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**To: Wendy**

**From applicant**

**Date: July 25 2025**

**Re: In re Marriage of Burke**

**Brief statement**

As your lawyer, we are strongly recommend you to take the offer of Harlan, which means we receiving \$50millions and Harlen receiving \$150 million, Since under Pereira rule, the community efforts is the reason for the value increase, and Harlen will be able to have more than Van Camp rules.the reason is stated as below.

**The characterization of Harlan's DigitalAudio Shares**

Property acquires by spouse during the marriage belongs to the marital community, it is community property, Columbia Family Code,section 760. At dissolution, community property is awarded to each spouse in an equal 50 percent share. Id.Section 2550. Property acquired by spouse before marriage belong to that spouse, it is his or her seperate property. Id. Section 770. The proceeds of property of spouse acquired before marriage also belong to that spouse, the proceeds are also his or her separate property. Even if he or she acquires the proceeds during the marriage. Id. Separate property is confirmed in its entirely to the owning spouse. Id. Section 2550.

The fact shows that Harlan Burke (H) received 50% percent of DigitalAudio(DA) shares before the marriage, thus H's DA share is His separate property.

**Community effort to acquire an interest in increase in value**

Under Columbia law, marriage is an egalitarian partnership. Whenever the community devotes more than minimal effort invoving a spouse's separate property during marriage, the community acquires an interest in any increase in value, during marriage, the community acquires an interest in any increase in value, during marriage , of the separate property and that interest is community property. In re Marriage of Dekker (Colum. Ct. App., 1993)

In dividing property at dissolution, the family court must apportion the increase in value, during marriage, of one spouse's separate property whenever the community devotes more than minimal effort involving the separate property during marriage. The court of In re Marriage of Rand concluded that although in dividing property at dissolution the family court is not required to adopt either the Pereira approach or the Van Camp approach or indeed any other approach, the court must nevertheless divide the property in such a way

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as to achieve substantial justice between the spouses.

Under *Pereira*, applies when the increase in value, during marriage of one spouse's separate property is principally due to community efforts (the predominant cause of the increase). The family court is required to apportion the increase in value mainly to the community estate (with the remainder to the owning spouse's separate estate).

Under *Van Camp*, applies when the increase in value, during marriage of one spouse's separate property is principally due to factors other than community efforts. The family court is required to apportion the increase in value mainly to the estate of the owning spouse (with the remainder to the community estate)

During 1989 to 2009, H was working on SoundAudio, he designed it, updated it and sustained it throughout its life as a marketable product. Although SoundAudio had ended its marketable life years earlier in 2009, but ProAudio, which is a marketable product of DA in 2009 is due to the successful selling of SoundAudio, otherwise DA would have gone out of business and it would never have developed ProAudio.

Therefore, the value of H's DA shares increase in value by \$200 million is principally due to community efforts.

Although Wendy Burke (W) stated that she only worked for DA with shipping some hardware and software in the early days of their marriage and she worked in the home after that, that fact is inconsequential, the community acts whenever either of the spouse acts. (In re Marriage of Rand)

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

### **The Apportionment of the \$200 million increase in value during marriage**

In re Marriage of Rand, the court stated that substantial injustice between the spouse does not require the court to evenly divide the entire increase in value, during marriage, of one spouse's separate property. Instead it requires the court to evenly divide only the portion of the increase principally due to community efforts.

Between 1989 to 2009 was the "Pereira period" during which the increase in value of H's DA shares was principally due to community efforts, i.e., H's work was the predominant cause of the increase. W is entitled to her 50 percent of \$200 million of DA shares as the community property. Since community property is awarded to each spouse in an equal 50 percent share at dissolution, California Family Code, section 760. W will have \$50 million and H will have \$150 million.

Question #3 Final Word Count = 803

**END OF EXAM**