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To: Andrew Washington

From: Applicant

Date: July 25, 2023

Re: In re Marriage of Burke

Dear Ms. Wendy Burke

First of all, I would like to recommend that joint stipulation is quite well reasonable so W should accept the offer because H's DA shares are SP and W, the community, devoted more than minimal effort involving H's DA shares during the marriage, and the H's hard work was predominant cause of the increase, the court likely should award H for his 50 percent share of the CP and his 100 percent of his SP

## INTRODUCTION

Pursuant to your request, I've analyzed issues below relating to 1) whether H's DigitalAudio(DA) shares are community property (CP) or separate property (SP), 2) whether the community devoted more than minimal effort involving H's DA shares during marriage so as to acquire an interest in any increase in value, during marriage, of the shares resulting in CP, 3) How should the family court apportion the \$200 mil. increase in value, during the marriage, or H's DA shares?

## ANALYSIS

### 1. Whether H's DA shares are CP or SP

Under Columbia law, marriage is an egalitarian partnership. Property that either spouse acquires during marriage belongs to the marital community. It is CP. CFC760. At dissolution, CP is awarded to each spouse in an equal 50 percent share. CFC 2550. Property that either spouse acquired before marriage belongs to that spouse. It is SP. CFC770. The proceeds of property that either spouse acquired before marriage also belong to that spouse, even if he acquires the proceeds during marriage. At dissolution, SP is confirmed in its entirety to the owning spouse. sec 2550. In re Marriage of Rand

In Marriage or Rand, the court properly characterized C's RIC shares as his SP because he acquired his shares before marriage.

Similar to Rand, in our case, H's DA shares are deemed as his SP because he also acquired his shares before marriage. Although H's DA shares was fallen to zero at the time of marriage

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and risen to \$200 mil during the marriage, \$200 mil is the proceeds of H's DA shares is that H acquired before marriage also belong to H.

Thus, H's DA shares are SP.

**2. Whether the community devoted more than minimal effort involving H's DA shares during marriage so as to acquire an interest in any increase in value, during marriage, of the shares resulting in CP**

Whenever the community devotes more than minimal effort involving a spouses's SP during marriage, the community acquires an interest in any increase in value, during marriage, or the separate property, and that interest is CP. Dekker in In re Marriage of Rand In dividing property at dissolution, the family court must apportion the increase in value, during marriage, of one spouses's SP whenever the community devotes more than minimal effort involving the SP during marriage. Marriage or Rand

In Marriage of Rand, the court held that the community acquired an interest in the increase in value, during marriage, of C's RIC shares because the community devoted more than minimal effort involving C's shares during marriage through C's hard work for the business between marriage and separation.

Similar to Marriage of Rand, W as the community devoted more than minimal effort involving H's DA shares during marriage through C's hard work for the business during the marriage because W in early days of the marriage, helped H with shipping some hardware and software in the home, just as hard as H worked at DA. W worked more than full time caring for them for H and for the house. Due to her intensive efforts, H is getting by quite well enough to focus on more his work at DA and H also admitted. Although there is no evidence that W worked for the business, that fact is inconsequential because the community acts whenever either of the spouses acts.

Thus, the community devoted more than minimal effort involving H's Da shares during the marriage.

**3. Family court's apportion the \$200 mil. increase in value, during the marriage, or H's DA shares**

One approach to apportionment, under Pereira, applies when the increase in value, during marriage, of one spouses's SP is principally due to community efforts. This approach requires the family court to apportion the increase in value mainly to the community estate. Marriage or Rand Another approach, under Van Camp, applies when the increase in value, during marriage, of one spouses's SP is principally due to factors other than community efforts. This approach require the court to apportion the increase in value mainly to the estate of the owning spouse. Marriage or Rand Although in dividing property the family court is not required to adopt either Pereira or Van Camp approach, the court must nevertheless divide the property in such a substantial justice between the spouses. Marriage or Rand

In Marriage of Rand, the court held that the facts show two separate periods during marriage,

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the first period was Pereria period during which the increase in value of C's RIC shares was principally due to community efforts, C's hard work was predominant cause of the increase. the second period was the Van Camp period during which the increase in value of C's RIC shares was principally due to factors other than community efforts, market forces were the predominant cause of the increase. The court also held that substantial justice btw the spouses does not require the court to evenly divide the entire increase in value, during marriage, of one spouse's SP; rather requires the court to evenly divide only the portion of the increase principally due to community efforts.

Here, unlike Rand that there are two separate periods during marriage, we don't have two separate periods during marriage. Even though it's Pereira period, similar to Marriage of Rand, H's hard work was predominant cause of the increase. Even his coworker said that without H, DA would not have come into existence and would not have remained in existence.

Thus, similar to Rand, the court likely should award H for his 50 percent share of the CP and his 100 percent of his SP.

## CONCLUSION

Because H's DA shares are SP and W, the community, devoted more than minimal effort involving H's Da shares during the marriage, and the H's hard work was predominant cause of the increase, the court

likely should award H for his 50 percent share of the CP and his 100 percent of his SP. Thus, joint stipulation is quite well reasonable so W should accept the offer.

Sincerely,

Andrew Washington

Question #3 Final Word Count = 1098

**END OF EXAM**