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Harlan=H

DigitalAudio=DA

Wendy=W

Community property=CP

Separate Property=SP

To: Andrew Washington

From: Applicant

July 25, 2023

Dear Wendy:

Brief statement of recommendation

Thank you for allowing me to conduct the recommendation for you. I believe that it is in your best interest to fight for your share of CP during your marriage which was from 1989 to 2009. While the other party will try to convince you that the share in your the value of your husband was not the CP because you did not work or you decline the offer to have support to raise your children from your husband, the facts are in your favor since you were not really have to be the working spouse to have your share of CP. I do not believe that the offer of 50 million reflects your true share of your CP because your husband was working very hard during your marriage, you should still be flexible to consider the offer because the market value of the products your husband was working on can affect this distribution after 2009.

1. Are H's DA shares are CP or SP?

Under Colombia law, marriage is an egalitarian partnership. In Re Marriage of Rand. Property that acquired during marriage is CP. Family Code Section 760. In contrast property acquired before marriage belongs to the spouse - the proceed of benefit is also SP because it was acquired before the marriage, even if he acquired the property during marriage. Under Section 2550, SP upon dissolution is confirmed in entirety to the owning spouses.

In re Marriage of Rand, the court characterized that the husband's shares of the RIC (Rand investment Corporation) as SP because it was undisputed that the defendant (Charles)acquired his share before the marriage when he formed RIC to provide investment advisory services in exchange for fees based on percentage of the client's assets. Similarly, here, Mr. Burke (H) co-founded digital Audio, Inc. with Pamela, his high school friend before he met his wife in 1981. H and W later got married in 1989. Therefore, applying the section 2550, upon divorce in 2009, the DA's shares are his SP.

Thus, it is likely that the court will find that H's DA, not the increased value of the stock, was his

SP.

2. Did the CP devote more than minimal effort involving H's DA during marriage as to acquire an interest in value during marriage?

It is likely that the court will find that community devoted more than minimal efforts involving H's DA to marriage due to his hard work. In re Marriage of Dekker, the court ruled that because the marriage is an egalitarian partnership, whenever the property devotes more than minimal efforts involving the spouse's separate property during marriage, the community acquires an interest in any increase in value of the property during marriage of the SP and that interest is CP. Relying on this case, in re marriage of Rand, when the community devotes more than minimal effort, the court used two approaches to apportion the increase in value of SP during marriage.

In re Marriage of Rand, under Pereira, the court held that that defendant (Husband)'s increase in value of his shares between the date of marriage and his withdrawal from the business was CP because the increase in value was due to the husband's personal efforts as it was the predominant cause of the increase. The court held that the community was devoted more than minimal effort involving the husband's share through the husband's hardwork for the business during the marriage. The court decided that the fact that the wife did not work for the business was not inconsequential because the community acts as whenever either of spouses act. It does not have to be only the wife. This approach requires the family court to apportion the increase in value to the community estate.

Similarly, here, while it is jointly stipulated that H's DA had fallen to zero by the date of marriage, W and Pamela both testified that H was working very hard on the DA. Ms. Burke, herself testified that her husband was working night and day for the typical start up. He worked there "night and day." According to Pamela, H was the Chief scientific Officer who was able to create the industry that transform the music recording. She testified that no one else except H worked on the first design of sound audio. H updates sound audio and sustained it throughout the entire company even when they were working on the second ProAudio version of it. Although he did not work on Pro- audio, he was the only one who was able to keep updating the SoundAudio which made the DA to keep selling this product and not wait for the Pro version to come in. If it was not for H's effort, they could have not sold the product. They should have kept the DA closed until the new product became marketable. While W was not working during this time except only for helping H for shipping is not the inconsequential because for the community to devote more than minimal, only contribution of one spouse was enough and because H worked during their marriage from 1989 to 2009 very hard, day and night, the community devote more than minimal efforts.

H's attorney is going to argue that the increase in value was not due to the devotion of the minimal efforts. In Rand, the court used another approach of Van Camp when increase in value of SP during marriage is due to factors other than community efforts. The court held that the increase in value of the share at the end of the marriage was because of the factors such as market forces as the predominant factor.

Here, H's attorney will argue that from 2009 to 2021, the pro Audio was the most predominant fact in increasing the value of the stock because the pro value became marketable product which was worth of \$200 millions and the end of the sound Audio. They will argue that the market forces such as popularity of the pro audio was the predominant factor of the increase in stock value. However, although this may be true after 2009 when they had the pro audio in the market, Pro audio could not be marketable without H's efforts. In the beginning of 2009, Proaudio had a rocky start and H was the only one who was able to sell the other product, Sound Audio, until the market adopt the pro-audio. Thus, it is likely that the court will not use the Van Camp formula in the begging of 2009 because H was still working on the other one to have the product sold.

3. How should the court apportion the \$200 million in increase in value during marriage??

In Rand, the court used the Hybrid determination of Perriera and Van Camp. Similarly, it is likely that the court will find that that between 1989 until 2009 during the marriage the increase in value was the CP as it was predominantly for the efforts of H's hard work. The beginning of 2009 will still be both perriera because H was still woking on the Audio Sound product but after the Pro was out in the market, the court is likely to use Van Camp because it was due predominantly the market force of Pro Audio. The court is likely to apportion the \$200 into the 20 years of marriage which becomes the CP and W will receive 1/2 of that CP. The court will probably determine whether the \$50 million in the offer would be for the half of the CP during 20 years.

Thank you for allowing me conducting this research for you.

Applicant

Question #3 Final Word Count = 1295

END OF EXAM