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KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 22-4-08326-1 KNT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Matter of

THE SHARON M. HAROLD
IRREVOCABLE TRUST DATED
NOVEMBER 12, 2004,

a Trust.

Case No.

**VERIFIED PETITION FOR
APPROVAL OF INTERIM
ACCOUNT; FOR DISCHARGE OF
SUCCESSOR TRUSTEE; AND FOR
APPOINTMENT OF SUCCESSOR
TRUSTEE**

I. RELIEF REQUESTED

David A. Paice ("Trustee" or "David"), in his capacity as successor trustee of the Sharon M. Harold Irrevocable Trust dated November 12, 2004 ("Harold Trust" or "Trust"), petitions the Court for (1) a judicial decree approving the Trustee's interim accounting of the Trust; (2) a release and discharge of David as Trustee; and (3) the appointment of a successor trustee. This Verified Petition for Approval of Interim Account; For Discharge of Successor Trustee; and For Appointment of Successor Trustee ("Petition") is filed pursuant to Chapter 11.96A RCW. A copy of the Trust is attached hereto as **Exhibit A**.

David has served as successor trustee of the Harold Trust, an irrevocable trust for the primary lifetime benefit of Sharon Harold, David's wife's grandmother, since early 2010. Although David has always kept Sharon fully apprised of the Trust's administration, until recently he was not aware of any requirement that he prepare formal trust accountings. *See* Declaration of David A. Paice, Trustee ("Paice Declaration") ¶ 5. Additionally, certain of Sharon's children, who are residuary beneficiaries of the Trust (collectively, "Residuary Beneficiaries"), have called into question David's actions as trustee. David has engaged in no wrongdoing, self-

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1 dealing or breach of fiduciary duty and now wishes to resign as trustee and to obtain a full release
2 and discharge from the Court.

3 **II. PARTIES, JURISDICTION, AND VENUE**

4 1. Petitioner. David Paice currently serves as the successor trustee of the Trust.
5 David's wife is Sharon M. Harold's granddaughter. David currently resides in King County,
6 Washington.

7 2. Respondent. Sharon M. Harold ("Sharon" or "Grantor") is the grantor of the Harold
8 Trust and the lifetime beneficiary of the Trust. Sharon currently resides in Reedsport, Oregon.

9 3. Respondent. Charles Anthony Harold, Jr. is Sharon's son and a residuary
10 beneficiary of the Harold Trust. On information and belief, Charles currently resides in Gold
11 Canyon, Arizona.

12 4. Respondent. John Joseph Harold is Sharon's son and a residuary beneficiary of the
13 Trust. On information and belief, John currently resides in Reedsport, Oregon.

14 5. Respondent. Jennifer Sawyer is Sharon's daughter and a residuary beneficiary of
15 the Trust. Jennifer is identified in the Trust by her former name, "Jenifer Francis Harold-
16 McWhirter." Jennifer currently resides in Tacoma, Washington.

17 6. Respondent. Angel Mary Harold is Sharon's daughter and a residuary beneficiary
18 of the Trust. On information and belief, Angel currently resides in Canyon Country, California.

19 7. Respondent. Amy Small is Sharon's daughter and a residuary beneficiary of the
20 Trust. Amy is identified in the Trust by her former name, "Amy Jane Harold-Aguilar." On
21 information and belief, Amy currently resides in Graeagle, California.

22 8. Respondent. Josette Marie Harold Ramirez is Sharon's daughter and a residuary
23 beneficiary of the Trust. On information and belief, Josette currently resides in Culver City,
24 California.

25 9. Respondent. Nicole Loomis is the daughter of Sharon's deceased son, Robert
26 Harold, and a residuary beneficiary of the Trust. On information and belief, Nicole currently
27 resides in Tonasket, Washington.

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10. Jurisdiction. This Court has jurisdiction over the matters raised herein pursuant to RCW 11.96A.020, RCW 11.96A.040, RCW 11.96A.060, RCW 11.96A.080, and RCW 11.106.030.

11. Venue. Venue is proper in King County pursuant to RCW 11.96A.050(1)(b).

III. FACTS

A. **The Harold Trust was created by Sharon Harold in November 2004 and provides that Sharon may receive net income and principal from the Trust for her lifetime.**

12. Sharon established the Harold Trust by executing the Declaration of Trust of the Sharon M. Harold Irrevocable Trust dated November 12, 2004. The property subject to the terms of the Trust ("Trust Estate") was \$10 and Sharon's "right to receive assets from the Joseph A. Daley Family Trust as beneficiary thereof." Trust, Schedule A (capitalizations omitted). Joseph Daley is Sharon's now-deceased brother. The Harold Trust is irrevocable and "may not be amended or revoked in whole or in part by the Grantor or any other person." Trust, Art. I.

13. Paragraph A of Article II of the Trust provided that Sharon may receive the following distributions:

The entire net income of the Trust Estate (or such lesser amounts thereof as the Grantor may direct the Trustee to pay to Grantor, the undistributed balance thereof to be added to principal of the Trust Estate) shall be paid in monthly or other convenient installments to or for the benefit of SHARON M. HAROLD, Grantor, during her life. If the Trustee shall deem the income to be insufficient, the Trustee shall pay to or apply for the benefit of Grantor as much of the principal of the Trust Estate as the Trustee shall, in the Trustee's discretion, deem necessary for her proper health, support, tax obligations, comfort, enjoyment, and welfare.

Trust, Art. II, ¶ A.

14. Upon the death of the Grantor, the Trust provides that, after the payment of taxes, the Trust Estate shall be distributed in equal shares to the Grantor's children free of trust:

Upon the death of the Grantor, and undistributed income of the Trust Estate shall be added to and become principal, and **the Trust Estate as then constituted shall be distributed by the Trustee, free of trust, in equal shares, to Grantor's children, namely, CHARLES ANTHONY HAROLD, JR., JOHN JOSEPH HAROLD, JENIFER FRANCIS HAROLD-McWHIRTER, ANGEL MARY HAROLD, ROBERT JOHN HAROLD, AMY JANE HAROLD-AGUILAR,**

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1 and JOSETTE MARIE HAROLD RAMIREZ. **In the event any**
2 **beneficiary named above does not survive the Grantor, then that**
3 **share shall be distributed, free of trust, to the deceased child 's**
4 **then living issue, by right of representation**, or, if there are no
5 such issue, then the share shall be distributed, free of trust, to
6 Grantor's then living issue, by right of representation .

7 Trust, Art. III, ¶ C.1 (emphasis added). Robert John Harold, one of the Grantor's children, is
8 deceased, and Respondent Nicole Loomis is Robert's living issue.

9 15. David accepted Sharon's request that he serve as trustee and executed the
10 appointment to serve as trustee of the Harold Trust in late February or early March 2010. **Exhibit B**
11 (Acceptance of David Allen Paice to Act as Successor Trustee of the Harold Trust); Declaration
12 of David A. Paice ("Paice Declaration") ¶ 3.

13 16. Although the Trust provides that the trustee "shall be entitled to reasonable
14 compensation for services rendered" under the Trust, David has never taken or received any
15 compensation from the Trust for his service as successor trustee. Trust Art V, ¶ G (entitling trustee
16 to "reasonable compensation"); Paice Declaration ¶ 4 (explaining no compensation ever taken).

17 **B. Throughout David's trusteeship he has kept Sharon fully informed regarding the**
18 **Trust Estate.**

19 17. As Trustee of the Harold Trust, David communicated with Sharon regarding the
20 Trust Estate, its investments, and Sharon's needs for income and distributions from the Trust. *See*
21 Paice Declaration. Although David communicated with Sharon at least once every month by
22 telephone regarding the Trust Estate, he was, until recently, unaware of any necessity for formal
23 trust accounting.

24 18. Following a request from certain Residual Beneficiaries for a formal accounting,
25 the Trustee engaged an accountant, Mr. David Llewellyn, Certified Public Accountant, of
26 Llewellyn Accountancy Corporation, to prepare an account for the Trust for the time that David
27 has served as Trustee, March 2010 through 2021 (collectively, "Trust Accountings"). The Trust
Accountings are attached as **Exhibit C** and span the following periods:

Trust Accountings
March 10, 2010 to December 31, 2010
January 1, 2011 to December 31, 2012
January 1, 2013 to December 31, 2014
January 1, 2015 to December 31, 2016
January 1, 2017 to December 31, 2018
January 1, 2019 to December 31, 2020
January 1, 2021 to December 31, 2021

19. The Trustee seeks the Court's approval of the Trust Accountings.

20. The Trust Accountings were sent to Sharon on June 21, 2022. Declaration of Aleksander R. Schilbach ("Schilbach Declaration") ¶ 2, **Ex. A** (Letter to S. Harold dated July 21, 2022). On August 9, 2022, and with Sharon's permission, the Trust Accountings and a copy of the Trust was sent to the Residuary Beneficiaries. *Id.* ¶ 3, **Ex. B** (Letter to Residuary Beneficiaries dated August 9, 2022). After receiving the Trust Accountings, Sharon executed a Release and Discharge of Successor Trustee. *Id.* ¶ 4, **Ex. C**. The Release and Discharge, however, was later rescinded by Sharon. *Id.* ¶ 6. The Trustee does not know precisely why Sharon rescinded her Release and Discharge. Jennifer Sawyer and Nicole Loomis, residuary beneficiaries of the Trust, have already approved the Trust Accountings. *Id.* ¶ 5, **Ex. D** and **Ex. E**.

C. The Residuary Beneficiaries have lodged serious—but wholly unsupported—allegations of misconduct against the Trustee, and the Trustee now wishes to resign as trustee.

21. One or more of the Residuary Beneficiaries has accused David of misconduct in administering the Harold Trust. *See* Paice Declaration ¶¶ 10-11 (describing accusations and harassment). David denies any misconduct, self-dealing or breach of fiduciary duty as trustee. David wishes to resign as successor trustee and seeks the appointment of a new successor trustee. *Id.* ¶ 12.

22. Although David has the power under the Trust to appoint a successor trustee, *see*

Trust, Art. V, ¶ A, David respectfully requests that the Court appoint a successor trustee and defers to the Court's determination in that regard.

D. The Trustee resides in and administers the Trust in Washington State, but the Trust provides that California law governs its terms.

23. David resides in King County, Washington and administers the Trust in Washington.

24. The Trust consists entirely of liquid assets (cash and mutual funds), which have their situs with the Trustee. The Trust does not contain a forum-selection clause and is silent as to the situs of the Trust where the Trustee resides in Washington.

25. Article III, ¶ I of the Trust provides that California law is the Trust's governing law:

This trust has been accepted by the Trustee in the State of California, and unless otherwise provided in this Instrument, or required by the laws of another state where property is situated, *its validity, construction and all rights hereunder shall be governed by the laws of California*. This Paragraph shall apply regardless of any change of residence of the Trustee or any beneficiary, or appointment or substitution of a Trustee residing in another state.

Trust, Art. III, ¶ I (emphasis added).

IV. EVIDENCE RELIED UPON

This Petition relies upon (1) the exhibits hereto; (2) the declaration of David A. Paice and the exhibits thereto; and (3) the declaration of Aleksander R. Schilbach and the exhibits thereto.

V. ISSUES PRESENTED

1. Should the Court rule that the situs of the Trust is Washington but apply California law to this proceeding? **YES.**

2. Should the Court approve the Trust Accountings from March 2010 through December 2021? **YES.**

3. Should the Court approve the Trustee's resignation, enter an order releasing and discharging the Trustee, and appoint a successor trustee? **YES.**

1
2 **VI. AUTHORITY**

3 **A. This Court has the power to settle questions of trust administration.**

4 1. Washington's Trust and Estate Dispute Resolution Act ("TEDRA") grants this
5 Court the power to administer and settle "[a]ll trusts and trust matters." RCW 11.96A.020.

6 2. TEDRA defines "matter" as "any issue, question, or dispute involving . . . the
7 direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary
8 capacity" and "the determination of any question arising in the administration of an estate or trust."
9 RCW 11.96A.030(2)(b), (c). If not already determined by RCW 11.98.005, the situs of a trust is a
10 "matter" for purposes of RCW 11.96A.030. RCW 11.98.005(3)(c).

11 3. In furtherance of settling all trust and trust matters, TEDRA grants this Court the
12 power to make and issue "any and all manner and kinds of orders, judgments, citations, notices,
13 summons, and other writs and processes that might be considered proper or necessary in the
14 exercise of the jurisdiction or powers given" under TEDRA. RCW 11.96A.060.

15 4. TEDRA permits any party to have a judicial proceeding "for the declaration of
16 rights or legal relations with respect to any matter, as defined by RCW 11.96A.030."
17 RCW 11.96A.080.

18 5. A judicial proceeding under TEDRA "is a special proceeding under the civil rules
19 of court." RCW 11.96A.090(1). Washington "procedural rules of court apply to judicial
20 proceedings under this title only to the extent that they are consistent with this title, unless
21 otherwise provided by statute or ordered by the court under RCW 11.96A.020 or 11.96A.050, or
22 other applicable rules of court." RCW 11.96A.090(4). RCW 11.96A.020 and .050 do not apply
23 here as the Court has not ordered "otherwise" and venue is proper under RCW 11.96A.050.

24 6. A court's paramount duty in construing a trust is to give effect to the settlors' intent.
25 *In re the Estate of Bernard*, 182 Wn. App. 692, 697, 332 P.3d 480, 483, *review denied*, 181 Wn.2d
26 1027, 339 P.3d 634 (2014). Courts determine intent from the language of the instrument as a whole.
27 *Id.* "[I]f a trust's language is unambiguous, the trust does not require either interpretation or
construction," and a court "cannot alter the settlor's intent by interpreting or construing the

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language used otherwise.” *In re Wash. Builders Ben. Tr.*, 173 Wn. App. 34, 75, 293 P.3d 1206 (2013) (citing *Templeton v. Peoples Nat’l Bank of Wash.*, 106 Wn.2d 304, 309, 722 P.2d 63 (1986)).

B. As part of this judicial proceeding, and in accordance with RCW 11.98.005(3)(c), the Court must determine that Washington is the Trust’s situs.

7. Because the Harold Trust provides that California law governs but is silent as to the Trust’s situs, RCW 11.98.005(3)(c) provides that the determination of situs “is a matter for purposes of RCW 11.96A.030.” Subsection (3)(c) provides that a Court will consider certain factors in determining whether the situs of the trust is Washington:

Whether Washington is the situs must be determined by a court in a judicial proceeding conducted under RCW 11.96A.080 if:

(i) A trustee has a place of business in or *a trustee is a resident of Washington*; or

(ii) *More than an insignificant part of the trust administration occurs in Washington*; or

(iii) *One or more of the qualified beneficiaries resides in Washington*; or

(iv) An interest in real property located in Washington is an asset of the trust.

RCW 11.98.005(3)(c)(i)–(iv) (emphasis added). *See also* Cal. Prob. Code § 17002(a) (“The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.”).

8. Here, the situs of the Harold Trust is Washington. First, David, the Trustee, is a resident of Washington and has always administered the Trust from Washington. *See* Paice Declaration (stating David is resident of King County, Washington and explaining all administration has occurred in Washington). Second, two of the Trust’s qualified beneficiaries reside in Washington. *See* RCW 11.98.002(2)(b) (defining qualified beneficiary); Petition ¶¶ 5, 9 (qualified beneficiaries Jennifer Sawyer and Nicole Loomis reside in Washington). Accordingly, the situs of the Harold Trust is Washington.

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1 9. Although the situs of the Harold Trust is Washington, the Trust provides that
2 California law governs its terms. Accordingly, the Court must apply California law to approve the
3 Trust Accountings. As this Petition was filed in King County, Washington under TEDRA,
4 however, Washington procedural rules of Court apply. RCW 11.96A.090(4) ("The procedural
5 rules of court apply to judicial proceedings under this title only to the extent that they are consistent
6 with this title").

7 **C. Pursuant to California Probate Code § 17200, the Trustee seeks an order settling the**
8 **accounts of the Trust, releasing and discharging the Trustee, and appointing a**
9 **successor trustee.**

10 10. California Probate Code § 17200(a) and (b) authorize the Trustee to petition the
11 Court for an order approving the Trust Accountings, approving the Trustee's resignation, releasing
12 and discharging the Trustee, and appointing a successor trustee:

13 (a) [A] trustee . . . of a trust may petition the court under this
14 chapter concerning the internal affairs of the trust or to determine
15 the existence of the trust.

16 (b) Proceedings concerning the internal affairs of a trust include,
17 but are not limited to, proceedings for any of the following purposes:

18

19 (5) Settling the accounts and passing upon the acts of the trustee,
20 including the exercise of discretionary powers.

21

22 (10) Appointing or removing a trustee.

23 (11) Accepting the resignation of a trustee.

24 Cal. Prob. Code § 17200(a), (b)(5), (b)(10)–(11). Under California Probate Code § 16063, an
25 account must contain the following information:

26 (1) A statement of receipts and disbursements of principal and
27 income that have occurred during the last complete fiscal year of the
trust or since the last account.

 (2) A statement of the assets and liabilities of the trust as of the
end of the last complete fiscal year of the trust or as of the end of the
period covered by the account.

 (3) The trustee's compensation for the last complete fiscal year

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1 of the trust or since the last account.

2 (4) The agents hired by the trustee, their relationship to the
3 trustee, if any, and their compensation, for the last complete fiscal
4 year of the trust or since the last account.

5 (5) A statement that the recipient of the account may petition the
6 court pursuant to Section 17200 to obtain a court review of the
7 account and of the acts of the trustee.

8 (6) A statement that claims against the trustee for breach of trust
9 may not be made after the expiration of three years from the date the
10 beneficiary receives an account or report disclosing facts giving rise
11 to the claim.

12 Cal. Prob. Code § 16063. This provision, from the Uniform Trust Code, is similar to
13 RCW 11.96A.070(1)(b)'s requirements for a "report" that will trigger the three year statute of
14 limitations for a breach of trust action. The California Probate Code also specifies that "[a]ll
15 accounts filed to be approved by a court" must be presented as specified in §§ 1060-1064 of the
16 California Probate Code. Cal. Prob. Code §§ 16063(b), 1060-64. In accordance with California
17 Probate Code §§ 1061-63, the accounts must contain a summary of account and supporting
18 schedules showing, of particular relevance here, receipts, disbursements, net income, gains or
19 losses on sales of property, distributions of cash or property to beneficiaries, and market values of
20 assets. *See* Cal. Prob. Code §§ 1061-63.

21 11. Under California Probate Code § 1064, the petition for approval of the account
22 must also contain the following:

23 (1) A description of all sales, purchases, changes in the form of
24 assets, or other transactions occurring during the period of the
25 account that are not otherwise readily understandable from the
26 schedule.

27 (2) An explanation of any unusual items appearing in the account.

(3) A statement of all compensation paid from the assets subject to
the account to the fiduciary or to the attorneys for the fiduciary other
than pursuant to a prior court order.

(4) A statement disclosing any family or affiliate relationship
between the fiduciary and any agent hired by the fiduciary during
the accounting period.

(5) An allegation disclosing whether all of the cash has been

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1 invested and maintained in interest bearing accounts or in
2 investments authorized by law or the governing instrument, except
3 for an amount of cash that is reasonably necessary for the orderly
4 administration of the estate.

5 Cal. Prob. Code § 1064(a)(1)-(5). Here, all of these requirements are met by this Petition and the
6 Paice Declaration.

7 12. The Court in its discretion may make any orders and take any other action necessary
8 or proper to dispose of the matters presented by the petition, including appointment of a temporary
9 trustee to administer the trust in whole or in part. Cal. Prob. Code § 17206. When reviewing a
10 trustee's petition to settle an account, the Court "has a duty imposed by law to inquire into the
11 prudence of the trustee's administration." *Schwartz v. Labow*, 164 Cal. App. 4th 417, 427, 78 Cal.
12 Rptr. 3d 838, 846 (2008), as modified (July 9, 2008) (internal quotations omitted).

13 13. The Trust Accountings contain all of the information required by California law
14 and should be approved and accepted by the Court. *See* Paice Declaration (addressing various
15 concerns and suspicions raised by Sharon and certain residuary beneficiaries); Cal. Prob. Code
16 §§ 1061-64 (addressing requirements of petition to approve account).

17 14. David seeks to resign as successor trustee of the Trust and obtain a discharge and
18 release. Pursuant to California Probate Code § 17200(b)(10) and (11), the Court should accept the
19 resignation of David and simultaneously enter an order releasing and discharging David.

20 15. David respectfully requests the Court appoint a successor trustee. David
21 respectfully takes no position on the identity of the successor trustee.

22 **VII. CONCLUSION**

23 David A. Paice, as Trustee of the Harold Trust, respectfully requests the Court enter an
24 order (1) approving the Trust Accountings presented together with this Petition; (2) accepting
25 David's resignation and enter an order releasing and discharging David as Trustee; and (3)
26 appointing a successor trustee.

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1 Respectfully Submitted: December 2, 2022

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3
4 By: 

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10 *Attorneys for David A. Paice, Trustee of the Sharon*
11 *M. Harold Irrevocable Trust dated November 12,*
12 *2004*


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DATED this 1st day of December 2022 at Burien, Washington.


David A. Paice, as Trustee of the Sharon M. Harold
Irrevocable Trust dated November 12, 2004

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