consuming abundant amounts of alcoholic beverages. [*Id.*]. Third, the Court notes that prior to the filing of the Divorce Action (and perhaps even after the filing), the Debtor spent a significant amount of time away from his wife and children. [*See* Findings of Fact Nos. 24 & 25]. While this in itself could be a cause for the breakup of the marriage, [*see* Hr'g Tr. 45:11−12, May 7, 2015], the Court will not place too much weight on this fact as the Debtor was attempting to carry out his responsibilities as Clover's Gulf Regional Manager in order to maintain a comfortable lifestyle for his family. [*See* Finding of Fact No. 25]. Finally, while the Debtor engaged in extramarital affairs with at least two women *after* the filing of the Divorce Action—Julie Svancara and Celina Beltran, [Findings of Fact Nos. 97, 98 & 101]—there is no credible evidence that the Debtor actually committed adultery *prior* to the Parties' separation. *In re S.A.A.*, 279 S.W.3d 853, 856 (Tex. App.—Dallas 2009, no pet.) ("Although adultery may be proved by direct and circumstantial evidence, clear and positive proof is necessary and mere suggestion and innuendo are insufficient."). Thus, the Debtor "cannot be faulted for the breakup of the marriage on this ground where the adultery [with Svancara and Beltran] did not occur until

after the separation." *Martel*, 2001 Tex. App. LEXIS 6025, at *7; *see Winkle*, 951 S.W.2d at 90−91. Moreover, this Court notes that the Debtor attempted to reconcile with Ms. Castillo several times even after she filed for divorce. [Finding of Fact No. 79].

While this Court will not punish Ms. Castillo or the Debtor for their adulterous relationships, this Court may certainly consider their actions as one of many factors when dividing the community estate. *See Murff*, 615 S.W.2d at 698−99; *Vannerson*, 857 S.W.2d at 669. Given the facts set forth above, the Court finds that this factor weighs against Ms. Castillo, as her affair with Scofield and lewd acts in public restaurants prior to the Divorce Action are the factors most responsible for the break-up of the Parties' marriage.

Either Spouses' Dissipation of the Estate, Including Excess of Community Property Gifts to Others or Waste of Community Assets

In making a "just and fair" division of community assets, the Texas Supreme Court has directed courts to consider, among many factors, whether there has been a "waste" of community assets. *Schlueter v. Schlueter*, 975 S.W.2d 584, 589 (Tex. 1998) (allowing "injured spouses . . . to recover [his or her] appropriate share of not only that property existing in the community at the time of divorce, but also that which was improperly depleted from the community estate"). The Texas Supreme Court describes "waste" as assets that were "improperly depleted from the community estate." *Id.* At least one Texas court has found "waste" of community assets when the husband—after three days of separation—disbursed community funds to relatives and a friend. *See, e.g.*, *Falor v. Falor*, 840 S.W.2d 683, 688 (Tex. App.—San Antonio 1992, no writ).

Here, neither party has technically "gifted" community estate funds to third parties; however, both the Debtor and Ms. Castillo have dissipated or "wasted" community property. Indeed, the Debtor used funds from the Parties' community estate to pay for trips that Beltran and he took together. [Finding of Fact No. 102]. Although such trips took place after Ms.

Castillo filed the her petition initiating the Divorce Action, the Debtor and she were nevertheless still married and the earnings used to pay for such trips were still considered community property. The Debtor also "wasted" community assets when he loaned $10,000.00 from the community account to Maria Muñoz, [Finding of Fact No. 90], and $2,500.00 from the community account to Omara Valles, [Finding of Fact No. 91], without Ms. Castillo's knowledge or consent. *Schlueter*, 975 S.W.2d at 589 (". . . that without the wife's knowledge or consent, he wrongfully depleted the community of assets of which [the wife] was entitled a share. Such behavior is properly considered when dividing a community estate."). Moreover, the Debtor "wasted" funds when he transferred the amount of $60,000.00 from the Parties' Joint Account to his personal account without Ms. Castillo's knowledge or consent. [Finding of Fact No. 78]. *See Falor*, 840 S.W.2d at 688; *Schlueter*, 975 S.W.2d at 589 (describing "waste" as assets that were "improperly depleted from the community estate").

On the other hand, on at least one occasion, Ms. Castillo spent community funds to pay for a hotel room where Scofield and she engaged in adulterous activity. [*See* Hr'g Tr. 88:18−21, June 26, 2015]. Her use of community funds for extramarital endeavors without the Debtor's knowledge or consent is clearly a "waste" of community assets. Further, Ms. Castillo wasted community assets when frequenting restaurants and bars during the lunch hour and meeting random men. [Findings of Fact Nos. 54, 105, 108, 112 & 119]. Ms. Castillo also wasted community assets when she gave at least one expensive watch to her attorney to pay his fees without the knowledge or permission of the Debtor. [Finding of Fact No. 77]. Moreover, Ms. Castillo wasted community assets when she totaled the family's Lamborghini while driving while intoxicated. [Finding of Fact No. 76]. Lastly, she committed waste of part of the community estate by escalating attorneys' fees of at least $713,734.47, [*see* Claim Nos. 8, 9 &

10 on Claims Register], which she incurred as a result of several lawsuits filed against her which are now pending in the Florida and Texas courts. [*See* Findings of Fact Nos. 228, 229, 230 & 231]. *See Faram v. Gervitz-Faram*, 895 S.W.2d 839, 844 (Tex. App.—Fort Worth 1995, no writ). *at least* $713,734.47.

Based on the above facts, the Court finds that the Parties equally wasted community funds and that this factor favors neither party in this Court's determination as to how to divide community property.

Benefits the Party Not at Fault Would Have Received from the Continuation of the Marriage

The Debtor and Ms. Castillo are both at fault. Thus, this factor does not come into play in the case at bar.

Nature of Property to be Divided

The nature of the property to be divided includes real property, tangible personal property, bank accounts, and other intangible assets. This factor does not weigh for or against either of the Parties in the case at bar.

Tax Consequences

With respect to tax consequences, the Texas Family Code ("Family Code") provides that this Court may consider: (1) whether a specific asset will be subject to taxation; and (2) if the asset will be subject to taxation, when the tax will be required to be paid." Tex. Fam. Code Ann. § 7.008; *Corrick*, 2011 WL 664007, at *4. Further, this Court may consider the possibility of future tax liability. Tex. Fam. Code Ann. § 7.008(2); *Corrick*, 2011 WL 664007, at *5. Based upon the evidence presented at trial, the Court finds that the only asset that is subject to substantial taxation is the Homestead. First, the Court notes that the Agreed Temporary Order requires that Ms. Castillo make payments on the *ad valorem* taxes on the Homestead. [Finding

of Fact No. 123]. Thus, she should have made these tax payments for the following years: 2012 (due by January 31, 2013); 2013 (due by January 31, 2014); and 2014 (due by January 31, 2015). However, despite Ms. Castillo receiving spousal maintenance payments and child support payments—totaling an aggregate of at least $385,287.50 (from August 2012 through October 2015), [Findings of Fact Nos. 122, 124 & 127]—Ms. Castillo has made only some payments for delinquent taxes. Indeed, Ms. Castillo still owes at least $48,129.86 to the Harris County Tax Assessor and Klein ISD. [Finding of Fact No. 123]. Stated differently, while Ms. Castillo has been receiving at least $385,287.50 in spousal maintenance and child support payments, she has failed to timely pay the Harris County Tax Assessor and/or Klein ISD for all past due *ad valorem* taxes on the Homestead—the place where she has been residing rent/mortgage free.[67] [*See* Finding of Fact No. 60, 122, 123, 124 & 127].

Second, the Court keeps in mind that there would not have been such a large tax bill due and owing to the Harris County Tax Assessor and Klein ISD in the first place had Ms. Castillo spent at least some of the spousal maintenance payments and child support payments to timely pay the taxing authorities. Interest and penalties have been accruing on the principal amount owed for each day that has passed without payment being made. Due to Ms. Castillo's failure to apportion funds that were received from her husband to pay in full *ad valorem* taxes on the Homestead, the Court finds that this factor weighs against Ms. Castillo and will certainly affect the percentage of community property awarded to her.

Attorneys' Fees

Texas courts have generally agreed that a trial court does not have inherent authority to award attorneys' fees in a divorce action. *Toles v. Toles*, 45 S.W.3d 252, 267 (Tex. App.—

[67] The Court notes that in February of 2016, Ms. Castillo paid the 2015 *ad valorem* property taxes to the Harris County Tax Assessor and the taxes to Klein ISD. [Doc. Nos. 483 & 484].

Dallas 2001, pet. denied); *Pletcher v. Goetz*, 9 S.W.3d 442, 447–48 (Tex. App.—Fort Worth 1999, pet. denied); *Chiles v. Chiles*, 779 S.W.2d 127, 129 (Tex. App.—Houston [14th Dist.] 1989, writ denied), *overruled on other grounds by Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993). However, a trial court may consider reasonable attorney's fees, along with the parties' circumstances and needs, in effecting a "just and right" division of the estate. *Murff*, 615 S.W.2d at 699; *Carle v. Carle*, 234 S.W.2d 1002, 1005 (Tex. 1950); *Mandell v. Mandell*, 310 S.W.3d 531, 542 (Tex. App.—Fort Worth 2010, pet. denied). Indeed, as the Texas Supreme Court stated in *Carle*, "[t]he attorney's fee is but a factor to be considered by the court in making an equitable division of the estate, considering the conditions and needs of the parties and all of the surrounding circumstances." *Carle*, 234 S.W.2d at 1005.

Both the Debtor and Ms. Castillo have each incurred substantial attorneys' fees—in both the Harris County District Court (i.e., Family Law Court) and this Bankruptcy Court. Ms. Castillo has also incurred attorneys' fees in a Florida court. Specifically, Ms. Castillo has incurred attorneys' fees and expenses for services rendered by the following attorneys: (1) Jared Woodfill (family law attorney), [*see* Findings of Fact Nos. 128, 140, 141, 142, 143, 144 & 156]; (2) Bobby Newman (family law attorney), [*see* Finding of Fact No. 77]; (3) Judge Schmude (family law attorney), [*see* Findings of Fact Nos. 141, 150, 162, 171, 200 & 201]; (4) Jeremy Hart of Bast Amron Law Firm (Florida attorney), [*see* Finding of Fact No. 228]; and (5) Matthew Probus (bankruptcy attorney), [*see* Findings of Fact Nos. 205, 206, 207, 211 & 213]. In addition to attorneys, Ms. Castillo—with the help of WLF and the Schmude Law Firm—retained the assistance of Stewart & Hurst (forensic accounting), [Findings of Fact Nos. 164, 190, 191, 192, 196 & 197]. According to the proofs of claim filed by Ms. Castillo's attorneys, the fees and expenses owed to the above professionals for services rendered on her behalf totals an aggregate

amount of *at least* $707,486.44. [*See* Findings of Fact Nos. 144, 207, 208, 209, 211 & 213]; [Claim Nos. 8 & 10 on Claims Register].

Meanwhile, the Debtor has incurred attorneys' fees and expenses for services rendered by the following attorneys: (1) Michael Phillips (family law attorney), [*see* Findings of Fact Nos. 214, 218, 219, 220 & 221]; (2) Mary E. Van Orman (family law attorney), [*see* Doc. No. 285-1, p. 24 of 36]; and (3) Leonard Simon (bankruptcy attorney), [*see* Findings of Fact Nos. 223, 224, 225 & 226]. According to the proofs of claim filed by the Debtor's attorneys, the fees and expenses owed for legal services rendered on his behalf total an aggregate amount of *at least* $381,944.93. [*See* Claim Nos. 5-2 & 7-2 on Claims Register]. While the exact amount of attorneys' fees and expenses incurred by each party are uncertain at present (because of continuing services being provided), it is clear that the Debtor has incurred significantly less attorneys' fees than Ms. Castillo. This fact might lead an outside observer unfamiliar with all of the facts and circumstances regarding the Parties to conclude that this factor favors Ms. Castillo with respect to division of the community property. But, it does not. As already discussed, WLF has made misrepresentations to the Family Law Court about the amount of fees it is owed. Further, as already discussed, WLF has failed to adequately explain to this Court certain glaring discrepancies between its IOLTA account balances and the balances appearing in the firm's IOLTA Ledger. Moreover, Ms. Castillo has brought some litigation upon herself by her own "over the top" conduct. Indeed, her misbehavior led Svancara to sue her in Harris County District Court and also led the Rincon family to sue her in Florida. These suits have necessarily caused her to incur attorneys' fees. [*See* Findings of Fact Nos. 228 & 229]. All of these circumstances lead this Court to find that this factor does *not* favor Ms. Castillo.

In sum, this Court notes that while all of the above factors should be considered in making a "just and right" division of the community property, it places more weight on certain factors—namely: the Parties' Behavioral Misconduct; Either Spouse's Dissipation of the Estate (Waste of Community Assets); Tax Consequences; and Attorneys' Fees. These are the factors that this Court believes significantly affect the division of the community property in this particular case. In fact, this Court puts considerable weight on the Parties' behavioral misconduct, especially in light of Ms. Castillo's pre-Divorce-Action-filing affair with Scofield.

This Court also puts significant weight on the Parties' dissipation of community assets, including but not limited to, the attorneys' fees incurred by both the Debtor and Ms. Castillo throughout the Divorce Action. While the exact amount of community assets that were "wasted" is yet to be determined, the Court finds important the hundreds and thousands of dollars that the Parties have incurred in attorneys' fees when deciding how to divide the community assets. Indeed, this Court finds it particularly important to note that Ms. Castillo has racked up a significantly higher amount of attorneys' fees than the Debtor—a significant part of which were incurred due to improper and excessive conduct initiated by Ms. Castillo and her family law counsel. [*See* Findings of Fact Nos. 144, 147, 148, 150, 153, 154, 156, 158, 159, 162, 163, 164, 170, 171, 173, 179, 206−11 & 213].

Similarly, this Court puts significant weight on the negative tax consequences resulting from Ms. Castillo's failure to pay all the *ad valorem* taxes on the Homestead (despite having the financial means to do so). By failing to timely pay these taxes over the past several years, significant penalties and interest have accrued—resulting in a mushrooming of this obligation to $48,129.86. And, it is particularly noteworthy that her failure to pay these taxes came despite her residing the entire time at the Homestead *and* despite a provision in the Agreed Temporary

Order requiring her to pay these taxes in full. [*See* Finding of Fact No. 123]. Thus, Ms. Castillo wants to have her cake and eat it too: she wants to continue to reside in a home without paying the all necessary *ad valorem* taxes on it. And, it is noteworthy that she wants to do so despite agreeing to pay these taxes! Even worse, while she was thumbing her nose at the Family Law Court's order, she (through WLF) was simultaneously misrepresenting to that court the amount of attorneys' fees owed to WLF, [*see* Findings of Fact Nos. 158 & 170], so as to concoct an argument that the Debtor needed to pay these fees—and then, when he could not financially do so, to complain that he was in default of that court's order, which led to the Family Law Court's issuance of a capias to arrest the Debtor, [*see* Finding of Fact No. 80].

Based on the factors described above and the weight this Court places on each factor, this Court divides the Parties' property as detailed below.

2. The Debtor and Ms. Castillo Should Retain Possession of Their Separate Property Acquired *Prior* to Marriage[68]

As discussed above, any property owned by the Debtor prior to the Parties' marriage (i.e., September 21, 1996) is the Debtor's separate property and, similarly, any property owned by Ms. Castillo prior to the Parties' marriage is her separate property. *Eggemeyer*, 554 S.W.2d at 140. During the 14-day trial, the Debtor testified that a majority of the items set forth in the Parties' inventory and the Debtor's Schedule B were acquired during the marriage with community funds. For her part, Ms. Castillo testified that she acquired only three household items before the marriage, and the Debtor agrees. [*See* 285-4, pp. 5−6 of 15]. Thus, the Court concludes that the Debtor and Ms. Castillo are entitled to retain possession of their separate property obtained *prior* to marriage as set forth below:

[68] The Parties agree that Ms. Castillo should retain possession of all of her separate property. For purposes of completeness as to disposition of *all* property associated with the marriage of Ms. Castillo and the Debtor, the Court includes discussion of Ms. Castillo's separate property herein.

The Debtor's Separate Property Acquired Prior to Marriage

- None/Unknown

Ms. Castillo's Separate Property Acquired Prior to Marriage

- Main House, Bedroom 2 Items:
  - Queen size bed
  - Dresser
  - 1 Walnut Nightstand

[Findings of Fact Nos. 232 & 233].

3. The Debtor and Ms. Castillo Should Retain Possession of Their Separate Property Acquired *During* Marriage

As discussed above, Section 15, Article XVI of the Texas Constitution "declares that a wife's property, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent shall be the separate property of the wife. By reason of legislation, the husband's property is classified the same way." *Eggemeyer*, 554 S.W.2d at 140. Importantly, a "gift is defined as a transfer of property made voluntarily and gratuitously, without consideration." *Rusk v. Rusk*, 5 S.W.3d 299, 303 (Tex. App.—Houston [14th Dist.] 1999, pet. denied). The burden of proving a gift is on the party claiming that the gift was made. *Ellebracht v. Ellebracht*, 735 S.W.2d 658, 659 (Tex. App.—Austin 1987, no writ). Again, the spouse claiming certain property as separate (e.g., by way of "gift") has the burden to trace and clearly identify the property claimed to be separate and, absent clear and convincing evidence, there is a presumption that any property held by the other spouse is community property. Tex. Fam. Code Ann. § 3.003; *Hanau*, 730 S.W.2d at 667. Additionally, Texas courts have held that "the testimony of an interested party, when not corroborated, does not conclusively establish a fact even when uncontradicted." *Robles*, 965 S.W.2d at 616.

In the case at bar, the following items were all purchased during the Parties' marriage and therefore are presumed to be community property absent clear and convincing evidence. Tex.

Fam. Code Ann. § 3.003; *Hanau,* 730 S.W.2d at 667. Such clear and convincing evidence was not provided by either of the Parties and the only evidence to consider is the testimony of the two interested parties—Ms. Castillo and the Debtor. However, while Ms. Castillo did not provide any evidence, other than her testimony, that the following assets are her separate property, this Court finds no reason to intervene, as the Debtor himself has asked this Court to award the below items to Ms. Castillo. [*See* Ms. Castillo's Ex. Nos. 57 & 58]; [Doc. No. 285-2, pp. 2 & 3 of 3]. Thus, this Court awards the following jewelry and watches to Ms. Castillo as her separate property:

- GTS Cartier Balloon Blue Watch, Model #W69009Z3
- Anastasia Neck, 18 KT WG MTG with 32 DIAS TW 1.10 CTS, G-H, SI
- Bangle Bracelet, 18 KT WG MTS with 28 RD DIAS TW .60 CTS, G-H, SI
- Bangle Bracelet, 18 KT WG MTG with 33 RD DIAS TW .50 CTS, G-H, SI
- Bangle Bracelet, 18 KT WG MTG with 41 RD DIAS TW .85 CTS, G-H, SI
- Circle Neck Roberto Coin, 18 KT WG MTG with 34 RBC DIAS TW 2.01 CTS and 18" Chain
- PR Earrings, 18 KT WG MTG with DIAS TW 1.25 CTS, G-H-, SI
- PR Hoop Earrings, Roberto Coin, 18 KT WG MTG with 44 RBC DIAS TW 3.46 CTS
- LDS RG Ritani, PLAT/YG MTG with 2.01 CT OVAL YELLO DIA, VS1 and RD DIAS TW .40 CTS, G, VS PAVE[69]

[69] The Court notes that the Debtor has asserted a waste claim against Ms. Castillo alleging that this item was "sold in violation of injunction of ¶10.3K, page 22 of Agreed Temporary Orders." [Doc. No. 285-1, p. 34 of 36]. However, even if Ms. Castillo did sell her separate property in violation of the Agreed Temporary Order, this piece of jewelry would have been awarded to Ms. Castillo regardless. Indeed, the Debtor unequivocally testified at the May 11, 2015 hearing that this item was, in fact, a gift to Ms. Castillo. [Hr'g Tr. 177:8−12, May 11, 2015]. As the Debtor gave this piece of jewelry to Ms. Castillo as a "gift" during the marriage, this item is her separate property. The Court concludes that the Debtor's claim of waste on this particular jewelry has no merit, as "waste" includes only assets that were "improperly depleted from the *community* estate." *Schlueter*, 975 S.W.2d at 589 (emphasis added).

[Hr'g Tr. 175:19−180:10, May 11, 2015]; [*see* Ms. Castillo's Ex. Nos. 57 & 58]; [Doc. No. 285-2, p. 2 & 3 of 3]; *Limbaugh v. Limbaugh*, 71 S.W.3d 1, 6 (Tex. App.—Waco 2002, no pet.) ("A trial court need not make findings of fact on undisputed matters.").

On the other hand, the Debtor claims that a certain watch—i.e., GTS Daytona Cosmograph Watch, STL ST, MDL#116520, SER #979203 ("GTS Daytona Cosmograph Watch")—was a gift from Clover and therefore his separate personal property. [*See* Ms. Castillo's Ex. No. 57, Bates #1]; [Hr'g Tr. 164:25−165:8, May 12, 2015]. Specifically, the following testimony from the Debtor was adduced at trial:

> Q: All right. And I probably missed this, so I need you to clear it up for me. Which one of these watches was the gift from Clover?
> A. The Item Number 2 [on Ms. Castillo's Docket Number 57].
> Q: Okay. That's the GTS Daytona Cosmograph watch.
> A: Yes, sir.
> Q: All right. And what was the purpose of your receiving the gift; had you achieved some award or accomplishment?
> A: It was my twenty-year anniversary with the company.

[Hr'g Tr. 165:1−8, May 12, 2015]. At trial, Ms. Castillo's testimony suggested otherwise:

> Q: Did you take the watch?
> A: He left the watch. Yes, I did. It was left.
> Q: Okay. And where did you find it when you took it?
> A: It was in the master bedroom closet.
> Q: And is that a man's watch?
> A: Yes, sir it is.
> Q: And is it a watch that is listed on your inventory?
> A. No, sir. It was on the community inventory.
> Q: What inventory are you referring to as the community inventory?
> A: Whatever he listed as—he listed it as assets that we—that was owned by the community in his schedule.

[Hr'g Tr. 79:10−21, May 8, 2015]. However, on her Chart of Assets, Ms. Castillo clearly labeled this certain watch as the Debtor's separate property with an estimated value of $12,178.00. [Doc. No. 333, p. 21 of 29]. The Court finds that the GTS Daytona Cosmograph

Watch is no longer in the possession of the Debtor because Ms. Castillo gave this particular watch to her former attorney, Bobby Newman, to partially pay her attorneys' fees. [Finding of Fact No. 77]. As the parties now agree that the GTS Daytona Cosmograph Watch was, in fact, the Debtor's separate property, this Court will award the value of $12,178.00 to the Debtor as his separate property. Due to Ms. Castillo's taking of the Debtor's separate property, this Court will compensate the Debtor for such loss, as described in more detail below, [*see infra* IV(D)(4)(c)].

4. A "Just and Right" Division of the Community Estate Consists of a Partition in Kind of the Community Personal Property Still in the Possession of the Parties

In making a "just and right" division, a trial court must first determine whether the parties' community property is "subject to partition in kind" and, if it is, the court "shall equitably divide the community property between the parties." *Hailey v. Hailey*, 331 S.W.2d 299, 303 (Tex. 1960). "[I]t is clear that an in-kind division of personal property does not require cutting each item of property in half, but rather contemplates the trial court awarding individual items of personal property to each party such that the overall division of community property is 'just' and 'right.'" *Walston v. Walston*, 971 S.W.2d 687, 693 (Tex. App.—Waco 1998, pet. denied). In determining if property is subject to partition in kind, this Court considers the "nature and type of particular property involved and the relative conditions, circumstances, capabilities and experience of the parties." *In re Marriage of Jackson*, 506 S.W.2d 261, 266 (Tex. App.—Amarillo 1974, writ dism'd). The Court finds that certain home furniture items which are set forth below are subject to a partition in kind.

a. Household Furnishings

Given the evidence presented at trial, the Court finds that all the household items located in the Homestead and in storage—with the exception of the separate property Ms. Castillo acquired prior to marriage, [*see supra* Part IV(D)(2)]; [Findings of Fact Nos. 233 & 234]—

constitute community assets. Indeed, the Parties did not present any clear and convincing evidence proving otherwise. Fortunately, the Parties have come to an agreement with these household goods and, therefore, this Court need not determine how to apportion such items. *Limbaugh*, 71 S.W.3d at 6 ("A trial court need not make findings of fact on undisputed matters."). Specifically, the Debtor testified that with the exception of a painting purchased in Venezuela, he has no issue with this Court awarding Ms. Castillo all household items located in the Homestead. [Hr'g Tr. 160:1−161:1, May 12, 2015]; [*see* Doc. No. 485-4].

Thus, with respect to the household items located in the Homestead, the Court awards Ms. Castillo the following community property:

- Main House, Master Bedroom Items:
  - King Bed
  - Night Stands (2)
  - Lamps (2)
  - Candelabra
  - Dresser
  - 56" TV
  - Dressing Benches in Closet (2)
- Main House, Bedroom 1 Items:
  - Queen Bed
  - Dresser
  - Night Stands (2)
  - Lamps
  - 46" TV
- Main House, Bedroom 2 Items:
  - Dresser
  - Lamps (2)
  - 46" TV
- Main House, Bedroom 3 Items:
  - Queen Bed
  - Dresser
  - Night Stands (2)
  - Lamps (2)
  - 46" TV
- Main House, Media Room:
  - Love Seats (6)
  - Large Screen
  - TV Projector

  - Stereo & Entertainment Equipment and Speakers
  - Race Car Simulator
- Main House, Living Room:
  - Sofa
  - Chairs (3)
  - Coffee Table
  - Corner Tables (2)
  - Long Sofa Table
- Main House, Dining Room:
  - Wooden Table for 6
  - Dining Chairs covered in fabric
  - Buffet Table
  - Large Mirror
- Guest House, Bedroom:
  - Queen Bed
  - Dresser
  - Night Stands (2)
  - 46" TV
- Guest House, Living/Kitchen Room:
  - Sofa
  - Arm Chairs (2)
  - Coffee Table
  - End Tables (2)
  - Lamps (2)
  - Entertainment Center
  - 56" TV[70]
  - Surround Sound Equipment & Stereos with Speakers
  - Round Dining Table
  - Chairs (3)

[Finding of Fact No. 234]; [Trustee's Ex. ii, pp. 1−7 of 15]; [Doc. No. 285-4]. With regard to the 56" TV, the surround sound equipment/stereos with speakers, the round dining table, and the three chairs, Ms. Castillo has requested that the Court award such items to the Debtor. [Doc. No. 333, p. 7 of 29]. However, based on the Debtor's testimony that Ms. Castillo could have all household items in the Homestead, [Hr'g Tr. 160:1−161:1, May 12, 2015], and the fact that the

[70] In the Debtor's Notice of Asset Chart 3, he lists as item #5 the "Guest House/Living Room/Kitchen Area: 56" TV" and requests that this Court award this item to "JC" (i.e., to the Debtor). [Doc. No. 285-3, p. 2 of 12]. However, the Debtor lists the same item in his Notice of Assets Chart 4 and requests that this Court award this same item to Ms. Castillo. [Doc. No. 285-4, Item #48]. The Court is uncertain as to whether this is a mistake on the Debtor's part. However, based on the Debtor's testimony, [Hr'g Tr. 160:1−161:1, May 12, 2015], the Court will award this asset to Ms. Castillo.

Debtor has requested this Court to award such items to Ms. Castillo as set forth in the Debtor's Notice of Assets Chart 4, [Doc. No. 285-4, pp. 9−10 of 15], the Court will award these items to Ms. Castillo. Based on the Parties' agreed-upon values of each of the assets described above, the value of all the household goods awarded to Ms. Castillo totals approximately $43,600.00. [*See* Doc. No. 285-4]; [*see* Doc. No. 333].

On the other hand, the Debtor has requested—and Ms. Castillo has agreed—that this Court award to the Debtor the following household items currently located in storage. [*See* Hr'g Tr. 161:7−13, May 12, 2015]. Thus, this Court awards all of the following household goods currently located in storage, along with the painting from Venezuela, to the Debtor:

- King Bed
- Night Stands (2)
- Night Stand (valued at $175.00)
- Lamps (2) (valued at $125.00)
- Lamps (2) (valued at $175.00)
- Lamp (valued at $75.00)
- Dresser (valued at $275.00)
- Dresser (valued at $375.00)
- 56" TV
- Dining Table with 6 Chairs
- Dining Room Table for 4
- Buffet Table
- Area Rug
- Sofa
- Arm Chair
- Wooden Bench
- Coffee Table
- End Tables (2)
- Queen Bed
- 46" TV
- Iron Base Table with Marble Top
- Xbox with Games
- DVD
- Small Appliances, Dishes & Glasses
- Assorted Sporting Equipment
- Laptop Computer
- 4 x 5 Painting from Venezuela

[Finding of Fact No. 234]; *Limbaugh*, 71 S.W.3d at 6 ("A trial court need not make findings of fact on undisputed matters."). Based on the Parties' agreed-upon values of each above item, the value of all the household goods awarded to the Debtor totals approximately $9,875.00. [*See* Doc. No. 285-4]; [*see* Doc. No. 333]; *Limbaugh*, 71 S.W.3d at 6 ("A trial court need not make findings of fact on undisputed matters.").

b. Community Firearms

With respect to the seven firearms, the Court recognizes an inconsistency in the Debtor's position on whether he would like them to be awarded to Ms. Castillo or himself. The Debtor, under oath, unequivocally testified that he would like all firearms to be awarded to Ms. Castillo:

> Q: Let's move on to Page 4 of Exhibit Number 57.
> A: (Witness reviews exhibit.)
> Q: And there is a section entitled "Gun Collection."
> A: Yes, sir.
> Q: The seven guns that are identified are – were they purchased during marriage?
> A: Yes, sir.
> Q: Were they purchased using community funds?
> A: Yes, sir.
> Q: Are you asking that those be awarded to Ms. Castillo?
> A: Yes.

[Hr'g Tr. 167:14−24, May 12, 2015]; [Ms. Castillo's Ex. No. 57, Bates #4]. This Court then asked for further clarification from the Debtor:

> COURT: I didn't hear that one. Mr. Castillo, are you asking that the guns all be awarded to Ms. Castillo?
> A: Yes, sir.

[Hr'g Tr. 168:1−3, May 12, 2015]. However, on July 27, 2015, the Debtor filed his Notice of Assets and attached an exhibit entitled, "Household Furniture, Clothing, Jewelry, Firearms, and Motor Vehicles to be Partitioned to [Juan Carlos] Castillo" (previously defined as Notice of Assets Chart 3). [Finding of Fact No. 13]. In the Debtor's Notice of Assets Chart 3, the Debtor

requests that this Court award the firearms to him rather than Ms. Castillo, [Doc. No. 285-3, pp. 9−11 of 12]—which is directly contrary to his testimony at trial. In any event, the Debtor's testimony adduced at trial was under oath and, therefore, is considered part of the record and has a binding effect on the Debtor. *See Bloom v. Bloom*, 767 S.W.2d 463, 470−71 (Tex. App.—San Antonio 1989, writ denied) ("[T]he administration of an oath to a witness by a competent officer is a fundamental and essential requirement to give the witness' testimony binding force, and is a prerequisite to giving of evidence."). On the other hand, the subsequent chart that the Debtor filed is not part of the record and/or not admitted into evidence. Because the Debtor has testified under oath that he would like all seven guns to be awarded to Ms. Castillo, this Court will award Ms. Castillo the following community firearms:

- 12 Gauge Browning Single Barrel Pump Shotgun (50 Pump Action BB Rifle)
- 45 Caliber HNK Automatic Pistol ($1,500.00)
- 45 Caliber HNK Automatic Pistol ($700.00)
- Sig Sauer AR 15 Assault Rifle ($2,000.00)
- Kimber .45 Caliber Pistol ($500.00)
- Sig Sauer 9mm Pistol ($500.00)
- 50 Pump Action BB Rifle (Value Unknown)

[Finding of Fact No. 238]; [*see* Ms. Castillo's Ex. No. 57, Bates #4]; [Hr'g Tr. 168:1−3, May 12, 2015]; [*see* Doc. No. 333, pp. 22−23 of 29]; [*see* Doc. No. 285-1, pp. 23−24 of 36]. Based on the estimated values agreed upon by the Parties, as set forth above, Ms. Castillo is awarded all community firearms with a total value of at least $5,450.00. [*See* Doc. No. 333, pp. 22−23 of 29]; [*see* Doc. No. 285-1, pp. 23−24 of 36]; *Limbaugh*, 71 S.W.3d at 6 ("A trial court need not make findings of fact on undisputed matters."). Accordingly, the Court does not award any of the firearms to the Debtor.

c. Community Jewelry and Watches

The Debtor has requested that this Court award the following community personal property to Ms. Castillo and, as there is no disagreement from Ms. Castillo regarding these items, the Court will award the following community property to Ms. Castillo, *Limbaugh*, 71 S.W.3d at 6:

- LDS Band, 18 KT WG MTG with 25 RBC DIAS TW .14 CTS, G-H, SI ($1,072.00)[71]
- LDS Chopard Happy Sport Watch, SST, Style #278349-3006 ($10,000.00)[72]
- LDS Rolex DATE JUST WATCH, OYSTER PERPETUAL DATE JUST, SS/18 KT WG, DIA BZL, MOP DIAL, JBL BRACELET, Model #11624449UB6360 ($18,673.00)[73]
- LDS Rolex Watch Oyster Perpetual, Model #76183 ($8,877.00)[74]

Based on the above values agreed upon by the Parties, Ms. Castillo is awarded a value of $38,622.00 in community jewelry and watches. The Court further awards the following community property to Ms. Castillo on behalf of her daughter, A.G.C., as the Debtor purchased the below item as a gift for A.G.C.:

- PR Stud Earrings, 14 KT WG MTG with 2 RD DIAS TW .20 CTS, I SI

[Hr'g Tr. 177:13−20, May 11, 2015]; [*see* Ms. Castillo's Ex. Nos. 57 & 58].

The remaining community jewelry that is in dispute includes the following men's watches:

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[71] [Doc. No. 333, p. 19 of 29]; [Doc. No. 285-4, p. 10 of 15].

[72] [Doc. No. 333, p. 19 of 29]; [Doc. No. 285-4, p. 11 of 15].

[73] The Court notes a typographical error in Ms. Castillo's Chart of Assets wherein she states that the "[v]alue of asset per Juan Castillo" for this particular item is $186,730.00. This amount should be $18,673.00, as reflected in the Debtor's Notice of Assets Chart 4 attached to Docket Number 285. [Doc. No. 333, p. 20 of 29]; [Doc. No. 285-4, p. 11 of 15].

[74] [Doc. No. 333, p. 20 of 29]; [Doc. No. 285-4, p. 12 of 15].

- GTS Rolex Watch Oyster Perpetual Dayton Cosmo, SST, Blk Dial, Auto Mvmt, Oyster BRC, Model #116520A30B7859 (*note:* Ms. Castillo gave this watch to Bobby Newman to pay his fees for representing her)
- GTS Hublot Big Band Watch, Model #301, Serial #695653
- GTS Rolex Sea Dweller Watch, Model #11660A30B9821
- GTS Rolex Watch, GMT Master II, BL and Red Rotating BZL, Model No. 16710, Serial No. Y393754

[Hr'g Tr. 163:17−164:24, May 12, 2015]; [*see* Ms. Castillo's Ex. No. 57, pp. 1 & 3]; [*see* Doc. No. 285-1, p. 35 of 36]. The Court acknowledges that the first watch—i.e., GTS Rolex Watch Oyster Perpetual Dayton Cosmo (community property)—along with the GTS Daytona Cosmograph Watch (the Debtor's separate property) are no longer in the possession of the Parties, as Ms. Castillo gave both watches to Newman to pay his fees. [*See* Ms. Castillo's Ex. No. 57, Bates #1]; [*see* Finding of Fact No. 77]. In any event, the Debtor requests that the remaining three watches be awarded to him, [Doc. No. 285-3, pp. 8 & 9 of 12], and Ms. Castillo requests that the same three watches be awarded to her, [Doc. No. 333, pp. 17 & 21 of 29].

This Court previously concluded that the GTS Daytona Cosmograph Watch is the Debtor's separate property, as it was a gift from Clover. [*See supra* Part IV(D)(2)]. There is no question that Ms. Castillo, without authorization, gave Newman the Debtor's separate property (i.e., GTS Daytona Cosmograph Watch) in addition to a watch that was community property (i.e., GTS Rolex Watch Oyster Perpetual Dayton Cosmo). [*See* Finding of Fact No. 77]. In exchange for these two watches, Ms. Castillo gained credit of at least $10,000.00 as part of her payment for her personal attorneys' fees. [*Id.*].

The Court notes that, during trial, the Debtor testified that the appraisal done by Jeweler's Mutual, [Ms. Castillo's Ex. No. 57], is accurate, [Hr'g Tr. 166:4−7, May 13, 2015]. He also testified that if there are any discrepancies between the values listed in the appraisal and the values listed on his inventory list, the values set forth in the Jeweler's Mutual appraisal are more

reliable. [Hr'g Tr. 166:11−20, May 13, 2015]. Therefore, according to the Jeweler's Mutual appraisal, the value of the GTS Rolex Watch Oyster Perpetual Dayton Cosmo is $12,178.00 and the value of the GTS Daytona Cosmograph Watch is also $12,178.00. [Doc. No. 333, p. 21 of 29]; [Ms. Castillo's Ex. No. 57, p. 2 of 3]. Given the values set forth in the Jeweler's Mutual appraisal and in her Chart of Assets, Ms. Castillo gave away the total value of $12,178.00 of the community estate (i.e., GTS Rolex Watch Oyster Perpetual Dayton Cosmo) to a third party—$6,089.00 of which is her community share (i.e., 50%). Ms. Castillo further stole the Debtor's separate property (i.e., GTS Daytona Cosmograph Watch), which is valued at $12,178.00 as set forth by Ms. Castillo's Chart of Assets and the Jeweler's Mutual appraisal. [Doc. No. 333, p. 21 of 29]; [Ms. Castillo's Ex. No. 57, p. 2 of 3].

Moreover, the values of the remaining three community watches are as follows: (1) GTS Hublot Big Band Watch ($14,900.00), [Ms. Castillo's Ex. No. 58]; (2) GTS Rolex Sea Dweller Watch ($10,013.00), [Doc. No. 333, p. 17 of 29], [Doc. No. 285-1, p. 18 of 36]; and (3) GTS Rolex Watch, GMT Master II ($4,775.00), [Doc. No. 333, p. 21 of 29], [Doc. No. 285-1, p. 22 of 36]. Again, the Court recognizes that Ms. Castillo took property belonging to the community estate and the Debtor's separate estate to help fund her personal attorneys' fees, and the Debtor should be compensated for the loss of his portion of the community estate as well as for the loss of his separate property. As discussed above, Ms. Castillo has already been awarded community jewelry and watches valued at a total of $38,622.00. The Debtor must be compensated for his loss of community property and his separate property and, therefore, the Court awards to the Debtor all three remaining community watches valued at $14,900.00, $10,013.00, and $4,775.00, respectively. The Debtor is therefore awarded the total value of $29,688.00 in community watches.

d. Community Automobiles

At trial, Ms. Castillo testified about vehicles purchased during the marriage of the Parties and expressly requested that this Court award her the following automobiles:

- 2003 Biesse Go Kart ($1,000.00)
- 2004 Biesse 125 Go Kart ($1,000.00)
- 2004 Hallmark Trailer ($5,000.00)
- 2005 Monza 125 Go Kart ($1,000.00)
- 2008 KTM 450 Motorcross Motorcycle ($4,000.00)
- 2010 Polaris Razor XP RV Blue ($7,000.00)
- 2011 Polaris Razor XP RV Red ($5,000.00)
- 2011 14' Trailer ($1,000.00)
- 2011 Yamaha 233 Dirt Bike ($2,000.00)
- 2015 Mercedes Benz ($33,475.00)
- 2007 Bimota Delirio Motorcyle ($10,000.00)
- 2010 Porsche GT3 ($73,000.00)

[*See* Hr'g Tr. 155:4−174:24, May 7, 2015]; [*see* Finding of Fact No. 235]. According to the Notice of Assets Chart 4, the Debtor requests that this Court award the following vehicles to Ms. Castillo. As Ms. Castillo clearly does not dispute the Debtor's request, the Court awards the following vehicles to Ms. Castillo:

- 1975 Honda 50 Motorcycle ($1,000.00)
- 2003 Biesse Go Kart ($1,000.00)
- 2004 Biesse 125 Go Kart ($1,000.00)
- 2004 Hallmark Trailer ($5,000.00)
- 2005 Monza 125 Go Kart ($1,000.00)
- 2008 KTM 450 Motorcross Motorcycle ($4,000.00)
- 2010 Polaris Razor XP RV Blue ($7,000.00)
- 2011 Polaris Razor XP RV Red ($5,000.00)
- 2011 14' Trailer ($1,000.00)
- 2011 Yamaha 233 Dirt Bike ($2,000.00)
- 2015 Mercedes Benz ($33,475.00)
- 2010 Chevrolet Silverado (for the Parties' son)

The approximate aggregate value of all the above vehicles totals $61,475.00. On the other hand, the Debtor has requested this Court to award the following three vehicles to him:

- 2007 Bimota Delirio Motorcyle ($10,000.00)
- 2010 Porsche GT3 ($73,000.00)

- Ducati Motorcycle (Year Unknown) ($9,295.00)

Thus, the Debtor has requested that the Court award him the total value of $92,295.00 in the community vehicles. However, the Court will not do so. Specifically, the Debtor testified that he sold a 2011 Audi R-85 in January of 2012 to his cousin, Luis Angel Rincon, for a total of $120,000.00. [Finding of Fact No. 236]. Ms. Castillo credibly testified that she does not know what happened to this vehicle, [*Id.*], but that the Debtor informed her that the vehicle was in Miami, [Hr'g Tr. 156:14−18, May 7, 2015]. There is also no evidence that such proceeds were placed into the Joint Account or that Ms. Castillo had access to the proceeds of this sale. The above circumstances lead this Court to conclude that the Debtor sold the Audi without Ms. Castillo's consent or knowledge, and then either pocketed the entire $120,000.00 or used the funds to purchase some other asset for himself about which Ms. Castillo (nor this Court) has any knowledge. Because the Audi was purchased using community funds (and the Debtor has not shown by clear and convincing evidence that this vehicle is *not* community property), Ms. Castillo should be compensated for the loss of her community share of approximately $60,000.00.

Assuming the Court divides the vehicles (and the values) pursuant to the Debtor's request, the Debtor would receive a significantly higher amount in value for the vehicles. And, the Debtor has not attempted to compensate Ms. Castillo for her loss of the community share when selling the 2011 Audi R-8 and, therefore, the Court will do so. Had the amount of $120,000.00 (i.e., proceeds from the 2011 Audi R-8 sale) been included in the above list, each party would be entitled to value of $136,885.00[75] for the community vehicles. Given the above

[75] $153,770.00 (aggregate value of all community vehicles not sold and presently listed above) + $120,000.00 (amount the Debtor sold the 2011 Audi R-8 for) = $273,770.00 (total of value in community vehicles if no vehicles

circumstances, the Court will award Ms. Castillo the 2010 Porsche GT3 which is valued at $73,000.00. Consequently, the Court awards the Debtor the 2007 Bimota Delirio Motorcyle ($10,000.00) and the Ducati Motorcycle ($9,295.00).

5. A "Just and Right" Division of the Community Estate Consists of a Partition in Kind of the Airline Miles and Club Memberships of the Parties

The Parties are in agreement that the United Airlines frequent flyer miles that were earned on Ms. Castillo's credit card should be partitioned to Ms. Castillo and the United Airlines frequent flyer miles that were earned on the Debtor's credit card should be partitioned to the Debtor. [Doc. No. 285-1, p. 31 of 36]; [Doc. No. 333, p. 29 of 29]. Thus, the Court awards any United Airlines frequent flyer miles earned on Ms. Castillo's card to her, and it awards any United Airlines frequent flyer miles earned on the Debtor's card to him.

The Parties further agree that the membership to the Porsche Club should be partitioned to the Debtor. [Doc. No. 285-1, p. 31 of 36]; [Doc. No. 333, p. 29 of 29]. Thus, the Court awards the non-transferable membership to the Porsche Club to the Debtor.

Lastly, the Parties agree that the Hilton Honors Points that were earned by Ms. Castillo should be partitioned to her and the Hilton Honors Points that were earned by the Debtor should be partitioned to him. [Doc. No. 285-1, p. 31 of 36]; [Doc. No. 333, p. 29 of 29]. Thus, the Court awards any Hilton Honors Point earned by Ms. Castillo to her and any Hilton Honors Points earned by the Debtor to him.

6. A "Just and Right" Division of the Community Estate Consists of a Partition in Kind of the Community Bank Accounts of the Parties

The Parties agree that the following bank accounts were acquired during their marriage and, thus, are community assets, [*see* Finding of Fact No. 239]:

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had been sold). Under normal circumstances, of the $273,770.00, Ms. Castillo's community share would be $136,885.00 and the Debtor's community share would be $136,885.00.

- Bank of America Checking Account No. xxxx-xx-9610
- Bank of America Savings Account No. xxxx-xx-3970
- Chase Bank Checking Account No. xxxxxxxx6875
- Chase Bank Savings Account No. xxxxxxxx8220
- TD Ameritrade Account No. xxx-xx5044

First, the Parties agree that the funds in the Bank of America Checking Account (-9610) and the funds in the Bank of America Savings Account (-3970) should be turned over to the Trustee. [Findings of Fact Nos. 240 & 241]. As there is no dispute with regard to these accounts, the Court will not award these accounts to either the Debtor or Ms. Castillo but, rather, orders that the Trustee take control of the $563.59 which is currently on deposit between the two Bank of America accounts.

Second, Ms. Castillo requests that this Court award her the Chase Bank Checking Account (-6875) (containing $8,854.60) as well as the Chase Bank Savings Account (-8220) (containing $8.30). [Findings of Fact Nos. 242 & 243]. The Debtor requests that this Court divide these assets by apportioning a percentage to the Debtor and a percentage to Ms. Castillo. The aggregate amount of funds in these two bank accounts total $8,862.90. [Findings of Fact Nos. 242 & 243]. However, at trial, the Debtor unequivocally admitted that he transferred the amount of $60,000.00 from the Parties' Joint Account (-6875) to his personal Chase account (-1803). [Finding of Fact No. 78]. Although the Debtor may have been rightfully concerned that Ms. Castillo would "siphon" off all the funds in their Joint Account, [*see id*.], he nonetheless deprived Ms. Castillo of her community share of such funds (i.e., $30,000.00). Thus, the Court will award Ms. Castillo the funds currently on deposit in the Chase Bank Checking Account and the Chase Bank Savings Account in the aggregate amount of $8,862.90. The Court awards nothing to the Debtor with respect to the Parties' community bank accounts.

7. Division of Community Debts and Liabilities

There is a general consensus among Texas courts that "debts contracted during marriage are presumed to be on the credit of the community and thus are joint community obligations, unless it is shown that the creditor agreed to look solely to the separate estate of the contracting spouse [i.e., spouse who contracted the obligation] for satisfaction." *Cockerham v. Cockerham*, 527 S.W.2d 162, 171 (Tex. 1975); *Richardson v. Richardson*, 424 S.W.3d 691, 698 (Tex. App.—El Paso 2014, no pet.) ("A debt amassed by either spouse during marriage is presumptively a community debt."); *Henry v. Henry*, No. 03-11-00253-CV, 2014 WL 1572478, at *1 (Tex. App.—Austin Apr. 18, 2014, no pet.) ("When a lender does not specifically look to the borrower's separate property for payment, a community debt has been incurred, and the money borrowed or property bought is community property."). The party seeking to overcome this presumption must do so by clear and convincing evidence. *French v. French*, 2003 WL 86555, at *4 (Tex. App.—Fort Worth 2003).

Once a debt is deemed as a community obligation, a court should determine the liability of the spouses in making an equitable division of the estate. *Rodgers v. Rodgers*, 2014 WL 1604332, at *5 (Tex. App.—Amarillo Apr. 17, 2014, no pet.). It is important to note, however, that a community debt does not, in and of itself, create joint and several liabilities to the spouses. *Cockerham*, 527 S.W.2d at 171. In its 2013 case of *Tedder v. Gardner Aldrich, LLP*, the Texas Supreme Court clarified its prior analysis in *Cockerham*—which it conceded was misleading and confusing with regard to the issue of a spouse's liability on the community debt—and made clear that "one spouse's liability for debts incurred by or for the other is determined by statute." *Tedder v. Gardner Aldrich, LLP*, 421 S.W.3d 651, 654−56 (Tex. 2013). Thus, a court must look

to the following sections of the Texas Family Code to determine whether one spouse is liable for debts incurred by the other spouse:

> Section 3.201(a) states:
>
> > A person is personally liable for the acts of the person's spouse only if:
> > (1) the spouse acts as an agent for the person; or
> > (2) the spouse incurs a debt for necessaries as provided by [Section 2.501].
>
> Section 2.501 states:
>
> > (a) Each spouse has the duty to support the other spouse.
> > (b) A spouse who fails to discharge the duty of support is liable to any person who provides necessaries to the spouse to whom support is owed.

Id. at 655; Tex. Fam. Code Ann. §§ 3.201(a) & 2.501.

a. Credit Card Debts

First, with respect to the several unsecured credit card debts, there is no question that these credit card accounts were opened during the marriage of the Parties. [Findings of Fact Nos. 246, 247, 248, 249, 250 & 251]. And, although the several credit cards were under Ms. Castillo's name, the Debtor does not dispute that these debts are nonetheless part of the community estate. [*See* Ms. Castillo's Ex. No. 57, Bates #6]. Because neither party has provided any evidence to rebut the well-established presumption under Texas law and there is no evidence that any of these creditors agreed to look solely to either Ms. Castillo's separate property or the Debtor's separate property for payment, the Court concludes that the unsecured debts incurred on these credit card accounts are indeed debts incurred by the community—namely, Ms. Castillo *and* the Debtor. *See Cockerham*, 527 S.W.2d at 171; *Mock v. Mock*, 216 S.W.3d 370, 373−74 (Tex. App—Eastland 2006); *French*, 2003 WL 86555, at *4 (affirming the trial court's finding that unsecured debts—such as medical bills and a personal loan from her parents—incurred by the ex-wife were community debts because the ex-husband did not

overcome the presumption [that the debts were community debts] by clear and convincing evidence). Unfortunately, in the case at bar, there is no evidence in the record that provides this Court information about what purchases were made, for whom they were made, the purpose of such purchases, or who made these purchases. Thus, the Court can only presume that the obligations incurred on these credit card accounts are debts incurred by the community, rather than a debt incurred by solely Ms. Castillo or solely by the Debtor.

Ms. Castillo has requested that this Court require the Debtor to pay all these unsecured credit card debts. [Hr'g Tr. 203:8−10, May 7, 2015]. In normal circumstances, this Court would not do so. However, as the Debtor transferred $60,000.00 from the Joint Account to his personal account—thereby eliminating Ms. Castillo's ability to access her share of the community property (i.e., $30,000.00)—this Court finds it only just and right to compensate her by ordering the Debtor to pay for the unsecured credit card debts (in addition to the $8,862.90 in the Chase accounts that was previously awarded to Ms. Castillo as set forth above). Accordingly, the Debtor is ordered to pay the unsecured credit card debts totaling $15,843.20 as set forth below.[76]

Dillard's Credit Card (xxxx5242) – balance of $1,468.11

With respect to the community debt incurred on the Dillard's credit card, the Court orders that the Debtor pay the total debt of $1,468.11 (as of April 30, 2015). [*See* Finding of Fact No. 247]. To the extent that additional debt was incurred on the Dillard's credit card at any time between April 30, 2015 and the date of these FOF & COL, the Debtor and Ms. Castillo will each be responsible for one-half of the total balance that was incurred during such time. *See Cockerham*, 527 S.W.2d at 173 ("It is well established that the trial court has wide discretion in

[76] $1,468.11 + $9,323.18 + $2,280.99 + $1,303.77 + $1,467.15 = $15,843.20.

the division of property on divorce and it will be disturbed only when an abuse of discretion is shown.").

GAP Visa Credit Card (xxx8491) – balance of $9,323.18

With respect to the community debt incurred on the GAP Visa credit card, the Court orders that the Debtor pay the total debt of $9,323.18 (as of April 14, 2015). [*See* Finding of Fact No. 248]. To the extent that additional debt was incurred at any time between April 14, 2015 and the date of these FOF & COL, the Debtor and Ms. Castillo will each be responsible for one-half of the total balance that was incurred during such time. *See Cockerham*, 527 S.W.2d at 173 ("It is well established that the trial court has wide discretion in the division of property on divorce and it will be disturbed only when an abuse of discretion is shown.").

Neiman Marcus Credit Card (xxx9552) – balance of $2,280.99

With regard to the community debt incurred on the Neiman Marcus credit card, the Court orders that the Debtor pay the total debt of $2,280.99 (as of April 5, 2015). [*See* Finding of Fact No. 249]. To the extent that additional debt was incurred at any time between April 5, 2015 and the date of these FOF & COL, the Debtor and Ms. Castillo will each be responsible for one-half of the total balance that was incurred during such time. *See Cockerham*, 527 S.W.2d at 173 ("It is well established that the trial court has wide discretion in the division of property on divorce and it will be disturbed only when an abuse of discretion is shown.").

Macy's Credit Card (xxx4460) – balance of $1,303.77

With regard to the community debt incurred on the Macy's credit card, the Court orders that the Debtor pay the total debt of $1,303.77 (as of March 12, 2015). [*See* Finding of Fact No. 250]. To the extent that additional debt was incurred at any time between March 12, 2015 and the date of these FOF & COL, the Debtor and Ms. Castillo will each be responsible for one-half

of the total balance that was incurred during such time. *See Cockerham*, 527 S.W.2d at 173 ("It is well established that the trial court has wide discretion in the division of property on divorce and it will be disturbed only when an abuse of discretion is shown.").

Nordstrom's Credit Card (xxxx8339) – balance of $1,467.15

With respect to the community debt incurred on the Nordstrom's credit card, the Court orders the Debtor to pay the total debt of $1,467.15 (as of April 10, 2015). [*See* Finding of Fact No. 251]. To the extent that additional debt was incurred at any time between April 10, 2015 and the date of these FOF & COL, the Debtor and Ms. Castillo will each be responsible for one-half of the total balance that was incurred during such time. *See Cockerham*, 527 S.W.2d at 173 ("It is well established that the trial court has wide discretion in the division of property on divorce and it will be disturbed only when an abuse of discretion is shown.").

b. Personal Loans

With regard to the three personal loans procured by Ms. Castillo, this Court must look to section 3.201(a) and section 2.501 of the Family Code to determine whether the Debtor is liable for the debts incurred by Ms. Castillo—namely, the three personal loans Ms. Castillo obtained from her father, mother, and sister. *See Teddy*, 421 S.W.3d at 655. There is no question that Ms. Castillo borrowed a rather significant amount of money from her father (approximately $25,000.00), her mother ($5,000.00), and her sister ($3,000.00). [*See* Findings of Fact Nos. 246, 252 & 253]. Under section 3.201(a) of the Family Code, the Debtor is not personally liable for Ms. Castillo's debts unless (1) Ms. Castillo incurred the debt as the Debtor's agent, or (2) the Debtor failed to support Ms. Castillo and the debt is for "necessaries." Tex. Fam. Code Ann. §§ 3.201(a). Here, there is no evidence that Ms. Castillo incurred these debts as the Debtor's agent, [*see* Tex. Fam. Code Ann. § 3.201(c) ("A spouse does not act as an agent for the other spouse

solely because of the marriage relationship."], therefore the only avenue for the Debtor to have liability is if he failed to support Ms. Castillo and these loans from her family members were for her to purchase "necessaries."

Generally, a spouse's necessaries "are things like food, clothing, and habitation—that is, sustenance . . . ." *Tedder*, 421 S.W.3d at 656. Specifically, citing a 1951 case—*Carle v. Carle*, 234 S.W.2d 1002, 1005 (Tex. 1951)—the Texas Supreme Court reiterated in *Tedder* that:

> *[I]t is not a correct approach . . . to classify the wife's attorney's fees as a necessity, and then apply the rule that necessities are primarily the obligations of the community and secondarily of the husband's separate estate* . . . . [T]he trial court [has discretion] in determining the proper division of the community estate of the parties . . . . The attorney's fee is but a factor to be considered by the court in making an equitable division of the estate, considering the conditions and needs of the parties and all of the surrounding circumstances. The court of appeals overlooked *Carle*, as have others. To the extent those opinions are inconsistent with today's decision, we disapprove them.

Tedder, 421 S.W.3d at 656 (emphasis added). Indeed, the Texas Supreme Court has repeatedly rejected the view that legal fees incurred by one spouse in a divorce proceeding are considered "necessaries."[77] *Id.*

Loan from Mason Holsworth – balance of approximately $25,000.00

During the pendency of the Divorce Action, Ms. Castillo's father, Mason Holsworth, loaned between $20,000.00−$25,000.00 to Ms. Castillo so that she could pay for her attorneys' fees. [Findings of Fact Nos. 40 & 252]. There is no question that this loan constitutes a community debt, as the Debtor did not provide any clear and convincing evidence that

[77] This Court, however, does recognize that section 6.708(c) of the Family Code—applicable to suits for dissolution of marriage filed ***on or after September 1, 2013***—provides that: "In a suit for dissolution of a marriage, the court may award reasonable attorney's fees and expenses." Tex. Fam. Code Ann. § 6.708(c). As Ms. Castillo initiated the Divorce Action ***before*** September 1, 2013, [Finding of Fact No. 2], this section is not applicable in the case at bar. *See Dias v. Dias*, 2014 WL 6679525, n. 2 (Tex. App.—Corpus Christi Nov. 25, 2014, pet. filed) ("This provision [6.708(c)] was added in 2013 and was not applicable at the time this petition for divorce was filed.").

overcomes the presumption that all debts acquired during the marriage are considered a community obligation. However, as discussed earlier, the Debtor is not personally liable for Ms. Castillo's debts unless: (1) Ms. Castillo incurred the debt as the Debtor's agent—which she clearly did not in this particular instance; or (2) the Debtor failed to support Ms. Castillo and the debt is for necessaries. Tex. Fam. Code Ann. §§ 3.201(a); *Tedder*, 421 S.W.3d at 655−56. This Court does not need to address whether the Debtor has failed to support Ms. Castillo because at trial, her father testified that he "loaned [Ms. Castillo] money to pay lawyers." [Findings of Fact Nos. 40 & 252]. He further testified that he loaned Ms. Castillo "in [the] neighborhood [of $25,000.00]." [Finding of Fact No. 40]. From this testimony, it is evident that the loan amount of approximately $25,000.00 was not incurred for the purpose of paying necessaries such as "food, clothing, and habitation." *Tedder*, 421 S.W.3d at 656.

Thus, the Texas Supreme Court's ruling in *Tedder* and the testimony of Holsworth lead this Court to conclude that the Debtor is not liable for the amount of approximately $25,000.00 loaned to Ms. Castillo from her father. *Tedder*, 421 S.W.3d at 656 ("[W]e have squarely rejected the view that a spouse's legal fees in a divorce proceeding fall into [the category of necessaries]."). Accordingly, Ms. Castillo is solely responsible for the entire loan amount to her father of approximately $25,000.00.

Loan from Lynette Keton – balance of $5,000.00

Ms. Castillo's mother, Lynette Keton, loaned $5,000.00 to Ms. Castillo during the course of the Parties' marriage. [Finding of Fact No. 253]. During trial, Ms. Castillo testified that she "had to borrow money from [her] family to pay bills so [her] car wouldn't . . . [be repossessed]" and that ". . . [her] my mom[] had to get groceries for the kids." [Hr'g Tr. 55:18−21, May 7, 2015]. Again, there is no question that this loan constitutes a community debt as the Debtor did

not provide any clear and convincing evidence to overcome the presumption that all debts acquired during the marriage are considered a community obligation.

However, Ms. Castillo has failed to identify the amount borrowed from Lynette Keton that she actually used for necessaries. Moreover, this Court has been unable to find Texas case law that sets forth the level of proof that a spouse is required to show in order to prove that certain debts were incurred for necessaries. In any event, Ms. Castillo did provide credible testimony that she had to borrow money from her family to pay her car bill—a debt that this Court considers a necessary. In an effort to justly and equitably divide the community estate and based on Ms. Castillo's testimony at trial, the Court concludes that at least some, if not all, of the loan of $5,000.00 was used for necessaries. Accordingly, the Court divides the loan debt of $5,000.00 as follows:

- 50% of the debt to the Debtor = $2,500.00
- 50% of the debt to Ms. Castillo = $2,500.00

Loan from Suzanne Cornett – balance of $3,000.00

Similarly, Ms. Castillo's sister, Suzanne Cornett, loaned $3,000.00 to Ms. Castillo during the course of the Parties' marriage. [Finding of Fact No. 253]. Once again, the Debtor has not provided any clear and convincing evidence that overcomes the presumption that all debts acquired during the marriage are considered a community obligation. As discussed immediately above, Ms. Castillo has failed to identify the amount borrowed from Suzanne Cornett that she actually used for necessaries. However, in an effort to justly and equitably divide community estate and based on Ms. Castillo's testimony regarding her need to borrow money from family to pay for bills, the Court concludes that at least some, if not all, of the amount of $3,000.00 was used for necessaries. Accordingly, the Court divides the loan debt of $3,000.00 as follows:

- 50% of the debt to the Debtor = $1,500.00

- 50% of the debt to Ms. Castillo = $1,500.00

c. Ad Valorem Tax Debts – Approximately $48,129.86

As stated above, the Family Law Court had issued the Agreed Temporary Order setting forth that Ms. Castillo "shall be responsible for the timely payment of . . . monthly debts related to assets temporarily awarded to [Ms. Castillo]." [*See* Ms. Castillo's Ex. No. 134, Bates #20 ¶ 8.3]; [Finding of Fact No. 123]. The Agreed Temporary Order also awarded Ms. Castillo with temporary use and possession of the Homestead, [*see* Ms. Castillo's Ex. No. 134, Bates #19 ¶ 8.1], thus, she was responsible for the *ad valorem* taxes on the Homestead, [Finding of Fact No. 123]. However, despite receiving spousal maintenance payments and child support payments, she has not paid the *ad valorem* taxes in full to the taxing authorities, and still owes approximately $48,129.86. [*Id*.].

It is undisputed that these *ad valorem* taxes were incurred during marriage and that, but for the Agreed Temporary Order, they would be characterized as a community debt. Nevertheless, the Agreed Temporary Order—which sets forth that Ms. Castillo is responsible for "debts related to assets temporarily awarded" to her—was in effect at the time these *ad valorem* taxes became due; and, the Family Law Court has not issued any order that supersedes this provision in the Agreed Temporary Order. Moreover, Ms. Castillo has been receiving child support payments and spousal maintenance payments from the Debtor in the amount of $12,138.00 a month for the last ten months and she could have used a portion of these funds to timely pay the *ad valorem* taxes. She has failed to do so. Ms. Castillo should not be able to reap the benefits of living in the Homestead during the pendency of the Divorce Action while thumbing her nose at the Agreed Temporary Order and failing and/or refusing to pay all the *ad valorem* taxes owed on the Homestead. Indeed, Ms. Castillo's failure to live up to the terms of an order that she (through her attorneys in the Family Law Court) agreed upon despite having the

funds to do so (received from the Debtor's monthly support payments) reflects an arrogance that is very disturbing to this Court. This Court takes into account her "having my cake and eating it, too" attitude when deciding what is "just and right" in dividing the community property.

Thus, based on the terms of the Agreed Temporary Order and taking into account the Just and Right Division Factors, the Court now determines that it is only "just and right" that Ms. Castillo be responsible for paying the *ad valorem* taxes due and owing to the Harris County Tax Assessor and Klein ISD. *See Arthur v. Arthur*, 1995 WL 17212334, at *2 (Tex. App.—Eastland Mar. 1, 1995) (affirming trial court's order that appellant pay the property taxes because "[t]he agreed temporary orders provided that appellant was responsible for those taxes. The temporary orders were in effect at the time the property taxes were due because the divorce decree had not been signed and because there was no further order by the trial court."); *see In re. S.A.A.*, 279 S.W.3d 853, 857 ("A [] court also has authority and discretion to impose the entire tax liability of the parties on one spouse."). The Court comes to this conclusion because Ms. Castillo has had the resources to make payments to the Harris County Tax Assessor and Klein ISD (by virtue of her receiving child support and spousal maintenance payments) and was unquestionably responsible for making such payments (pursuant to the Agreed Temporary Order) while she resided in the Homestead. *See LaFrensen v. LaFrensen*, 106 S.W.3d 876, 877 (Tex. App.—Dallas 2003, no pet.); *In re P.J.H.*, 25 S.W.3d 402, 405 (Tex. App.—Fort Worth 2000, no pet.) (a trial court does not abuse its discretion if there is some evidence of a substantive and probative character to support the decision).

8. <u>There is No Dispute Regarding the Change of Beneficiaries on the Parties' Life Insurance Policies</u>

Currently, the Parties have two life insurance policies. One policy is a Liberty Mutual Term Life Policy (already defined as the Debtor's Life Policy) that insures the life of the Debtor

for $1,000,000.00 and designates Ms. Castillo as the beneficiary. The second policy is a Liberty Mutual Term Life Policy (already defined as Ms. Castillo's Life Policy) that insures the life of Ms. Castillo for $500,000.00 and designates the Debtor as the beneficiary. There is no dispute that the Parties want the two life insurance policies to be changed for the benefit of the Children. [Hr'g Tr. 168:10−170:16, May 12, 2015]; [Hr'g Tr. 153:18−25, May 7, 2015]. Therefore, this Court orders that the beneficiary on the Debtor's Life Policy be changed from Ms. Castillo to the Children and that the beneficiary on Ms. Castillo's Life Policy be changed from the Debtor to the Children. The Court further orders that the Debtor continue to make payments on the premium for the Debtor's Life Policy and that Ms. Castillo make payments on the premium for Ms. Castillo's Life Policy.

9. A "Just and Right" Division of the Community Estate Consists of a Partition in Kind of the Debtor's Wages, Bonuses, and Commissions Earned During the Marriage

Generally, wages, bonuses, and commissions earned by a spouse during marriage are presumed to be community income. *See Zisblatt v. Zisblatt*, 693 S.W.2d 944, 954 (Tex. App.—Fort Worth 1985, writ dism'd); *In re Bathrick*, 1 B.R. 428, 430 (Bankr. S.D. Tex. 1979) ("Texas is a community property state in which the income produced by either spouse during marriage is community property."). And, once such "income" is identified as a community asset, a spouse is entitled to one-half of this community asset. *See Cockerham*, 527 S.W.2d at 173 ("We hold that . . . the 320-acre tract is . . . one-half the community property of the husband and the wife . . . ."). However, when dividing up marital property, a court may determine a division of that property to be less than one-half. *See Murff*, 615 S.W.2d at 698−99 (concluding that a division of the community estate need not be equal, and that the trial court may weigh many factors in reaching its decision). Nevertheless, as stated above, a spouse is only entitled to a division of property

that the community owns *at the time of the divorce*. *Smith*, 836 S.W.2d at 692 ("A spouse is only entitled to a division of property that the community owns at the time of the divorce.").

Here, there is uncontroverted testimony that during the marriage of the Parties, the Debtor earned a yearly base salary of $100,000.00 and received a bonus at the end of each year from Clover which is equal to two weeks' pay. [Finding of Fact No. 26]. The Debtor also earned three forms of commission: (1) the Discretionary 5% Commission (calculated based on the net profits generated from the Clover-Houston operations on the PDVSA account and the CITGO account); (2) the Overall 5% Commission (calculated based on Clover-Houston's total revenue generated in that particular year); and (3) the 5% EDC Commission. [Findings of Fact Nos. 27, 29, 30, 84, 85, 86 & 87].

There is also no question that the Debtor will continue receiving a yearly base salary of $100,000.00 and a bonus of approximately $3,850.00 at the end of each year. [Finding of Fact No. 26]. Based on the Parties' own admissions, the amount in the Joint Account has increased from $6,306.18 (as of September 22, 2015), [*see* Doc. No. 333, p. 1 of 29], to $8,854.60 (as of October 11, 2015), [*see* Doc. No. 338, p. 2 of 8]. [Finding of Fact No. 242]. This increase in the Joint Account leads this Court to conclude that the Debtor's weekly salary has been continually deposited into the Joint Account despite the initiation of the Divorce Action—an account to which both Parties have access. Thus, the Court notes that before (and after) the filing of the Divorce Action, Ms. Castillo has had complete access to the community funds which she was able to use, and therefore this Court need not divide any wages, bonuses, or commissions earned

and deposited into their Joint Account prior to October 11, 2015.[78] *See Loaiza*, 130 S.W.3d at 908.

Similarly, the Court need not divide the commissions the Debtor earned and received prior to the filing of the Divorce Action as any commissions earned (and paid to the Debtor) during that time frame were deposited into the Joint Account—an account to which Ms. Castillo had complete access. *See Loaiza*, 130 S.W.3d at 908. However, any commissions earned and received (actually paid to the Debtor) after the filing of the Divorce Action should be investigated by the Trustee, as the Parties have failed to provide this information to this Court. Thus, this Court orders the Trustee to investigate and to determine the exact amount of commissions the Debtor earned *and* received from May 18, 2012 through the date of these FOF & COL, and to determine whether the Debtor deposited all of these commissions into the Joint Account or, alternatively, whether he deposited these commissions into an account for which only he has signature authority. If the latter, then the Court finds that Ms. Castillo will be entitled to 45% of the proceeds that the Debtor deposited into that separate account.

Moreover, the Court acknowledges that the Debtor receives the Discretionary 5% Commission only when Clover's respective clients pay Clover for its services. This Court further notes that the Debtor has not received some of his Discretionary 5% Commission (which was earned during the marriage) due to the fact that Clover's clients—namely, PDVSA—has not yet remitted payment to Clover. [*See* Finding of Fact No. 27]. Indeed, PDVSA currently owes Clover at least $10-15 million. [*Id.*]. There is no question that any commission resulting from the PDVSA account during the marriage is community property. *See Zisblatt*, 693 S.W.2d at 954. However, while Ms. Castillo contends that she is entitled to at least $750,000.00 (i.e., 5%

[78] October 11, 2015 is the date that the Parties filed their Joint Certificate setting forth the balances in all their accounts. [Doc. No. 338].

commission of $15 million) of the Debtor's commission earned on the PDVSA account, [*see* Doc. No. 279, p. 3 of 15], she does not take into account that the Debtor receives a commission only from the *net profits* generated from the PDVSA account. [*See* Finding of Fact No. 27]. Likewise, Ms. Castillo asserts that she is entitled to at least $150,000.00 (i.e., 5% of $3 million) of the Debtor's commission earned from the EDC account for which EDC still owes approximately "$2.8 or 3-some million." [*See* Doc. No. 279, p. 4 of 15]. As the Parties have failed to provide any information regarding the actual commissions owed from these two accounts, this Court orders the Trustee to investigate and to determine the exact amount of commissions the Debtor has earned ***during*** marriage but has yet to actually receive, and to subsequently disburse such funds according to this Court's division set forth below.

Despite the normal 50/50 percentage of community property to which each party is typically entitled, this Court has considered the Just and Right Division Factors set forth above and has determined that based on its analysis of such factors and of all other relevant facts, there is a reasonable basis to support this Court's disproportionate division. *See Smith v. Smith*, 143 S.W.3d 206, 214 (Tex. App.—Waco 2004, no pet.). Ms. Castillo should receive 45% of the above community assets and the Debtor should receive 55% of the above community assets. The Court concludes that this percentage division is just and right as an analysis of the Just and Right Division Factors reveals that Ms. Castillo, among other misconduct, displayed serious behavioral issues at the Palm restaurant and other restaurants, attempted to use (and waste) community funds to constantly pay for her attorneys' rather questionable legal actions, stole separate property from the Debtor to help pay for her attorneys' fees, drove while intoxicated and was twice arrested, and carried on a lurid pre-filing-Divorce-Action affair with Scofield—an affair which led the Debtor (once he learned about it) to attempt suicide. *See Murff*, 615 S.W.2d at

698−99 (concluding that a division of the community estate need not be equal, and that the trial court may weigh many factors in reaching its decision).

In any event, although the Debtor may not have actually received his 5% commissions already earned during the marriage (i.e., 5% PDVSA Commission and 5% EDC Commission), Ms. Castillo is nonetheless entitled to her 45% share of those same commissions that may be paid in the future (i.e., post-divorce). The Court reiterates that Ms. Castillo is entitled to ***only*** her share of the commissions that the Debtor has earned during the marriage (but not yet received), not commissions he will earn (if any) post-divorce, as discussed immediately below. [*See infra* Part IV(D)(11)].

Thus, this Court makes the following divisions:

> **Total Commissions Earned and Already Received During Marriage from May 18, 2012 through November 5, 2015 That Were Deposited Into Any Account on Which the Debtor has Sole Signature Authority**
>
> - Ms. Castillo: 45% of Unknown (to be determined by Trustee). To the extent that Ms. Castillo has already received more than 45% of the earned and paid commissions, Ms. Castillo shall pay over to the Chapter 11 estate any amount that exceeds 45% of the earned and already received commissions.
> - The Debtor: 55% of Unknown (to be determined by Trustee)
>
> **Total Commissions Earned During Marriage but Not Yet Received/Paid from May 18, 2012 through November 5, 2015**
>
> - Ms. Castillo: 45% of Unknown (to be determined by Trustee)
> - The Debtor: 55% of Unknown (to be determined by Trustee)

10. A "Just and Right" Division of the Community Estate Consists of a Partition in Kind of the Parties' Tax Refund

As discussed above, under Texas law, income produced by either spouse during marriage is considered community property. *Bathrick*, 1 B.R. at 430. "The source of an overpayment of income tax determines the character of the refund, with a refund of excess withholding tax merely being a repayment of earnings from employment." *Id.* (citing *Gehrig v. Shreves*, 491 F.2d 668, 671−73 (8th Cir. 1974)). Therefore, under Texas law, a couple's tax refund would be

community property. *See Bathrick*, 1 B.R. at 430. Courts have generally held that community property which has not been legally divided as of the commencement of the bankruptcy case passes to the debtor's estate. *See In re Mantle*, 153 F.3d at 1085 (9th Cir. 1998) (citing *Keller v. Keller (In re Keller)*, 185 B.R. 796 (9th Cir. BAP 1995)); *McCoy v. Bank of America (In re McCoy)*, 111 B.R. 276 (9th Cir. BAP 1983); *Miller v. Walpin (In re Miller)*, 167 B.R. 202 (Bankr. C.D. Cal. 1994); *In re Hendrick*, 45 B.R. 976, 983–984 (Bankr. M.D. La. 1985). The Fifth Circuit concurs:

> We agree with the [] view that former community property which has been partitioned and classified as separate property of the debtor's former spouse under state law prior to the commencement of the case does not pass into the bankruptcy estate. Under section 541(a)(2) only "interests of the debtor and the debtor's spouse in *community property as of the commencement of the case* " may become part of the estate.

In re Robertson, 203 F.3d at 862.

Here, there is no question that the Parties' tax refund for 2014 is community property as of the date of the bankruptcy petition (i.e., March 12, 2015) and that such refund has not been legally divided as of the same date. Because this refund has yet to be legally divided as of the commencement of this bankruptcy case, such community property passes to the Debtor's Chapter 11 estate. Therefore, upon receipt of the 2014 tax refund, the Debtor (or Ms. Castillo) shall transfer the full tax refund to the Trustee so that he will disburse such funds according to the below percentages. And, based on the same reasoning as set forth above, this Court makes the following division regarding the Parties' forthcoming tax refund.

Total Income Tax Refund for 2014

- Ms. Castillo: 45% of Unknown (to be determined by Trustee)
- The Debtor: 55% of Unknown (to be determined by Trustee)

11. Ms. Castillo is Not Entitled to Any of the Debtor's Future Commissions or Earnings Generated by Future Work

It is well-settled under Texas law that a person's earnings after divorce are separate property and therefore not subject to division. *Murray v. Murray*, 276 S.W.3d 138, 147 (Tex. App.—Fort Worth 2008, pet. dism'd); *see Von Hohn v. Von Hohn*, 260 S.W.3d 631, 641 (Tex. App.—Tyler 2008, no pet.); *Loaiza*, 130 S.W.3d at 894, 908 (Tex. App.—Fort Worth 2004, no pet.). Stated differently, "a spouse is not entitled to a percentage of his or her spouse's future income." *Smith*, 836 S.W.2d at 692. Here, Ms. Castillo contends that she is entitled to a share of the Debtor's "contractual right of [Clover's] overall net profits and 5% of profits generated by clients that [the Debtor] brought to the company that continues as long as he is employed with Clover." [Doc. No. 279, p. 4 of 15]. This Court disagrees.

In *Murray*, the husband was a broker for a marketing company and his income was based on sales that he made along with the sales of the brokers he had recruited, as well as members and brokers recruited by them, and so on (the "downline"). *Murray*, 276 S.W.3d at 141. At the trial court, the wife argued that her husband's "downline, as of the date of divorce, should be treated as a book of business and therefore, the residual income generated by that downline should be divided monthly based on the agreed upon 60/40 split." *Id.* The trial court issued a divorce decree that awarded the husband 40% and the wife 60% of the residual income based upon the book of business as of the date of the divorce. *Id.* at 142. After the divorce, the amount the wife received began to decline and, as a result, she filed a petition for enforcement alleging that her husband violated the terms of the decree or, that the decree required clarification. *Id.* The trial court entered a clarifying order. *Id.* at 143.

The court of appeals agreed that based on the decree's failure to ascribe meanings to the terms "business generated" and "book of business" regarding residual income, the decree was

subject to more than one reasonable interpretation and was ambiguous. *Id.* at 145. However, the court of appeals determined that because the husband's earnings after divorce constituted separate property that was not subject to division, the trial court erred in interpreting the decree in a way that would grant the wife a percentage of the husband's future income. *Id.* at 147. The court of appeals agreed with the husband's assertion "that any income outside the snapshot [of the marriage] is a mere expectancy and therefore would be his separate property." *Id.* at 145.

In reaching its conclusion, the court of appeals gave the following explanation:

> Although we agree with [the wife's] statement that the income stream earned during marriage is not a mere expectancy and, therefore, is community property subject to division, we disagree with her conclusion that the same can be said of the income stream's growth ***after*** divorce. Whereas, the monthly income received from the downline in existence at the time of divorce is *already* earned, the income resulting from new members and brokers being added after divorce is not . . . Because the addition of new members and brokers is not a guarantee, the growth in income resulting from new members and brokers is merely an expectancy . . . [and] although [the husband] has significant rights as to the income stream earned during marriage, he does not and cannot have any rights in something he has yet to acquire. Therefore, any growth in income resulting from new members and brokers being added after the divorce is [the husband's] separate property.

Id. at 147–48 (internal citations omitted) (emphasis added). Stated differently, the court of appeals concluded that the income resulting from the addition of new members and brokers **after** the divorce was not subject to division and that the husband's ex-wife was not entitled to any share of his future income. *Id.* at 148 ("[T]he trial court's order awarding [the wife] a percentage of the income stream's future growth is contrary to the law. We hold, therefore, that the trial court abused its discretion in rendering the order . . . .").

This Court agrees with *Murray*'s reasoning and conclusion. A major issue in the case at bar concerns whether Ms. Castillo is entitled to a share of the commissions earned by the

Debtor's **post**-divorce work at Clover; this Court holds that she is not. Based on the Debtor's testimony at trial, he has no "contractual right" to any of the Discretionary 5% Commissions, the Overall 5% Commissions, or the 5% EDC Commissions. [Finding of Fact No. 31]. Indeed, the Debtor credibly testified that Clover and he have never entered into a written contract wherein he was "entitled to [commissions]." [Hr'g Tr. 21:12−13, May 12, 2015]; [*see* Finding of Fact No. 31]. He further testified, repeatedly, that such commissions are only discretionary. [*See* Findings of Fact Nos. 27 & 31]. Simply stated, there is no "contract" requiring Clover to pay the Debtor any commissions at all. Moreover, the Debtor testified that his job in Panama will likely result in him receiving no commissions at all, as such commissions are reserved for someone who manages the PDVSA and CITGO accounts, which he will no longer be managing upon assuming his new position in Panama. [Finding of Fact No. 33]. Similar to the husband in *Murray*, the Debtor's future commissions, if any, have yet to be acquired but, rather, are "merely [] expectanc[ies]." *See Murray*, 276 S.W.3d at 148.

Ms. Castillo requests that this Court award her $4,603,469.00, which accounts for a 5% commission right of the Debtor's future income for the next 13 years (i.e., when the Debtor turns 65 years old). [Doc. No. 333, p. 24 of 29]. This Court cannot—and will not—award Ms. Castillo any future commissions that the Debtor may earn post-divorce. *See Murray*, 276 S.W.3d at 148; *Mandell v. Mandell*, 310 S.W.3d 531, 539 (Tex. App.—Fort Worth 2010, pet. denied) ("A spouse is not entitled to a percentage of his or her spouse's future earnings . . . [and] [a] spouse is only entitled to a division of property that the community owns at the time of divorce.").

While the Court recognizes that the Debtor's future commissions may be considered as his "income" and that any spousal maintenance payments and/or child support payments will be paid from the Debtor's future income, it wants to emphasize that there is a difference between

having a right to receive a share of the actual amount constituting future commissions and a right to receive spousal/child support payments that are paid ***from*** future commissions. The Court reiterates that Ms. Castillo is only entitled to the latter.

12. Analysis of the "Gifts" the Parties Received During the Marriage

As discussed above in Part IV(D), "a wife's property, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent shall be the separate property of the wife. By reason of legislation, the husband's property is classified the same way." *Eggemeyer*, 554 S.W.2d at 140. And, if a spouse claims certain property as separate (e.g., by way of "gift"), he or she has the burden to trace and clearly identify the property claimed to be separate. Tex. Fam. Code Ann. § 3.003; *Hanau*, 730 S.W.2d at 667.

Here, the Court finds that from 2008 through 2012, the Parties received an aggregate amount of $2,133,858.00 in "gifts" from the Debtor's father. [Findings of Fact Nos. 82, 83, 84, 85, 86, 87 & 88]. Based on the record before this Court, the Parties received the following gifts from the Debtor's father: (a) $345,000.00 in 2008; (b) $184,720.00 in 2009; (c) $639,406.00 in 2010; (d) $399,732.00 in 2011; and (e) $565,000.00 in 2012. [Findings of Fact Nos. 82, 83, 84, 85 & 86].

Ms. Castillo argues that the aggregate amount of $2,133,858.00 are not "gifts" from the Debtor's father but, rather, constitutes "income" of the Debtor because such funds allegedly came from Clover, a corporation. [Doc. No. 279, p. 6 of 15]. According to Ms. Castillo, because these funds are considered "community income," she is entitled to one-half of this "income."

This Court disagrees. First, there is no credible testimony or evidence showing that the above amounts came from Clover, and, in fact, the Parties' tax returns clearly indicate that such

amounts were in fact "gifts" received by the Parties. [Findings of Fact Nos. 82, 83, 84, 85, 86 & 198]. Second, Ms. Castillo's argument that the above amounts are not "gifts" but, rather "income" paid by Clover is unnecessary. This is because during the 14-day trial, the Debtor did not once claim that the gifts from his father were his separate property. Rather, the Debtor repeatedly and credibly testified to this Court that the funds (i.e., the "gifts") were transferred from his father's MMG Account into the Parties' Joint Account:

> Q: And were [the gifts] given in the form of cash?
> A: Wire transfers sent to our joint account, my wife's and I's.

[Hr'g Tr. 53:7−9, May 12, 2015]; [*see* Finding of Fact No. 81].

> Q: And were all of those gifts from your father?
> A: Yes.
> Q: Okay. And did this cash come from the MMG or the Davos accounts?
> A: This cash that came into our joint account, Amy's and I's [sic], came from MMG's, my father's personal account.

[Hr'g Tr. 53:25−54:5, May 12, 2015]; [*see* Finding of Fact No. 81].

> Q: And so let me see if I understand the way it works. You would go and exercise your power of attorney of account and take the money or wire the money from MMG's Panamanian account into the joint account in Houston. Is that right?
> A: That's correct, sir. Yes.

[Hr'g Tr. 54:11−15, May 12, 2015]; [*see* Finding of Fact No. 35, 36 & 81].

Even assuming that the amount of $2,133,858.00 was comprised of actual "gifts" given to the Debtor personally (i.e., as his separate property), the Debtor nonetheless commingled such funds with the Parties' community property—therefore, the Debtor must defeat the community presumption. Tex. Fam. Code Ann. § 3.003; *Hanau*, 730 S.W.2d at 667. And, assuming the Debtor did claim that such gifts are his separate property, the Court finds that the Debtor did not satisfy his burden of proving, by clear and convincing evidence, that such gifts—which were

clearly commingled with community funds—were, in fact, his separate property. *See Gibson v. Gibson*, 614 S.W.2d 487, 489 (Tex. App.—Tyler 1981, no writ) ("To overcome this presumption, the party asserting separate ownership must clearly trace the original separate property into the particular assets on hand during the marriage . . . but when the evidence shows that separate and community property have been so commingled as to defy resegregation and identification, the burden is not discharged and the statutory presumption that the entire mass is community controls its disposition.") (citing *McKinley v. McKinley*, 496 S.W.2d 540, 543 (Tex. 1973)); *Tarver v. Tarver*, 394 S.W.2d 780, 783 (Tex. 1965). Thus, the aggregate "gift" amount of $2,133,858.00 constitutes community property and, therefore, Ms. Castillo would ordinarily be entitled to one-half share of these gifts. However, all gifts received prior to November 5, 2015 need not be divided, as such funds are no longer in existence because both Parties have had access to the Joint Account and both Parties have spent such funds freely. [*See* Finding of Fact No. 81].

13. A "Just and Right" Division of the Community Estate Consists of a Partition by Sale of the Homestead

There is no question that the Parties' Homestead—namely, the Main House and the Guest House—is the largest community asset of the Parties (in size and value). In the case at bar, the Debtor does not dispute that Ms. Castillo should receive at least a percentage of the Homestead. [Hr'g Tr. 165:22−24, May 12, 2015] ("I would like her – for her to have a percentage of [the Main House and the Guest House]."). Ms. Castillo, on the other hand, requests that this Court award her the entire Homestead (i.e., Main House and Guest House). [Doc. No. 333, p. 2 of 29]; [Hr'g Tr. 88:23−25, May 7, 2015].

Under Texas law, the homestead of the spouses is subject to division on divorce. *Hedtke v. Hedtke*, 248 S.W. 21, 23 (Tex. 1923). Indeed, a court "has broad power to order the 'just and

right' division of the divorcing couple's estate, including the ability to award the use of the homestead to one spouse, even if title to the homestead property is held by the other spouse." *Laster v. First Huntsville Properties Co.*, 826 S.W.2d 125, 131 (Tex. 1991). Moreover, a "just and right" division includes the power to order the sale of the homestead and the allocation of the proceeds. *See, e.g., Trigg v. Trigg*, 18 S.W. 313, 317 (Tex. 1891); *Kirkwood v. Domnan*, 16 S.W. 428, 429 (Tex. 1891); *McIntyre v. McIntyre*, 722 S.W.2d 533, 537 (Tex. App.—San Antonio 1986, no writ); *Delaney v. Delaney*, 562 S.W.2d 494, 495–96 (Tex. App.—Houston [14th Dist.] 1978, writ dism'd); *Brunell v. Brunell*, 494 S.W.2d 621, 622–23 (Tex. App.—Dallas 1973, no writ); *Hammond v. Hammond*, 197 S.W.2d 502, 503−04 (Tex. App.—Fort Worth 1946, no writ).

First and foremost, this Court recognizes that it has jurisdiction to divide the community estate despite the Debtor having exempted the Homestead under § 522 of the Code. [Doc. No. 297, p. 21 of 40]. Courts have generally taken the position that once the property is exempted, it is no longer a property of the estate but, rather, it "revests" in the debtor. *See, e.g., In re Hahn,* 60 B.R. 69, 73 (Bankr. D. Minn. 1986) ("Once a debtor's claim of exemption to property has been allowed by the running of the period for objection to the claim of exemptions under Bankruptcy Rule 4003(b), the property revests in the Debtor and is no longer property of the estate."); *In re Kretzer,* 48 B.R. 585, 587 (Bankr. D. Nev. 1985) ("Unless a party in interest timely objects, property claimed as exempt is exempted from the bankruptcy estate . . . [P]roperty exempted from the estate revests in the debtor."); *Matter of Wiesner,* 39 B.R. 963, 965 (Bankr. W. D. Wis. 1984) ("Once property is exempted from the estate it revests in the Debtor, and is no longer part of the estate . . . [T]he cars in question became property of the debtor after the . . . period of objection to exemptions expired."); *see In re Parsons*, 530 B.R. 411, 417

(Bankr. W.D. Tex. 2014) ("[T]he Court holds that the Debtors' homestead exemption is proper and the Homestead is not property of the estate.").

However, Bankruptcy Rule 4003(b) expressly provides that, *inter alia*, the deadline for any party-in-interest to object to any exemption claimed by a debtor is thirty days following the first date set for the meeting of creditors. Hence, even though a debtor may claim certain property (including the Homestead) as exempt, the exemption does not become final until the deadline for lodging that exemption has passed. *In re Calvin*, 329 B.R. 589, 597 (Bankr. S.D. Tex. 2005) (holding that even though a debtor may claim certain property as exempt, the exemption does not become final until the deadline for lodging objections has passed); *In re Williams*, 249 B.R. 222, 223 (Bankr. D.C. 2000) ("The debtor exempted the account, but that exemption has not become final because the time for objections has not expired."); *In re Pimental*, 142 B.R. 26, 29 (Bankr. D.R.I. 1992) ("Therefore, when debtors filed their Chapter 7 petition, the funds on deposit with the [bank] became property of the estate, and did not revert to the Debtors until said funds were properly claimed and allowed as exempt property.").

Here, the Trustee filed his Motion for Extension of Deadline and asked this Court to extend the deadline for any parties-in-interest to object to the Debtor's claim of exemptions. [Finding of Fact No. 14]. The Court granted this motion and extended the deadline to object to the Debtor's exemptions until forty-five (45) days after this Court enters its order on Ms. Castillo's Motion for Division. [Doc. No. 307]. As of the date of these FOF & COL, the Debtor's claim of exemption on the Homestead is not yet final and, therefore, the Homestead has not actually been "exempt" at this time; it is still property of the Debtor's Chapter 11 estate. *See Williams*, 249 B.R. at 223; *Pimental*, 142 B.R. at 29. And, because the Homestead is still

property of the Debtor's Chapter 11 estate, this Court maintains jurisdiction to divide the Homestead.

The Court has decided to order that the Homestead be sold, with the sale proceeds (after payment of all liens, the broker's fee, and closing costs) to be divided between the Debtor and Ms. Castillo. *See, e.g.*, *McIntyre*, 722 S.W.2d at 537 ("Where a homestead cannot be partitioned, it is subject to sale and a division of the proceeds."); *Delaney*, 562 S.W.2d at 495–96 (holding that a court may order partition of a community homestead, including partition by sale). The Court finds that this is a "just and fair" division because: (1) Ms. Castillo has woefully failed to pay all of the *ad valorem* taxes on the Homestead despite the Agreed Temporary Order and the availability of funds, [*see* Finding of Fact No. 123]—telegraphing to the Court that she does not care **that** much about remaining in the Homestead; (2) Ms. Castillo's own income for the foreseeable future will not be sufficient to pay for the upkeep, [*see* Finding of Fact No. 68], and *ad valorem* taxes on the Homestead, [*see* Finding of Fact No. 123]; (3) the Parties' son will soon be graduated from high school, [*see* Finding of Fact No. 58], and may attend college, which means he may not be residing at the Homestead in the future—thereby making it more sensible for Ms. Castillo to purchase or lease a much smaller house for her and her 14-year-old daughter to reside in; (4) the Debtor is moving to Panama in his new position at Clover Logistics RL, [*see* Finding of Fact No. 33], and therefore has absolutely no need to keep the Homestead; and (5) given the value of the Homestead (approximately $931,434.00), [*see* Finding of Fact No. 60], and given the fact that the Parties have already paid off the mortgage on the Homestead, [*Id.*], the resulting sale will generate substantial unencumbered proceeds for Ms. Castillo, and her share of these proceeds will allow her not only to purchase or lease a smaller residence, but also help pay for various other expenses in the immediate future while she seeks employment.

The key issue is therefore: Once the Homestead if sold, what percentage of the net sale proceeds should be given to Ms. Castillo and what percentage should be given to the Debtor? First, the Court acknowledges that several of the Just and Right Division Factors weigh in favor of giving Ms. Castillo a greater percentage: (1) she has no college degree; (2) she has a much lower earning power and earning ability when compared to the Debtor; (3) she has less employment opportunities because she has been out of the work force for almost nineteen years; (4) she has sole custody of the Children; (5) she will likely need financial support in the near future; and (6) she has incurred a significant amount of debt due to her attorneys' fees and pending lawsuits. [*See supra* Part IV(D)(1)]. Consequently, this Court's analysis of these above factors does not weigh in favor of the Debtor.

However, the Court also notes that several of the Just and Right Division Factors are, for the most part, neutral to both Ms. Castillo and the Debtor: (1) the Parties are relatively the same age; (2) the Parties' physical health conditions are of similar degrees; (3) the Parties' separate estates are similarly non-existent; (4) the length of the marriage is approximately nineteen years; (5) the benefits the party not at fault would have received is not applicable as both Ms. Castillo and the Debtor are at fault for the discord of the marriage; (6) the education of the Parties does not appear to be substantial disparate; and (7) the nature of property to be divided does not weigh in favor or disfavor of Ms. Castillo. [*See supra* Part IV(D)(1)]. Thus, these specific factors do not weigh in favor for or against the Parties. Had this Court's analysis ended after reviewing only the above factors, it would have been more inclined to apportion the Homestead in a 50/50 division. However, there is more.

The Court has carefully considered the remaining Just and Right Division Factors as well as the totality of the circumstances presented in this case. There is no question that both parties

are at fault for the dissolution of the marriage, although with varying degrees. [*See supra* Part IV(D)(1)]. Many courts have looked to a husband or wife's conduct during marriage in determining "fault." *See, e.g.*, *Williams v. Williams*, 1998 WL 175691, at *1 (Tex. App.—Dallas, Apr. 16, 1998) (trial court made a finding of fault when, during the marriage, the husband committed adultery, abused drugs and alcohol, and committed family violence); *see also Faram v. Gervitz–Faram*, 895 S.W.2d 839, 844 (Tex. App.—Fort Worth 1995, no writ) (in affirming a 72.9% award of community property, the court noted that "[a] key factor was [the husband's] abusive and violent nature, which ultimately contributed to the divorce"). There is no doubt that both the Parties here have engaged in inappropriate conduct before and after Ms. Castillo initiated the Divorce Action.

The Court heard testimony from Ms. Castillo that the Debtor would frequent restaurants, smoke marijuana in their home garage, and spent a significant amount of time away from home and traveling for his job. [Findings of Fact Nos. 24, 25 & 55]. It is unquestionable that the Debtor spent a significant amount of time away from his family in order to fulfill his duties as Clover's Gulf Regional Manager; but, the Court will not place too much weight on this fact, as it finds difficulty in faulting the Debtor for working hard to provide the very comfortable lifestyle to which his wife and his children have been accustomed. [*See* Findings of Fact Nos. 24 & 25]. The Debtor's fault in the breakup of the marriage is further alleviated because he, at least, attempted to repair the marriage shortly after Ms. Castillo initiated the Divorce Action. [Finding of Fact No. 79]. There is no evidence suggesting that for her part, Ms. Castillo attempted to reconcile with the Debtor. The Court, however, keeps in mind that the Debtor's extramarital affairs with Julie Svancara (which occurred on the night the divorce petition was filed) and Celina Beltran (which occurred several months after the date of the filing of the Divorce Action),

[Findings of Fact Nos. 97 & 101], could have inhibited Ms. Castillo from reciprocating the Debtor's efforts to patch up their marriage.

Nevertheless, based on the testimony adduced at trial, the Court finds that Ms. Castillo's actions (both before *and* after the filing of the Divorce Action) are more damaging than the actions committed by the Debtor. The Court notes that Ms. Castillo, too, frequented restaurants (i.e., Palm Restaurant) where she met three men whom she dated or had sexual relationships with—i.e., Kyle Scofield, Ron White, and Richard Spitzer. [Findings of Fact Nos. 105, 106, 107, 108, 112, 113, 115, 119 & 120]. The Court also notes that while the Debtor was out-of-town for work, Ms. Castillo would visit the Palm Restaurant during the lunch hour, dress provocatively (revealing her genital area), and display large amounts of cash to restaurant patrons. [Findings of Fact Nos. 54, 75, 105, 106 & 119]. Indeed, because of her blatant promiscuity, Ms. Castillo was able to catch the eye of several male strangers and, later, initiated a sexual relationship with Scofield several months *prior* to her filing the Divorce Action. [Finding of Fact No. 107]. To the contrary, there is no evidence to show that the Debtor engaged in an extramarital affair *prior* to Ms. Castillo's initiating the Divorce Action. What is also compelling is that when the Debtor discovered Ms. Castillo's pre-divorce affair with Scofield, the Debtor attempted to commit suicide by overdosing on sleeping pills. [Finding of Fact No. 20].

Further, Ms. Castillo continued to cavort around even after the filing of the Divorce Action. For example, she briefly dated Richard Spitzer sometime in late 2012, [Finding of Fact No. 120], and she engaged in an extramarital relationship with Ron White sometime in mid-2014, [Findings of Fact Nos. 112, 113 & 115]. Similar to the Debtor, these extramarital affairs could have prevented the reconciliation of the Parties after the filing of the Divorce Action. The Court notes that while the Court is ***not*** punishing Ms. Castillo (by way of reducing her

percentage of the proceeds for the sale of the Homestead) for her fault in the breakup of the marriage, the Court is certainly able to consider Ms. Castillo's (and the Debtor's) fault in the breakup of the marriage—as only one of many factors—when dividing the marital property. *Murff*, 615 S.W.2d at 698 ("We there [*Young v. Young*, 609 S.W.2d 758 (Tex. 1980)] held that in a divorce granted on a fault basis, the trial court may consider the fault of one spouse in breaking up the marriage when making a property division."). In any event, the Court concludes that Ms. Castillo's fault in the breakup of the marriage does not weigh in her favor.

Second, while this Court will not award Ms. Castillo's attorneys' fees that were incurred during the pending divorce, [*see Tedder*, 421 S.W.3d at 656], it certainly has considered the amount of attorneys' fees the Parties have incurred when dividing up community property, [*Murff*, 615 S.W.2d at 699]. The Court keeps in mind that the Debtor has incurred over $300,000.00 in attorneys' fees and expenses due, in large part, to extensive litigation in the Family Law Court. [*See* Findings of Fact Nos. 122, 124, 174, 230 & 231]. Ms. Castillo, on the other hand, has spent over $700,000.00 in attorneys' fees and expenses for several law firms, attorneys, and/or forensic accounting firms, and based on the findings this Court has made above, the Court is suspicious about the need for a large portion of these fees. [*See* Findings of Fact Nos. 144, 207, 208, 209, 211 & 213]. In any event, this Court finds that this particular factor weighs against Ms. Castillo, as she has run up several hundred thousand dollars in attorneys' fees and expenses, [*see* Findings of Fact Nos. 144, 147, 148, 150, 153, 154, 156, 158, 159, 162, 163, 164, 170, 171, 173, 179, 206−11 & 213]—obligations that she incurred only with the expectation that her husband would pay for all of them.

Third, the Court notes that had Ms. Castillo chosen to use her spousal maintenance payments and child support payments to help pay a substantial portion of the *ad valorem* taxes

owed to the Harris County Tax Assessor and Klein ISD, there would not be at least $48,129.86 currently due.[79] [*See* Findings of Fact Nos. 123, 127 & 231]. As stated above, while Ms. Castillo has been receiving at least $385,287.50 in spousal maintenance and child support payments (from August 2012 through October 2015), she has only made a few *de minimus* payments to the Harris County Tax Assessor or Klein ISD for past due *ad valorem* taxes on the Homestead—the place where she has been residing rent/mortgage free. [*See* Finding of Fact No. 60, 123 & 127]. There is no question that it is due to Ms. Castillo's selfishness that a significant amount of taxes (including penalties and interest) remain due and owing to the Harris County and Klein ISD.

Upon a thorough review of the testimony adduced and exhibits introduced, together with an assessment of credibility of the Debtor and Ms. Castillo, as well as this Court's analysis of the Just and Right Division Factors discussed above, the Court awards the Debtor with a 55% share of the proceeds from the sale of the Homestead and Ms. Castillo with a 45% share of the proceeds from the sale of the Homestead. The Court, in its broad discretion, has determined that these percentages constitute a "just and right" division of the Homestead and, therefore, orders that the Homestead be partitioned by sale and the proceeds to be divided in these respective percentages.[80]

[79] The Court notes that in February of 2016, Ms. Castillo paid the 2015 *ad valorem* property taxes to the Harris County Tax Assessor and the taxes to Klein ISD. [Doc. Nos. 483 & 484].

[80] Because the Homestead at this time is still property of the bankruptcy estate, it is the Trustee who has standing to sell this particular property. [*See infra* Part IV(E)]. Accordingly, the Trustee will be authorized to retain a real estate broker to market the Homestead, and once the Trustee, through the broker, finds an acceptable buyer in his discretion, then he will file a motion to sell the Homestead pursuant to § 363(b) of the Code.

E. Any Claims That Exist Due to Damage to the Community Estate (and Therefore the Bankruptcy Estate) Belong to the Trustee, Who, in His Business Judgment, May Prosecute These Claims

The bankruptcy estate consists of, among other property, "all interests of the debtor *and the debtor's spouse in community property* as of the commencement of the case that is (A) under the sole, equal, or joint management and control of the debtor." 11 U.S.C. § 541(a)(2) (emphasis added). Generally, a trustee serves as the representative of the bankruptcy estate. *Kane v. Nat'l Union Fire Ins. Co.*, 535 F.3d 380, 385 (5th Cir. 2008) (per curiam). Once a bankruptcy petition is filed, the trustee "is the real party in interest, and is the only party with standing to prosecute causes of action belonging to the estate." *Id.*; *In re Seven Seas Petroleum, Inc.*, 522 F.3d 575, 584 (5th Cir. 2008) ("If a claim belongs to the estate, then the bankruptcy trustee has exclusive standing to assert it.").

1. Ms. Castillo's Claim Against Clover and the AC Third Parties for Negligent Misrepresentation, Fraud, and Constructive Fraud, Conspiracy to Commit Fraud, and a Claim Under the Uniform Fraudulent Transfers Act (i.e., the Clover Lawsuit) Belongs to the Trustee

Ms. Castillo initiated a lawsuit against Clover and the AC Third Parties in the 309th District Court of Harris County, Texas (previously defined as the Clover Lawsuit). [Finding of Fact No. 230]. According to her Fourth Amended Petition, Ms. Castillo alleges that Clover committed the following actions resulting in her being deprived of her share of community property: (1) negligent misrepresentation, fraud, and constructive fraud; (2) conspiracy to commit fraud; and (3) violation of the Uniform Fraudulent Transfers Act. [*Id.*]. Ms. Castillo's Fourth Amended Petition clearly shows that her claims against Clover and the Rincons relate to community property acquired by the Debtor and herself during their marriage. [*See* Claim No. 10-1, Part 2, p. 8 of 13 ("[Clover and the Rincons] hold funds and/or assets belonging to the parties' community estate; [Clover and the Rincons] were members of a combination, the object

of which was to accomplish an unlawful purpose or a lawful purpose through unlawful means, among such other things, defrauding [Ms. Castillo] and the marital community of its assets and property . . . .")]. Upon a review of Ms. Castillo's Fourth Amended Petition, it is clear that her claims allege that Clover has taken actions that have damaged the community estate.

There is also no question that Ms. Castillo—the Debtor's wife—has an interest in such community property; but, because community assets belong to the Chapter 11 estate, the Trustee necessarily "is the real party in interest, and is the only party with standing to prosecute causes of action belonging to the estate." *Kane*, 535 F.3d at 385; *Seven Seas Petroleum, Inc.*, 522 F.3d at 584 ("If a claim belongs to the estate, then the bankruptcy trustee has exclusive standing to assert it."). Moreover, Ms. Castillo's claims against Clover concern allegations of waste, fraudulent transfer, and other damages to the community estate—claims that belong to the community itself. *See Chu v. Hong*, 249 S.W.3d 441, 444−45 (Tex. 2008) (". . . waste, fraudulent transfer, or other damage to community property are claims belonging to the community itself, so they must be included in the trial court's just-and-right division of community property upon divorce."). Because Ms. Castillo's causes of action against Clover and the Rincons belong to the Chapter 11 estate, the Trustee (and only the Trustee) has the right to prosecute these claims, if he so chooses. Thus, Ms. Castillo lacks standing to prosecute the Clover Lawsuit. Therefore, this Court expressly does not award this asset to Ms. Castillo, but rather orders the Trustee to intervene as the party with standing to prosecute these claims and to make a determination whether to prosecute these claims.

2. The Parties' Claims Against Each Other for Wasting the Community Estate, and Other Claims Asserted by the Debtor Against Third Parties, Now Belong to the Trustee

Ms. Castillo claims that the Debtor has wasted community funds, [Doc. No. 333, pp. 1 & 24 of 29], and, likewise, the Debtor claims that Ms. Castillo has wasted substantial community funds, [Doc. No. 285-1, pp. 24, 26, 27, 31−34 & 36 of 36]. The majority, if not all, of the waste claims alleged by the Parties concern allegations of community waste and/or damage to the community estate—claims that belong to the community itself. *See Hong*, 249 S.W.3d at 444−45 (". . . waste, fraudulent transfer, or other damage to community property are claims belonging to the community itself, so they must be included in the trial court's just-and-right division of community property upon divorce."). Because the claims of the Debtor and Ms. Castillo discussed below relate to property belonging to the Chapter 11 estate, the Trustee (and only the Trustee) has the right to prosecute these claims; the Parties lack standing to prosecute these claims. Accordingly, the following claims belong to the Trustee.[81]

- Ms. Castillo's waste claim for unaccounted funds valued at $1,371,888.23
- Ms. Castillo's waste claim for unaccounted funds transferred to the FIMG account (-9601)
- Ms. Castillo's waste claim for unaccounted funds transferred from Juan Jose Castillo (i.e., the Debtor's father)
- The Debtor's claim against Bobby Newman and Mary E. Van Orman to recover approximately $120,000.00 of funds that were held in attorney trust
- The Debtor's legal malpractice claim against Mary E. Van Orman[82]

[81] If the Trustee chooses to prosecute a claim, and there is a lawsuit already pending, then the Trustee must intervene as the party with sole standing to prosecute. If the Trustee chooses to prosecute a claim for which no lawsuit has yet been filed, then the Trustee shall file suit in the appropriate forum. Finally, if the Trustee chooses to abandon any claim, then the Trustee shall file a motion in this Court pursuant to § 554(a) of the Code.

[82] Under Texas law, legal malpractice claims are non-assignable. *In re J.E. Marion, Inc.*, 199 B.R. 635, 637 (Bankr. S.D. Tex. 1996) (citing *Britton v. Seale*, 81 F.3d 602 (5th Cir. 1996)). However, state law restrictions on the assignment of legal malpractice claims are superseded by federal bankruptcy laws. *Stanley v. Trinchard*, 500 F.3d 411, 425 (5th Cir. 2007) ("[The trustee] counters that federal bankruptcy law—specifically, placing the trustee in the shoes of the debtor—trumps state laws prohibiting the assignment of legal malpractice claims. We agree."). Accordingly, federal law controls whether a bankruptcy trustee may bring a malpractice action on behalf of the bankruptcy estate, and "[f]ederal law provides that when a legal malpractice cause of action has accrued to a debtor

- The Debtor's claim against WLF for return of $225,000.00 paid under the Rule 11 Agreement
- The Debtor's claim against Stewart & Hurst for overpayment and retainer amount
- The Debtor's waste claim regarding Andresen Law Firm's fees and expenses
- The Debtor's waste claim regarding Bast Amron Law's Firm fees and expenses
- The Debtor's waste claim regarding WLF's fees and expenses
- The Debtor's waste claim regarding Wausson ♦ Probus Law Firm's fees and expenses
- The Debtor's waste claim regarding Phillips' Law Firm, P.C.'s pre-petition fees and expenses
- The Debtor's waste claim regarding the Schmude Law Firm's fees and expenses
- The Debtor's waste claim regarding fees and expenses for causing the bankruptcy filing
- The Debtor's waste claim regarding the early liquidation of the 401K
- The Debtor's waste claim regarding forensic accounting fees incurred in bad faith prosecution of this case from the inception
- The Debtor's claim for reimbursement from Ms. Castillo for one-half of the 401k proceeds that he contributed to the community estate

[*See* Doc. No. 285-1, pp. 24−36 of 36].

Accordingly, this Court orders the Trustee to investigate the allegations underlying the above waste claims and, if he deems appropriate, to initiate suits to recover any alleged waste of funds. The Court expressly does not award these claims to either Ms. Castillo or the Debtor, but rather orders that the Trustee take control over these claims by intervening as the proper party-in-interest to serve as the plaintiff in the lawsuit.

3. Other Claims

As to any other claims of either Ms. Castillo or the Debtor that existed as of March 12, 2015, whether against the Debtor, Amy Castillo, or third parties (the "Other Claims"), the Court

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as of the commencement of the bankruptcy case, it becomes part of the debtor's bankruptcy estate." *Id.* Thus, the Trustee in the case at bar may pursue this legal malpractice claim if he chooses to do so. *Wieburg v. GTE Southwest Inc.*, 272 F.3d 302, 306 (5th Cir. 2001) ("Because the claims are property of the bankruptcy estate, the Trustee is the real party in interest with exclusive standing to assert them.").

expressly does not award any of the Other Claims to either Ms. Castillo or the Debtor, but rather orders that the Trustee is the only person who may pursue, sell or abandon any of the Other Claims. "Other Claims" shall include, but not be limited to, (a) all contempt claims asserted by Ms. Castillo against the Debtor pending in the Divorce Action, (b) all sanctions claims asserted by Ms. Castillo against the Debtor and/or Clover pending in the Divorce Action, (c) the waste claim regarding the 2011 Audi R85, (d) the waste claims listed in **Exhibit F** to the 11/06/2015 Property/Debts Division Order, and (e) any other waste claims, known or unknown, and including claims asserted or subject to being asserted, by Ms. Castillo or the Debtor in the Divorce Action.

F. The Determination of Spousal Maintenance Payments and Child Support Payments

The Debtor, through his counsel, has requested this Court to determine how much the Debtor has to pay to Ms. Castillo for spousal maintenance payments and child support payments. [*See* Finding of Fact No. 5 & 6]. Ms. Castillo, through her counsel, opposes this request. [Finding of Fact No. 9]. Although Ms. Castillo wants this Court to divide the community property, she expressly does not want this Court to determine spousal maintenance payments and child support payments. She contends that this Court lacks jurisdiction to do so, and that only the Family Law Court can make such determination. The Court now addresses these issues.

1. Legal Authority With Regard to the Determination of Spousal Maintenance Payments and Child Support Payments

Over a century and a half ago, the Supreme Court announced in dicta—without citation or discussion—that federal courts lack jurisdiction over "the subject of divorce, or . . . alimony." *Barber v. Barber*, 62 U.S. 582, 583 (1858) ("This court disclaims altogether any jurisdiction in the courts of the United States upon the subject of divorce or for the allowance of alimony, either as an original proceeding in chancery, or as an incident to a divorce *a vinculo*, or to one from bed

and board."). Lower courts, unsurprisingly, have followed suit. *See, e.g.*, *Franks v. Smith*, 717 F.2d 183, 185 (5th Cir. 1983) (agreeing that "issues of domestic relations are the province of state courts") (citing *Ex Parte Burruss*, 136 U.S. 586, 593−94 (1890)); *Bennett v. Bennett*, 682 F.2d 1039, 1042 (D.C. Cir. 1982) ("a federal court will not . . . grant a divorce, determine alimony or support obligations, or resolve parental conflicts over custody of their children"); *Lewis v. Lewis*, 423 B.R. 742, 756 (Bankr. W.D. Mich. 2010) (concluding that "this court lacks jurisdiction to award spousal support . . . .").

The Supreme Court's pronouncement in *Barber* became the cornerstone of a judicially-created "exception" to federal jurisdiction over "domestic relations" cases—i.e., "family law" cases. What subsequently became known as the "domestic relations exception," this doctrine applies only in the context of the diversity-of-citizenship provision of 28 U.S.C. § 1332. *See Marshall v. Marshall*, 547 U.S. 293, 306−07 (2006). Stated differently, this exception directs federal courts to decline adjudicating domestic relations disputes even if the requirements of diversity jurisdiction are satisfied. *Goins v. Goins*, 777 F.2d 1059, 1061 (5th Cir. 1985) ("Federal courts traditionally decline to hear cases involving the subject matter of 'domestic relations' despite the existence of diversity of citizenship.").

If applicable at all in today's bankruptcy system—and this is questionable, at least in individual Chapter 11 cases—the domestic relations exception pertains only to certain domestic relations issues. Indeed, since *Barber*, the Supreme Court has concluded that the domestic relations exception "divests the federal courts [only] of power to issue divorce, alimony, and child custody decrees." *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992). The Fifth Circuit has concluded no differently. *Estate of Merkel v. Pollard*, 354 Fed.Appx. 88, 92 (5th Cir. 2009) (". . . [U]nder the domestic-relations exception, federal courts lack jurisdiction to 'issue divorce,

alimony, and child custody decrees'"). The exception, however, does not apply to division of community property, as community property is property of the bankruptcy estate over which bankruptcy courts have exclusive jurisdiction. *See* 11 U.S.C. § 541(a)(2); *see In re Robertson*, 203 F.3d 855, 862 (5th Cir. 2000) ("We agree with the prevailing view that former community property which has been partitioned and classified as separate property of the debtor's former spouse under state law prior to the commencement of the case does not pass into the bankruptcy estate. Under section 541(a)(2) only 'interests of the debtor and the debtor's spouse in *community property as of the commencement of the case*' may become part of the estate.").

Despite the Supreme Court's rulings in *Barber* and *Ankenbrandt*, this Court notes that it does have exclusive jurisdiction over all of the Debtor's post-petition earnings, as such earnings are property of the Chapter 11 estate. Section 1115 of the Code was enacted in 2005—years after the Supreme Court's issuance of *Barber* and *Ankenbrandt*. This particular section sets forth, in pertinent part: "In a case in which the debtor is an individual, property of the estate includes . . . (2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first." 11 U.S.C. § 1115(a)(2). This language suggests that this Court does indeed have jurisdiction to determine spousal maintenance and child support, as the only source of such support is the Debtor's future earnings over which this Court has exclusive jurisdiction. Stated differently, the enactment of BAPCPA[83] in 2005, which created § 1115, impliedly eviscerated the domestic relations exception and conferred subject matter jurisdiction on bankruptcy courts to adjudicate issues regarding spousal maintenance and child support.

[83] The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") made several changes to the Code. Among other amendments, BAPCPA created § 1115, which sets forth that the post-petition earnings of an individual in Chapter 11 constitute property of the bankruptcy estate.

However, this Court does not have to decide at this time whether it has such jurisdiction, as it will abstain from determining these issues.

2. This Court Abstains From Determining Spousal Maintenance and Child Support

Permissive abstention is governed by 28 U.S.C. § 1334(c)(1), which provides:

> Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

The Fifth Circuit has stated that "[u]nder the 'permissive abstention' doctrine, 28 U.S.C. § 1334(c)(1), courts have broad discretion to abstain from hearing state law claims whenever appropriate 'in the interest of justice, or in the interest of comity with State courts or respect for State law.'" *Matter of Gober*, 100 F.3d 1195, 1206 (5th Cir. 1996). Moreover, permissive abstention under 28 U.S.C. § 1334(c)(1) may be raised by a court *sua sponte*. *Id.* at 1207 n. 10 (citing *Austin v. Cockings (In re Cockings)*, 195 B.R. 915, 917 n. 3 (Bankr. E.D. Ark. 1996); *Roddam v. Metro Loans, Inc. (In re Roddam)*, 193 B.R. 971, 975 n. 3 (Bankr. N.D. Ala. 1996); *Scherer v. Carroll*, 150 B.R. 549, 552 (D.Vt.1993); *Richmond Tank Car Co. v. CTC Invs. (In re Richmond Tank Car Co.)*, 119 B.R. 124, 125 (S.D. Tex. 1989)).

In the dispute at bar, the Debtor asks this Court to determine an amount for spousal maintenance and child support for Ms. Castillo—in essence, to modify the Family Law Court's interim determination on these particular issues. [*See* Findings of Fact Nos. 5 & 6]. Ms. Castillo asserts that this Court lacks subject matter jurisdiction to make these determinations. [Finding of Fact No. 9].

The Court first notes that the domestic relations exception applies only in the context of the diversity-citizenship statute of 28 U.S.C. § 1332. *See Marshall*, 547 U.S. at 306−07. Here, while a diversity of citizenship between the Parties *may* exist, this issue was never raised and it

was certainly not the sole basis of this Court's federal subject matter jurisdiction. Rather, there exists an independent basis for federal jurisdiction: the Debtor filed his bankruptcy petition in this Federal Bankruptcy Court. Because the Debtor is currently involved in a Chapter 11 case before this Court, this Court necessarily has jurisdiction over the discrete dispute of the division of marital property because (1) this Court has exclusive jurisdiction over community property, 11 U.S.C. § 541(a)(2); and (2) it affects the administration of the Debtor's bankruptcy estate. *See* 28 U.S.C. § 157(b)(2)(A). Moreover, this Court's dividing up the marital assets does not violate the holdings of *Barber* and its progeny. Division of community property owned by the Debtor and Ms. Castillo is *not* a determination of the amount of spousal maintenance or the amount of child support to be paid to Ms. Castillo. Nor is a division of community property a decree of divorce. These three decisions belong exclusively to family law courts pursuant to the Supreme Court's ruling that "federal courts [are divested] of power to issue divorce, alimony, and child custody decrees." *Ankenbrandt*, 504 U.S. at 703.

Therefore, on one hand, this Court is mindful that the Supreme Court's pronouncement in *Barber* and *Ankenbrandt* suggests that any domestic relations disputes regarding the determination of spousal alimony (whether in a diversity jurisdiction or not) should be left to the state courts. On the other hand, this Court also notes that § 1115 of the Code—enacted years after the Supreme Court's issuance of *Barber* and *Ankenbrandt*—suggests that this Court does, in fact, have exclusive jurisdiction to determine future spousal maintenance and/or child support in a Chapter 11 case where the debtor is an individual. 11 U.S.C. § 1115(a)(2) ("In a case in which the debtor is an individual, property of the estate includes . . . (2) earnings from services performed by the debtor after the commencement of the case . . . .").

In any event, whether it has jurisdiction to determine spousal maintenance or child support in the pending matter, this Court need not decide that issue today. At this time, the Court has decided to abstain from determining spousal maintenance or child support. Depending upon how quickly the prosecution and adjudication of the spousal maintenance and child support issues proceed in the Family Law Court, this Court may revisit this matter at some subsequent point. After all, a plan needs to be filed in this Chapter 11 case, and this Court does not want the confirmation hearing to be held hostage to delays that may arise in the Family Law Court. The Debtor has creditors other than Ms. Castillo,[84] and this Court will not countenance undue delay in the prosecution of a plan proposing to pay all of these creditors.

Because this Court has decided to abstain, it will now defer to the Family Law Court to make a final determination on the spousal maintenance and child support based upon the findings made by this Court, and any other evidence introduced in that court. The question is what additional evidence will the Parties attempt to introduce in the Family Law Court? This Court is extremely concerned about the Parties' intentions and tactics when they return to the Family Law Court to obtain rulings on the spousal maintenance and child support. The Divorce Action has now been contested for 3½ years, and the level of acrimony has been so extreme—not only between the Debtor and Ms. Castillo, but between their respective counsel as well—that this Court is concerned about the Parties and their counsel running up attorneys' fees and prolonging disputes in the Family Law Court merely to spite the other side. Under these circumstances, this Court wants to ensure that the Parties do not retry issues that they have already tried in this

[84] According to the Debtor's schedules, the Debtor names the following parties as creditors holding secured claims: (1) Capital One Auto Finance; (2) Clover Internacional LLC; (3) Harris County Tax Assessor; and (4) Klein ISD. [Doc. No. 297, pp. 22−23 of 40]. The Debtor further lists the following parties as creditors holding unsecured nonpriority claims: (1) ABN Amro Bank; (2) Ms. Castillo; (3) Bank of America Visa; (4) Dillard's Card Services/Wells Fargo; (5) Elite Martial Arts & Fitness, Inc.; (6) GAP Visa; (7) Hugo Castillo; (8) Joseph Indelicato, Jr., P.C.; (9) Macy's Credit Card; (10) Mary E. Van Orman; (11) Neiman Marcus Credit Card; (12) Nordstrom Bank Colorado Service Center; (13) Schmude Law Firm, P.C.; and (14) the Woodfill Law Firm. [*Id*., pp. 27−30 of 40].

Court, as such a scenario would result in needless attorneys' fees and further delay in the Parties obtaining a divorce and moving on with their respective lives. Therefore, this Court, relying upon the principle of collateral estoppel, will impose an injunction to prevent them from relitigating in the Family Law Court those issues already tried in this bankruptcy case. Set forth below is this Court's explanation of its decision to *sua sponte* impose an injunction on the Parties.

3. Although This Court Abstains, the Doctrine of Collateral Estoppel and Other Applicable Law Provide the Basis for This Court to Enjoin the Parties From Retrying Issues in the Family Law Court That Have Already Been Tried in this Court

Under the doctrine of collateral estoppel, Texas courts have established that parties may be estopped from litigating issues that have been made or that could have been raised in prior proceedings in other courts. The Court certainly agrees with this public policy and, as a result, the detailed findings of fact that relate to this Court's division of the community assets and debts, to the extent that Texas law requires the Family Law Court to consider such issues in its decision on spousal maintenance and child support, may ***not*** be retried in the Family Law Court. After all, the Texas Supreme Court has stated that "[these preclusion] doctrines serve the vital functions of bringing litigation to an end, maintaining stability of court decisions, avoiding inconsistent results, and promoting judicial economy." *Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 629 (Tex. 1992). In an effort to enforce this long-standing principle, the Court will now impose a § 105(a) injunction against the Parties from relitigating these issues. A review of the doctrine of collateral estoppel underscores why this Court is justified in imposing an injunction.

a. Determining Whether Federal Law or State Law Governs Collateral Estoppel

In *Aerojet-General Corp. v. Askew*, the Fifth Circuit made clear that when a federal court renders a decision in a diversity case, the decision's preclusive effect is governed by federal principles of preclusion—as opposed to state law. 511 F.2d 710, 716 (5th Cir. 1975), appeal dismissed, 423 U.S. 908, 96 S.Ct. 210, 46 L.Ed.2d 137 (1975). The Fifth Court stated that "[t]he importance of preserving the integrity of federal court judgments cannot be overemphasized—out of respect for the federal courts and for the policy of bringing litigation conclusively to an end. If state courts could eradicate the force and effect of federal court judgments through supervening interpretations of the state law of res judicata, federal courts would not be a reliable forum for final adjudication of a diversity litigant's claims." *Id.* at 716 (footnote omitted).

Here, although diversity jurisdiction does not exist in the instant bankruptcy case, the Court finds that the logic of *Aerojet* should be applicable to any future hearings in the Family Law Court concerning spousal maintenance and child support. *Vela v. Alvarez*, 507 F. Supp. 887, 890 (Bankr. S.D. Tex. 1981) ("While the instant case does not involve diversity jurisdiction, nevertheless the rationale of *Aerojet* and its progeny is particularly applicable here, where a prior federal judgment based on federal criminal jurisdiction is sought to act as collateral estoppel to a subsequent state claim brought under the Court's pendent jurisdiction."). Assuming that this Court is incorrect in concluding that federal law should govern whether collateral estoppel applies here, it nonetheless concludes that the result would be the same whether it applied federal law or state law in this particular case. *See Eagle Properties, Ltd. v. Scharbauer*, 807 S.W.2d 714, 721 (Tex. 1990) ("In this case, the same result will be reached whether federal or state law is applied to the issue of collateral estoppel. Therefore, we do not decide the choice of law question."); *Vela*, 507 F. Supp. at 890, n. 4 ("Plaintiff contends that the application of Texas

collateral estoppel law would have the same results as the application of federal collateral estoppel law. While the Court's cursory examination of this contention reveals some merit, it is not necessary to decide the issue.").

b. Applying Collateral Estoppel to Subsequent Litigation in Family Law Court as Governed by Federal Law

Because precedent dictates that federal law be applied in determining whether collateral estoppel applies, this Court will look to federal principles of collateral estoppel. Under the federal rules of issue preclusion, a party is prevented from relitigating issues provided: "(1) that the issue at stake be identical to the one involved in the prior litigation; (2) that the issue has been actually litigated in the prior litigation; and (3) that the determination of the issue in the prior litigation has been a critical and necessary part of the judgment in that earlier action."[85] *Terrell v. DeConna*, 877 F.2d 1267, 1270 (5th Cir. 1989). The Court finds that all elements are satisfied.

The factors to be considered in the division of marital assets and debts—which have now already been litigated before this Court for 14 days—are substantially similar, if not identical, to the factors to be considered in awarding spousal maintenance and child support. *Cf. Murff*, 615 S.W.2d at 698−99 to Tex. Fam. Code Ann. § 8.052. For example, in dividing up the community assets, this Court, after listening to testimony adduced at trial, has determined that Ms. Castillo's adulterous affair with Scofield occurred prior to her initiating the Divorce Action and thereby

[85] Under Texas state law, in order to prevail on its collateral estoppel defense, a party must establish: "(1) the facts sought to be litigated in the first action were fully and fairly litigated in the prior action; (2) those facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action." *Calabrian Corp. v. Alliance Specialty Chems., Inc.*, 418 S.W.3d 154, 158 (Tex. App.—Houston [14th], 2013, no pet.). The Court notes that the only major difference between collateral estoppel governed by state law and collateral estoppel governed by federal law is the element that "the parties were cast as adversaries in the first action," which is required by Texas state law. Assuming state law (and not federal law) applies, this requirement is easily satisfied here, as there is no question that the Debtor and Ms. Castillo have been adversaries in the Motion for Division presently pending before this Court.

rendered her more at fault in the breakup of the marriage. [*See supra* Part IV(D)(1)]; *see Vannerson*, 857 S.W.2d at 669 ("The court may consider . . . fault in its breakup."). Additionally, as a result of the 14-day trial on the Motion for Division, the Court has made findings of fact regarding other factors—such as the length of the marriage, the Parties' earning ability, the Parties' physical and mental health, and the Parties' role in the dissipation of community assets. [*See supra* Part IV(D)(1)]. As described in more detail below, these are the same issues that the Parties may now want the Family Law Court to determine in the Divorce Action in order to determine the amount of spousal maintenance. Tex. Fam. Code Ann. § 8.052.

Second, the evidence introduced during the 14-day trial before this Court, and the resulting findings of fact made by this Court, make clear that such issues have in fact already been litigated. Indeed, this Court admitted voluminous and numerous exhibits, heard testimony from 16 witnesses, heard closing arguments from counsel, and has now issued the FOF & COL set forth herein. There is no question that numerous specific issues have been litigated during the trial on Ms. Castillo's Motion for Division.

Third, this Court's making fact findings and analyzing the Just and Right Division Factors, [*see supra* Part IV(D)(1)], are unquestionably "a critical and necessary part of [this Court's] judgment" relating to Ms. Castillo's Motion for Division. In fact, these factors were, in large part, the only "issues" to be determined. Without this Court's evaluation and determination of these issues, it would not have been able to divide community assets and debts as requested by the Parties. Given these circumstances, this Court concludes that collateral estoppel applies here and, therefore, the Parties must be enjoined from relitigating the same issues in the Family Law Court.

Because collateral estoppel applies, the Parties are barred from relitigating the same issues in the Family Law Court. *See Aerojet*, 511 F.2d at 716; *Vela*, 507 F.Supp. at 890 (holding that, to permit the defendant to relitigate the same elements already litigated in his federal claim would "directly conflict with the fundamental interests of the federal courts in maintaining the integrity and consistent of their own judgments"). While this Court chooses to abstain from determining an amount for spousal maintenance and child support, it does recognize that the Family Code allows for a spouse to receive maintenance if he or she:

> (A) is unable to earn sufficient income to provide for the spouse's minimum reasonable needs because of an incapacitating physical or mental disability; (B) has been married to the other spouse for 10 years or longer and lacks the ability to earn sufficient income to provide for the spouse's minimum reasonable needs; ***or*** (C) is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because of a physical or mental disability that prevents the spouse from earning sufficient income to provide for the spouse's minimum reasonable needs.

Tex. Fam. Code. Ann. § 8.051(2). Moreover, "[d]eciding what the minimum reasonable needs are for a particular individual is a fact-specific determination that should be made by the trial court on a case-by-case basis." *Amos v. Amos,* 79 S.W.3d 747, 749 (Tex. App.—Corpus Christi, 2002, no pet.).

Once a spouse is deemed "eligible" to receive maintenance, the Family Code directs the trial court to determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors, including:

> (1) each spouse's ability to provide for that spouse's minimum reasonable needs independently, considering that spouse's financial resources on dissolution of the marriage;
> (2) the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to earn sufficient income, and the availability and feasibility of that education or training;
> (3) the duration of the marriage;

> (4) the age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;
> (5) the effect on each spouse's ability to provide for that spouse's minimum reasonable needs while providing periodic child support payments or maintenance, if applicable;
> (6) acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;
> (7) the contribution by one spouse to the education, training, or increased earning power of the other spouse;
> (8) the property brought to the marriage by either spouse;
> (9) the contribution of a spouse as homemaker;
> (10) marital misconduct, including adultery and cruel treatment, by either spouse during the marriage; and
> (11) any history or pattern of family violence, as defined by Section 71.004.

Tex. Fam. Code Ann. § 8.052.

Because the Parties are bound by, and may not retry, this Court's findings of fact under the principle of collateral estoppel, this Court will, for clarity's sake, set forth below the specific findings of fact that it made which also relate to spousal maintenance and child support. The Parties are barred from relitigating these issues, but they assuredly may cite them to the Family Law Court to argue their respective positions as to how much spousal maintenance and child support the Family Law Court should award to Ms. Castillo.

First, this Court reiterates the following findings of fact, [*see supra* Part II & III], relevant to Ms. Castillo's eligibility for receiving spousal maintenance under § 8.051(2) of the Family Code.[86]

> (1) The Debtor and Ms. Castillo were married on September 21, 1996 and, therefore, have been married in excess of 10 years. [Finding of Fact No. 50].
>
> (2) The marriage between the Debtor and Ms. Castillo has been of a long duration. [*See* Finding of Fact No. 50].

[86] The Parties are, of course, not only free to cite to the Family Law Court these specific findings of fact, but are also free to cite any other finding of fact that this Court has made relating to the Motion for Division.

(3) Ms. Castillo is the primary custodian of the Parties' two minor children. The Children currently live with Ms. Castillo in the Homestead. Upon the Debtor's move to Panama to begin his new job, Ms. Castillo will retain custody of the Children. [Findings of Fact Nos. 33, 60 & 61].

(4) The Children—J.M.C., 17 years old, and A.G.C., 14 years old—are in fairly good physical health with no physical impairment, and neither child requires substantial and constant supervision with respect to any physical ailments. [Findings of Fact Nos. 58 & 59].

(5) J.M.C. suffers from dyslexia and ADHD but does not require substantial supervision, as he has been involved in football and basketball most of his life. [*See* Finding of Fact No. 58]. A.G.C. is in good mental health.

(6) Ms. Castillo, although having no incapacitating physical or mental disability, occasionally suffers from ulcerative colitis which causes flare-ups, joint pain, tiredness, low levels of bleeding, or residual infections. [Finding of Fact No. 41].

(7) Ms. Castillo does not own separate property of any significant value. [See Finding of Fact No. 233].

(8) Ms. Castillo is 46 years old and has limited work experience in the real estate industry. [Findings of Fact Nos. 37 & 44].

(9) Ms. Castillo's education and employment skills are not significantly developed due to her long absence from the work place while tending to the Children for more than 17 years. [*See* Findings of Fact Nos. 53, 67 & 68].

(10) As Ms. Castillo has been out of the work place for a substantial amount of time, she has limited earning ability. [*See* Findings of Fact Nos. 53, 67 & 68].

(11) Since filing for divorce, Ms. Castillo has attempted to pursue business opportunities and trying to build a resume. [Finding of Fact No. 48]. Ms. Castillo would like to go back to school to possibly pursue a paralegal degree. [*Id.*].

(12) Ms. Castillo currently owes the Harris County Tax Assessor and Klein ISD approximately $48,000.00 for *ad valorem* taxes due on the Homestead. [Finding of Fact No. 123].

(13) Ms. Castillo currently has no college degree. [Finding of Fact No. 45].

As detailed in this particular section and throughout the FOF & COL, the Court has provided findings of fact regarding Ms. Castillo's earning ability, education, business opportunities, physical and mental health, and tax concerns. *See Amos*, 79 S.W.3d at 749. Given the relevant findings of fact set forth above, this Court believes that the Family Law Court can properly determine whether Ms. Castillo is eligible for spousal maintenance.

Assuming the Family Law Court concludes that Ms. Castillo is eligible for spousal maintenance under the Family Code, this Court reiterates that the findings of fact set forth herein (and summarized below) are relevant to the determination of the nature, amount, duration, and manner of periodic payments of such maintenance, and the Parties may certainly cite them to the Family Law Court to argue their respective positions—they just cannot retry them:

> (1) Ms. Castillo's education and employment skills are not significantly developed due to her long absence from the work place while tending to the Children for more than 17 years. [*See* Findings of Fact Nos. 53, 67 & 68].
>
> (2) Ms. Castillo currently has no college degree. [Finding of Fact No. 45].
>
> (3) The Debtor has a significantly higher chance of earning a more income than Ms. Castillo as the Debtor has been working during the duration of the Parties' marriage. [Findings of Fact Nos. 22, 23 & 68].
>
> (4) The Debtor will earn a base salary of $100,000.00 in his new position in Panama. [Finding of Fact No. 33]. He will not be currently entitled to any commissions. [*Id*.].
>
> (5) According to the Order on Additional Fees and Support, the Debtor is currently responsible for child support in the amount of $2,137.50 per month. [Findings of Fact Nos. 124 & 126]. Thus, with the Debtor's base salary of $100,000.00, the Debtor will not be able to make spousal maintenance payments of $10,000.00 as currently required by the Order on Additional Fees and Support. [*See* Findings of Fact Nos. 33 & 126].
>
> (6) Since filing for divorce, Ms. Castillo has tried to build a resume. [Finding of Fact No. 48]. Ms. Castillo would like to return to school to possibly pursue a paralegal degree. [*Id*.].

(7) The Debtor and Ms. Castillo were married on September 21, 1996 and, therefore, have been married in excess of 10 years. [Finding of Fact No. 50].

(8) Ms. Castillo is 46 years old. [Finding of Fact No. 37].

(9) As Ms. Castillo has been out of the work place for a substantial amount of time, at this time she has relatively limited earning ability compared to the Debtor's present earning ability. [*See* Findings of Fact Nos. 53 & 68].

(10) Ms. Castillo is capable of obtaining a job and working as shown by her employment history. Specifically, Ms. Castillo held several jobs where she sold high-end women's merchandise, which included sales positions at Macy's, Fendi Boutique, and Dolce and Gabbana. [Finding of Fact No. 46]. And, in 1996, Ms. Castillo worked at Office System of Texas where she sold copiers. [Finding of Fact No. 47].

(11) Ms. Castillo, although having no incapacitating physical or mental disability to prevent her from obtaining a job, occasionally suffers from ulcerative colitis which causes flare-ups, joint pain, tiredness, low levels of bleeding, or residual infections. [Findings of Fact No. 41].

(12) Ms. Castillo does not own separate property of any significant value. [See Finding of Fact No. 233].

(13) Ms. Castillo has contributed greatly to the raising of the Children as her sole job was to be a "stay-at-home" mom. [Findings of Fact Nos. 53 & 68]. In her role as a stay-at-home mom, Ms. Castillo dedicated her time to taking care of the Children. [Findings of Fact Nos. 53 & 68].

(14) On at least one occasion, Ms. Castillo spent community funds to pay for a hotel room where Kyle Scofield and she engaged in sexual activity. [Finding of Fact No. 108].

(15) Ms. Castillo wasted community assets when she gave her attorney one of the Debtor's expensive watches and one of the community watches without the knowledge or permission of the Debtor. [Finding of Fact No. 77].

(16) The Debtor used funds from the Parties' community estate to pay for trips that Celina Beltran and he took together. [Finding of Fact No. 102].

(17) The Debtor also loaned $10,000.00 from the community account to Maria Muñoz, [Finding of Fact No. 90], and $2,500.00 from the community account to Omara Valles, [Finding of Fact No. 91].

(18) Ms. Castillo developed a habit of visiting certain Houston restaurants at the lunch hour, displaying large amounts of cash to the public, and meeting new "friends." [Findings of Fact Nos. 54, 75, 105, 106, 112 & 119].

(19) Ms. Castillo engaged in an extramarital affair with Kyle Scofield prior to the filing of the Divorce Action. [Finding of Fact No. 107]. She also had sexual relationships and/or dated Ronald White and Richard Spitzer during the course of the Parties' marriage. [Findings of Fact Nos. 115 & 120].

(20) The Debtor engaged in extramarital affairs with Julie Svancara and Celina Beltran during the marriage of the Parties, but only after Ms. Castillo filed for divorce. [Findings of Fact Nos. 97 & 101].

(21) Due to the demands of his job, during the marriage, the Debtor traveled to various cities and countries about 60% of the time. [Finding of Fact No. 25]. However, when not traveling, the Debtor, at times, frequented certain restaurants and consumed alcohol. [Finding of Fact No. 55].

With respect to the determination of child support, the Court notes that child support awards are not unlimited under the Family Code. *Coburn v. Moreland*, 433 S.W.3d 809, 834 (Tex. App.—Austin 2014, no pet.) ("[E]ven when an obligor has an earning potential in excess of $7,500 [of net monthly resources], child-support awards are not unlimited because they are capped at the proven needs of the child."); *see* Tex. Fam. Code Ann. § 154.126. During the 14-day trial conducted before this Court, the Parties did not present any evidence with regard to the "proven needs" of the Children or of the Debtor's net resources. Even if this Court has jurisdiction to make the determination on child support, it cannot do so without such information. However, the Court reiterates the following findings of fact relating to the Children's current health and well-being, as such factors will certainly be relevant to the Family Law Court's determination of an award of child support.

(1) The Children currently reside with Ms. Castillo at the Homestead. [Finding of Fact No. 61].

(2) J.M.C. is 17 years old and suffers from dyslexia and ADHD, although these afflictions do not affect his ability to lead a normal life. [Finding of Fact No. 58]. He will be graduating from high school soon.

(3) Although J.M.C. played football and basketball most of his life, he is not currently involved in any extracurricular activities. [*Id.*].

(4) A.G.C. is 14 years old and participates in her school's drama club. [Finding of Fact No. 59].

(5) Ms. Castillo has been a stay-at-home mom for 17 years. [Findings of Fact Nos. 53, 67 & 68].

(6) The Debtor and Ms. Castillo have agreed that Ms. Castillo shall retain full custody of the Children. [Finding of Fact No. 61].

In sum, to permit the Parties to relitigate the issues set forth above in the Family Law Court would in no way "serve the vital functions of bringing litigation to an end, maintaining stability of court decisions, avoiding inconsistent results, and promoting judicial economy." *See also Vela*, 507 F.Supp. at 890 (holding that, to permit the defendant to relitigate the same elements already litigated in his federal claim would "directly conflict with the fundamental interests of the federal courts in maintaining the integrity and consistent of their own judgments"). When the Parties return to the Family Law Court to obtain rulings on spousal maintenance and child support, this Court trusts that they will use this Court's findings to present arguments to the Family Law Court about the amounts that should be awarded to Ms. Castillo for spousal maintenance and to the Parties' minor son and daughter for child support. Indeed, because this Court has serious concerns about the Parties' intentions and tactics, this Court, relying upon the principle of collateral estoppel, will now enjoin them from relitigating any issues in the Family Law Court that this Court has already decided.

G. This Court's Authority to Enjoin the Parties From Relitigating the Same Issues Already Tried in this Court Is Derived From 11 U.S.C. § 105 and 28 U.S.C. § 2283

The Court first notes that the Anti-Injunction Act, codified as 28 U.S.C. § 2283, generally prohibits federal courts from enjoining state court proceedings, except in three situations. Section 2283 states that:

> A court of the United States may not grant an injunction to stay proceedings in a State court *except* as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283 (emphasis added). In the case at bar, all three exceptions exist. First, the Code, enacted by Congress in 1978, contains an express provision—§ 105(a)—authorizing this Court to issue an injunction. Second, this Court has exclusive jurisdiction over both the community property of the Debtor's marriage and his post-petition earnings; and in order to ensure that the litigation in the Family Law Court does not impede this jurisdiction by reducing the value of these assets and earnings for the sole benefit of Ms. Castillo and at the expense of the Debtor's other creditors, this Court has the power to enjoin actions that would result in such a scenario. Third, this Court has issued an order on the Motion for Division, and the Court has the power under 28 U.S.C. § 2283 to enjoin the Parties from now taking any action or pursuing any strategy that undermines this order.

It has been well-established that bankruptcy courts have equitable powers to issue a stay of a proceeding in a state court pursuant to § 105 of the Code. *See* 11 U.S.C. § 105(a); *Matter of Schwamb,* 169 B.R. 601, 605 (E.D. La. 1994), *aff'd*, No. 94–30427, 48 F.3d 530, 1995 U.S. App. LEXIS 4456 (5th Cir. 1995). Section 105(a) provides, in relevant part, that:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte,* taking any action

> or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

The Supreme Court has held that § 105(a) grants bankruptcy judges "broad authority . . . to take any action that is necessary or appropriate 'to prevent an abuse of process.'" *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 127 S.Ct. 1105, 1111–12, 166 L.Ed.2d 956 (2007) (quoting § 105(a)). Moreover, the Fifth Circuit has held that § 105(a) is to be "interpret[ed] liberally," so long as any action taken pursuant to § 105(a) is "consistent with the rest of the Bankruptcy Code." *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 760 (5th Cir. 1995). Section 105(a) thus permits bankruptcy courts to "fashion such orders as are necessary to further the substantive provisions of the Bankruptcy Code." *Perkins Coie v. Sadkin (In re Sadkin)*, 36 F.3d 473, 478 (5th Cir. 1994) (quoting *Chiasson v. Bingler (In re Oxford Management Inc.)*, 4 F.3d 1329, 1333 (5th Cir. 1993)). Thus, when reading the Anti-Injunction Act in conjunction with § 105(a) of the Code, this Court is provided with ample authority to enjoin the Parties from relitigating issues in the Divorce Action that this Court has already decided with respect to the Motion for Division.

Here, this Court wants to further the substantive provisions of Chapter 11 of the Code. The Debtor's case is a Chapter 11, and the Debtor and the Trustee—or both—will no doubt be filing a Chapter 11 plan which proposes to pay claims of **all** of the Debtor's creditors, including the spousal maintenance and child support claims held by Ms. Castillo. In order to ensure that there is a maximum amount of funds in this Chapter 11 estate for any plan proponent to use as a basis for confirming a plan, there must be a bar to the expenditure of the Debtor's post-petition earnings to pay for attorneys' fees in the Family Law Court litigating issues that have already been tried in this Court. The vehicle to prevent the incurring and expenditure of such fees is a § 105 injunction against the Parties. Indeed, "implicit in § 105 is the ability of a bankruptcy court

to stay a state court proceeding when the principles of claim preclusion or collateral estoppel are applicable." *In re Tippins*, 221 B.R. 11, 28 (Bankr. N.D. Ala. 1998).

Moreover, the "protect or effectuate its judgments" exception of the Anti-Injunction Act—also known as the "relitigation exception"—leads this Court to conclude that an injunction would serve "to protect [and] effectuate [this Court's] judgment" in dividing the community estate and requiring the Trustee to prosecute or abandon numerous causes of actions owned by the estate. *See Southmark Properties v. Charles House Corp*., 742 F.2d 862, 873 (5th Cir. 1984); *Jacksonville Blow Pipe Co. v. Reconstruction Fin. Corp*., 244 F.2d 394, 397 (5th Cir. 1957). Specifically, the Fifth Circuit states that "[t]he relitigation exception prevents state litigation of an issue that was previously presented to and decided by the federal court. It is founded in the well-recognized concepts of res judicata and collateral estoppel." *Harvey Specialty & Supply, Inc. v. Anson Flowline Equipment Inc.*, 434 F.3d 320, 323 (5th Cir. 2005) (internal quotations omitted). Indeed, the relitigation exception is essentially a concept designed to prevent issues that have been tried in federal court from being relitigated in state court. *Woods Exploration & Prod. Co., Inc. v. Aluminum Co. of America*, 438 F.2d 1286, 1312 (5th Cir. 1971), *cert. denied,* 404 U.S. 1047, 92 S.Ct. 701, 30 L.Ed.2d 736 (1972). There is good reason to prevent a "relitigation" of claims and/or issues. In fact, the First Circuit aptly observed that:

> [W]hat is sought is a relitigation injunction. The justification for the injunction here is not effect on the debtor (although the presence of such an effect certainly strengthens the case for the injunction), but protection of a federal judgment. A valid original judgment provides the federal court with the power to issue the religitation injunction.

In re G.S.F. Corp., 938 F.2d 1467, 1475 (1st Cir. 1991) (citations omitted). Here, this Court has made extensive findings of fact in making a decision on the division of community property—a decision that both Parties expressly requested this Court to make—and neither of them should

now be allowed to return to the Family Law Court to relitigate any issue merely because they may be unhappy with this Court's ruling. To allow such tactics would undermine this Court's jurisdiction over property of the estate (including the Debtor's post-petition earnings) and the enforcement of its own order regarding the Motion for Division.

In sum, based on 28 U.S.C. § 2283, its power under § 105(a), and the principle of collateral estoppel, this Court now enjoins the Parties from returning to the Family Law Court and relitigating the same issues already tried in this bankruptcy case. *See, e.g.*, *Central West Virginia Energy Co. v. Wheeling–Pittsburgh Steel Corp.*, 2007 WL 1675004, at *11 (6th Cir. 2007) (recognizing bankruptcy courts have the jurisdiction and power under case law and 11 U.S.C. § 105(a) to issue injunctions as may be necessary or appropriate to effectuate or prevent the frustration of orders that they have previously issued). Not only will this injunction prevent the Parties from unnecessarily increasing attorneys' fees and thereby depleting the value of property of the Debtor's bankruptcy estate (i.e., community property and post-petition earnings); it will also minimize the possibility that the Family Law Court will make findings and conclusions, and issue an order, that conflicts with this Court's findings of fact and conclusions of law as well as this Court's enforcement of its order regarding the Motion for Division. *See Jacksonville Blow Pipe Co. v. Reconstruction Finance Corp.*, 244 F.2d 394, 400 (5th Cir. 1957) ("[N]othing would be as productive of friction between the state and the federal courts as to permit a state court to interpret and perhaps to upset such a judgment of a federal court."); *Southwest Airlines Co. v. Texas Intern. Airlines, Inc.*, 546 F.2d 84, 91 (5th Cir. 1977) (citing *Woods Exploration & Prod. Co. v. Aluminum Co. of America*, 438 F.2d 1286, 1312, cert. denied, 404 U.S. 1047, 92 S.Ct. 701, 30 L.Ed.2d 736) ("Friction is also avoided by an injunction that: prevents multiple litigation of the same cause of action and . . . assures the winner in a federal

court that he will not be deprived of the fruits of his victory by a later contrary state judgment which the Supreme Court may or may not decide to review.").

IV. CONCLUSION

Having now divided the community property, this Court will hold periodic status conferences in this case to obtain reports from the Trustee regarding his investigation of the various assets discussed herein, including, but not limited to, the amount of commissions earned but not yet paid to the Debtor; and whether to pursue claims on behalf of the bankruptcy estate for waste of community assets, for legal malpractice representing the Debtor, and for reimbursement of payments that the Debtor made to Ms. Castillo out of his 401k account.

A separate order consistent with these Amended Findings of Fact and Conclusions of Law will be entered simultaneously on the docket.

Signed on this 18th day of February, 2016

Jeff Bohm
United States Bankruptcy Judge