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**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING**

In re the Matter of	Case No. 22-4-08326-1 KNT
THE SHARON M. HAROLD IRREVOCABLE TRUST DATED NOVEMBER 12, 2004, a Trust.	SUPPLEMENTAL BRIEF RE: APPROVAL OF TRUSTEE'S FRAUDULENT INTERIM ACCOUNT DOES NOT PRECLUDE ADDITIONAL REMEDIES

Respondents Charles A. Harold, Jr., John J. Harold, Angel Harold, Amy Jane Small and Josette Ramirez herein incorporate by reference all prior submissions to this Court in the captioned TEDRA matter, and all submissions in the case entitled, *Harold v. Paice*, Case No. 23-2-03980-7 as if fully set forth herein. Each and every allegation, argument, exhibit and objection previously submitted by Respondents is reiterated and realleged with the same force and effect as if fully stated in this document, the Supplemental Brief Regarding Approval of Trustee’s Fraudulent Interim Account Does Not Preclude Additional Remedies in Support of the Verified Joint Objection to Verified Petition for Approval of Interim Account; For Discharge of Successor Trustee; and For Appointment of Successor Trustee as follows:

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1 **I. INTRODUCTION**

2 California Probate Code § 16420 states:

3 (a) If a trustee commits a breach of trust, or threatens to commit a
4 breach of trust, a beneficiary or cotrustee of the trust may commence a
proceeding for any of the following purposes that is appropriate:

5 (b) The provision of remedies for breach of trust in subdivision (a) does
6 not prevent resort to any other appropriate remedy provided by statute
or the common law.

7 Paice's Verified Petition contains false equivalencies and misrepresentations that
8 constitute a deceptive posture before this Court. This deception not only nullifies any
9 potential ruling in favor of Paice or Lane Powell's attorney fees but also provides
10 evidence of extrinsic fraud.

11 Even if this Court rules in favor of Paice's petition for approval of interim account,
12 the doctrine of res judicata would not preclude Respondents from bringing additional
13 claims against Paice due to this fraudulent nature.

14 Lane Powell's attorney fees have been: 1) taken illegally against the express
15 intent of the Grantor's Trust, 2) improperly encumbered upon Trust assets in the
16 approximate amount of \$260,000, and 3) concealed in what appears to be two separate
17 IOLTA accounts, as discovered during mediation. These acts of deception and misuse
18 of Trust funds render Paice's entire TEDRA case moot and open to further legal
19 challenge.

20 **II. FRAUD AS AN EXCEPTION TO RES JUDICATA.**

21 The doctrine of res judicata generally precludes parties from relitigating a cause
22 of action that has been finally determined by a court of competent jurisdiction. However,
23 there are exceptions to this doctrine, particularly in cases involving fraud.

24 Respondents have identified numerous examples of extrinsic fraud evidenced in
25 Paice's 12 year retroactive account of trust that did not include an "accounting" of trust,
26 was in violation of numerous Cal. Probate Codes, did not balance and was a false
27 equivalent before this Court.

1 Respondents also pointed out to the Court that Paice and Lane Powell's "Verified"
2 Petition was not and could not be approved because California Probate Codes, require
3 a perspective, not a retroactive application of statutes per California Probate Code § 3.

4 **A. California Case Law on Fraud Exceptions.**

5 In Lazzarone v. Bank of America, 181 Cal. App. 3d 581, 226 Cal. Rptr. 855
6 (1986), the court held that orders settling a trustee's accounts are entitled to res judicata
7 effect unless there are allegations of extrinsic fraud. Extrinsic fraud is considered a
8 separate cause of action and can be grounds for setting aside a judgment.

9 In Estate of Charters, 46 Cal. 2d 227, 293 P.2d 778 (1956), the California
10 Supreme Court held that this case recognized that probate court orders are subject to
11 collateral attack in cases of extrinsic fraud.

12 Additionally, it has been established that res judicata applies to probate
13 proceedings but also acknowledged exceptions for fraud. Bernhard v. Bank of America,
14 19 Cal. 2d 807, 122 P.2d 892 (1942).

15 **B. Federal Case Law on Fraud Exceptions.**

16 Federal courts also recognize exceptions to res judicata in cases of extrinsic
17 fraud. The distinction between extrinsic and intrinsic fraud is crucial, with extrinsic fraud
18 being valid grounds for setting aside judgments.

19 In United States v. Throckmorton, 98 U.S. 61 (1878), the court distinguished
20 between intrinsic and extrinsic fraud, holding that only extrinsic fraud can be grounds for
21 setting aside a judgment. Similarly, in Marshall v. Holmes, 141 U.S. 589 (1891), the
22 court further explored the distinction of intrinsic and extrinsic fraud and allowed for relief
23 based on extrinsic fraud.

24 The Ninth Circuit held that extrinsic fraud, such as preventing a litigant from
25 presenting their case, can be grounds for relief and res judicata does not apply.
26 Kougasian v. TMSL, Inc., 359 F.3d 1136 (9th Cir. 2004).

1 **III. CRIMINAL FRAUD CONSIDERATIONS**

2 In cases involving both civil and criminal fraud, criminal fraud constitutes an
3 independent cause of action, separate from civil proceedings. This is supported by
4 federal case law recognizing that criminal fraud can invalidate prior judgments and is
5 not subject to res judicata. The case of Goddard v. Citibank, No. 04-CV-5317(NGG)(LB),
6 2006 U.S. Dist., discussed the fraud exception to the Rooker-Feldman doctrine, which
7 is related to res judicata, and recognized that fraud upon the court can invalidate
8 judgments.

9 **IV. EQUITY COURT'S DUTY TO THE GRANTOR'S EXPRESSED INTENT.**

10 The first duty of equity courts in trust matters is to enforce the stated intent of the
11 Grantor in the trust, not approve a "murky" account of trust by a "potentially nefarious"
12 trustee.

13 Respondents have pointed out numerous examples of extrinsic fraud in their
14 numerous briefs and have asked this Court to rule sua sponte on the matter. This aligns
15 with this Court's duty in equity trust matters to ensure fairness and uphold the Grantor's
16 stated intent in the Trust instrument.

17 Probate Code § 16420 provides remedies for beneficiaries, including compelling
18 the trustee to perform duties, enjoining breaches, and redressing breaches through
19 payment or other means. The court has broad discretion to address breaches of trust
20 and ensure the proper administration of the trust.

21 In Thorley v. Superior Court, 78 Cal.App.3d 900 (1978), it was illustrated that a
22 judgment will not have the force of res judicata as to issues that remain subject to final
23 determination, particularly in equity matters.

24 **V. FAIRNESS TO PRO SE RESPONDENTS.**

25 This Court has a duty to ensure pro se Respondents receive a fair hearing. The
26 Respondents' pro se status should not be used to disadvantage them in their pursuit of
27 justice, as shown in the following cases.

1 The Supreme Court held in Haines v. Kerner, 404 U.S. 519 (1972) that pro se
2 pleadings are to be held to less stringent standards than formal pleadings drafted by
3 lawyers.

4 The Washington State Code of Judicial Conduct supports Haines, supra and
5 indicates that judges are allowed to make reasonable accommodations to help pro se
6 litigants:

7 "It is not a violation of this Rule for a judge to make reasonable
8 accommodations to ensure pro se litigants the opportunity to have their
9 matters fairly heard." Haines, supra, Comment, Rule 2.2.

10 **VI. JURISDICTIONAL AND CONSTITUTIONAL CONSIDERATIONS.**

11 Respondents reaffirm their previous objections regarding the jurisdictional and
12 constitutional issues raised by this case. The fact that Respondents reside in California,
13 Oregon, and Arizona, while Paice has petitioned a Washington court under TEDRA,
14 presents significant legal concerns. These issues strongly support Respondents'
15 argument that they should be allowed to proceed in California court, rather than being
16 compelled to litigate in Washington. The multi-state nature of this dispute raises
17 important questions about personal jurisdiction, due process, forum selection, and
18 choice of law that must be carefully considered.

19 **A. Limited Jurisdiction of Washington TEDRA Court.**

20 Washington courts may decline jurisdiction in probate matters where the
21 decedent and majority of interested parties reside out-of-state. Estate of Kordon, 157
22 Wash.2d 206 (2006). Here, with Respondents residing in California, Oregon, and
23 Arizona, the Washington TEDRA court should have rejected "Trustee" Paice's petition
24 due to lack of personal jurisdiction over Respondents.

25 **B. Due Process Concerns.**

26 The Fourteenth Amendment's Due Process Clause requires that legal
27 proceedings should not deprive individuals of life, liberty, or property without due
28 process of law. Forcing out-of-state respondents to litigate in Washington potentially

1 violates their due process rights by imposing an undue burden on their ability to
2 participate fully in the proceedings. As established in Mullane v. Central Hanover Bank
3 & Trust Co., 339 U.S. 306 (1950), due process requires notice and an opportunity to be
4 heard that is appropriate to the nature of the case.

5 Due to the extrinsic fraud identified in Trustee's own verified petition, equity
6 cannot be achieved. Because fraud is not appropriate to the nature of a "verified" petition,
7 Respondents can never have an equitable opportunity to be heard.

8 **C. Equal Protection Issues.**

9 The Equal Protection Clause of the Fourteenth Amendment requires that similarly
10 situated individuals be treated alike under the law. By attempting to adjudicate the rights
11 of out-of-state beneficiaries in Washington, Paice's actions violated equal protection
12 principles by subjecting Respondents to different and potentially disadvantageous legal
13 standards compared to in-state residents, such as California. If Paice had filed
14 his "verified" petition there, the outcome would have been different.

15 **D. Full Faith and Credit Considerations.**

16 Article IV, Section 1 of the U.S. Constitution requires states to respect the "public
17 acts, records, and judicial proceedings of every other state." California courts are better
18 positioned to apply California trust law, as specified in the Trust instrument, ensuring
19 proper respect for California's legal determinations. This is evidenced by the fact that
20 the attorneys in this case are likely preparing to introduce "California" experts to testify
21 about California probate law at the TEDRA trial. Were Trustee's case in California this
22 would not be necessary because the judge would be the trier of law, not an "expert."

23 **E. Minimum Contacts Test.**

24 As established in International Shoe Co. v. Washington, 326 U.S. 310 (1945), a
25 court may exercise personal jurisdiction over a non-resident defendant only if the
26 defendant has "minimum contacts" with the forum state. Respondents residing outside
27 of Washington lack such minimum contacts, further undermining the Washington court's
28 jurisdiction.

1 **F. Privileges and Immunities Clause.**

2 States are prohibited from discriminating against citizens of other states in favor
3 of their own citizens. The attempt of Paice to obtain approval of his fraudulent account
4 of Trust is discriminatory because: 1) Paice has violated his fiduciary duty of loyalty by
5 filing his petition and taking trust funds from Grantor, (who lives in Oregon), for his
6 attorney fees, and 2) "Trustee" Paice's breaches would not be tolerated in California
7 where the Trust was created. The clause ensures that citizens of each state are entitled
8 to the privileges and immunities of citizens in the several states.

9 **G. Court of Competent Jurisdiction.**

10 Under strict scrutiny, it is probable that federal courts would find that Washington
11 courts had no compelling reason to exercise personal jurisdiction over the multi-state
12 Respondents because it violated their constitutional rights stated herein. Washington
13 State was therefore not the appropriate location for the case to be heard.

14 **VII. CONCLUSION.**

15 The constitutional violations, and evidence of extrinsic fraud in this case
16 fundamentally undermine the validity of any actions taken by the TEDRA court and
17 preclude the application of res judicata. Even if this Court approves "Trustee" Paice's
18 fraudulent interim account, Respondents retain their right to pursue additional remedies.
19 The following key points support these conclusions:

20 A jurisdictional defect is that the Washington TEDRA court lacks personal
21 jurisdiction over the out-of-state Respondents, violating due process requirements as
22 outlined in International Shoe Co. v. Washington, 326 U.S. 310 (1945). This jurisdictional
23 flaw renders any court orders invalid.

24 Compelling out-of-state Respondents to litigate in Washington violates their due
25 process rights under the Fourteenth Amendment and the Privileges and Immunities
26 Clause. These Constitutional violations further undermine the legitimacy of the
27 proceedings.

1 Respondents contend that the Extrinsic Fraud Exception applies to this case.
2 “Trustee” Paice's fraudulent actions, including misrepresentation of trust assets and
3 concealment of information, constitute extrinsic fraud. As established in Lazzarone v.
4 Bank of America, supra, and Estate of Charters, supra, extrinsic fraud provides grounds
5 for setting aside judgments and overcoming res judicata.

6 Approval of “Trustee” Paice's fraudulent interim account does not bar nor
7 preclude Respondents from seeking other legal and additional remedies. This principle
8 is fundamental to trust law and ensures beneficiaries can protect their interests even
9 after initial court approvals.

10 Equity courts have a primary duty to enforce the stated intent of the grantor in
11 trust matters. “Trustee” Paice's actions have repeatedly violated this principle, further
12 invalidating the proceedings.

13 Furthermore, “Trustee” Paice's actions constitute fraud on the court, which, as
14 noted in Marshall v. Holmes, 141 U.S. 589 (1891), vitiates judgments and prevents the
15 application of res judicata.

16 Given these foregoing factors, the TEDRA court rulings should be considered
17 void ab initio. The evidence of extrinsic fraud and jurisdictional defects opens the door
18 for collateral attack on any judgments or orders issued by the TEDRA court.
19 Consequently, res judicata does not apply, and Respondents retain their right to pursue
20 claims against “Trustee” Paice for damages and breach of fiduciary duty, regardless of
21 any approval of the interim account.

22 Respondents will be filing our petition in California to remove David Allen Paice
23 and continue to cooperate with those “governmental or enforcement agencies” in
24 multiple states that David Allen Paice seeks to obstruct.

25 **VII. REQUESTS FOR SUA SPONTE RELIEF**

26 The Court must take immediate action to address these serious issues as
27 outlined above. Respondents respectfully urge this Court to:

- 28 (1) Declare the TEDRA court rulings void due to constitutional violations;

- 1 (2) Remove David Allen Paice as Trustee and appoint a temporary trustee;
2 (3) Order a forensic accounting of the Trust, to be paid for by David Allen
3 Paice and Lane Powell;
4 (4) Impose a surcharge against Lane Powell and David Allen Paice to restore
5 the Trust to its pre-TEDRA case assets; and
6 (5) Terminate the TEDRA matters immediately, as it conflicts with the spirit of
7 RCW 11.96A.010.

8 These actions are necessary to protect the interests of the beneficiaries, uphold
9 the true intent of the Trust, and remedy the fraud perpetrated on this Court. The integrity
10 of the trust administration process and the rights of the beneficiaries depend on the
11 Court's swift and decisive action in this matter.

12 Respectfully submitted:

13 DATED: July 17, 2024 s/Charles A. Harold, Jr.
14 Charles A. Harold, Jr., Residual Beneficiary and
15 Respondent in pro se
16 1455 N. Tomahawk Rd.
17 Apache Junction, AZ 85119
Tel: 818-652-6400 / E-mail: chuckharold@gmail.com

18 DATED: July 17, 2024 s/John Harold
19 John Harold, Residual Beneficiary and
20 Respondent in pro se
21 230 Westmont Dr.
22 Reedsport, OR 97467
Tel: (541) 662-6262
Email: john6231@live.com

23 DATED: July 17, 2024 s/Angel Harold
24 Angel Harold, Residual Beneficiary and
25 Respondent in pro se
26 230 Westmont Dr.
27 Reedsport, OR 9746726707
Tel: (661) 289-4238
Email: angelharold25@gmail.com

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DATED: July 17, 2024

s/Amy Jane Small
Amy Jane Small, Residual Beneficiary and
Respondent in pro se
P.O. Box 352
Graeagle, CA 96103
Tel: (805) 827-0051
Email: aj.harold9@gmail.com

DATED: July 17, 2024

s/Josette Harold Ramirez
Josette Harold Ramirez, Residual Beneficiary and
Respondent in pro se
11319 Playa St.
Culver City, CA 90230
Tel: (310) 280-6229
Email: jobabe007@gmail.com

We certify that this memorandum contains 2,306 words, in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I am and was at the time of service of these papers herein, over the age of eighteen (18) years.

On July 17, 2024, I caused the following documents: **SUPPLEMENTAL BRIEF RE APPROVAL OF TRUSTEE'S FRAUDULENT INTERIM ACCOUNT DOES NOT PRECLUDE ADDITRIONAL REMEDIES** to be electronically served on the interested parties in this action as follows:

Gail E. Mautner, Esq.
Aleksander Shilback, Esq.
LANE POWELL, PC
1420 Fifth Avenue, Suite 4200
P.O. Box 91302
Seattle, Washington 98111-9402
Tel: (206) 223-7000 / Fax: (206) 223-7107
E-mail: mautnerg@lanepowell.com
schilbacha@lanepowell.com

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

Paul Barrera, Esq.
NORTH CITY LAW, PC
17713 Fifteenth Avenue NE, Suite 101
Shoreline, WA 98155-3839
Tel: (206) 413-7288 / Fax: (206) 367-0120
E-mail: paul@northcitylaw.com

Counsel for Sharon M. Harold, Grantor of the
Sharon M. Harold Irrevocable Trust dated
November 12, 2004

John J. Harold
230 Westmont Dr.
Reedsport, OR 97467
Tel: (541) 662-6262
Email: john6231@live.com

Residual Beneficiary, Pro Se

Amy Jane Small
P.O. Box 352
Graeagle, CA 96103
Tel: (805) 827-0051
Email: aj.harold9@gmail.com

Residual Beneficiary, Pro Se

Angel Harold
100 River Bend Rd. #103
reedsport, OR 97467
Tel: (661) 289-4238
Email: angelharold25@gmail.com

Residual Beneficiary, Pro Se

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Josette Harold Ramirez
11319 Playa St.
Culver City, CA 90230
Tel: (310) 280-6229
Email: jobabe007@gmail.com

Residual Beneficiary, Pro Se

Jenifer Sawyer
1819 74th St. E
Tacoma, WA 98404
E-mail: send2jen3@hotmail.com

Residual Beneficiary, Pro Se

Nicole Loomis
31688D U.S. 97
Tonasket, WA 98855
E-mail: crazyapples10@gmail.com

Residual Beneficiary, Pro Se

via the electronic filing system maintained by the Clerk's Office at the above-captioned court or by email if they were not registered to receive electronic service via the Clerk's Office.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated July 17, 2024, at Apache Junction, Arizona.

s/Charles A. Harold, Jr.
Charles A. Harold, Jr.