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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: RETROSPECTIVE vs PROSPECTIVE APPLICATIONS OF CALIFORNIA PROBATE STATUTES

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 prior 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 re: Retrospective vs. Prospective Applications of Statutes 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:

I. INTRODUCTION

“Trustee” Paice had an antecedent duty to the Grantor, beneficiaries and the irrevocable trust instrument when he was appointed “acting” trustee. These pre-existing

1 legal obligations and responsibilities were well established in common law, statutory
2 provisions, and the specific terms of the trust instrument well before “Trustee” Paice
3 assumed his role.

4 These duties included fiduciary responsibilities that were immediately applicable
5 once “Trustee” Paice assumed his role, not contingent upon exercising his limited
6 and restricted discretionary powers.

7 “Trustee” Paice was required to manage the trust assets according to California
8 Probate Code § 21102 and the express intent stated in Grantor’s Trust, “to provide for
9 Grantor.” “Trustee” Paice was also required to comply with relevant probate codes going
10 forward, in real time for the entire tenure of his trusteeship, up to and including the filing
11 of his self-serving and fraudulent “Verified Petition for Approval of Interim Account”
12 which, as Respondents have shown, is neither verified nor interim.

13 **II. GENERAL PRINCIPLES OF STATUTORY CONSTRUCTION**

14 “Trustee” Paice’s 12-year-late (now 14 years late) retroactive “verified” “interim
15 account” can never be approved by this Court when applying a prospective analysis to
16 the probate statutes for the following reasons:

17 **1) Prospective Application:** Statutes are generally presumed to apply
18 prospectively (going forward from their enactment) unless there is a clear legislative
19 intent for retroactive (backward-looking) application, or the statute is remedial in nature.
20 However, if a statute creates a new liability or imposes a penalty, it must be applied
21 prospectively only, even if remedial.

22 **2) Retroactive Application:** A statute may be applied retroactively if there is
23 explicit legislative intent or if the statute is remedial and does not create new liabilities
24 or impose penalties

25 **3) Substantive vs. Procedural Laws**

26 a) Substantive Laws: These laws define the rights and duties of individuals and
27 organizations. They establish the legal relationships between people and the state,
28 including laws that define crimes and prescribe punishments, as well as laws that govern

1 contracts, property, and family relations. Retrospective application of substantive laws
2 is generally disfavored unless explicitly stated by the legislature. For example, changing
3 the punishment for a crime after it was committed would be a retrospective application,
4 which is typically not allowed because it would violate principles of fairness and due
5 process.

6 **b) Procedural Laws:** These laws govern the processes by which legal matters
7 are adjudicated. Procedural laws include rules about how courts operate and the steps
8 that must be followed to enforce legal rights and obligations. Because they do not alter
9 substantive rights but rather the methods of enforcing those rights, procedural laws
10 can often be applied retroactively. This means that changes in procedural rules can
11 apply to ongoing cases without violating principles of fairness, as they do not change
12 the underlying legal rights or obligations of the parties involved.

13 **4) California Probate Codes and Prospective Application**

14 a) Substantive nature: The duties of a trustee define the rights, obligations, and
15 relationships between trustees and beneficiaries. They establish what trustees must do
16 and how they must behave in managing the trust. This aligns with the definition of
17 substantive laws, which affect the rights and duties of individuals.

18 b) Real-time performance: These laws require trustees to perform duties in real-
19 time, such as managing assets, providing information to beneficiaries, and making
20 prudent investments. This ongoing nature of the obligations further supports their
21 classification as substantive.

22 c) Penalties for non-compliance: The fact that there are penalties like removal for
23 failing to perform these duties indicates they are fundamental to the trustee's role and
24 the rights of beneficiaries, rather than merely procedural aspects of trust administration.

25 d) Prospective application: Generally, substantive laws are applied prospectively
26 (to future actions) rather than retroactively. This aligns with the observation that trustee
27 duties would typically have a prospective application unless explicitly stated otherwise
28 in the legislation.

1 e) Impact on rights: These laws directly impact the rights of beneficiaries and the
2 obligations of trustees, which is a hallmark of substantive law rather than procedural law
3 that typically governs the method of enforcing rights. Most provisions of the California
4 Probate Code relating to trustee duties would be considered substantive laws with
5 prospective application, unless there is specific language indicating retroactive
6 application. This approach protects the expectations and rights of both trustees and
7 beneficiaries by ensuring that new or changed duties generally apply only to future
8 actions.

9 **5) Legal Presumptions and Constraints:** There is a general presumption
10 against the retrospective application of statutes, rooted in principles of fairness and due
11 process. This presumption can be overridden if the legislature clearly indicates an intent
12 for the statute to apply retrospectively.

13 **6) The U. S. Supreme Court Analysis:** Landgraf v. USI Film Products, 511 U.S.
14 244 (1994) "Elementary considerations of fairness dictate that individuals should have
15 an opportunity to know what the law is and to conform their conduct; accordingly, settled
16 expectations should not be lightly disrupted". Id. at 265. This supports the presumption
17 against retroactivity. This case is a landmark decision that reasserts the presumption
18 against retroactive legislation, emphasizing the importance of fairness and the need for
19 individuals to have clear knowledge of the law to guide their actions.

20 **7) Presently**

21 In the present case, "Trustee" Paice claimed in his verified petition that he never
22 sought legal advice about his duties as "Trustee". Although Respondents have proven
23 this is false, it is irrelevant to the current discussion. "Trustee" Paice like Respondents
24 could have simply read the expressed intent stated in Grantor's Trust instrument
25 required by mandatory California Probate Code § 21102 and followed the provisions of
26 the Trust accordingly as Respondents discussed previously in Respondents'
27 Supplemental Brief re: Determining Grantor's Intent in the Trust Instrument.

1 Therefore, "Trustee" Paice would have afforded himself an "[o]ppportunity to know
2 what the law is and to conform their [his] conduct; accordingly." Landgraf, supra.

3 **III. AUTHORITY**

4 **A. Statutes and their Application to the Present Case**

5 **California Probate Code § 3** states, "Except where otherwise specifically
6 provided, the code applies on the operative date to all matters governed by the code
7 regardless of whether an event occurred, or circumstance existed before or after the
8 operative date." A prospective analysis.

9 **a) Application:** The provisions of the Probate Code apply from the date they
10 become operative to all matters within its scope, regardless of whether the relevant
11 events or circumstances occurred before or after that date. This means that unless a
12 specific provision of the Probate Code explicitly states that it applies retroactively, the
13 default assumption is that the code applies prospectively from its operative date.

14 **b) Prospective Application:** The default rule is that California Probate Code §
15 **3** applies to events and circumstances from its operative date forward. This ensures that
16 individuals and entities are not subject to new legal requirements or penalties for actions
17 taken before the code's provisions became effective.

18 **c) Exceptions for Retroactivity:** If a particular provision of the Probate Code is
19 intended to apply retroactively, it must explicitly state so. This ensures clarity and
20 prevents the retroactive imposition of new liabilities or penalties unless clearly intended
21 by the legislature.

22 **d) The Code is Unambiguous:** California Probate Code § 3 establishes a clear
23 rule for the prospective application of the Probate Code, with exceptions only where
24 retroactivity is explicitly stated. The cited cases illustrate the principles governing the
25 retroactive and prospective application of statutes in trust and estate disputes in
26 California.

1 **B. Case Law**

2 **In re Marriage of Bouquet, 16 Cal.3d 583 (1976)** - The California Supreme
3 Court emphasized that retroactive application of statutes is generally disfavored unless
4 the legislature explicitly states otherwise. The court also noted that retroactive
5 application is permissible if it serves a significant state interest and does not disrupt
6 settled expectations. This case supports the principle that new liabilities or penalties
7 should not be imposed retroactively without clear legislative intent.

8 **Prudential Home Mortgage Co. v. Superior Court, 66 Cal.App.4th 1236**
9 **(1998)** - The court distinguished between remedial and penal statutes, noting that
10 remedial statutes may be applied retroactively to further their purpose, while penal
11 statutes, which impose new liabilities or penalties, are generally applied prospectively.
12 This case is relevant in determining whether a trustee's actions can be retroactively
13 approved under new legal standards.

14 **People v. White, 223 Cal.App.4th 512 (2014)** - The court reiterated that
15 retroactivity cannot be implied solely because a statute is remedial. Penal statutes,
16 which impose new penalties or liabilities, are presumed to apply prospectively unless
17 explicitly stated otherwise. This case reinforces the principle that new legal requirements
18 or penalties should not be imposed retroactively without clear legislative intent.

19 **IV. MANDATORY PERSPECTIVE APPLICATION OF § 16062**

20 Most all other California Codes cited in this case require prospective application
21 per **California Probate Code § 3** states. However, for the sake of brevity, Respondents
22 will only analyze California Probate Code § 16062 for this Court because it is the most
23 relevant in that "Trustee" Paice is trying to have his "verified" 12 year retroactive "interim
24 account" of Trust approved **retrospectively**.

25 **California Probate Code § 16062 states:**

26 (a) Except as otherwise provided in this section and in Section 16064, the trustee
27 shall account at least annually, at the termination of the trust, and upon a change of
28 trustee, to each beneficiary to whom income or principal is required or authorized in the

1 trustee's discretion to be currently distributed.

2 (b) A trustee of a living trust created by an instrument executed before July 1,
3 1987, is not subject to the duty to account provided by subdivision (a).

4 (c) A trustee of a trust created by a will executed before July 1, 1987, is not
5 subject to the duty to account provided by subdivision (a), except that if the trust is
6 removed from continuing court jurisdiction pursuant to Article 2 (commencing with
7 Section 17350) of Chapter 4 of Part 5, the duty to account provided by subdivision (a)
8 applies to the trustee.

9 (d) Except as provided in Section 16064, the duty of a trustee to account pursuant
10 to former Section 1120.1a of the Probate Code (as repealed by Chapter 820 of the
11 Statutes of 1986), under a trust created by a will executed before July 1, 1977, which
12 has been removed from continuing court jurisdiction pursuant to former Section 1120.1a,
13 continues to apply after July 1, 1987. The duty to account under former Section 1120.1a
14 may be satisfied by furnishing an account that satisfies the requirements of Section
15 16063.

16 (e) Any limitation or waiver in a trust instrument of the obligation to account is
17 against public policy and shall be void as to any sole trustee who is either of the
18 following:

19 (1) A disqualified person as defined in former Section 21350.5 (as repealed by
20 Chapter 620 of the Statutes of 2010).

21 (2) Described in subdivision (a) of Section 21380, but not described in Section
22 21382.

23 **Prospective Analysis:**

24 **Subsection (a):** Requires trustees to account at least annually, at the
25 termination of the trust, and upon a change of trustee. This is a general duty that
26 applies moving forward from the enactment date.

27 **Subsection (b):** Exempts trustees of living trusts created by instruments
28 executed before July 1, 1987, from the duty to account. This indicates a prospective

1 application, as it sets a clear cutoff date.

2 **Subsection (c):** Similar to (b), it exempts trustees of trusts created by wills
3 executed before July 1, 1987, unless the trust is removed from continuing court
4 jurisdiction. This also suggests prospective application.

5 **Subsection (d):** Continues the duty to account for certain older trusts (created
6 by wills executed before July 1, 1977) that have been removed from court jurisdiction.
7 This provision maintains existing duties rather than imposing new ones, aligning with
8 prospective application.

9 **Subsection (e):** States that any limitation or waiver of the obligation to account
10 is void for certain disqualified persons. This provision is likely intended to apply
11 prospectively to prevent future abuses.

12 **Retroactive Application Not Stated:** California Probate Code § 16062 does
13 **not** explicitly state that it applies retroactively. The exemptions for trusts created before
14 specific dates (July 1, 1987, and July 1, 1977) suggest that the legislature intended the
15 statute to apply prospectively. The use of present and future tense in the statute ("shall
16 account," "is not subject") indicates a legislative intent for prospective application.

17 **Conclusion:** Based on the general principles of statutory construction and the
18 specific language of California Probate Code § 16062, the statute is intended to be
19 applied prospectively. The provisions set clear cutoff dates and use present and future
20 tense, indicating that the duties and exemptions outlined are meant to govern actions
21 moving forward from the enactment date, rather than retroactively imposing new
22 obligations or liabilities on trustees.

23 **V. "TRUSTEE" PAICE'S VERIFIED INTERIM ACCOUNT IS INELIGIBLE FOR**
24 **RETROACTIVE APPROVAL OF THE COURT.**

25 "Trustee" Paice has failed to file an account of the trust for 12 years to 14 years
26 which constitutes a clear violation of California Probate Code § 16062 and numerous
27 other sections.

28 Section 16062 mandates that a trustee must account at least annually, at the

1 termination of the trust, and upon a change of trustee. "Trustee" Paice's prolonged
2 failure to comply with this statutory duty not only breaches fiduciary obligations but also
3 precludes the possibility of retroactive approval of the accounting.

4 The statute does not provide any exceptions that would justify such an extended
5 period without accounting, especially when the trust remains active, and Grantor is
6 entitled to receive distributions.

7 **1) Ineligibility for Retroactive Approval**

8 "Trustee" Paice cannot seek retroactive approval of the accounting for several
9 reasons:

10 **a) Statutory Non-Compliance:** "Trustee" Paice's failure to comply with the
11 annual accounting requirement for 12 years cannot be remedied by retroactive approval.
12 The statute mandates timely and regular accounting, and retroactive approval would
13 undermine the legislative intent of ensuring ongoing transparency and accountability.

14 **b) Breach of Fiduciary Duty:** The prolonged failure to account constitutes a
15 breach of fiduciary duty. California law holds trustees to a high standard of care,
16 requiring them to act in the best interests of the beneficiaries and to provide regular,
17 accurate accounts of the trust's administration.

18 **c) Approval of Account is Approval of Breach:** Retroactive approval by this
19 Court would effectively condone and ratify "Trustee" Paice's breach of duty and set a
20 dangerous precedent that could encourage other trustees to neglect their accounting
21 obligations.

22 **d) Lack of Beneficiary Oversight:** The beneficiaries have been deprived of their
23 right to review and object to the trustee's actions on an annual basis. Retroactive
24 approval by this Court would deny them the opportunity to address potential issues in a
25 timely manner, which is a critical aspect of trust administration.

26 **e) Public Policy Considerations:** Allowing retroactive approval of the
27 accounting is against public policy. Such a ruling would allow anyone who breaches a
28 duty to be excused by pleading a general denial in an equity case to avoid the perception

1 of trying to prove a negative. The purpose of the statutory accounting requirement is to
2 ensure the fiduciary duty of transparency and protect beneficiaries from potential
3 mismanagement or abuse by trustees. Retroactive approval would undermine these
4 protections and could lead to increased instances of fiduciary misconduct.

5 **VI. CONCLUSION**

6 “Trustee” Paice’s petition for retroactive approval of interim account should be
7 denied on the grounds that retrospective application of the statute cannot be applied
8 even within the scope of the equity court’s wide discretionary powers.

9 “Trustee” Paice’s failure to account for 12 years, now 14 years, constitutes a
10 breach of fiduciary duty and misrepresentation and lacks transparency before both this
11 Court and beneficiaries.

12 This Court granting “Trustee” Paice retroactive approval on his 12 year late and
13 incomplete “verified” “interim account” would be in violation of California Probate Code
14 and undermine the statutory requirements and protections designed to ensure
15 transparency and accountability in trust administration.

16 It is the affirmative duty of an equity court to defend and uphold the settlor’s intent
17 as expressed in the trust instrument. This Court has an affirmative duty to see to it that
18 the trust is faithfully executed according to the settlor’s lawful purposes, not the “murky”
19 self-serving intentions of “Trustee” Paice.

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

- 21 1. Immediate removal of David Allen Paice as Trustee.
- 22 2. Appointment of a temporary trustee.
- 23 3. An Order of a forensic accounting of the Trust, paid for by the Trustee David
- 24 Allen Paice and Lane Powell.
- 25 4. A Surcharge against Lane Powell and David Allen Paice to restore the Trust
- 26 to its pre-TEDRA case assets of approximately \$708,000.

1 5. End the TEDRA and VAPO matters immediately because 3 years of litigation
2 is in direct conflict with the spirit of RCW 11.96A.010 - Legislative Intent

3 DATED: July 10, 2024 s/Charles A. Harold, Jr.
4 Charles A. Harold, Jr., Residual Beneficiary and
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We certify that this memorandum contains 2,850 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 11, 2024, I caused the following documents: **SUPPLEMENTAL BRIEF RE: RETROSPECTIVE VS. PROSPECTIVE APPLICATIONS OF CALIFORNIA PROBATE STATUTES** to be electronically served on the interested parties in this action as follows:

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Sharon M. Harold Irrevocable Trust dated
November 12, 2004

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

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

15 Dated July 11, 2024, at Apache Junction, Arizona.

16
17
18 s/Charles A. Harold, Jr.
19 Charles A. Harold, Jr

State of California

PROBATE CODE

Section 3

3. (a) As used in this section:

(1) “New law” means either of the following, as the case may be:

(A) The act that enacted this code.

(B) The act that makes a change in this code, whether effectuated by amendment, addition, or repeal of any provision of this code.

(2) “Old law” means the applicable law in effect before the operative date of the new law.

(3) “Operative date” means the operative date of the new law.

(b) This section governs the application of a new law except to the extent otherwise expressly provided in the new law.

(c) Subject to the limitations provided in this section, a new law applies on the operative date to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before, on, or after the operative date, including, but not limited to, creation of a fiduciary relationship, death of a person, commencement of a proceeding, making of an order, or taking of an action.

(d) If a petition, account, report, inventory, appraisal, or other document or paper is filed before the operative date, the contents, execution, and notice thereof are governed by the old law and not by the new law; but any subsequent proceedings taken after the operative date concerning the petition, account, report, inventory, appraisal, or other document or paper, including an objection or response, a hearing, an order, or other matter relating thereto is governed by the new law and not by the old law.

(e) If an order is made before the operative date, including an order appointing a personal representative, guardian, conservator, trustee, probate referee, or any other fiduciary or officer, or any action on an order is taken before the operative date, the validity of the order or action is governed by the old law and not by the new law. Nothing in this subdivision precludes proceedings after the operative date to modify an order made, or alter a course of action commenced, before the operative date to the extent proceedings for modification of an order or alteration of a course of action of that type are otherwise provided by statute.

(f) No personal representative, guardian, conservator, trustee, probate referee, or any other fiduciary, officer, or person is liable for any action taken before the operative date that was proper at the time the action was taken, even though the action would be improper if taken on or after the operative date, and such a person has no duty, as a result of the enactment of the new law, to take any step to alter the course of action or its consequences.

(g) If the new law does not apply to a matter that occurred before the operative date, the old law continues to govern the matter notwithstanding its amendment or repeal by the new law.

(h) If a party shows, and the court determines, that application of a particular provision of the new law or of the old law in the manner required by this section or by the new law would substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons in connection with an event that occurred or circumstance that existed before the operative date, the court may, notwithstanding this section or the new law, apply either the new law or the old law to the extent reasonably necessary to mitigate the substantial interference.

(Enacted by Stats. 1990, Ch. 79.)

State of California

PROBATE CODE

Section 16062

16062. (a) Except as otherwise provided in this section and in Section 16064, the trustee shall account at least annually, at the termination of the trust, and upon a change of trustee, to each beneficiary to whom income or principal is required or authorized in the trustee's discretion to be currently distributed.

(b) A trustee of a living trust created by an instrument executed before July 1, 1987, is not subject to the duty to account provided by subdivision (a).

(c) A trustee of a trust created by a will executed before July 1, 1987, is not subject to the duty to account provided by subdivision (a), except that if the trust is removed from continuing court jurisdiction pursuant to Article 2 (commencing with Section 17350) of Chapter 4 of Part 5, the duty to account provided by subdivision (a) applies to the trustee.

(d) Except as provided in Section 16064, the duty of a trustee to account pursuant to former Section 1120.1a of the Probate Code (as repealed by Chapter 820 of the Statutes of 1986), under a trust created by a will executed before July 1, 1977, which has been removed from continuing court jurisdiction pursuant to former Section 1120.1a, continues to apply after July 1, 1987. The duty to account under former Section 1120.1a may be satisfied by furnishing an account that satisfies the requirements of Section 16063.

(e) Any limitation or waiver in a trust instrument of the obligation to account is against public policy and shall be void as to any sole trustee who is either of the following:

(1) A disqualified person as defined in former Section 21350.5 (as repealed by Chapter 620 of the Statutes of 2010).

(2) Described in subdivision (a) of Section 21380, but not described in Section 21382.

(Amended by Stats. 2016, Ch. 86, Sec. 250. (SB 1171) Effective January 1, 2017.)

RCW 11.96A.020 General power of courts—Intent—Plenary power of the court. (1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:

(a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this title; and

(b) All trusts and trust matters.

(2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court. [1999 c 42 § 103.]