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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

METROPOLITAN LIFE
INSURANCE COMPANY,

Plaintiff,

vs.

GARY SUMNER, as Trustee of the
Testamentary Trust of Martin
Herman FBO L.H., a minor under
the age of 18; JARED MICAH
HERMAN and JADE HERMAN,

Defendants.

Case No. C15-1451RSL

ORDER DENYING SUZANNE
HERMAN'S MOTION FOR
SUMMARY JUDGMENT

This matter comes before the Court on the “Motion of Suzanne M. Herman for Partial Summary Judgment.” Dkt. # 50. Suzanne seeks an order awarding her 50% of the proceeds of an insurance policy purchased by her deceased husband, Martin Herman, with community assets. The policy designates Jade and Micah, Martin’s adult children from a first marriage, as the beneficiaries.

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact that would preclude the entry of judgment as a matter of law. The party seeking summary

1 dismissal of the case “bears the initial responsibility of informing the district court of
2 the basis for its motion” (Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)) and
3 “citing to particular parts of materials in the record” that show the absence of a
4 genuine issue of material fact (Fed. R. Civ. P. 56(c)). Once the moving party has
5 satisfied its burden, it is entitled to summary judgment if the non-moving party fails to
6 designate “specific facts showing that there is a genuine issue for trial.” Celotex Corp.,
7 477 U.S. at 324. The Court will “view the evidence in the light most favorable to the
8 nonmoving party . . . and draw all reasonable inferences in that party’s favor.”
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10 Krechman v. County of Riverside, 723 F.3d 1104, 1109 (9th Cir. 2013). Although the
11 Court must reserve for the jury genuine issues regarding credibility, the weight of the
12 evidence, and legitimate inferences, the “mere existence of a scintilla of evidence in
13 support of the non-moving party’s position will be insufficient” to avoid judgment.
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15 City of Pomona v. SQM N. Am. Corp., 750 F.3d 1036, 1049 (9th Cir. 2014);
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17 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). Factual disputes whose
18 resolution would not affect the outcome of the suit are irrelevant to the consideration
19 of a motion for summary judgment. S. Cal. Darts Ass’n v. Zaffina, 762 F.3d 921, 925
20 (9th Cir. 2014). In other words, summary judgment should be granted where the
21 nonmoving party fails to offer evidence from which a reasonable jury could return a
22 verdict in its favor. FreecycleSunnyvale v. Freecycle Network, 626 F.3d 509, 514 (9th
23 Cir. 2010).
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1 Having reviewed the memoranda, declarations, and exhibits submitted by the parties,¹
2 and having heard the arguments of counsel, the Court finds as follows:

3 Under Washington law, neither spouse can give away community property
4 “without the express or implied consent of the other.” RCW 26.16.030(2). See also
5 Francis v. Francis, 89 Wn.2d 511, 517 (1978). The parties agree that the life insurance
6 policy and proceeds at issue in this litigation are community property and that Suzanne
7 must have consented to giving the insurance proceeds to Jade and Micah in order for
8 Martin’s beneficiary designations to be effective. Suzanne argues that, given the nature
9 of the asset at issue, her consent had to be express, and preferably in writing, for the
10 gift to be effective. While it is unclear what aspect of the asset Suzanne believes
11 necessitates express consent – possibly the size of the gift or the cumulative cost of the
12 premiums – it is clear that the governing statute makes no distinction between
13 categories or types of assets. The statute specifically states that a spouse’s implied
14 consent to a gift of community property is all that is needed. Nor does Washington law
15 require that the spouse’s consent be in writing. Dkt. # 64 at 2. The “written consent”
16 language on which Suzanne relies comes from a discussion of California law in
17 Francis, 89 Wn.2d at 515 (quoting Pac Mut. Life Ins. Co. v. Cleverdon, 108 P.2d 405,
18 407 (Cal. 1940)). A “written consent” requirement would be inconsistent with the
19 governing statute. RCW 26.16.030(2).
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26 ¹ The Court has not relied upon or considered the evidence or argument to which Suzanne
27 objects in ruling on this motion. The Court also finds it unnecessary to consider the
supplemental evidence submitted by Jade and Micah on June 22, 2016. The motion for leave
to supplement (Dkt. # 75) is therefore DENIED.

1 The evidence in the record shows that Suzanne consented to both the purchase of a life
2 insurance policy with community assets and the payment of all proceeds from that policy to
3 Jade and Micah. Her declaration makes clear that she took part in the purchase and was fully
4 informed of the designated beneficiaries. Dkt. #51 at 2. Although only Martin signed the
5 application, the purchase of the policy for Jade and Micah’s benefit was with her knowledge
6 and consent.
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8 If there were any doubt about the fact of consent (and there is not), it would be
9 overcome through an applicable statutory presumption. Where, as here, the property to
10 be gifted consists of the proceeds of a life insurance policy, consent to the gift is
11 presumed where the insured designates a “child, parent, brother, or sister of either of
12 the spouses” as the beneficiary. RCW 48.18.440(2). “The manifest legislative purpose
13 in adopting [RCW 48.18.440(2)] was to facilitate the prompt payment of the proceeds
14 of insurance policies to the named beneficiaries” (Miller v. Paul Revere Life Ins. Co.,
15 81 Wn.2d 302, 306 (1972)) and to prevent “delayed claims that a spouse did not
16 consent to the designation” (Francis, 89 Wn.2d at 517-18). The Washington Supreme
17 Court deemed this legislative presumption entirely rational based on the relationship of
18 trust and confidence presumed to exist between married couples and which would
19 likely involve mutual decisionmaking and disclosures as the couple makes provision
20 for elderly, incompetent, or dependent family members. Miller, 81 Wn.2d at 307, 309-
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1 The policy at issue in this case was purchased by Martin for the provision of his
2 children: the presumption of consent therefore applies. The presumption is one of fact,
3 however, and may be rebutted. Nat'l Bank of Commerce of Seattle v. Lutheran Bhd., 40
4 Wn.2d 790, 794 (1952). As discussed above, all of the relevant evidence shows that Suzanne
5 was fully aware of the policy, approved its purchase, and knew that Martin had designated
6 Jade and Micah as the beneficiaries. Suzanne has not come forward with any evidence from
7 which a reasonable jury could find that the presumption of consent has been rebutted. See
8 Bradley v. S.L. Savidge, Inc., 13 Wn.2d 28, 63-64 (1942). Suzanne does not state that she
9 was unaware of the policy, that she was unaware that Martin had designated Jade and Micah
10 as beneficiaries, that she did not approve of the designations, or that she did not consent to
11 Martin's gift of the proceeds to his children. To the contrary, her declaration makes clear that
12 she and Martin agreed to purchase this policy for Jade and Micah's provision.²

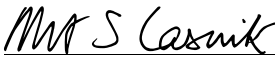
16 Suzanne's primary argument is that she only recently became aware that spouses have
17 an interest in the proceeds of life insurance policies and therefore (a) could not have
18 knowingly consented to waive that interest and (b) never consented to a conversion of a
19 community asset into Martin's separate property. This argument is unpersuasive. First, there
20 is no requirement that a spouse know of or specifically waive her "spousal interest" in a
21 community asset. The issue under RCW 26.16.030(2) is whether Suzanne expressly or
22 impliedly consented to the gift of community property, in this case, to giving the proceeds of
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26 ² Because Suzanne has not provided any evidence in support of her contention that she did
27 not consent to naming Jade and Micah as the beneficiaries of the life insurance policy, the
Court need not determine whether such evidence must be "uncontradicted, unimpeached,
clear and convincing." Bradley, 13 Wn.2d at 63.

1 a life insurance policy that was purchased with community assets to Martin's children. No
2 reasonable jury could find, based on the actual and presumed facts, that she did not consent to
3 such a gift. Second, there was no conversion of a community asset into Martin's separate
4 property. All parties agree that the insurance proceeds were purchased with and remain a
5 community asset.³ Because both spouses consented to give that asset to Jade and Micah, the
6 transfer of the community asset was effective.
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10 For all of the foregoing reasons, the Court finds that, as a matter of law, Suzanne
11 consented to the gift of the life insurance policy proceeds to Martin's children. Her motion for
12 summary judgment (Dkt. # 50) is therefore DENIED and Jade and Micah are entitled to a
13 summary determination of this issue in their favor.
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16 Dated this 5th day of August, 2016.

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18 Robert S. Lasnik
19 United States District Judge
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22 ³ Estate of Langeland v. Drown, ___ P.3d ___ (Wn. App. July 18, 2016), on which Suzanne
23 relied at oral argument, is distinguishable on this ground. The heir in that case argued that her
24 father, Langeland, and his partner, Drown, held separate interests in the house they had
25 purchased together. Her father had put up \$148,000 of the \$158,000 purchase price, with
26 Drown paying the other \$10,000 and signing a \$40,000 promissory note in favor of
27 Langeland. The appellate court found that there was "no evidence that Drown and Langeland
intended to convert their jointly owned earnings into separate interests in the house." Id. at *4.
The presumption that property acquired during a committed relationship is a community asset
won out over the heir's unsupported interpretation of the house agreement. In this case,
neither party is attempting to rebut the community property presumption. The policy and its
proceeds are acknowledged as community property.