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TO: Wendy Burke

FROM: Andrew Washington

DATE: July 25, 2023

RE: Opinion Letter Harlan Bruke's Counsel Offer

Dear Ms. Burke,

I have received your request of the offer the was given to you by Harlan's counsel and I have read certain caselaw that pertain to this matter. Below attached are some questions I have created that would help you understand whether or not this offer from Harlan's attorney is considered to be a fair deal.

1) Are Harlan's DigitalAudio shares community property or separate property?

To understand this question, I will define community property and separate property.

Under Columbia Family Code (CFC) Section 760, property that either spouse acquires during marriage belongs the marital community is community property. Essentially what this means is that any assets or income received during the course of marriage is considered to be community property and will be divided equally 50/50.

In your situation all assets and income earned during the course of your marriage from 1989 up until 2009 is considered to be community property and you are entitled to those assets 50/50 regardless. However, the stocks fro DigitalAudio, Inc. could be possibly considered separate property which is discussed below.

In contrast, under CFC Section 770, property that either spouse acquired before marriage, after marriage, at death, at divorce belongs to that spouse is separate property. Essentially, if it separate property, the spouse that earned that property is not entitled to share it as they would have been if it was community property.

Similar to the case of *Rand*, Mr. Burke hand co-founded DigitalAudi, Inc. form 1983 until the date of your marriage with marriage with Mr. Burke is considered to be separate property. Though the the digital audio stocks are considered to be separate property because they were acquired by Mr. Burke before marriage, there are several approaches and tests the court will use to determine if community property funds were used to increase the the separate property asset, which you could be possibly entitled to.

Thus, even though the stocks are considered separate property they could be considered community property depending on the methods discussed below.

2) Whether or not the community work that you and Harlan had done during the course

of marriage devote more than minimal effort involving the DigitalAudio Shares?

In the case of *In re Marriage of Dekker*, the court determined that whenever the community devotes more than minimal effort involving a spouses' separate property during marriage, the community acquires an interest in any increase in value, during marriage, of the separate property, and that interest community property. There are two approaches to this called the *Pereria* Method and the *Van Camp* Method. I will describe them properly below.

A. *Pereria* Method

The *Perira* method applies when the increase in value, during marriage of one spouses' separate property is principally de to the community efforts. In other words, this method favors the community property.

In the case of *Rand* the court concluded that between the stocks of 1986 and 1991, the increase of those stocks were considered to be community property even though the spouse in the case did not do any work for the stock increase. The court states, "the community acts whenever either of the spouses acts."

Theres is a strong argument that you could be entitled to the share of the increase of the \$200 million dollar stocks because your "community labor" of taking care of the children which allowed for Mr. Bruke to work "night and day" provided him more time to solely focus on his work instead of focussing on the the four children. Raising four children is not a easy task which requires both spouses. You had taken that sole responsibility which would allow Mr. Burke to solely focus on his career. It does not matter whether or not Mr. Burke offered you housekeepers, nannies, dirvers, etc., it is the fact you worked for the community regardless. If it was not for your work in the community to give Mr. Burke more free time, he would not have the time to solely work in DigitalAudio. If the court see this approach fit, you could be entitled to a large sum of money of the \$200 million dollar share increase despite the separation the both of you had between 2009 until 2021. If the court sees this way, they would consider the increase of the sticks to be community property and Mr. Burke would have to divide 50/50 with you. This could leave you with \$100 million instead of the original \$50 million they would offering yu.

Thus, if the court choses the Perera Method, you would significantly receive a lot more, specifically around \$100 million dollars, however, there is no guarentee the court is bound to use this method. They could use the *Van Camp* method, dicussed down below.

B. *Van Camp* Method

The *Van Camp* Method applies when the increase in value, during marriage, of one spouses separate property is principally due to facts *other than* community efforts. In other words, this method favors separate community property.

In the case of *Rand*, however, the court did state that Charle's hard work between the years of 1991 and 2004 were the sole reasons why the stocks raised in value, and thus were considered to be separate property alone.

Similar to the case at hand, the court could very much use the *Van Camp Method* and presume that all the work that Mr. Burke for the Audio shares were solely because of his hard work with Ms. Garden. As Ms. garden testified, Mr. Burke deigned SoundAduio, updated SounAudio, and sustained SoundAudi throughout its life as marketable product. Further, Ms. Garden further

states that Mr. Burke was the main reason Digital Audio was a mainstream success as she stated in her testimony "he was always at 110 percent." An more importantly, Ms. Gardeer states that without Mr. Burke, DigitalAudio would have gone out of business if it were not for Mr. Burke's hardwork. However, to counter argue this, it seems from Mr. Burke's testimony that he had not share or hand on the ProAudio which was a major reason why Digital Audio stock increased by \$200 million. Though it was only Mr. Burke's hard work why SoundAudio was successful, its marketable life ended in 2009 which would indicate that this was not due to Mr. Burke's labor. However, even if we do argue that *Van Camp* would not apply to ProAudio, the fact that the both of you had separated in 2009, all assets received would be still considered to be separate property.

Thus, if the court uses the *Van Camp* approach, they would likely conclude that you may be not entitled to any profits of the separate property stocks increase.

C. Substantial Justice

It is important to note in the case of *In re Marriage of Rand* the court had concluded that they are not bounded by the Pereria Method or the Van Camp Method as they could nevertheless divide the property in such a way as to achieve substantial justice between the parties. But not get this confused as the spouse in the *Rand* case as the court held, " Contrary to Lindsa's assumption, substantial justice between the spouses *does not* require the court to evenly divide the *entire* increase in value, during marriage, of one spouses' separate property. Instead, it requires court evenly only divide only the property of the increase *principally due to community efforts*.

I just want to remind the court has its own discretion to use either *Van Camp* or *Perra* what they court deems is fit best. In the case of *Rand*, the spouses requesting the division of the stocks was not fair and was not of substantial justice. The court did not agree with this agreement at all and upheld their previous separation contribution what they originally believed was to be fair.

Conclusion: For all discussed above, I believe it would be in your best interest to take the offer agreement for \$50 million dollars instead of pursuing the possibility of receiving \$100 million dollars under the Perria method. If the court decides to chose the *Van Camp method* there is a high risk that you may not receive much less than what Mr. Burke's counsel is offering. If you have any questions, please do not hesitate to contact.

Regards,

Andrew Washington, Esq.

/S/Andrew Washington

The Washington Law Group

Question #3 Final Word Count = 1409

END OF EXAM