

# Mullen & Henzell L.L.P.

ATTORNEYS AT LAW

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November 5, 2021

**VIA CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED**

J. ROBERT ANDREWS  
JAY L. BECKERMAN  
JOSEPH F. GREEN  
MACK S. STATON  
GREGORY F. FAULKNER  
CHRISTINE P. ROBERTS  
MICHAEL E. CAGE  
LORI A. LEWIS  
PAUL K. WILCOX  
JARED M. KATZ  
DEBORAH K. BOSWELL  
RAMÓN R. GUPTA  
GRAHAM M. LYONS  
RAFAEL GONZALEZ  
JANA S. JOHNSTON  
LINDSAY G. SHINN  
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BRETT W. PIERSMA  
BRIAN T. DALY  
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DANIELLA SCIOSCIA-REGENCIA  
BRUCE A. PENCE III  
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AUDREY K. SINGH  
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DENNIS W. REILLY  
STEPHEN N. YUNGLING  
BROOKE C. McDERMOTT  
Of Counsel

THOMAS M. MULLEN  
1915-1991

ARTHUR A. HENZEL  
1927-2016

Behavioral Wellness  
of Santa Barbara County  
315 Camino Del Remedio, Bldg. 3  
Santa Barbara, CA 93110

**Re: Estate of John M. Kovacs, Deceased  
Distribution of The John Kovacs Revocable Trust**

Dear Beneficiary:

As you know from prior correspondence, this firm represents Michael McGinnis as successor Trustee of The John Kovacs Trust established on August 28, 2009, as amended and restated. Mr. Kovacs passed away on May 16, 2020.

The Trust, as amended, provides for the residue of the Trust estate to be distributed in equal shares to three charitable organizations, including your organization. The Trustee is pleased to enclose with this letter a check payable to your organization in the amount of \$170,000 in partial satisfaction of your beneficial interest. The Trustee has held a small reserve to cover the remaining administrative expenses. The balance of the reserve, if any, following the payment of final expenses will be distributed to the beneficiaries.

In addition to this cash distribution, your organization is entitled to receive a 33% interest in an IRA held at Vanguard. We have been told by Vanguard that your organization will need to first establish an account with Vanguard, which will allow the Trustee to instruct Vanguard to transfer your share of the IRA to your account. Please let me know once the account has been established so we can notify the Trustee that he can proceed with transferring your share of the IRA to your new account.

Lastly, we are enclosing for your signature and return an informal accounting of the administration of The John Kovacs Trust. We ask that you review the accounting and, if you find it in order, please sign and return the extra signature page, using the self-addressed envelope enclosed.

\* \* \*

November 5, 2021  
Page 2



If you have any questions, please contact my legal assistant, Mindy Geary.

Sincerely,

A handwritten signature in blue ink that reads "Jay L. Beckerman".

Jay L. Beckerman of  
Mullen & Henzell L.L.P.

JLB:mag  
Enclosures  
cc: Michael McGinnis, Trustee (w/o encs.)  
#24912-0001  
4876-1814-8610, v. 1

**5.16 Voluntary Consent; Counterpart Originals**

Each person signing this Accounting, Waiver and Release acknowledges and warrants that his or her signature is made freely and voluntarily. This Accounting, Waiver and Release may be signed in counterpart originals.

**IN WITNESS HEREOF**, the parties have executed this Account, Waiver and Release as shown below.

**TRUSTEE:**

Dated: October 11, 2021



MICHAEL McGINNIS, Trustee of  
The John Kovacs Revocable Trust  
dated August 28, 2009

**BENEFICIARIES:**

GUIDE DOGS FOR THE BLIND

Dated: \_\_\_\_\_

By \_\_\_\_\_

BRAILLE INSTITUTE OF  
AMERICA, INC.

Dated: \_\_\_\_\_

By \_\_\_\_\_

BEHAVIORAL WELLNESS OF  
SANTA BARBARA COUNTY

Dated: \_\_\_\_\_

By \_\_\_\_\_

**DISTRIBUTION AGREEMENT WITH INFORMAL ACCOUNTING, WAIVER OF FORMAL ACCOUNTING, AND RELEASE OF TRUSTEE**

*The John Kovacs Revocable Trust*

This Distribution Agreement with Informal Accounting, Waiver of Formal Accounting, and Release of Trustee (this "Agreement and Accounting") is entered into by and between MICHAEL McGINNIS, Trustee of The John Kovacs Revocable Trust dated August 28, 2009 (the "Trust"), and GUIDE DOGS FOR THE BLIND, BRAILLE INSTITUTE OF AMERICA, INC., and BEHAVIORAL WELLNESS OF SANTA BARBARA COUNTY (the "Beneficiaries") as residual Beneficiaries of the Trust (Trustee and Beneficiaries may be referred to as "Party" and collectively as "Parties") with respect to the following facts and intentions.

**RECITALS**

- A. On August 28, 2009, JOHN KOVACS, in his capacity as Settlor, and JOHN KOVACS, in his capacity as Trustee, executed a revocable Declaration of Trust known as The John Kovacs Revocable Trust ("Trust"). The Trust was amended in its entirety by a First Revision dated July 18, 2016, and by a Second Amendment dated November 7, 2019.
- B. JOHN KOVACS died on May 16, 2020, following which the Trust became irrevocable.
- C. Section 5.1 of Article V of the Trust provides that following the death of JOHN KOVACS, MICHAEL McGINNIS is to serve as the successor Trustee of the Trust for the period of post-death Trust administration. MICHAEL McGINNIS has consented to serve as Trustee of The John Kovacs Revocable Trust.
- D. The persons entitled to an accounting are GUIDE DOGS FOR THE BLIND, BRAILLE INSTITUTE OF AMERICA, INC., and BEHAVIORAL WELLNESS OF SANTA BARBARA COUNTY, the Beneficiaries of the Trust. The Trustee desires to present this Agreement and Accounting to disclose the material facts related to the Trust administration, and provide an accounting of the Trustee's actions for the period of administration.
- E. The Trustee has not presented a petition to the Superior Court of California, which has jurisdiction to supervise the administration of the Trust, for settlement of the Trustee's accounting.
- F. This document is being submitted to the Beneficiaries of the Trust for their signature in order to waive the expense and time required for the Trustee to provide a Probate Code Section 16063 or court-approved accounting, and to release the Trustee from liability for the Trustee's administration of the Trust.

**NOWHEREFORE, the Parties hereby agree as follows:**

**I. INFORMAL ACCOUNTING & REPORT**

The Trustee accounts for the Trust for the period May 16, 2020 through September 30, 2021 (the "Accounting Period") as follows:

**1.1 Assets at Beginning of the Accounting Period**

When MICHAEL McGINNIS became Trustee of the The John Kovacs Revocable Trust on May 16, 2020, the Trust had the following assets:

Chase Checking Acct. #xxx2259	\$ 59,198
Chase Savings Acct. #xxx9089	\$ 15,216
Vanguard Brokerage Acct.	\$397,145
Schwab One Acct. #xxx9100	\$ 50,652
Bank of America Checking Acct. #xxx2779	\$ 8,201
Bank of America Savings Acct. #xxx0651	\$ 17,067
Tangible Personal Property	\$ 10,000
Vanguard IRA Acct. #xxx5240	\$ 62,451
<b>TOTAL TRUST:</b>	<b><u>\$619,930</u></b>

**1.2 Liabilities at Beginning of the Accounting Period**

When MICHAEL McGINNIS became Trustee of the The John Kovacs Revocable Trust on May 16, 2020, the Trust had the following liabilities:

Medical, rent due on decedent's apartment	\$12,356
Sandpiper Golf Club fees	\$ 310
<b>TOTAL LIABILITIES:</b>	<b><u>\$12,666</u></b>

**1.3 Administration Expenses**

In addition to the payment of the Trust liabilities, the Trustee paid the following administration expenses during the period of post-death Trust administration:

Mullen & Henzell LLP (Legal Expenses)	\$16,200
Fred Gaeden (CPA Expenses)	\$ 831
Trustee Fees	\$ 3,000
Patterson Storage (to store personal property)	\$ 485
Miscellaneous Expenses	\$ 24
<b>TOTAL ADMINISTRATION EXPENSES:</b>	<b><u>\$20,540</u></b>

**1.4 Assets and Liabilities at the End of the Accounting Period**

After satisfying liabilities, and paying all administration expenses, the Trust currently has the following assets for distribution to the Beneficiaries:

Chase Checking Acct. #xxx2259	\$527,923
Vanguard IRA Acct. #xxx5240	\$ 77,429 (includes gains on investments)
Less Reserve for final expenses	\$ -25,000
<b>TOTAL DISTRIBUTION VALUE:</b>	<b><u>\$580,352</u></b>

**1.5 Summary of Distribution to Beneficiaries**

The Trust provides that certain items of tangible personal property are to be distributed to specifically named individuals, and the remaining personal property is to be distributed to MICHAEL MCGINNIS. The Trustee has distributed those items of personal property as called for under the terms of the Trust.

The residual assets in the Trust, following the payment of all administration expenses and taxes, are to be distributed as follows:

- a) 33% to GUIDE DOGS FOR THE BLIND
- b) 34% to BRAILLE INSTITUTE OF AMERICA, INC.
- c) 34% to BEHAVIORAL WELLNESS OF SANTA BARBARA COUNTY

**II. APPROVAL OF ACCOUNTING**

**2.1 Approval of Accounting**

Each Beneficiary hereby approves the reports, transactions, and acts of the Trustee described in this Agreement and Accounting. Each Beneficiary has had the opportunity to request and review the Trust records and to consult with such advisors as each Beneficiary considers appropriate.

**III. WAIVER OF FORMAL ACCOUNTINGS**

**3.1 Waiver of Court-Approved Accounting**

The Beneficiaries hereby waive their right to petition the Probate Court for a court-approved accounting for the Trust administration to date, including the right to petition the Probate Court for an accounting under Probate Code Section 17200.

**3.2 Waiver of Probate Code Sections 16062 & 16063**

The Beneficiaries are entitled to an accounting under California Probate Code Section 16062, with the information specified in California Probate Code Section 16063. The



Beneficiaries hereby waive Probate Code Sections 16062 and 16063 and release the Trustee from providing a more formal accounting for the Trust.

### **3.3 Waiver of Further Accounting**

The Beneficiaries hereby waive their right to any further report or accounting by the Trustee in the administration of the Trust under Probate Code Sections 16061 and 16062, and accept the Accounting provided in Section I above as the final accounting of the Trustee.

### **3.4 Consideration**

The Beneficiaries desire to avoid the cost and time required of the Trustee to provide an accounting as provided in Probate Code Section 16063. The Beneficiaries desire to avoid the further increased cost and time required by the Trustee to prepare and file a formal accounting with the Probate Court and each has concluded that no constructive purpose will be served by the Trustee's preparing and filing an accounting for court approval.

## **IV. DISTRIBUTIONS AND CLOSING RESERVE**

### **4.1 Distribution**

Pursuant to the Trust, the Trustee has prepared and filed (or arranged for the preparation and filing) the appropriate personal and fiduciary income tax returns required in this matter, has paid the administration expenses incurred to date. Trustee now hereby distributes and quitclaim assigns the residue of the Trust to the Beneficiaries in the manner set forth on Exhibit "A" attached hereto.

In addition, certain items of personal property and household furniture and furnishings were distributed to specifically named individuals, as provided under the terms of the Trust.

### **4.2 Closing Reserve**

The Trustee intends to hold a closing reserve in the amount of approximately \$25,000. Any amount remaining after the final payment of such expenses will be distributed to the Beneficiaries as follows:

- d) 33% to GUIDE DOGS FOR THE BLIND
- e) 34% to BRAILLE INSTITUTE OF AMERICA, INC.
- f) 34% to BEHAVIORAL WELLNESS OF SANTA BARBARA COUNTY

The Trustee will use a portion of the closing reserve to pay final expenses of Trust administration, including, but not limited to, legal fees, accounting fees, the payment of any income taxes owing either now or in past years, and the payment of any estate taxes due on audit.

**4.3 Distribution of Reserve**

The Trustee will distribute the unexpended portion of the closing reserve, if any, as provided above, after it has determined that any income tax liabilities for prior years have been paid. In the unlikely case that the closing reserve is insufficient to pay taxes or unexpected, but reasonable expenses, each Beneficiary understands and agrees that he or she is liable for any such reasonable insufficiency in accordance with law.

**V. RELEASE OF TRUSTEE**

**5.1 Release**

The undersigned Beneficiaries hereto agree to release and discharge MICHAEL McGINNIS in his capacity as Trustee of The John Kovacs Revocable Trust, including, but not limited to any cause of actions or claims, known or unknown, suspected or unsuspected, of whatsoever character created by or arising out of the death of JOHN KOVACS, any probate, post-death trust administration, and other proceedings which have been, or should have been, or may be, commenced in connection therewith, and the transactions and omissions of the Trustee to the signing date herein, to the same extent as if:

- 5.1.1 The Trustee had rendered a formal and integrated accounting of all such information to a Court with proper jurisdiction;
- 5.1.2 Notice of the hearing on such matter had been sent to all proper persons;
- 5.1.3 Such Court had settled the accounting as rendered and had approved the actions of the Trustee and release her from liability; and
- 5.1.4 The judicial Order settling the accounting had become final.

**5.2 Agents and Successors**

The undersigned Beneficiaries further agree to release and discharge each attorney, agent, accountant, representative, successor, and assign of MICHAEL McGINNIS as Trustee, from any and all liability to the Beneficiaries for any and all actions, causes of action, obligations, costs, damages, losses, claims, liabilities, demands, liens, agreements, contracts, covenants, suits, obligations, controversies, debts, attorneys' fees, expenses, judgments, and orders, of whatever kind, nature or character, in law, equity, or otherwise, which have existed, or which do exist, or which hereafter may exist, based on any of the facts, events, or omissions occurring from the time that MICHAEL McGINNIS began serving as Trustee until the date hereof.

**4.1 Section 1542 of the California Civil Code**

Each Beneficiary acknowledges that he or she is aware of Section 1542 of the California Civil Code, which provides as follows:



**“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

**EACH BENEFICIARY HEREBY WAIVES THE BENEFIT AND APPLICABILITY OF THIS SECTION.**

**4.2 Section 16464 of the California Probate Code**

Each Beneficiary acknowledges that he or she is aware of Section 16464(b)(2) of the California Probate Code, which provides as follows:

**“A release or contract is not effective to discharge the trustee’s liability for a breach of trust in any of the following circumstances...(2) Where the beneficiary did not know of his or her rights and of the material facts (A) that the trustee knew or reasonably should have known and (B) that the trustee did not reasonably believe that the beneficiary knew.”**

**EACH BENEFICIARY HEREBY WAIVES THE BENEFIT AND APPLICABILITY OF THIS SECTION.**

**5.3 Limitation**

This release and discharge does not discharge or negate the responsibility of the Trustee to wrap up the administration of the Trust as outlined above, and to make the remaining distributions to the Beneficiaries of any remaining balance in the Trust at the conclusion of the administration as described herein, nor does it release the Trustee from his obligation to complete the administration in a timely manner and to file the final fiduciary income tax returns and pay any fiduciary income taxes due, as well as any remaining administrative expenses.

**5.4 Trustee Representations**

The Trustee hereby represents and warrants to the Beneficiaries as follows:

- 5.4.1 The Trustee has prudently investigated all material facts of the Trust Administration; and
- 5.4.2 All material facts of the Trust administration are contained in the Trust records, which may be made available for each beneficiary’s inspection prior to the signing of this Accounting, Waiver and Release.

**5.5 Beneficiary Representations**

Each Beneficiary hereby represents and warrants to the Trustee and to each other that:

- 5.5.1 The signing Beneficiary has not filed a petition in bankruptcy;

- 5.5.2 The signing Beneficiary has read this Accounting, Waiver and Release and understands its contents;
- 5.5.3 The signing Beneficiary has had the opportunity and ability to be represented by legal counsel of that Beneficiary's own choice regarding the legal significance of this Accounting, Waiver, and Release, and is signing this document either with the consent and advice of that Beneficiary's own attorney, or after knowingly deciding to forego obtaining legal representation and advice; and
- 5.5.4 The signing Beneficiary understands that Mullen & Henzell L.L.P. represents the Trustee and has not and does not represent any individual Beneficiary with regard to its beneficial interests in the matter of the administration of The John Kovacs Revocable Trust dated August 28, 2009, as subsequently amended.

## **5.6 Consideration**

The Beneficiaries hereby acknowledge the Trustee's right to petition the Probate Court to settle the accounts of the Trustee, and that an accounting filed with the Probate Court must be in the form and contain the information required by Probate Code Section 1060 *et. seq.* The Trustee would be protected from subsequent claims against him for any perceived error in administration of the Trust if the Trustee prepared and filed an accounting with the court. The Beneficiaries wish to avoid the increased costs and delays associated with a court-approved accounting and each has concluded that no constructive purpose will be served by the Trustee's preparing and filing an accounting for court approval. The Trustee hereby agrees not to seek a court order settling the Trustee's accounts and passing on the Trustee's acts in administration of the trust.

## **5.7 Attorneys**

Each signatory to this Accounting, Waiver and Release is either represented by an attorney of its choosing, or has chosen not to seek independent counsel. Each signatory to this Accounting, Waiver and Release was free to seek independent counsel and any Beneficiary who chose not to make that choice freely.

## **5.8 No Inducement**

The Trustee has not urged any Beneficiary to release the Trustee from liability. The Parties desire the expeditious conclusion and settlement of the Trust administration, and to avoid future administrative costs

## **5.9 Books & Records**

The Trustee hereby offers to the Beneficiaries the opportunity to inspect the trust's records and each Beneficiary has either inspected the trust records or has chosen not to inspect the trust records. The Trustee hereby represents that all material facts of the Trust administration are contained in the Trust records, which have been provided to each beneficiary or made available for each beneficiary's inspection.

### **5.10 Governing Law & Venue**

For all purposes, this Accounting, Waiver and Release shall be deemed effective, executed, and delivered as of the date executed by the Beneficiary. The laws of the State of California shall govern this Accounting, Waiver and Release without giving effect to conflict of laws, with venue for all purposes mandatory and proper only in the County of Santa Barbara, State of California.

### **5.11 Complete Agreement**

This Accounting, Waiver and Release is the entire understanding of the parties. This Accounting, Waiver and Release supersedes all prior discussion, negotiations, correspondence, memoranda and agreements, and no evidence of any such discussions, negotiations, correspondence, memoranda or agreement shall be admissible in any lawsuit or arbitration to enforce or interpret this Accounting, Waiver and Release or any term or provision hereof. Beneficiaries waive their right to assert that this Accounting, Waiver and Release was affected by oral agreement, course of conduct, waiver, or estoppel.

### **5.12 Fees**

Should any action or other proceeding be necessary to enforce any of the provisions of this Accounting, Waiver and Release, the non-prevailing party shall pay the prevailing party's expenses incurred in any lawsuit, arbitration, or other formal proceeding related to this Accounting, Waiver and Release, including actual attorneys' fees, paralegal fees, legal costs and expenses, if and only if the prevailing party made a good faith attempt to mediate the dispute.

### **5.13 Authority; Successors and Assigns**

This Accounting, Wavier and Release is binding upon and inures to the benefit of each Beneficiary's personal representative, conservator, heirs and assigns without limitation.

### **5.14 Modification**

This Accounting, Waiver and Release may not be changed, modified or amended except by written agreement signed by all parties hereto.

### **5.15 Severability**

In the event that any provision or part of this Accounting, Waiver and Release shall be determined to be invalid, illegal, void, or unenforceable, such provision or part shall be deemed severable from the remaining provisions and parts of this Accounting, Waiver and Release, which shall remain in full force and effect.


**5.16 Voluntary Consent; Counterpart Originals**

Each person signing this Accounting, Waiver and Release acknowledges and warrants that his or her signature is made freely and voluntarily. This Accounting, Waiver and Release may be signed in counterpart originals.

**IN WITNESS HEREOF**, the parties have executed this Account, Waiver and Release as shown below.

**TRUSTEE:**

Dated: October 11, 2021

  
MICHAEL MCGINNIS, Trustee of  
The John Kovacs Revocable Trust  
dated August 28, 2009

**BENEFICIARIES:**

GUIDE DOGS FOR THE BLIND

Dated: \_\_\_\_\_

By \_\_\_\_\_

BRAILLE INSTITUTE OF  
AMERICA, INC.

Dated: \_\_\_\_\_

By \_\_\_\_\_

BEHAVIORAL WELLNESS OF  
SANTA BARBARA COUNTY

Dated: \_\_\_\_\_

By \_\_\_\_\_

**Exhibit "A"**  
**Distribution Schedule**

**33% of Residue to Guide Dogs For The Blind:**

<u>Asset</u>	<u>Value</u>
Cash	\$165,000
Vanguard IRA	<u>25,552</u>
TOTAL:	<u>\$190,552</u>

**34% of Residue to Braille Institute of America, Inc.:**

<u>Asset</u>	<u>Value</u>
Cash	\$170,000
Vanguard IRA	<u>26,326</u>
TOTAL:	<u>\$196,326</u>

**34% of Residue to Behavioral Wellness of Santa Barbara County:**

<u>Asset</u>	<u>Value</u>
Cash	\$170,000
Vanguard IRA	<u>26,326</u>
TOTAL:	<u>\$196,326</u>