

No. 20-413

In The
Supreme Court of the United States

JOZLYN THOMAS,

Petitioner,

v.

JAMES SCOTT BLEVINS,

Respondent.

**On Petition For A Writ Of Certiorari
To The Court Of Appeal Of California,
Fifth Appellate District**

**BRIEF IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI**

JAMES SCOTT BLEVINS
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Ripon, CA 95366
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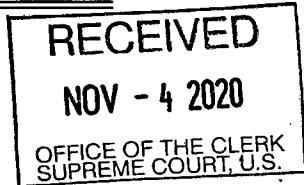


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BRIEF IN OPPOSITION
INTRODUCTION

Petitioner characterizes this matter as a dispute relating to the Fifth Amendment and Fourteenth Amendment to the United States Constitution. Specifically, the question presented is “Whether the Fifth and Fourteenth Amendments to the United States Constitution serves to void the Order of the trial court. . . .” However, the content of the brief submitted by Petitioner is entirely untethered to the very question Petitioner presents. Instead, Petitioner’s argument exclusively revolves around Petitioner’s disagreement with the California Fifth District Court of Appeals (“CA5th DCA”) interpretation of a California case – *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215.

FACTUAL BACKGROUND

In 2009, Respondent, in his capacity as Trustee of the Giles Revocable Trust (the “Trust”), filed a petition with the trial court to approve: (1) the Trust accounting; (2) an agreement between the Trustee and one of the beneficiaries Dawn Morin; and (3) a plan of distribution for the Trust assets. This petition was approved by the court in 2009 (the “2009 Order”).

On or about May 18, 2009 (less than two weeks after the 2009 Order was entered), Respondent learned from his then wife Deena Blevins that Petitioner was living with and being cared for by her legal guardians

Daniel and Mary Thomas in Punta Gorda, Florida. Prior to learning of the Thomas' involvement, all correspondence and court filings for Petitioner were sent to addresses that Respondent reasonably understood were accurate as they were provided to Respondent from Petitioner's father, Joseph Giles, and Respondent's mother Bobette Giles prior to her death. However, once Respondent learned that Petitioner was living with and being cared for by Mr. and Mrs. Thomas, Respondent immediately caused all communications, all court filings, and all Trust distributions to be sent to Petitioner at the address provided to him by Mr. and Mrs. Thomas. Indeed, since 2009 Respondent has had countless discussions with Dan Thomas regarding all facets of the Trust and distribution of Trust assets.

Distribution of all Trust assets was completed in *2011 and the final Trust tax return was filed that year as well.* From and after 2011, the various beneficiaries of the Trust, fourteen (14) total *including Petitioner*, continued to own various pieces of real estate together as a result of the Trust distribution; and they continued to own an interest in at least one general partnership. Setting aside the 2009 Order will effectively create an unprecedented mechanism to reopen a completed trust administration and unwind the past decade of spending, investing, selling, devising, donating, etc. the distributed Trust corpus by each of these fourteen (14) beneficiaries. It will be nothing short of cataclysmic, and quite frankly, impossible to unwind this history of unique transactions.

It is undisputed that all documents relating to the Trust were sent to Petitioner at the address provided to Respondent by Petitioner's guardians from and after May 2009. It is also undisputed that at least three separate documents were signed by and/or received by Petitioner's legal guardians in 2011 which expressly identify the 2009 Order Petitioner seeks to set aside, now a decade later.

The clear undisputed facts are that Petitioner was made aware of the 2009 Order in a release signed by Petitioner's guardians **and** in at least the following two letters sent to and received by Petitioner in 2011:

1. ***Letter dated February 17, 2011, to Petitioner.*** On February 17, 2011, the undersigned's law firm sent a letter to Petitioner that included a very detailed and thorough recap of the Dawn Morin case and 2009 Order. There is literally a heading on page two of this letter for "*Dawn Morin*" and it states as follows: "*We recently provided Dawn Morin with her percentage share of the Trust reserve account as required by the terms of the prior settlement agreement between the Trust and Dawn. The Court order dated May 6, 2009 that was entered in connection with this particular dispute mandated that Dawn was to receive her percentage of the reserve account no later than December 31, 2009.*" (***Emphasis added***) A true and correct copy of this letter is attached hereto as **Exhibit "A"** and incorporated herein by this reference.

2. ***Letter dated September 8, 2011, to Petitioner.*** On September 8, 2011, the undersigned's law firm sent a letter to Petitioner that once again provided a recap relating to Dawn Morin as follows: *"As you will recall, at the time of distribution of the Trust estate, a reserve account balance was held to be used for the payment of Trust expenses, including but not limited to accounting fees and legal fees. The Trust reserve account balance was also held in order to assist with the formation of a Tenants in Common agreement related to the Manteca Property, the distribution of the Burson property, and the distribution of Dawn Morin's share of the Trust reserve account as mandated by the previously entered Court order dated May 6, 2009, among other things."* (***Emphasis added***) A true and correct copy of this letter is attached hereto as **Exhibit "B"** and incorporated herein by this reference.
3. ***Release dated September 30, 2011.*** On September 30, 2011, Petitioner signed a Release of Liability of Trustee and Waiver of Accounting (the "Release") releasing Respondent from *"... any and all actions, causes of action, claims, demands, damages, costs, and expenses, including any liability to JOZLYN THOMAS, known or unknown, existent or non-existent, for or because of any matter or thing done, omitted or suffered to be done by JAMES SCOTT BLEVINS as Trustee of the above mentioned trust."* The Release was not "boilerplate" or "routine" and included an entire detailed page of the various aspects of the administration of the Trust, *including the*

2009 Order Petitioner claims to have only just discovered in 2017. The following two paragraphs contained in the Release are directly related to the instant action:

- i. "We acknowledge having been provided with a formal accounting for the period April 3, 2003 through December 31, 2008 and for the period of January 1, 2009 through March 14, 2010. We hereby waive any further accounting from the Trustee."
- ii. "We further acknowledge that JOZLYN THOMAS' share of the current balance on hand has been adjusted to 9.976855%, due to the fact that the final share to beneficiary DAWN MORIN has already been distributed **as mandated by prior Court order.**" (This Dawn Morin order is the 2009 Order that is at issue in this Appeal). A true and correct copy of the Release is attached hereto as **Exhibit "C"** and incorporated herein by this reference.

ARGUMENT

- 1. PETITIONER'S ARGUMENT RESTS ENTIRELY WITH HER DISAGREEMENT WITH THE 5TH DCA'S ANALYSIS AND INTERPRETATION OF CALIFORNIA CASE LAW, NOT THE UNITED STATES CONSTITUTION.**

As mentioned, Petitioner characterizes her Petition as one concerning the Fifth Amendment and Fourteenth Amendment to the United States Constitution.

However, Petitioner fails to argue how these two Constitutional Amendments apply to the facts of this case. Instead, Petitioner complains about the 5th DCA's interpretation of California case law, specifically, *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215. The *Gorham* case was properly interpreted by the 5th DCA, but confusingly, this has nothing to do with the "Question" presented by Petitioner in her Petition.

Since the issue was raised, I'll address it. *Gorham* concluded that where a fraudulent return of service results in a complete failure of service of process on the defendant whose rights were at stake, there is a fundamental lack of jurisdiction over that party and any resulting order or judgment against him or her is void and may be set aside at any time. *Gorham* at 1228-1229, 1234-1235. In reaching that conclusion, *Gorham* acknowledged that where the invalidity of a judgment does not appear on the face of the record, it may be attacked by a motion in the action in which the judgment was entered, but such motion would ordinarily have to be made under a statute providing relief within certain time limits or a reasonable time. *Id.* at p. 1228. However, the opinion also recognized that even if relief is no longer available under statutory provisions, a trial court retains the power to vacate a judgment on equitable grounds where it resulted from extrinsic fraud or mistake, or where it was established as a matter of law to be void for lack of due process. *Ibid.* In that regard, *Gorham* emphasized that a false return of summons proves "both" extrinsic fraud and mistake *and* that the judgment or order is void. *Id.* at 1229.

The 5th DCA correctly found that in the present case, no such false or fraudulent return of service was shown. Furthermore, although an exception to the statutory time limits for moving to vacate a void judgment due to improper service of process has of course been recognized in cases where there was extrinsic fraud involved, it was still required in those cases that such a motion be made with diligence or within a reasonable time. (See e.g., *Munoz v. Lopez* (1969) 275 Cal.App.2d 178, 181-182; *Washko v. Stewart* (1941) 44 Cal.App.2d 311, 317-318; *Smith v. Jones* (1917) 174 Cal. 513, 515-516). In any event, this was not a fraudulent return of service case, so the apparent ruling in *Gorham* that no diligence would be required in such unique cases may be distinguished. As such, it was not an abuse of discretion for the trial court in the instant action to require Petitioner to bring her motion to vacate the 2009 Order, premised on alleged extrinsic fraud, within a reasonable time. (See *Trackman v. Kenney*, 187 Cal.App.4th 175 [a party “can show that extrinsic fraud or mistake exists, such as a falsified proof of service, and such a motion may be made at any time, provided the party acts with diligence upon learning of the relevant facts”].

The 5th DCA concluded that diligence was not shown in this case; that is, the motion to vacate filed by Petitioner was not brought within a reasonable time. Further, the *Gorham* case is distinguishable and, in any event, does not establish an abuse of discretion in this case or require a reversal of the trial court’s denial of the motion to vacate. Ultimately, the 5th DCA

held that Petitioner failed to demonstrate that, under all the circumstances (outlined in the Factual Background section above), the trial court abused its discretion when it denied her motion to vacate the 2009 Order.

CONCLUSION

Respondent respectfully requests that this Court deny Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

JAMES SCOTT BLEVINS
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EXHIBIT A

GIANELLI & ASSOCIATES
A Professional Law Corporation

Business & Estate Planning Real Estate, Mediation & Litigation

1014 16th Street
P.O. Box 3212
Modesto, California 95353
Ph: 209-521-6260
Fax: 209-521-5971

L. F. "Bud" Gianelli (1928-2009)

Michael L. Gianelli*	David L. Gianelli ¹
Brett L. Dickerson	John B. Pavia
Keric J. Cushing	Anthony D. Johnston
Chad Bion Yates	David C. Johnston
Eric T. Nielsen	Emily A. Wirowek
Luis O. Perez	

*Certified Specialist, Probate, Estate Planning and Trust Law. The State Bar of California Board of Legal Specialization

¹LLM Taxation

February 17, 2011

Boys & Girls Club of Manteca Attn: Charlie Halford P.O. Box 1061 Manteca, CA 95336	James Scott Blevins 11277 Cleveland Avenue Oakdale, CA 95361
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St. Vincent de Pauls Society Attn: Al Degroot, President 525 East North Street Manteca, CA 95336	Bryan Blevins 2091 Willow Lane Lakewood, CO 80215
Daniel Thomas and Mary Thomas, as guardians of the Estate of Jozlyn Thomas, a Minor 10 Belem Street Punta Gorda, FL 33983	Brent Blevins 7887 Koftinow Court Manteca, CA 95336
Michael Giles, a Minor c/o Attorney Dawn Spratley Lane Powell PC 1420 Fifth Avenue, Suite 4100 Seattle, WA 98101-2338	Kelly Bergman 1172 Joseph Court Ripon, CA 95366
	Anthony L. Giles 5613 Lowell Street Everett WA. 98203

Re: Estates of Charles and Bobette Giles Giles
Revocable Trust dated January 18, 2002
Client Code: GILBO-1

Dear Beneficiaries:

This letter is being sent to provide you with an update on the status of various matters related to the Giles Revocable Trust (the "Trust"), of which you are all beneficiaries.

Manteca Property

We previously circulated a Tenants In Common agreement related to the property located at 1299 Vanderbilt Circle, in Manteca California (the "Manteca

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Property"). Thank you for your combined effort in getting this signed and returned to me. As of last week, we have now received all signatures on this particular agreement and I have enclosed a fully executed copy of the same for your files.

Now that the Tenants In Common agreement has been put in place we will be distributing the Manteca Property out of the Trust to each of you individually in accordance with your percentage ownership as set forth on page two of the agreement. Please note that upon distribution of the Manteca Property, your rights and responsibilities (with regard to the Manteca Property) will be governed by the Tenants in Common Agreement.

Dawn Morin

We recently provided Dawn Morin with her percentage share of the Trust reserve account as required by the terms of the prior settlement agreement between the Trust and Dawn. The Court order dated May 6, 2009 that was entered in connection with this particular dispute mandated that Dawn was to receive her percentage of the reserve account no later than December 31, 2009. However, there were a multitude of ongoing partnership issues, Trust issues, and transfers that took place post-settlement of this dispute of which Dawn (through her attorney Chris Ramey) was involved and these issues delayed the Court ordered distribution to Dawn.

Chris Ramey recognized the benefit of resolving the foregoing issues amicably and as such, did not press

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the issue regarding Dawn's distribution until recently. Specifically, now that Dawn has no interest in the remaining Trust property, except for the Court ordered distribution of her percentage of the reserve account, Mr. Ramey demanded that the Trustee comply with the terms of the above referenced settlement agreement and distribute Dawn's share which we did as required by the Court order.

As information, the informal accounting of the reserve account at the time of distribution to Dawn Morin (i.e. January 1, 2011) showed a balance of \$76,892.23 and Dawn's 28.5242% of this balance was equal to \$21,932.89.

Burson Property

After the Manteca Property is distributed to each beneficiary, the remaining Trust assets will consist of the balance of the reserve account and the real property commonly referred to as the "Burson Property" consisting of approximately 5.76 acres in Valley Springs California.

The Trustee has been actively trying to sell the Burson Property for months and notwithstanding a recent price reduction to \$99,500 it has sat on the market for nearly 3 months without any interest being generated at this lower price. The link to the listing for the Burson Property with Stark Realty can be found immediately below:

http://www.starkrealty.com/home_detail.php?pointer=102216

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In view of the time and expense related to the ongoing management of the Trust to simply have the Burson Property listed for sale, coupled with the beneficiaries' desire to receive their percentage share of the remainder of the reserve account, and the fact that the Burson Property is not receiving any offers (even with the reduced price), the Trustee has decided that it would make the most sense to distribute out this last remaining asset to the individual beneficiaries, together with your percentage of the reserve account. Accordingly, if the Trust does not receive any offers to purchase the Burson Property by March 1, 2011, we will move forward with distributing this asset to each of you along with your percentage of the reserve account.

Thank you for your attention to this and please do not hesitate to contact our office with any questions or concerns you might have.

Very truly yours,
/s/ Eric T. Nielsen
ERIC T. NIELSEN

ETN/lgm
Enclosures

cc: Daniel J. Gatto, CPA

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EXHIBIT B

GIANELLI & ASSOCIATES
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*Certified Specialist, Probate, Estate Planning
and Trust Law. The State Bar of California
Board of Legal Specialization

¹LLM Taxation

September 8, 2011

Boys & Girls Club of Manteca Attn: Charlie Halford P.O. Box 1061 Manteca, CA 95336	Anthony L. Giles 5613 Lowell Street Everett WA. 98203
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St. Vincent de Pauls Society Attn: Al Degroot, President 525 East North Street Manteca, CA 95336	Bryan Blevins 2091 Willow Lane Lakewood, CO 80215
Daniel Thomas and Mary Thomas, as guardians of the Estate of Jozlyn Thomas, a Minor 10 Belem Street Punta Gorda, FL 33983	Brent Blevins 7887 Koftinow Court Manteca, CA 95336
Michael Giles, a Minor c/o Carla Little 5613 Lowell Street Everett, WA 98203	Kelly Bergman 1172 Joseph Court Ripon, CA 95366
Charles W. Giles, Jr. 10216 10th Place SE Lake Stevens, WA 98258 and E-mail to charlesgiles31@yahoo.com	William Blevins 337 Ruess Road Ripon, CA 95366

Re: Estates of Charles and Bobette Giles Giles
Revocable Trust dated January 18, 2002
Client Code: GILBO-1

Dear Beneficiaries:

This letter is being sent as a follow up to my correspondence dated April 13, 2011 regarding the Giles Revocable Trust (the "Trust"), of which you are all beneficiaries. We have now received the final tax return for the Trust and as such, the Trustee is now in a position

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to distribute the remaining assets of the Trust which consist solely of the Trust Reserve Account.

As you will recall, at the time of distribution of the Trust estate, a reserve account balance was held to be used for the payment of Trust expenses, including but not limited to accounting fees and legal fees. The Trust reserve account balance was also held in order to assist with the formation of a Tenants in Common agreement related to the Manteca Property, the distribution of the Burson property, and the distribution of Dawn Morin's share of the Trust reserve account as mandated by the previously entered Court order dated May 6, 2009, among other things.

The balance on hand for distribution is \$31,851. I have enclosed a distribution schedule that indicates: (1) the total Reserve Account balance (above); (2) your specific percentage interest therein; and (3) the total amount of your respective share of the Reserve Account balance.

With regard to distribution of your respective shares of the Reserve Account, I am also enclosing a Waiver of Accounting and Release of Liability of Trustee. Please review the waiver and release, and sign where indicated. Please return the original document to me in the envelope provided. Once all signed waivers are received, original checks will be immediately forwarded directly to each of you.

Should you have any questions, please do not hesitate to contact either Jalyn Winters or me.

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Very truly yours,
/s/ Eric T. Nielsen
ERIC T. NIELSEN

ETN/lgm
Enclosures

cc: James Scott Blevins

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Giles Revocable Trust
 Distribution Schedule – Reserve
 Date: August 30, 2011

Assets on Hand	Balance/Value	Boys & Girls Club of Manteca	St. Vincent de Pauls Society	Dawn	Jozlyn	Charles	Anthony
	<u>prior allocation</u>	0.03765485	0.03765485	0.285242	0.0713104	0.0713104	0.0713104
	<u>allocation excluding</u>						
	Dawn	0.05268193	0.05268193	0.00000000	0.09976855	0.09976855	0.09976855
Bank of Stockton Interest Checking Account	\$ 31,851.00	\$ 1,677.97	\$ -	\$ 3,177.73	\$ 3,177.73	\$ 3,177.73	\$ 3,177.73
Assets on Hand	Balance/Value	Michael	Scott	Bill	Bryan	Brent	Kelly
	<u>prior allocation</u>	0.0713104	0.0713104	0.0713104	0.0713104	0.0713104	0.0713104
	<u>allocation excluding</u>						
	Dawn	0.09976855	0.09911239	0.09911239	0.09911239	0.09911239	0.09911239
Bank of Stockton Interest Checking Account	\$ 31,851.00	\$ 3,177.73	\$ 3,156.83	\$ 3,156.83	\$ 3,156.83	\$ 3,156.83	\$ 3,156.83

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GILES REVOCABLE TRUST
dated January 18, 2002

**RELEASE OF LIABILITY OF TRUSTEE
AND WAIVER OF ACCOUNTING**

We, DANIEL THOMAS and MARY THOMAS, as Guardians of the Estate of JOZLYN THOMAS, a Minor, acknowledge that JOZLYN THOMAS is one of the beneficiaries of the GILES REVOCABLE TRUST dated January 18, 2002 (the "Trust").

We understand that we are entitled to a full and complete accounting of all assets, liabilities, receipts and expenses of the Trust. We acknowledge having been provided with a formal accounting for the period April 3, 2003 through December 31, 2008 and for the period of January 1, 2009 through March 14, 2010. We hereby waive any further accounting from the Trustee.

We acknowledge that the Trust Estate consists of an interest checking account held at Bank of Stockton with a balance on hand for distribution of \$31,851.00, and that such account is the sole remaining asset of the Trust Estate.

We acknowledge that JOZLYN THOMAS is entitled to 7.13104% of the net Trust Estate. We further acknowledge that JOZLYN THOMAS' share of the current balance on hand has been adjusted to 9.976855%, due to the fact that the final share to beneficiary DAWN MORIN has already been distributed as mandated by prior Court order. Therefore, we acknowledge that JOZLYN THOMAS is entitled to final distribution

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of the sum of \$3,177.73 (the "Distribution") at this time.

Except for payment of the Distribution and upon receipt of the Distribution, we hereby release JAMES SCOTT BLEVINS, as Trustee of the GILES REVOCABLE TRUST dated January 18, 2002, from any and all actions, causes of action, claims, demands, damages, costs, and expenses, including any liability to JOZLYN THOMAS, known or unknown, existent or non-existent, for or because of any matter or thing done, omitted or suffered to be done by JAMES SCOTT BLEVINS as Trustee of the above mentioned trust.

The undersigned waives the provisions of Section 1542 of the California Civil Code, which provides that:

"Section 1542. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The undersigned understands and acknowledges the significance and consequence of this specific waiver of Section 1542 of the California Civil Code.

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Dated:

DANIEL THOMAS, as Guardian of
the Estate of JOZLYN THOMAS, a
Minor

MARY THOMAS, as Guardian of
the Estate of JOZLYN THOMAS, a
Minor

EXHIBIT C

GILES REVOCABLE TRUST
dated January 18, 2002

**RELEASE OF LIABILITY OF TRUSTEE
AND WAIVER OF ACCOUNTING**

We, DANIEL THOMAS and MARY THOMAS, as Guardians of the Estate of JOZLYN THOMAS, a Minor, acknowledge that JOZLYN THOMAS is one of the beneficiaries of the GILES REVOCABLE TRUST dated January 18, 2002 (the "Trust").

We understand that we are entitled to a full and complete accounting of all assets, liabilities, receipts and expenses of the Trust. We acknowledge having been provided with a formal accounting for the period April 3, 2003 through December 31, 2008 and for the period of January 1, 2009 through March 14, 2010. We hereby waive any further accounting from the Trustee.

We acknowledge that the Trust Estate consists of an interest checking account held at Bank of Stockton with a balance on hand for distribution of \$31,851.00, and that such account is the sole remaining asset of the Trust Estate.

We acknowledge that JOZLYN THOMAS is entitled to 7.13104% of the net Trust Estate. We further acknowledge that JOZLYN THOMAS' share of the current balance on hand has been adjusted to 9.976855%, due to the fact that the final share to beneficiary DAWN MORIN has already been distributed as mandated by prior Court order. Therefore, we acknowledge

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that JOZLYN THOMAS is entitled to final distribution of the sum of \$3,177.73 (the "Distribution") at this time.

Except for payment of the Distribution and upon receipt of the Distribution, we hereby release JAMES SCOTT BLEVINS, as Trustee of the GILES REVOCA- BLE TRUST dated January 18, 2002, from any and all actions, causes of action, claims, demands, damages, costs, and expenses, including any liability to JOZLYN THOMAS, known or unknown, existent or non-exist- ent, for or because of any matter or thing done, omitted or suffered to be done by JAMES SCOTT BLEVINS as Trustee of the above mentioned trust.

The undersigned waives the provisions of Section 1542 of the California Civil Code, which provides that:

"Section 1542. A general release does not ex- tend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially af- fected his or her settlement with the debtor."

The undersigned understands and acknowledges the significance and consequence of this specific waiver of Section 1542 of the California Civil Code.

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Dated: September 30, 2011

/s/ Daniel Thomas

DANIEL THOMAS, as Guardian of
the Estate of JOZLYN THOMAS,
a Minor

/s/ Mary Thomas

MARY THOMAS, as Guardian of
the Estate of JOZLYN THOMAS,
a Minor
