

No. 22-

IN THE
Supreme Court of the United States

MICHAEL CHUI,

Petitioner,

v.

BENJAMIN TZE-MAN CHUI AS TRUSTEE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
THE SUPREME COURT OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

SAM P. ISRAEL
Counsel of Record
TIMOTHY SAVITSKY
SAM P. ISRAEL, P.C.
32 Broadway, 11th Floor
New York, New York 10004
(646) 787-9880
admin@spi-pc.com

Counsel for Petitioner



QUESTION PRESENTED

The 14th Amendment’s Due Process Clause provides that “No state . . . shall deprive any person of life, liberty, or property without due process of law.” In *Mathews v. Eldridge*, 424 U.S. 319 (1976) this Court held that while “due process” fundamentally requires notice and opportunity to be heard, the quality of the required notice and hearing in a given case depends on the interests at issue, likelihood of erroneous deprivations of that interest, and practicability. The courts below held that—under California’s Code of Civil Procedure §372(a)(1) and Probate Code §3500(b)—the trial judge had unilateral authority to negotiate and settle a near-adult ward’s legal claims in nine interrelated litigations without notice to the minor or holding an evidentiary hearing, notwithstanding his and his mother’s objections. Other states, such as Texas, always require an evidentiary hearing prior to permanently binding a minor to a settlement.

The question presented is:

Is a near-adult ward’s right to due process violated by California’s law allowing courts to settle actions involving the minor without the minor’s knowledge, participation, or consent; without an appointment of a guardian *ad litem*; over the minor’s and his parents’ objections, and without holding an evidentiary hearing to determine if the settlement is in the minor’s best interest?

PARTIES TO THE PROCEEDING

Petitioner Michael Chui, his mother Respondent Christine Chui, and his sister Respondent Jacqueline Chui were the appellants below, and Respondents Benjamin Tze-Man Chui, Esther Chao, Margaret Lee, Guardian Ad Litem Jackson Chen, Ruth Chui and Helena Chui were the appellees in the courts below.

RELATED PROCEEDINGS

1. *In re. the Matter of the King Wah Chui and Chi May Chui Declaration of Trust – Trust B and C*, Case No. BP137413, Superior Court of California, County of Los Angeles, Central District. Judgement entered June 24, 2020. Appeal Pending.
2. *King Wah Chui and Chi May Chui Declaration of Trust - Trust A*, Case No. BP155345, Superior Court of California, County of Los Angeles, Central District. Judgement entered June 24, 2020. Appeal Pending.
3. *In re. the Matter of Estate of King Wah Chui*, Case No. BP154245, Superior Court of California, County of Los Angeles, Central District. Judgement entered June 24, 2020. Appeal Pending.
4. *In re. the Matter of the Robert and Helena Chui Irrevocable Trust Matter*, Case No. BP145642, Superior Court of California, County of Los Angeles, Central District. Judgement entered June 24, 2020. Appeal Pending.
5. *In re. the Matter of the King Wah Chui and Chi May Chui Insurance Trust*, Case No. BP162717, Superior Court of California, County of Los Angeles, Central District.

Judgement entered June 24, 2020. Appeal Pending.

6. *In re. the Matter of the Estate of Robert Tak-Kong Chui*, Case No. BP143884, Superior Court of California, County of Los Angeles, Central District. Judgement entered June 24, 2020. Appeal Pending.
7. *Esther Chao v. Estate of Robert Chui Matter*, Case No. BC544149, Superior Court of California, County of Los Angeles, Central District. Judgement entered June 24, 2020. Appeal Pending.
8. *In re. the Matter of the Guardianships of the Estates for Jacqueline Chui and Michael Chui*, Case No. BP145759 Superior Court of California, County of Los Angeles, Central District. Judgement entered June 24, 2020. Appeal Pending
9. *In re. the Robert Tak-Kwong Chui Separate Property Trust Dated May 9, 2003*, Case no. 16STPB04524, Superior Court of California, County of Los Angeles, Central District. Judgement entered June 24, 2020. Appeal Pending.
10. *In re. the Estate of King Wah Chui*, Case No. B306918, Court of Appeal of the State of California, Second Appellate District.

Disposition and opinion issued March 2, 2022.
Rehearing denied March 28, 2022.

11. *In re. the Estate of King Wah Chui*, Case No. S273980, Supreme Court of the State of California. Petition for Review denied June 15, 2022.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING.....	ii
RELATED PROCEEDINGS.....	iii
TABLE OF CONTENTS	vi
TABLE OF APPENDICES	viii
TABLE OF AUTHORITIES	ix
OPINIONS AND ORDERS BELOW	1
JURISDICTION.....	1
STATUTES INVOLVED.....	2
STATEMENT OF THE CASE.....	3
The Respondents with Whom the Guardian <i>Ad Litem</i> Settled Had Vindictively Litigated Against Michael’s Grandparents and Parents for Years.....	4
Christine, Esther, Margaret, and Benjamin Entered into an Omnibus Oral Settlement Without Michael’s Knowledge on May 14, 2018	7
Christine, Michael and Jacqueline Each Repudiate the Settlement Terms, Yet GAL Chen Seeks Court Confirmation Anyway	9

The March 3, 2020 Consolidated Ruling Rejected the Petitioner’s Repudiations and Confirmed the Settlement Over All Objections and Without an Evidentiary Hearing	14
California’s Court of Appeal Rules that Near-Adult Wards Are Not Entitled to Any Notice or Hearing Prior to Their Rights’ Being Settled Against Their Wishes	15
REASONS FOR GRANTING THE WRIT.....	17
I. States Are Split as to What Minimum Due Process Is Sufficient to Protect Minors’ Constitutional Rights and Agency	19
II. Whether Wards Are Being Deprived Due Process by Unscrupulous or Disinterested Guardians Is an Urgent Issue Affecting Millions of People and This Case Is Perfectly Situated to Clarify Their Rights	22
III. California’s Law Permitting a Ward to Have His Rights Permanently Determined Without Notice and Without an Evidentiary Hearing Violates Due Process Principles Articulated by This Court	25
JOINDER	33
CONCLUSION	33

TABLE OF APPENDICES

	Page
APPENDIX A—ORDER DENYING REVIEW IN THE UNITED STATES COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE, IN THE SUPREME COURT OF CALIFORNIA, FILED JUNE 15, 2022	1a
APPENDIX B—OPINION OF THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION ONE, FILED MARCH 2, 2022	3a
APPENDIX C—OPINION OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, DATED JUNE 24, 2020.....	89a
APPENDIX D—OPINION OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, FILED MARCH 3, 2020	108a
APPENDIX E—OPINION OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, FILED SEPTEMBER 17, 2018	149a

TABLE OF AUTHORITIES

	Page(s)
FEDERAL CASES	
<i>Bellotti v. Baird</i> , 443 U.S. 622 (1979)	26
<i>Covey v. Town of Somers</i> , 351 U.S. 141 (1956)	32
<i>Goldberg v. Kelly</i> , 397 U.S. 254 (1970)	31
<i>Gray Panthers v. Schweiker</i> , 652 F.2d 146 (D.C. Cir. 1980)	32
<i>Griffin v. Illinois</i> , 351 U.S. 12 (1956)	25, 26
<i>In re Gault</i> , 387 U.S. 1 (1967)	26
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	19, 26, 27, 29
<i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972)	31
<i>Neilson v. Colgate-Palmolive Co.</i> , 199 F.3d 642 (2d Cir. 1999)	19, 32
<i>Planned Parenthood of Missouri v. Danforth</i> , 428 U.S. 52 (1976)	26

<i>Watkins v. Bailey</i> , 484 Fed. Appx. 18 (6 th Cir. 2012)	20
<i>Wolff v. McDonnel</i> , 418 U.S. 539 (1974)	26
STATE CASES	
<i>Bowden v. Hutzal Hosp.</i> , 252 Mich. App. 566 (Ct. App. Mich. 2002).....	20, 29
<i>Byrd v. Woodruff</i> , 891 S.W.2d 689 (Ct. App. Tx. 1994).....	<i>passim</i>
<i>Chui v. Chui</i> , S273980, 2022 Cal. LEXIS 3192 (Jun. 15, 2022)	1
<i>In re A.L.</i> , 2011 Ohio 2569 (Ct. App. Oh. 2011)	28
<i>In re Estate of King Wah Chut v. Chui</i> , BP154245, 2020 Cal. Super., LEXIS 1820 (Mar. 3, 2020).....	1
<i>In re Fagan</i> , 909 N.W.2d 443 (Ct. App. Ia. 2017)	21
<i>Large v. Hayes</i> , 534 S.2d 1101 (Sup. Ct. Ala. 1988)	20, 30
<i>Pearson v. Superior Court</i> , 202 Cal. App. 4th 1333 (2012).....	16, 21

<i>Richardson v. Tyson</i> , 110 Wis. 572 (Sup. Ct. Wis. 1901).....	33
--	----

FEDERAL STATUTES

U.S. Const. Amend. XIV	2, 26, 33
28 U.S.C. § 1257(a).....	1
Sup. Ct. R. 10(c)	18

STATE STATUTES

California Code of Civ. Pro. § 372	16
California Code of Civ. Pro. § 372(a)(1).....	<i>passim</i>
California Probate Code § 3500(a).....	2
California Probate Code § 3500(b).....	<i>passim</i>
Iowa Code § 633.561	21
Iowa Code § 633.575	21
Tenn. Code. Ann. 29-34-15(b)(5).....	20

OTHER

- Associated Press, *California Now Has the World's 5th Largest Economy*, May 4, 2018
<https://www.cbsnews.com/news/california-now-has-the-worlds-5th-largest-economy/> 30
- BBC News, *Britney Spears: Singer's Conservatorship Case Explained*, Nov. 12, 2021,
<https://www.bbc.com/news/world-us-canada-53494405> 23
- Katie Campione, *Britney Spears Invited to Testify Before Congress About Conservatorships*, Feb. 16, 2022,
<https://www.thewrap.com/britney-spears-congress-conservatorships-invite/> 23
- Samuel Spencer, *'I Care a Lot': the Shocking True Stories Behind the Netflix Movie*, Feb. 24, 2021,
<https://www.newsweek.com/i-care-lot-real-life-true-story-marla-grayson-1571600> 22-23
- Statista, *Per Capita Real Gross Domestic Product (GDP) of the United States in 2019, by State*,
<https://www.statista.com/statistics/248063/per-capita-us-real-gross-domestic-product-gdp-by-state/> 30-31

Thompson, <i>How 1.3 Million Americans Became Controlled by Conservatorships</i> , Oct. 18, 2021, https://www.usnews.com/news/health-news/articles/2021-10-18/how-13-million-americans-became-controlled-by-conservatorships	25
Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2021)	21

OPINIONS AND ORDERS BELOW

The California Superior Court's original March 3, 2020 decision confirming the omnibus settlement of the Petitioner's claims is unpublished and reprinted in the Petitioner Michael Chui's Appendix hereto ("P.A.") at 108a-148a.

The California Superior Court's June 24, 2020 decision granting re-argument and partially modifying the March 3, 2020 decision is published as *In re Estate of King Wah Chut v. Chui*, BP154245, 2020 Cal. Super. LEXIS 1820 (Mar. 3, 2020) and reprinted in P.A. 89a-107a.

The Court of Appeal of the State of California's March 2, 2022 decision affirming the Superior Court's orders is published as *Chui v. Chui*, 75 Cal. Ap. 5th 873 (2022) and reprinted at P.A. 3a-88a

The California Supreme Court's June 15, 2022 denial of review of the affirming decision of the California Court of Appeal is published as *Chui v. Chui*, S273980, 2022 Cal. LEXIS 3192 (Jun. 15, 2022), and reprinted at P.A. 1a-2a.

JURISDICTION

The California Supreme Court entered an order denying Michael Chui's ("Michael") petition for review on June 15, 2022. The petition for a writ of certiorari is due on September 13, 2022. This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATUTES INVOLVED

The 14th Amendment to the Constitution of the United States provides that “No state . . . shall deprive any person of life, liberty, or property without due process of law.”

Section 372(a)(1) of the California Code of Civil Procedure states in pertinent part that:

When a minor . . . is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian *ad litem* appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case.

Section 3500(a) of the California Probate Code states in pertinent part that:

When a minor has a disputed claim for damages, money or other property and does not have a guardian of the estate, the following persons have the right to compromise . . . the claim . . . (1) Either parent if the parents of the minor are not living separate and apart [and] (2) The parent having the care, custody, or control of the minor if the parents of the minor are living separate and apart.

Section 3500(b) of the California Probate Code states in pertinent part that:

the compromise or covenant is valid only after it has been approved, upon the filing of a petition, by the superior court of either of the following counties: (1) The County where the minor resides when the petition is filed (2) Any country where suit o the claim or matter properly could be brought.

STATEMENT OF THE CASE

Long before Michael's father and paternal grandfather both suddenly passed away in 2013 and 2014, they set up various testamentary devices to ensure that Michael would carry on the family legacy. Their plan included devising property to Michael that had been in the family for multiple generations and that he had played on when he was a little boy.

But when Michael was 16 years old, a person with whom he had never met or spoken negotiated and settled nine different adversarial legal proceedings on his behalf involving his inheritance claims to real properties and other assets left to him by his father and grandfather. The person, a complete stranger to Michael, waived Michael's claims to his ancestral property and to receive ten-years-worth of trust accountings: (i) without having been appointed his guardian ad litem in most of the settled proceedings, (ii) without asking for (let alone receiving) Michael's approval, (iii) without notifying Michael of the settlement or its terms, (iv) over the substantive objections to the settlement filed by

Michael himself and his mother, and, most critically, (v) without demonstrating the soundness of the settlement through an evidentiary hearing. As the appellate court below noted, all of this is permitted under California state law. Judges are vested with the authority to determine the rights of wards by confirming compromises on their behalf “*ex parte*, in chambers” and without notice or an evidentiary hearing—even in the face of a concerned parent’s objection. P.A. 62a.

Now 18 years old, Michael petitions this Court to clarify what federal constitutional safeguards exist to prevent near-adult wards from having life altering decisions made for them without receiving due process of law.

The Respondents with Whom the Guardian Ad Litem Settled Had Vindictively Litigated Against Michael’s Grandparents and Parents for Years

This case involves a multi-year legal melee between extended family members all locked in high stakes litigation over complex multi-million-dollar trusts and other assets left behind following the deaths of family patriarch King Chui (“King”) and his son Robert Chui (“Robert”). Adding to the complexity is the fact that King, whose property distribution choices were being contested by the Respondents, immigrated from Hong Kong decades ago. Dueling cultural perspectives on how to fairly dole out inheritances led to various family members having wildly different expectancies. See Volume 20 of Christine Chui’s Appellant’s Appendix (“A.A.”)

submitted to the California Court of Appeal at page 8616 (20 A.A. 8616).

Though tensions rose for decades, the powder keg ignited when Michael's father (Robert) and paternal grandfather (King) both died within one year of each other in 2013 and 2014, respectively. P.A. 8a. The two men left behind tens of millions of dollars in assets (including cash, real properties, and heirlooms) governed by, among other things, trusts. P.A. 10a-11a; 25a-26a. Believing they were entitled to more, Michael's half-brother, aunt, and other family members started firing volleys of legal paperwork at each other and at Michael's mother, Christine Chui ("Christine") in an attempt to alter the terms of King's and Robert's testamentary plans. P.A. 8a-9a. Nearly all such filings stood to affect Michael and his older sister Jacqueline Chui ("Jacqueline") as named beneficiaries in the various testamentary vehicles set up by their father and grandfather. P.A. 8a. At the time this all started, Michael was not yet ten years old. P.A. 6a.

One of the key disputes revolves around the creation and management of a large irrevocable trust (the "Trust"). P.A. 10a-11a (discussing allegations that the Trust was denuded of \$10 million); 25a-26a (Christine's claims that the settlement at issue deprives her son and daughter of tens of millions of dollars under the Trust). It had been originally set up by King, then managed by Michael's father Robert and aunt Margaret Lee ("Margaret"). *Id.* Among other things, the Trust provided that two of King's multi-million-dollar properties—called the "Three Lanterns" and the

“Sycamore”—would be given to Robert upon King’s death. P.A. 6a-7a. But if Robert died before his father, Robert’s wife Christine stood to inherit the properties. *Id.* Finally, if both Robert and Christine died before King, the properties were to go directly to their son Michael. *Id.* Robert did in fact die before his father. Under the Trust’s terms, the properties therefore went to Christine. P.A. 8a. The Trust held various other multi-million-dollar assets, including priceless heirloom jewelry, and Michael stood to receive a payout from two large life insurance policies taken out in Robert and King, respectively. P.A. 10a, 11a, 69a, 83a, 151a.

But as noted, King’s and Robert’s estates were fiercely fought over and the above-described terms did not actually resolve the Trust’s distribution or any other inheritance issues. Shortly before Robert died, he became incapacitated. P.A. 8a. As a result, his sister Margaret and son from a first wife, Benjamin Tze-Man Chui (“Benjamin”), became co-trustees of the Trust (the “Co-trustees”). *Id.* They then started an action against Christine alleging that she and Robert had committed elder abuse against King and mismanaged the Trust’s assets. P.A. 9a-10a. In their complaint, Margaret and Benjamin sought a judicial declaration “that Christine be deemed to have pre-deceased King,” thereby causing Michael to inherit the Three Lanterns and the Sycamore properties along with other assets. 1 A.A. 47 (the Co-trustee’s petition against Christine).

The accusations from her in-laws notwithstanding, the trial court found Christine fit

to serve as her son's estate guardian and guardian ad litem in two proceedings (involving life insurance policies). P.A. 11a-12a. But it appointed a professional guardian ad litem, Jackson Chen ("GAL Chen"), to represent Michael with respect to the Trust litigation. *Id.* Benjamin, Margaret, GAL Chen, and Robert's youngest sister Esther Chao are collectively referred to as the "Respondents."

Michael had no appointed guardian in the remaining related proceedings in which he was a named party. P.A. 12a, FN 11. In California like in many states, the trial court itself serves as de facto guardian for the minor where no one has been appointed. P.A. 59a; Cal Code Civ. Pro. §372(a)(1).

Christine, Esther, Margaret, and Benjamin Entered into an Omnibus Oral Settlement Without Michael's Knowledge on May 14, 2018

Litigation advanced on several fronts for years. By Spring 2018, Christine on one side and Benjamin and Margaret on the other were making final preparations for the trial over the claims Christine and Robert mismanaged the Trust. 3 A.A. 1412 (May 14, 2018 hearing transcript). If Christine lost and was deemed to have "predeceased" King, Michael would then receive the Sycamore and Three Lantern properties. P.A. 54a; 1 A.A. 47; 19 A.A. 7496. The outcome was uncertain but, at one point, the trial court noted that a "substantial question has been raised whether the theory of Co-Trustees [against Christine] even makes sense where Christine was allegedly the principal beneficiary of [the Trust]." See Volume 2 Clerk's Transcript at p. 495:1-5

(submitted by Michael as part of the record before the California Court of Appeal).

The matter never made it to trial. On May 14, 2018, the Trust litigants appeared in court and “surprised” the judge with an oral settlement (the “Oral Settlement”) of all claims in all of the various related proceedings. 3 A.A. 1413. The settlement had twelve separate points. P.A. 47a. Notably, it provided that Christine would waive her rights to receive the Three Lantern and Sycamore properties. P.A. 67a, FN 32; 3 A.A. 1413. But rather than those properties going directly to Michael as the next-in-line-beneficiary under the Trust’s terms, the Oral Settlement (according to the Co-trustees’ interpretation) provided for them to go into the Trust’s residue. P.A. 67a, FN 32; 3 AA 1414; 29 A.A. 14465. All other litigation by and between the parties in all of the nine related proceedings would be terminated. P.A. 14a.

Notably, on the day the Oral Settlement was recorded, no party made any appearance on behalf of Michael: Christine was appearing in the Trust litigation trial in her individual capacity and GAL Chen was not present. P.A. 53(a) FN 25; 3 A.A. 1415 (transcript with appearances). Christine’s counsel of record in several matters that were ostensibly to be resolved by the Oral Settlement involving Christine’s guardianship of the minors—Vikram Brar Esq.—was not present for the Oral Settlement. *Id.* Mr. Brar never reviewed or approved the Oral Settlement terms on behalf of Christine or the minor children. 6 A.A. 2553 at ¶2, 6 A.A. 2554 at ¶¶6-8 (Declaration of Mr. Brarr objecting to the trial

court's binding of Christine to the Oral Settlement since her counsel of record in some of those settled cases, Mr. Brarr, had not been aware of, approved, or entered an appearance for the Oral Settlement); P.A. 53(a) FN 25.

Christine, Esther, Benjamin, and Margaret noted in the Oral Settlement recitation, however, that any terms that affected the minors' rights or potential claims in cases that GAL Chen was assigned (e.g., Michael's claim to Three Lanterns and Sycamore) would still be subject his approval. P.A. 46a (noting that "the settlement agreement was 'subject to the condition precedent of [GAL] Chen's agreement.'"); 3 A.A. 1415.

Christine, Michael and Jacqueline Each Repudiate the Settlement Terms, Yet GAL Chen Seeks Court Confirmation Anyway

Six weeks later, Christine filed a motion to set aside the Oral Settlement. P.A. 16a. She argued after closer examination and consultation with her children, it did not serve her or their best interests and was unconscionable. *Id.*; P.A. 69a. She also argued additional material terms had been added to the settlement. *Id.* In fact, she was willing to—and did—execute an assignment of all of her interest under the Trust the Three Lanterns and Sycamore to Michael so that he would get those properties if the settlement was *not* confirmed. P.A. 78a. For his part, GAL Chen also initially told the trial court that he had his own concerns and would not sign the written version of the settlement that had been sent to him. P.A. 17a. GAL Chen had a number of

modifications and stipulations that he wanted to make. *Id.*

Eventually GAL Chen executed a modified settlement with Benjamin, Margaret, and all other interested parties to the related litigations (but not including Christine, Michael, or Jacqueline). P.A. 17a-18a. He then entered into an omnibus settlement agreement referred to as the “First GAL Agreement” and signed it on behalf of Michael and Jacqueline without their knowledge or input *Id.* GAL Chen submitted voluminous paper submissions to have the First GAL Agreement confirmed over Christine’s objections, claiming it was in her children’s best interest. P.A. 16a.

The trial court ultimately rejected this First GAL Agreement with prejudice, in part, because GAL Chen had no idea if the agreement he signed and was submitting for confirmation was actually a good deal. 19 A.A. 7496 (July 18, 2019 trial order rejecting the First GAL Agreement). The court scathingly wrote that Chen “could not testify to the rough monetary value [that] the wards will receive by way of the agreement—not even by way of approximation.” 19 A.A. 7496. It further noted that if it didn’t approve the settlement and Christine lost at trial, the Three Lanterns and Sycamore properties could end up going to Michael. 19 A.A. 7499-7500. The trial court specifically wanted to know what Michael would have received if Christine lost the Trust litigation trial. 19 A.A. 7496.

GAL Chen then went back and reworked a revised settlement of Michael and Jacqueline’s

rights. Once again, he did so without consulting with Michael, Jacqueline, or their mother. The parties and opinions below refer to this second settlement as the “Second GAL Agreement.” P.A. 22a-23a. All parties to the string of related litigations signed the Second GAL Agreement—except for Christine and her children. Christine argued that, having been modified twice, the Second GAL Agreement was not the mirror image of the Oral Settlement she originally agreed to. P.A. 23a.

By early 2020, GAL Chen filed a motion to have the fully executed Second GAL Agreement approved by the trial judge and reduced to a judgment in accordance with the Oral Settlement. P.A. 22a. But since GAL Chen had only been appointed as a guardian ad litem in two of the nine cases he had settled through the Second GAL Agreement, and since Christine (the other guardian) refused to sign, GAL Chen filed a second motion requesting to be vested with retroactive authority to bind the minors under the agreement he had *already* negotiated and signed on their behalf. P.A. 27a (describing GAL Chen’s petition); *see also* P.A. 23a and 58a.

The Second GAL Agreement denied Michael any ability to take control over the multi-million-dollar apartment complexes which Christine had assigned him in April 2019. P.A. 23a, 24a, 78a. It was also replete with various property swaps, tax indemnities, and waivers of rights based on valuations that GAL Chen had made. P.A. 92a. Finally, GAL Chen waived Michael’s ability to bring past, present, or future accounting proceedings

against the Co-trustees based on any perceived mismanagement of the Trust. P.A. 66a.

None of the terms or their rational were explained to Michael or Jacqueline by GAL Chen or the trial court judge. 20 A.A. 8175 (Michael's January 31, 2020 Declaration of Repudiation of the Second GAL Agreement); P.A. 26a. In fact, GAL Chen has not once—ever in the past ten years—spoken to or met either one of the persons whose interests he was representing and whose lives he was altering. 20 A.A. 8175; P.A. 26a.

Michael's mother attempted to prevent the Oral Settlement and Second GAL Agreement from being confirmed because she believed her children would be forfeiting millions of dollars in property and claims. P.A. 25a-26a First, she repudiated the Oral Settlement and objected to all efforts to enforce it. P.A. 24a. She argued that GAL Chen's initial attempt to modify certain terms amounted to a rejection of the contingent offer in the Oral Settlement, thereby permitting her to modify, alter, or remove terms as well. P.A. 49a. Next, she opposed GAL Chen's attempt to have the Second GAL Agreement so ordered because it was not in Michael's or Jacqueline's best interest. P.A. 54a. Third, she sought GAL Chen's removal as guardian ad litem. P.A. 27a. Fourth, she legally assigned all of her interests in the Sycamore and Three Lantern family properties under the Trust to Michael, to avoid having them liquidated as residue of the Trust as the Second GAL Agreement provided. P.A. 78a. Christine hoped to change the trial court's calculus as to whether the Oral Settlement and subsequent

Second GAL Agreement were still in the best interests of Michael. Because of the assignments, Michael would be getting the two properties outright if the settlements were rejected. *See id.* Fifth, Christine filed objections to the motions for GAL Chen’s appointment as the minors’ guardian in any other actions. P.A. 27a. Finally, she submitted several appraisal affidavits of experts opining that Michael and his sister Jacqueline would receive substantially more under the Trust without the settlement (especially due to Christine’s recent assignment of her interest in the trust to Michael) than they would under it. P.A. 63a.

For their part, Michael and Jacqueline both signed and filed repudiations of the Oral Settlement and Second GAL stating that they did not want to abandon their claims against, and engage in byzantine “property swaps” with, persons who viciously attacked their parents for seven years. P.A. 26a, FN 18. Not only had GAL Chen excluded Michael and Jacqueline from all negotiations and mediation sessions, he had never spoken with them, at any point, to try to inform them on the settlement of the inheritance rights. *See id.*; 20 A.A. 8175 (Michael’s Jan. 31, 2020 repudiation declaration). In particular, Michael found the waiver of any right to an accounting by the Co-trustees—who had sued his mother and father while they simultaneously managed the Trust—to be unacceptable. *Id.* He did not want to waive any ability to investigate whether they had properly administered the Trust. *Id.* In fact, he had reason to believe that he had tens of millions of dollars in legitimate claims against them. 20 A.A. 8614, 8622-23 at ¶¶16-18 (Christine petition

dated Feb. 24, 2020 alleging that the Co-Trustees, among other misconduct, encumbered Three Lanterns with a \$6 million loan and “completely depleted” a \$23 million company’s, Atlantic Towers, LLC’s, assets in violation of the Trust terms).

The March 3, 2020 Consolidated Ruling Rejected the Petitioner’s Repudiations and Confirmed the Settlement Over All Objections and Without an Evidentiary Hearing

No evidentiary hearing was held to investigate any of the above noted objections or questions of fact. P.A. 61a.

On March 3, 2020, the trial court issued a “consolidated ruling” granting GAL Chen’s requested relief; denying the Christine’s, Michael’s, and Jacqueline’s objections; and so-ordering the Second GAL Agreement. P.A. 27a. It ruled the agreement to be in the best interests of the Jacqueline and Michael. P.A. 60a.

One problem for the trial court was that although Christine had been appointed guardian to Michael in several cases that GAL Chen’s Second GAL Agreement purported to resolve, she refused to sign. *See* P.A. 57a. To short-circuit her resistance, the court said it would simply remove Christine as Michael’s guardian in all affected cases and replaced her with GAL Chen—ostensibly giving GAL Chen retroactive authority to have settled those cases on behalf of the minors. P.A. 27a.

And beyond simply ignoring what the minors had to say about the Second GAL Agreement, the trial court struck Michael's and Jacqueline's repudiation affidavits as "irrelevant." 21 A.A. 8962 (trial court striking repudiations as signed but unverified as "improper and irrelevant"); P.A. 23a (appellate court explaining they were corrected and re-submitted as verified, but remained stricken as irrelevant).

On June 24, 2020 in response to Christine's motion for re-argument, the trial court clarified that regardless of what information Christine or her children filed, a motion to approve a minor's settlement never requires an evidentiary hearing. 29 A.A. 14468. This is because whether to approve a minor's compromise is "fundamentally between the GAL and the Court alone" and is thus never a "contested" matter. 29 A.A. 14468; P.A. 28a. The trial court did, however, acknowledge that it should not have removed Christine as guardian ad litem in relation to a life insurance trust and their Estate proceedings and reversed that portion of its March 3, 2020 ruling. P.A. 32a. But it confirmed the Second GAL Agreement anyway. *See id.*

California's Court of Appeal Rules that Near-Adult Wards Are Not Entitled to Any Notice or Hearing Prior to Their Rights' Being Settled Against Their Wishes

On appeal, Michael (jointly with his sister Jacqueline and mother Christine) raised several due process arguments. First, he argued that GAL Chen was not his appointed guardian in most of the cases

that he negotiated and settled through the Second GAL. P.A. 28a, 38a (listing all of the Petitioner's objections on appeal). 58a. Second, he argued that he was entitled to, but never received, sufficient legal notice to GAL Chen's petition to replace his mother as his guardian, be appointed as guardian to his five unrepresented proceedings, and confirm the Second GAL Agreement. P.A. 38a. Third, he claimed to have been denied due process by the trial judge overruling his mother's litany of objections and arguments against the Second GAL Agreement and GAL Chen's appointment without holding an evidentiary hearing. *Id.* Fourth, he maintained that the Second GAL Agreement was not in his best interest and the Court ignored evidence submitted by Christine on behalf of the minors because Christine had "waived" her ability to speak for them. *Id.*; P.A. 26a.

The appellate court rejected these arguments. It held that "None of [California's laws] requires notice or an adversary hearing to approve a minor's compromise." P.A. 61a (*citing, inter alia*, Cal. Prob. Code 3500(b) and Cal. Code Civ. Pro. 372). Under California law, "a petition to approve . . . a minor's compromise may be decided by the superior court, *ex parte*, in chambers." P.A. 61a (*citing Pearson v. Superior Court*, 202 Cal.App.4th 1333, 1337 (2012)).

Further, the appellate court ruled it made no difference that GAL Chen was not the guardian ad litem for Michael in most of the cases he negotiated and settled through the Second GAL Agreement or that Christine—Michael's guardian ad litem in two of those cases—and Michael himself had rejected the agreement. P.A. 59a. 62a. Here, the appellate court

gave circular reasoning. It held that although parents of minors “generally have a right to object or repudiate,” that right does not exist where there is a finding that the objection “is inconsistent with the Minor’s interest.” P.A. 30a, 62a. Yet no evidentiary hearing was needed to make this finding because, in California, a petition to approve a minor’s compromise is “fundamentally between the GAL and the Court alone” and is thus never a “contested” matter. P.A. 61a, 101a (June 24, 2020 Rearmament decision). As a result, the settlement did not require a hearing as to whether it was in Michael’s best interest because it was not a “contested” matter and it could not *be* a contested matter because the settlement was determined to be in his best interests. P.A. 62a, 73a-74a (rejecting Christine’s repudiation). P.A. 78a-79a (rejecting the minors’ repudiations). Without an evidentiary hearing, this rationale is a perfect circle.

Michael filed for leave to appeal to the California Supreme Court, which was denied. P.A. 1a-2a.

REASONS FOR GRANTING THE WRIT

The entire legal profession recognizes that our courts—especially our state courts—have busy dockets. But the solution cannot be to turn a blind eye to the buckling of due process rights of the country’s most vulnerable: wards who do not possess full legal agency. This Court’s intervention is necessary to clarify a stark division between U.S. States as to what minimum notice and hearing requirements exist, or should exist, before a trial court can bind a vulnerable and voiceless ward to an

immutable settlement of his property rights. *See* Sup. Ct. R. 10(c).

The answer in California is “None.” P.A. 61a. The court below observed its probate and civil procedure statutes do not require “notice or an adversary hearing to approve a minor’s compromise.” *Id.* (citing Cal. Code Civ. Proc. §372(a)(1) and Cal. Prob. Code. §3500(b)). Nor was the near-adult ward here given notice of the appointment of a new guardian in cases in which he was previously unrepresented. *Id.* Even though the courts were dealing with multi-million-dollar trusts and real properties with highly disputed values and variable long-term incomes, California law permits a trial court to forgo the receipt of evidence, lay testimony, expert testimony, and cross-examination as to whether a compromise is truly in a minor’s best interests.

In fact, California judges are free to override the recommendation or objection of a guardian ad litem without an evidentiary hearing because the “court is, in effect, the guardian.” P.A. 58a-59a. Under the same rationale, they may strike a minor’s signed objections to the settlement. P.A. 30a; P.A. 133a. No evidentiary hearing is required to inform the judge before she exercises her fiat.

Yet other states such as Michigan, Alabama, Tennessee, and Texas require an evidentiary hearing before a settlement is reduced to an unavoidable judgment affecting a minor. *See* Section I, *infra*. Michael respectfully submits that these states provide adequate due process to wards while

California does not. Without an evidentiary hearing, there is too large of a risk of permanent error to provide meaningful due process.

On behalf of every ward in the country, Michael asks this Court to recognize a simple principal of liberty: When determining the rights of wards, a court “must undertake even more strenuous efforts to explain the process and give the party a meaningful opportunity to respond,” not less. *Neilson v. Colgate-Palmolive Co.*, 199 F.3d 642 (2d Cir. 1999) (Sotomayor, J., dissenting). Applying the considerations laid out in *Mathews v. Eldridge*, 424 U.S. 319 (1976), California’s application of Cal. Prob. Code. Section 3500(b) to deny evidentiary hearings to wards and their parents violates their right to receive due process of law.

I. States Are Split as to What Minimum Due Process Is Sufficient to Protect Minors’ Constitutional Rights and Agency

Whether due process requires notice and a hearing prior to appointing a new guardian or confirming a settlement affecting a ward is a fundamental constitutional question that divides courts and states. In a dissenting opinion issued while serving on the bench for the Second Circuit, Justice Sonia Sotomayor observed that individuals who are assigned guardians require *more* notice and opportunity to be heard as a result of their diminished legal capacity, not less. *Neilson*, 199 F.3d 642 (Sotomayor, J., dissenting and positing that a ward was deprived procedural due process of law

when her guardian ad litem was appointed without an evidentiary hearing or meaningful notice to her).

Michigan, Alabama, Florida, Tennessee, and Texas agree. Each of these states requires that if a guardian has not been appointed to represent a minor, the Court *must* hold an evidentiary hearing to determine if any proposed settlement is in the minor's best interest before confirmation. *Bowden v. Hutzel Hosp.*, 252 Mich. App. 566, 573-74 (Ct. App. Mich. 2002) (finding trial court erroneously entered a settlement after guardian withdrew its approval [like Christine did here] without holding a "full evidentiary hearing" including an appearance by the minor before the court to assess nature of physical injuries); *Large v. Hayes*, 534 S.2d 1101, 1105 (Ala. 1988) ("Before [settlement of a minor's claims] can be approved, there must be a hearing, with an extensive examination of the facts, to determine whether the settlement is in the best interests of the minor."); *Watkins v. Bailey*, 484 Fed. Appx. 18 (6th Cir. 2012) (noting trial court heard testimony at hearing on whether settlement was in the minor's best interest in accordance with Tenn. Code. Ann. 29-34-15(b)(5)); *Byrd v. Woodruff*, 891 S.W.2d 689, 705 (Tex. App. 1994) ("With minors, however, even if the parties and court-appointed ad litem agree to the settlement, a judgment ratifying the compromise cannot be rendered without a hearing and evidence that the settlement serves the minor's best interest."). In a similar vein, Iowa requires that in guardianship proceedings appointed counsel to a ward has an affirmative duty to ensure the ward has been properly advised of all its rights throughout the process, including by personally interviewing the

ward. *See In re Fagan*, 909 N.W.2d 443 (Ct. App. Ia. 2017) (citing Iowa Code §§633.561; 633.575).

California requires radically less. It allows that “a petition to approve . . . a minor’s compromise may be decided by the superior court, *ex parte*, in chambers.” P.A. 62a; (quoting *Pearson v. Superior Court*, 202 Cal.App.4th 1333, 1337, fn. 2 (2012) (*Pearson*); Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2021) ¶12:579)). “None of [California’s statutes] requires notice or an adversary hearing to approve a minor’s compromise.” P.A. 61a (citing Cal. Code Civ. Proc. §372(a)(1) [a judge is the de factor guardian of minor] and Cal. Prob. Code. §3500(b) [a judge may approve compromise on a petition without notice or hearing]). The rule governs even where—like here—the near-adult minor is not represented by a guardian ad litem in several of the proceedings being settled. P.A. 60a (holding there is “no legal significance” to the fact that GAL Chen was not appointed as guardian to the minors in several cases he negotiated and settled on their behalf since the trial court had authority to bind the minors by its approval regardless of the existence of a guardian).

California is on the wrong side of this state split. It’s *no notice, no hearing* law results in situations such as this one where one of the ward’s guardians ad litem can disapprove of and disavow the settlement before its confirmation—as Christine did—yet the trial court remains empowered to override the objection and confirm the settlement by ignoring the objecting guardian or appointing a new one. P.A. 58a-59a. And it may do so based solely on

paper submissions as to appropriate values of multi-million-dollar assets and claims; no receipt of expert/lay testimony or evidence is required no matter how complicated or contested the settlement is. *See id.*

Michael respectfully requests that this Court weigh in on whether California's statutes and interpretation thereof complies with due process or whether the better standard of due process involving the settlement of wards claims is the one followed by Texas. *See Byrd*, 891 S.W.2d at 705 ("With minors, however, even if the parties and court-appointed ad litem agree to the settlement, a judgment ratifying the compromise cannot be rendered without a hearing and evidence that the settlement serves the minor's best interest.").

II. Whether Wards Are Being Deprived Due Process by Unscrupulous or Disinterested Guardians Is an Urgent Issue Affecting Millions of People and This Case Is Perfectly Situated to Clarify Their Rights

Public discourse has taken notice of the inequities and abuses that are prone to occur in guardianship cases. From Netflix's lauded satire "I Care a Lot" (2020) about a swindling professional guardian to real-life public outcry over the handling of pop-singer Britney Spears' conservatorship, the nations' guardianship laws have been subject to persistent criticism in recent years. *See Samuel Spencer, 'I Care a Lot': the Shocking True Stories Behind the Netflix Movie*, Feb. 24, 2021 available at

<https://www.newsweek.com/i-care-lot-real-life-true-story-marla-grayson-1571600> (quoting the director and screenwriter of “I Care a Lot” as taking his inspiration from news stories of “real life predatory guardians”); BBC News, *Britney Spears: Singer’s Conservatorship Case Explained*, Nov. 12, 2021 <https://www.bbc.com/news/world-us-canada-53494405> (reporting on the controversy of Ms. Spears conservatorship and citing the New York Times reporting that it extended to determine “the color of her kitchen cabinets.”). The issue has also drawn the attention of members of United States’ Congress. On December 1, 2021, Congressmen Mr. Eric Swalwell and Mr. Charlie Crist wrote to Ms. Britney Spears expressing their concerns over the conservatorship process in general:

Many concerning issues that are commonplace in the guardianship and conservatorship process were brought to light...Your journey towards justice will inspire and empower many other who are improperly silenced by the conservatorship process.

Katie Campione, *Britney Spears Invited to Testify Before Congress About Conservatorships*, Feb. 16, 2022, available at <https://www.thewrap.com/britney-spears-congress-conservatorships-invite/> .

Though the public skepticism towards guardianships is broad, the question posed to this Court is narrow: What is the notice and hearing procedure needed before trial judge confirms a compromise permanently determining a ward’s

rights regardless of his consent? The present case is an ideal vehicle for answering this question. Though the situation faced by Michael is an everyday occurrence, a ward's *ability* to advance arguments all the way to the Supreme Court of the United States for a due process determination is rare. The very nature of the guardian-ward dynamic makes it difficult for a near-adult ward to exercise her own independent agency and defend her due process rights, particularly at Supreme Court level. Michael asks the Court to not pass over the opportunity.

Moreover, the particular circumstances are such that, if a near-adult ward ever had any Constitutional right at all to notice and a hearing before being bound to an unavoidable settlement, the right would necessarily have been triggered in this case. Michael (a) had multiple guardians ad litem who disagreed about whether a global settlement of nine litigations was in his best interests (b) was completely unrepresented by a guardian in a number of the litigations proposed to be resolved, and (c) the settled cases involved waiver and assignment of complex claims, accounts, and properties. Michael asks the Court to reject California's no notice, no hearing rule and require the trial court to receive testimony and, if necessary, oversee the cross examination of the guardian ad litem or other witnesses concerning the settlement.

About 1.3 million guardianship or conservatorship cases are active at any given time in the United States, managing assets that total at least \$50 billion for people whose rights have essentially been stripped from them, according to the

National Council on Disability. See Thompson, *How 1.3 Million Americans Became Controlled by Conservatorships*, Oct. 18, 2021, available at <https://www.usnews.com/news/health-news/articles/2021-10-18/how-13-million-americans-became-controlled-by-conservatorships>. Resolving this issue is therefore of vital national importance for a segment of citizens that, by definition, are given the least amount of political influence and legal agency.

III. California’s Law Permitting a Ward to Have His Rights Permanently Determined Without Notice and Without an Evidentiary Hearing Violates Due Process Principles Articulated by This Court

What legal “process” a person is “due” under the Fourteenth Amendment before her liberty or property rights are determined is a flexible, pragmatic, and evolving concept not particularly susceptible to universal bright-line rules. See *Griffin v. Illinois*, 351 U.S. 12, 20-21 (1956) (Frankfurter, J. concurring) (observing that due process is “the least frozen concept of our law” and may change with the standards and expectations of society). Notwithstanding this flexibility, California’s law allowing a trial court to determine a minor’s rights (a) in the absence of an appointed guardian in some of the settled cases, (b) against the mother and guardian’s objection to settling her appointed-to cases, (c) without notice to an intelligent teenage minor, (d) involving nine complex legal proceedings and multi-million-dollar trusts, and—most

crucially—(e) without an evidentiary hearing, falls below even the most minimal of due process standards.

We begin with the threshold issue. Near-adult wards possess a right to receive due process of law when they are sixteen the same as when they are eighteen. “Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Near-Adult Wards, as well as adults, are protected by the Constitution and possess constitutional rights.” *Planned Parenthood of Missouri v. Danforth*, 428 U.S. 52, 74 (1976); *Bellotti v. Baird*, 443 U.S. 622, 633 (1979) (“A child, merely on account of his minority, is not beyond the protection of the Constitution.”); *In re Gault* 387 U.S. 1, 13 (1967) (“neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.”).

This Court observed in the seminal case *Mathews*, 424 U.S. 319 that “some form of hearing” is required by the 14th Amendment before an individual is deprived of a property interest. *Id.* at 333 (citing *Wolff v. McDonnell*, 418 U.S. 539, 557-558 (1974)). In all cases, the “fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* But due process is flexible and contextual. See *Griffin*, 351 U.S. at 20-21 (Frankfurter, J. concurring). Precisely *what* form of hearing is required depends on what is at stake and what type of hearing is meaningful in that particular situation. The same legal process that might be meaningful prior to the DMV suspending a driver’s license, would be meaningless prior to the State issuing a

murder conviction. *Mathews* concluded the robustness of the notice and hearing will ultimately be subject to various considerations. In an administrative action “something less than an evidentiary hearing” is ordinarily sufficient. *Mathews*, 424 U.S. at 343.

To determine the amount and type of legal process required in a particular case, the Court must weigh three considerations. *Id.* at 332. These are (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used, and the probable value of additional or different procedural safeguards; and (3) the government’s interest including the administrative burdens additional or different procedure would entail. *See id.*

California’s law fails to recognize the weight of the very first *Mathews* factor as it applies to wards. A petition to resolve a ward’s rights, irrespective of their knowledge or consent, implicates not only the ward’s property interest, but his *liberty* interest as well. By definition, wards—whether because they are minors or have been deemed legally incompetent—have limited legal agency. In many cases, including this one, their most intimate personal rights and desires are subject to the efforts undertaken by complete strangers (such as GAL Chen) who have not only never met them, but have never even spoken to them. P.A. 26a; 20 A.A. 8175 (Michael’s repudiation declaration). Confirming a compromise is therefore not simply a determination on the merits of an individual’s property right, it is a

substitution of a ward's wishes for a guardian's. *See* 20 A.A. 8175.

Granting a guardian ad litem's petition to approve a compromise "ex parte in chambers" because a petition to enforce a compromise is "fundamentally between the GAL and the Court alone" and is thus never a "contested" matter (see P.A. 28a, 62a) does not respect the property and liberty interests at stake. *See e.g., In re A.L.*, 2011-Ohio-2569 (Ct. App. Oh. 2011) (though a court may accepted a guardian's custody recommendation as testimony, due process requires it to make the guardian ad litem available for direct and cross-examination by the interested parties).

Second, the risk of erroneous deprivation of a ward's rights is extremely high in the absence of an evidentiary hearing. The mind-bending complexity of the settlement here shows exactly why California's process is so dangerous. *See* P.A. 65a-66a. The Second GAL Agreement resolves nine disputed actions by leveraging various "property swaps," waivers of trust rights, assignments of insurance payout interests, tax indemnity agreements, and valuations of multi-million-dollar, income-generating apartment buildings. *Id.* Further, GAL Chen waived Michael's right to receive any sort of accounting from the Co-Trustee's decade-long management of a trust worth over \$50 million. 20 A.A. 8614, 8622-23 at ¶¶16-18 (Christine's petition dated Feb. 24, 2020); P.A. 24a (noting Michael and Jacqueline waive all rights to an accounting of the Trust under the Second GAL). There is simply no way these valuations and terms can be credibly analyzed and

safeguarded without a rigorous examination of the facts, testimony, and underlying valuations of the properties.

Other jurisdictions have recognized this; California has not. *See, e.g., Bowden*, 252 Mich. App. at 573-74; *Byrd*, 891 S.W.2d at 705.

The particular settlement in this case is a shell-game of property and interest exchanges that needs to be evaluated and testified to by competent expert testimony, or at least the guardian ad litem and other persons who spent years litigating the matters. In nearly all cases other than the most basic of contract disputes, reliance solely on paper submissions drafted by attorneys creates far too high a risk of error—including the risk that a guardian would settle the case just to get it off her plate.

Indeed, the lack of due process did cause injury here. The courts below failed to recognize that if the settlements were rejected, Michael would receive the Three Lantern and Sycamore properties outright based on Christine's assignment. *See* P.A. 77a. It also failed to properly consider that Michael permanently waived any ability to receive an accounting of the Co-trustees activities over the past ten years. P.A. 69; *see* 20 A.A. 8614, 8622-23 at ¶¶16-18 (Christine's Feb. 2020 petition containing allegations of misconduct by Co-Trustees).

This brings us to the third *Mathews* factor: practicability. Requiring an evidentiary hearing prior to approving a ward's compromise is not some pie-in-the-sky sea change that would throw trial

courts across the country into disarray. It is already a well-recognized requirement adopted by many states in view of the above-listed concerns. *See* pp. 19-20, *supra*.

Certainly, California's size does not render evidentiary hearings for minors impractical. While California is the most populated state in the country, Texas, the second most populated, requires evidentiary hearings to approve minor's compromises in *all* cases (*i.e.* regardless of whether the guardian ad litem approves). *Byrd*, 891 S.W.2d at 705 ("With minors, however, even if the parties and court-appointed guardian ad litem agree to the settlement, a judgment ratifying the compromise cannot be rendered without a hearing and evidence").

Nor is it an issue of finance. California is the wealthiest state in the country and possesses the fifth largest economy of any sovereign entity anywhere in the world. Associated Press, *California Now Has the World's 5th Largest Economy*, May 4, 2018, *available* at <https://www.cbsnews.com/news/california-now-has-the-worlds-5th-largest-economy/>. Yet Alabama, with the 46th ranked per capita GDP of all the U.S. states, is fully capable of requiring evidentiary hearings prior to approving a settlement which determines the rights of a ward. *Large*, 534 S. 2d at 1105 (Ala. 1988) ("Before [settlement of a minor's claims] can be approved, there must be a hearing, with an extensive examination of the facts, to determine whether the settlement is in the best interests of the minor."); Statista, *Per Capita Real Gross Domestic*

Product (GDP) of the United States in 2019, by State, available at <https://www.statista.com/statistics/248063/per-capita-us-real-gross-domestic-product-gdp-by-state/>.

The better law—the law which more adequately protects the liberty and property interests of wards—is the rule requiring an evidentiary hearing before approving any settlement on behalf of a ward, full stop. *See Byrd*, 891 S.W.2d at 705. That is the only way to safeguard against the risk of erroneously binding a ward to a disadvantageous settlement without his knowledge or consent, for life.

California’s apathetic *no notice, no hearing* has no redeeming qualities. The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.” *Goldberg v. Kelly*, 397 U.S. 254, 268-69, (1970) *see also Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (“Due process is flexible and calls for such protections as the particular situation demands). Here, the California courts erred by failing in their most basic duty. They did not require notice be given to Michael and that an evidentiary hearing be held on any of the applications pending before it, including the appointment of GAL Chen as Michael’s guardian ad-litem in all cases and overruling of his mother’s objections to the Second GAL Agreement.

The premise of California’s reasoning is that the trial judge was Michael’s guardian pursuant to §372(a)(1) of the California Code of Civil Procedure. But in no meaningful sense can a trial judge be said to effectively represent a competent near-adult’s

interest in settling an inheritance dispute without having ever spoken to him, without ensuring he received notice of the proposed determination of his rights and that he understood them, without analyzing testimony on direct and cross examinations to untangle the rationale behind the merits of the settlement.

Michael's inheritance of real property from his father and grandfather hung in the balance of a hotly contested and highly complex dispute. For ten years, the Trusts were controlled by persons who were actively suing his mother and father and had no incentive to act in his best interests. Yet before giving up his rights to the property and the Respondents' need to account for their ten-year administration of the Trust, neither of his purported guardians—be it the Court or GAL Chen—sought out his input or approval. With Michael being a sixteen-year-old minor, more effort to notify him should have been made by the trial court and GAL Chen. See *Neilson*, 199 F.3d 642 (Sotomayor, J., dissenting) (noting that where a ward with diminished capacity for understanding is represented by a guardian ad litem, additional notice measures are required to satisfy the ward's right to due process) (*citing Gray Panthers v. Schweiker*, 652 F.2d 146, 169 (D.C. Cir. 1980) (where elderly population is less capable of understanding legal notices, additional methods of notice were required before denying their Medicare benefits); *Covey v. Town of Somers*, 351 U.S. 141, 145-47 (1956) (holding that notice measures "deemed sufficient in the case of the ordinary taxpayer" did not suffice as applied to a "known incompetent"))).

If a trial judge is to act as guardian to a minor or other ward, it must take on some increased responsibility in settlement review than would ordinarily be applied by the judge—not simply resolve the matter based on paper filings drafted by attorneys, without Michael’s consent of cross-examination of the guardian. The expanded authority over the ward should entail expanded duties to protect him. *See Richardson v. Tyson*, 110 Wis. 572, (Sup. Ct. Wis. 1901) (“[T]he infant is always the ward of every court wherein his rights or property are brought into jeopardy and is entitled to the most jealous care that no injustice be done him.”). If any trial court is to act as the guardian to a ward, it must necessarily take on a bias towards the ward and take seriously any claims that a proposed settlement falls short. By failing to hear from Michael or hold seek testimony from the settling parties, the trial court failed in his regard.

JOINDER

Michael joins all arguments from Jacqueline and Christine on this Writ.

CONCLUSION

This Court should certify the petition, clarify the rights of minors under the Due Process Clause, and ultimately reverse California’s ruling as inconsistent with the Fourteenth Amendment.

Respectfully submitted,

Dated: September 13, 2022

By: Sam P. Israel, Esq.

Counsel of Record

Timothy Savitsky, Esq.

Sam P. Israel, P.C.

32 Broadway, 11th Fl.

New York, NY

(646) 787-9883

admin@spi-pc.com

APPENDIX

1a

**APPENDIX A — ORDER DENYING REVIEW
IN THE UNITED STATES COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION
ONE, IN THE SUPREME COURT OF
CALIFORNIA, FILED JUNE 15, 2022**

COURT OF APPEAL,
SECOND APPELLATE DISTRICT,
DIVISION ONE - NO. B306918

S273980

IN THE SUPREME COURT OF CALIFORNIA

En Banc

BENJAMIN TZE-MAN CHUI,
AS TRUSTEE, *etc. et al.*,

Plaintiffs and Respondents,

v.

CHRISTINE CHUI, INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE, *etc.*,

Defendant and Appellant,

MICHAEL CHUI, A MINOR, *etc. et al.*,

Appellants,

ESTHER SHOU MAY CHUI CHAO *et al.*,

Respondents.

Appendix A

The request for judicial notice filed by Jacqueline Chui on May 9, 2022, is denied as to Exhibits A and B and granted as to Exhibit C. The request for judicial notice filed by Jacqueline Chui on May 25, 2022, is denied. The request for judicial notice filed by Christine Chui on May 20, 2022, is denied.

The petitions for review are denied.

CANTIL-SAKAUYE
Chief Justice

**APPENDIX B — OPINION OF THE COURT OF
APPEAL OF CALIFORNIA, SECOND APPELLATE
DISTRICT, DIVISION ONE, FILED MARCH 2, 2022**

CERTIFIED FOR PARTIAL PUBLICATION¹

IN THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

B306918

ESTATE OF KING WAH CHUI,

Deceased.

BENJAMIN TZE-MAN CHUI,
AS TRUSTEE, *etc., et al.,*

Plaintiffs and Respondents,

v.

CHRISTINE CHUI, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE, *etc.,*

Defendant and Appellant;

MICHAEL CHUI, A MINOR, *et al.,*

Appellants;

1. Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of parts A., B.1., B.2., B.3., B.4., B.5., B.7., B.8., C.2., C.3., C.4., C.5., D., E.2., and F. of the Discussion.

Appendix B

ESTHER SHOU MAY CHUI CHAO *et al.*,

Respondents;

JACKSON CHEN,

Respondent.

APPEAL from orders of the Superior Court of Los Angeles County, David J. Cowan, Judge. Affirmed.

In proceedings under the Probate Code concerning the administration of a trust, the co-trustees and a beneficiary of the trust filed petitions under Probate Code section 850² alleging that Christine Chui misappropriated trust assets and committed elder abuse against the trustor. On the day set for trial on the petitions, the litigants settled and recited the terms before the court. The terms affecting Christine’s minor children—Jacqueline and Michael³—who are beneficiaries under the trust, were subject to the approval of their guardian ad litem, Jackson Chen, and the court. Chen, on behalf of the Minors, subsequently entered into an agreement with the co-trustees and certain trust beneficiaries, but not Christine (the first GAL agreement). The first GAL agreement recited Chen’s approval of the oral settlement agreement and set forth additional terms.

2. Unless otherwise indicated, all undesignated statutory references are to the Probate Code.

3. Some of the parties have the same surname. To avoid confusion and to enhance the opinion’s readability, we will refer to the parties by their first names. We mean no disrespect. We will also refer to Jacqueline and Michael collectively at times as the Minors.

Appendix B

Christine sought to cancel and repudiate the agreements through a variety of procedural methods. The court granted the co-trustees' motion to enforce the oral settlement agreement under Code of Civil Procedure section 664.6, but denied Chen's petition for approval of the first GAL agreement. Chen, the co-trustees, and certain trust beneficiaries—but not Christine—subsequently entered into a second agreement (the second GAL agreement). Over Christine's objections, the court granted Chen's petition to approve that agreement. The court also denied Christine's petition to remove Chen as the Minors' guardian ad litem in the trust litigation and granted Chen's petition to be appointed the Minors' guardian ad litem in related probate cases.

Christine and the Minors appealed, challenging the orders (1) enforcing the oral settlement agreement; (2) granting Chen's petition to approve the second GAL agreement; (3) appointing Chen as the Minors' guardian ad litem in certain probate cases; and (4) denying Christine's motion to remove Chen as the Minors' guardian ad litem.

For the reasons set forth below, we affirm the court's orders.

FACTUAL AND PROCEDURAL SUMMARY**A. The Trust**

King Wah Chui (King) and Chi May Chui (May) had three children: Robert, Margaret, and Esther.

Robert married Helena Chui in 1974. They had one child, Benjamin. Robert and Helena divorced in 2002.

Appendix B

Robert married Christine in March 2003. They had two children, Jacqueline (born March 2003) and Michael (born May 2004).

In 1988, King and May established a revocable trust (the Trust). The assets of the Trust consist primarily of interests in residential apartment complexes and related business entities, other real property, and financial accounts.

After May died in March 2004, the Trust was divided into three subtrusts: Trust A, Trust B, and Trust C.⁴ Trust B and Trust C were irrevocable. Among the assets of Trust C are interests in properties the parties refer to as Taylor, Paularino, Domingo, Derek (or Pepperwood), and Calle Cristina.⁵ According to the Trust document, these properties are to be distributed upon King's death to Robert or, if Robert is not then living, to Robert's children—Benjamin, Jacqueline, and Michael—equally.

After May's death, King amended Trust A several times.⁶ Under an amendment made in June 2004, interests

4. We will refer to the Trust and the subtrusts collectively as the Trust unless a more specific reference to a subtrust is appropriate.

5. Consistent with the terms of the Trust and the parties' understandings, our references to properties includes the Trust's interests in partnerships and limited liability companies that hold real property.

6. As a result of the amendments to Trust A, Robert's share of the Trust assets allegedly increased from 36.6 percent to 69.7 percent. Benjamin alleged that King made these amendments

Appendix B

in properties the parties refer to as Three Lanterns and Sycamore are to be distributed upon King's death to Robert or, if Robert is not then living, to Christine; but if Christine is not then living, these properties are distributed to Michael.

Under an amendment made in January 2005, a certain residence in Monterey Park is to be given to Jacqueline.⁷

Under an amendment made in November 2005, property the parties refer to as Atlantic Towers is to be distributed upon King's death to Robert or, if Robert is not then living, to Christine.⁸

In addition to the distributions described above, the Trust document provides for distributions of real properties, business interests, and money to Robert, Margaret, Esther, Benjamin, Jacqueline, and Michael,

as a result of Christine's and Robert's "psychological, emotional, and financial elder abuse on an increasingly demented and incapacitated King."

7. Certain bequests are made to the trustees of trusts established for the benefit of Esther, Benjamin, or Jacqueline. Our references to bequests to such individuals includes bequests to the trustee of such trusts unless the more specific reference is appropriate.

8. The Atlantic Towers property was sold in 2013. It appears from our record that proceeds of the sale have been held in a separate account of a limited partnership that remains a Trust asset. The parties' references to Atlantic Towers appears to refer to the Trust's interests in that limited partnership.

Appendix B

among others. The Trust document includes other bequests that are not relevant for our purposes.

The Trust document further provides for the distribution of the Trust residue; that is, trust property for which there is no specific bequest. Under the residuary provisions, 30 percent of the residue goes to each of Robert, Margaret, and Esther, and 10 percent goes to Benjamin; if, however, Robert predeceases King, Robert's 30 percent share of the residue is distributed in equal parts to each of Robert's children—Benjamin, Jacqueline, and Michael.

In February 2011, King, whose cognitive abilities had allegedly been in decline for some time, resigned as trustee of the Trust and, pursuant to the Trust document, Robert and Margaret became co-trustees.

In January 2013, Robert became incapacitated and, in March 2013, the superior court appointed Benjamin (Robert's son by his first wife, Helena) to act as co-trustee of the Trust together with Margaret. (We will sometimes refer to Benjamin and Margaret collectively as the co-trustees.)

Robert died in June 2013.

King died in June 2014.

B. Trust Litigation

In October 2012 (prior to Robert's and King's deaths), Esther filed a petition in the Los Angeles Superior Court alleging that Robert and Margaret improperly delegated

Appendix B

to Christine their fiduciary duties as trustees of the Trust. The petition was assigned case No. BP137413. Esther sought an accounting and an order removing Robert and Margaret as trustees.

In March 2013, Esther requested the appointment of a guardian ad litem for the Minors in Los Angeles Superior Court case No. BP137413. The court, over Christine's objection, granted the request and appointed Chen as the Minors' guardian ad litem. At that time, Jacqueline and Michael were ages 10 and 8, respectively.

In February 2014 (after Robert's death and the appointment of Benjamin as co-trustee of the Trust), Esther filed an amended petition in case No. BP137413, alleging that Christine converted trust assets for her benefit. On the same day, Esther filed another amended petition under section 850 in the same case alleging that Benjamin and Margaret breached their fiduciary duties as co-trustees of the Trust.

In August 2015, Benjamin and Margaret filed a petition in case No. BP137413 for an order surcharging Robert's estate based on allegations that Robert breached his fiduciary duties as trustee "by making improper and unauthorized payments and disbursements of [t]rust assets."

In July 2016, Benjamin filed a petition under section 850 in Los Angeles Superior Court case No. BP154245. Benjamin alleged, among other claims, that Robert and Christine committed elder financial abuse against

Appendix B

King and, acting as trustee and/or trustee *de son tort*, breached their fiduciary duties and misappropriated trust assets—including money, jewelry, and antiques—for their own benefit. Benjamin sought compensatory, statutory, and punitive damages, an order requiring Christine to disgorge assets wrongfully taken from the Trust, and a determination that Christine be deemed to have predeceased King for purposes of section 259.

In October 2016, Christine filed petitions in Los Angeles Superior Court case No. BP155345 to remove Benjamin and Margaret as trustees of the Trust based on alleged breaches of trust. Christine sought, among other relief, an order suspending and removing Benjamin and Margaret as trustees and surcharging them for losses to Trust A incurred as a result of their mismanagement. Benjamin moved to dismiss the petition under the anti-SLAPP statute (Code Civ. Proc., § 425.16). The court denied the motion on February 20, 2018.⁹

In August 2017, Margaret filed a “joinder” to Benjamin’s petition in case No. BP154245. In March 2018, Benjamin and Margaret filed a first amended petition that alleged claims similar to those Benjamin alleged in the original petition and sought similar relief.

Esther filed another amended petition in January 2017 under case No. BP155345. She alleged that King suffered from dementia since 2004 and was susceptible to undue

9. Benjamin appealed that order to this court, which we assigned case No. B288425. On January 29, 2020, we ordered the appeal stayed “pending determination of the proceedings before the probate court.”

Appendix B

influence since that time. Christine and Robert allegedly took advantage of King's vulnerability to wrongfully transfer to themselves approximately \$10 million of trust assets. Esther sought, among other relief, an order that Christine return the property taken from the Trust and pay double damages pursuant to section 859. She also sought an order determining that Christine predeceased King for purposes of section 259.

In addition to the Trust litigation in case Nos. BP137413, BP154245, and BP155345 described above, at least five other probate court proceedings have been deemed related to these cases. Although the substance and status of these related cases are not entirely apparent from our record, they have been identified (and summarily described) as Los Angeles Superior Court case No. BP143884 (concerning Robert's estate); case No. BP145642 (concerning Robert and Helena's irrevocable life insurance trust (ILIT)); case No. BP145759 (concerning the guardianship of the Minors); case No. BC544149 (concerning litigation regarding Robert's estate); and case No. BP162717 (concerning the King Chui and Chi May Chui life insurance trust).¹⁰

In 2014, the court appointed Christine as guardian of the estates of Jacqueline and Michael in case No. BP145759 and guardian ad litem for the Minors in case No. BP145642 (concerning the ILIT litigation).

10. The parties also refer to Los Angeles Superior Court case No. BP16STP04524, which is apparently concerned with Robert's separate property trust, although it does not appear that a court has deemed that case related to the others.

Appendix B

It does not appear that, prior to March 3, 2020, any guardian ad litem had been formally appointed for the Minors other than Chen in case No. BP137413 and Christine in the ILIT litigation, case No. BP145759.¹¹

C. The Settlement Agreement

Trial in the Trust litigation was set to begin on May 14, 2018.¹² That day, counsel for Christine, Benjamin, Margaret, and Esther announced a settlement (the settlement agreement) in court and orally set forth the terms on the record in accordance with Code of Civil Procedure section 664.6. Guardian ad litem Chen was not present and the Minors were not represented in the proceeding.

Christine's counsel recited the following settlement terms on the record:

(1) Christine “waives all rights to Trust A, including but not limited to claims regarding Three Lanterns, Sycamore, and Atlantic Towers. Such interest goes to the residue.”

11. In March 2020, the court expressed its view that the failure to appoint Chen in “several other cases” that had been deemed related was the result of the court’s “oversight” and an “administrative defect,” which it then “cur[ed]” by appointing Chen as guardian ad litem in several of the related cases.

12. It is not clear from our record which cases were the subject of the trial that was scheduled to begin on May 14, 2018.

Appendix B

(2) Benjamin's interest in "Taylor, Derek, and Paularino are disclaimed to the Minor[s]," and the Minors and Christine "disclaim their beneficial interest in Domingo" to Benjamin.

The property known as "Calle Cristina will be sold, and two-thirds of the net proceeds will go to Ben[jamin], and the remaining one-third will go to the minor children's trusts."

"The parties consent to the sale of [property known as] Hellman for fair market value, and shall cooperate as needed."¹³

(3) Christine will deliver to Benjamin's lawyers certain jewelry and other items of personalty within one week.

(4) Christine will pay \$3 million to Benjamin's counsel's trust account within one week.

(5) The property to be distributed to Jacqueline and Michael under the Trust "will be distributed to their respective irrevocable trusts that were established by King, Robert[,] and Christine."

(6) "Christine disclaims any rights as a beneficiary of King's trusts. The minor children's claims, if any, can only be brought by their guardian ad litem Jackson Chen, his designee, or his court-appointed successor, until such time as they reach the age of majority."

13. The Hellman property was not the subject of a specific bequest in the Trust and was considered part of the Trust residue.

Appendix B

(7) Christine’s appeal in the ILIT case and Benjamin’s appeal from the order denying his anti-SLAPP motion will be dismissed with prejudice, each side bearing their own costs and attorney fees.

(8) Benjamin “disclaims any further interest or rights or standing in Robert’s trust, with the exception of the Domingo property.” “All litigation between the parties ... will be dismissed, with each side to bear their own costs and attorney fees.” No one admits liability and all parties “agree to a waiver of Civil Code section 1542.”

(9) “[A]ll provisions of this agreement affecting the Minors’ interests and rights are subject to approval by the guardian ad litem.”

(10) “[T]he parties shall work together to cause the Trust to be amended to effectuate the settlement with the resulting tax treatment that is fair and equitable to all parties.”

(11) “[A]ll objections to any accountings are dismissed with prejudice, and all parties waive rights to future accountings.”

(12) The parties shall “prepare a long form agreement, with all disputes regarding the long form agreement to be resolved by” a specified judge “via a binding arbitration.”

The court confirmed with counsel that the agreement would be enforceable under Code of Civil Procedure section 664.6.

Appendix B

After Christine's counsel recited the foregoing terms, counsel for Benjamin announced that "there are other terms that are not material to the agreement with Christine that have been reached as and among all the other parties." He proposed to read these additional terms into the record after the court has questioned the parties about the agreement. The court then asked Christine, Benjamin, Margaret, and Esther if they heard and understood the terms of the agreement, if they had had enough time to speak to their lawyers about the terms, and if they agreed to the terms. Each answered the questions affirmatively.

The court concluded that, "subject to, with the exception of Mr. Chen on behalf of the two minor children, everybody appears to have agreed to these terms, and the court can, with that one exception, assuming they agree, find that there's a binding settlement of all issues, and all petitions will be disposed of per the agreement."

Benjamin's counsel then indicated he wanted to place the additional terms on the record. Christine's counsel asked if they "need[ed] to stay." The court suggested that they "stay, just in case," but told counsel, "[Y]ou can leave if you want." Christine's counsel responded, "Let's leave." Christine and her counsel then left the courtroom.

Benjamin's counsel then recited the following additional terms: Esther will receive the \$3 million that Christine agreed to deliver to Benjamin's lawyers; Helena Chui (Robert's first wife and Benjamin's mother) and Ruth Chang (Helena's mother) will exercise a right to purchase

Appendix B

the Sycamore property “at book value”; Esther has a right of first refusal on any offer for the Three Lanterns property without commission; and Margaret will have the authority to assign family burial plots. Lastly, a time limit established in the Trust that bars Esther from full access to her trust property shall be waived.

The court inquired of Esther, Margaret, Helena, and Ruth as to their understanding and acceptance of the terms and their opportunity to speak with counsel, and received affirmative responses from each. The court then found that “there’s another binding agreement between the parties enforceable under [Code of Civil Procedure section] 664.6.”

Within one week after the settlement agreement was placed on the record, Christine delivered to Benjamin’s counsel \$3 million and certain jewelry, in accordance with the agreement.

D. The First GAL Agreement

On July 5, 2018, Christine filed a motion to set aside the settlement agreement, asserting that her consent to the settlement “was legally invalid because she was under the influence of codeine, as well as ill and sleep-deprived.” She further asserted that the settlement agreement is “unconscionable.” The court denied Christine’s motion without prejudice as procedurally improper.¹⁴

14. The court denied the motion to vacate the settlement because “there was no such thing as a motion to vacate an agreement. You either file a complaint to vacate an agreement

Appendix B

On July 23, 2018, Chen, pursuant to a request from the court, provided a report to the court in which he referred to a “long-form” “draft ‘Settlement Agreement and Mutual Release,’ ” which Benjamin’s counsel had circulated. Chen informed the court: “At the present time, with the long-form agreement as drafted, I do not believe that the proposed settlement is in the best interests of the Minors and I am unable to sign the agreement.” He made the following comments: (1) The \$3 million Christine paid to Benjamin’s counsel’s trust account should be deposited in the Trust to be applied to estate taxes and administration expenses; (2) He could not agree to “broad releases, including a waiver of Civil Code [s]ection 1542”; (3) He has “substantial concerns” regarding the distribution of property into the Minors’ trusts, which “are not supervised by the [c]ourt” and would extend the time the distributions are held in trust “to the detriment of the Minors”; (4) He would not agree to the approval of trust accountings or to waive the Minors’ rights to future accountings; and (5) The provision giving the guardian ad litem the power to bring claims on behalf of the Minors should be limited to matters connected to proceedings in which a guardian ad litem is appointed. Chen concluded that he “will insist on certain changes to the long-form agreement before” he agrees to sign it.

On August 10, 2018, Benjamin, Margaret, Esther, and Chen entered into the first GAL agreement, which recites that Chen “agrees to the terms of the Settlement

... or perhaps you bring a petition in probate court parallel to a complaint to vacate an agreement.”

Appendix B

Agreement subject to this Agreement.” The first GAL agreement included, among other provisions, an agreement that the Minors will each receive \$500,000 out of the \$3 million Christine had delivered to Benjamin’s counsel. The agreement further provides that the guardian ad litem’s waiver of rights under Civil Code section 1542 is limited to matters pertaining to the Trust and that, although Chen agrees to withdraw any objection to previously filed petitions for accountings, he “retains the right to request future accountings.”

Christine is not named as a party to the first GAL agreement, and she did not sign it.

E. Motion to Enforce the Settlement Agreement

On August 15, 2018, Benjamin and Margaret filed a motion to enforce the settlement agreement under Code of Civil Procedure section 664.6. The motion was supported in part by Chen’s declaration in which he states that he believes the first GAL agreement “did not change the material terms of the settlement agreed to by the other parties.” The settlement agreement, he stated, “is in the best interest of the [M]inors and the other beneficiaries of the ... Trust.” In a supplemental declaration, he stated that he “never rejected the May 14, 2018 [s]ettlement,” and he had “agreed to the settlement on behalf of the [M]inors on August 10, 2018.”

Christine filed an opposition to the motion and argued, among other arguments, that Chen’s July 23, 2018 report “amounted to a rejection of the offer set forth in the

Appendix B

[settlement] [a]greement,” and the first GAL agreement includes terms that differ from the settlement terms.

On September 12, 2018, the court held a hearing on the motion and took the matter under submission. On September 17, the court issued a written ruling granting the motion. The court rejected Christine’s argument that the terms of the oral settlement agreement were changed by the first GAL agreement. The first GAL agreement, the court explained, “explicitly states Chen’s agreement to the terms of the settlement agreed to by the other parties on the record before the [c]ourt on May 14, 2018.” The court also rejected the argument that Chen’s July 23, 2018 report to the court constituted a rejection of the settlement agreement: “Chen never stated that he rejected the terms of the settlement”; he “stated merely that he would not sign the proposed long form agreement as drafted.”

The court concluded by stating that “[t]he [settlement] agreement still remains subject to [c]ourt approval of the [M]inors’ compromise.”

In its order, the court noted that although “Chen was appointed initially as [guardian ad litem] in just one case, thereafter the parties stipulated that the pending petitions in all these related cases were to be tried together. The [c]ourt understood that [Chen] was [guardian ad litem] for all of these cases—as did Chen.” In that order, the court refers to the following cases as “related”: BP137413, BP143884, BP145642, BP145759, BP154245, BP155345, BP162717, and BC544149.

Appendix B

On September 27, 2018, Christine filed a motion for reconsideration of the order enforcing the settlement agreement. She argued that she had been denied an evidentiary hearing and that the court erred in concluding that the agreement among other parties that the \$3 million she had paid would be given to Esther was immaterial. She further argued that Chen's July 23, 2018 report constituted a rejection of the settlement "offer."

Before that motion was heard, Christine filed a motion to vacate the order enforcing the agreement on the grounds: (1) Two pending appeals in related cases deprived the court of jurisdiction to make the order enforcing the settlement agreement; (2) Christine, in her capacity as guardian ad litem for the Minors in the ILIT case and as guardian of the Minors' estates, did not consent to the settlement agreement; (3) There was no meeting of the minds because Christine was mistaken as to material terms of the settlement agreement; (4) The settlement agreement was the result of extrinsic fraud or mistake; (5) The settlement agreement is unconscionable and contrary to public policy; and (6) Christine's mental condition at the time of the agreement was "impaired."

On December 14, 2018, the court denied the motion for reconsideration and the motion to vacate the order enforcing the settlement agreement.

On December 17, 2018, Christine filed a petition in case No. BP154245 to set aside the settlement agreement, appoint an interim trustee to manage the Trust, and appoint herself as guardian ad litem for the Minors in

Appendix B

place of Chen, among other relief. The court subsequently granted Benjamin's anti-SLAPP motion and dismissed the petition.¹⁵

In January 2019, the court entered its order enforcing the settlement agreement.¹⁶

F. Chen's Petition for Approval of the First GAL Agreement

On November 12, 2018, Chen filed a petition for an order approving the first GAL agreement. A trial on Chen's petition took place in April and May 2019. After Chen rested his case, Christine made a motion for nonsuit, which the court treated as a motion for judgment under Code of Civil Procedure section 631.8.

On July 18, 2019, the court granted Christine's motion and denied Chen's petition for approval of the first GAL

15. Christine has appealed the order granting Benjamin's anti-SLAPP motion to this court (case No. B301214). We stayed proceedings on appeal pending the outcome of the litigation regarding the settlement agreement.

16. Christine filed a notice of appeal from this order on March 5, 2019, which we assigned case No. B296150. In June 2019, Benjamin filed a motion in this court to dismiss the appeal on the ground that the order was not an appealable order because the settlement agreement was subject to approval of the Minors' compromise. On July 3, 2019, we granted Benjamin's motion and dismissed the appeal "as premature."

Appendix B

agreement.¹⁷ Chen, the court stated, had not proven “that the agreement is in both or either of the [Minors’] best interests.” The court also issued an order to show cause (OSC) re removal of Benjamin and Margaret as co-trustees.

G. The Second GAL Agreement

On July 29, 2019, Benjamin and Margaret moved for reconsideration of the court’s order granting Christine’s motion for judgment. On August 22, Chen, Benjamin, and Margaret filed motions to reopen the trial. During the hearing on these motions in October 2019, the parties agreed to participate in a mediation.

On December 5, 2019, Benjamin, Margaret, Chen, and Christine participated in a mediation. All participants other than Christine reached an agreement (the second GAL agreement).

At a status conference held on December 16, 2019, the court was informed of the second GAL agreement and ordered that the motions to reopen the trial and the motion for reconsideration of the order granting Christine’s motion for judgment were withdrawn as moot. The court explained that Chen’s petition for approval of the first GAL agreement was “denied with prejudice as to that agreement” and without prejudice to a motion for approval of “some revised [GAL] agreement.”

17. The Trust document does not refer to an “Insurance Trust,” and it is not clear from our record to what the phrase “Insurance Trust #1” refers. Its nature and the amount due the Minors under this trust, however, does not appear to be in dispute.

Appendix B

The second GAL agreement was memorialized in a writing dated January 16, 2020, and signed by, among others, Benjamin and Margaret (in their individual capacities and as trustees of the Trust), Esther, Helena (Robert’s first wife), and Chen as the Minors’ guardian ad litem. Christine did not sign the document.

The second GAL agreement incorporates the terms of the settlement agreement and states that the parties “agree to and approve the terms of the Settlement Agreement that affect Jacqueline and Michael, and except as expressly provided herein, nothing in [the second GAL agreement] modifies or eliminates any term of the [settlement].”

According to the second GAL agreement: Benjamin shall give to the Minors his interests in the Taylor, Derek, and Paularino properties and the Minors shall give to Benjamin their interests in the Domingo property; the Minors shall each receive \$500,000 out of the \$3 million Christine paid to Benjamin’s counsel under the settlement agreement and approximately \$190,000 “from Insurance Trust #1”;¹⁸ Helena and Ruth shall pay \$740,000 to each of the Minors for the Minors’ interests in Sycamore; the Calle Cristina property will be sold and one-third of the net proceeds “shall collectively be distributed” to the Minors “equally”; the Hellman property shall be sold and 10 percent of the net proceeds “shall collectively be distributed” to the Minors “equally”; Benjamin, Margaret,

18. The court ultimately struck these declarations because they were not verified. The declarations were resubmitted in March 2020 with the Minors’ verifications.

Appendix B

and Esther shall pay any estate tax liability attributable to the interests the Minors receive from the Trust; the Minors shall receive “a credit for their share of the [e]xpenses of [a]dministration [as defined] coupled with a complete and full distribution of their share of the Trust” and, as a result, they shall “have no further interest in the Trust and/or in the future accountings of the Trust”; the trustees shall pay any property taxes attributable to the Minors’ property interests in the Trust until the properties are distributed to them; “‘all objections to any accountings are dismissed with prejudice, and all parties waive rights to future accountings’ ”; the parties release the Minors from any liability for legal and administrative expenses attributable to the interests distributed under the second GAL agreement; and the parties waive their rights under Civil Code section 1542, provided that Chen’s waiver is limited to matters pertaining to the administration of and litigation relating to the Trust; the parties waive their right to object to approval of the second GAL agreement and to appeal from an order approving the agreement.

H. The Repudiations

On December 3, 2018, Christine filed a notice of repudiation of the settlement agreement and the first GAL agreement. Three days later, she filed an amended and supplemental notice of repudiation of the settlement agreement and the first GAL agreement. Christine purported to repudiate these agreements in her capacity as parent and guardian of the Minors, guardian ad litem of the Minors with respect to the ILIT case, “and as a

Appendix B

petitioner, respondent, and beneficiary of the ... Trust.” According to Christine, the terms other parties agreed to after she left the courtroom on May 14, 2018 “resulted in material prejudice to the Minors.” She also relied on a declaration by an accountant who opined that the settlement agreement resulted in a net loss to the Minors of \$25,251,430. In addition, “she has reason to believe” the settlement agreement may have caused “as much as \$100,000,000.00” in economic harm to the Minors.

In February 2019, Jacqueline (then 15 years old) filed an unverified notice of her repudiation of the settlement agreement and the first GAL agreement. She states that she is repudiating the settlement agreement “on her own” “because it is not in her best interests,” it waives various rights and claims she holds, disclaims her interest in the Domingo property, “and in many ways leav[es] her in a worse position than if Christine ... had lost at trial.”

On December 26, 2019—after the parties to the second GAL agreement participated in the mediation that led to that agreement and before that agreement was memorialized in writing—Christine filed a notice of repudiation of the second GAL agreement on the ground, among others, that the agreement was not in the best interest of the Minors. After the written second GAL agreement was executed, Christine filed a supplemental repudiation of the agreement. In each document, she stated she was acting as the parent and guardian ad litem for the Minors in the ILIT case, guardian of the Minors’ estates, trustee of Robert’s separate property trust, and the trustee of the Minors’ irrevocable trusts. According

Appendix B

to Christine, the Minors “are far better off without” the second GAL agreement “by approximately \$50 million” and, if the agreement is disapproved, the Minors “will reserve their rights and claims of \$100 million against Esther,” Benjamin, and Margaret, as well as their “rights to accountings, and appeal.”

On January 31, 2020, Jacqueline (then 17 years old) and Michael (then 15 years old) signed and filed declarations repudiating the second GAL agreement. The Minors stated that Chen “has never met or spoken with [them]” during the preceding eight years and has assisted others in litigating against them and their interest. According to the Minors, the agreement also: “waives [their] substantial rights and claims including 8-year past due and future trust accountings”; “waives [their] substantial rights, interests, [and] claims of over \$100 million against [others]”; and “waives [their] constitutional rights to appeal.” The Minors further stated that Chen has a conflict of interest by representing both of them.¹⁸

On February 27, 2020, the co-trustees filed a response to Christine’s purported repudiations. Among other points, they asserted that Christine does not have standing to repudiate the agreements in any capacity because Chen is the only person who can act for the Minors with respect to the Trust litigation, Christine has an irreconcilable conflict of interest with the Minors, and Christine waived any rights to represent the Minors when she agreed to the settlement agreement.

*Appendix B***I. The March 3, 2020 Consolidated Rulings**

The day after the second GAL agreement was signed, Chen filed a petition for its approval and a petition to remove Christine as the Minors' guardian ad litem in all related cases and to appoint Chen in her place. In response, Christine filed demurrers to each petition and a petition to remove Chen as guardian ad litem for the Minors.¹⁹

On March 3, 2020, the court heard oral argument from counsel for Christine, Benjamin, Margaret, Esther, and Chen regarding the pending petitions and demurrers. At the conclusion of the hearing, the court issued a “consolidated ruling,” in which the court made the following rulings, among others: (1) The court overruled Christine's demurrer to Chen's petition to remove Christine as guardian ad litem of the Minors and granted Chen's petition, appointing him guardian ad litem of the Minors in Christine's place in all related cases except the case concerned with the guardianship of the estate of the

19. On the same day, Christine, in her individual capacity and in her capacity as a fiduciary of Jacqueline and Michael, filed a petition under section 850 alleging, among other claims, that Benjamin, Margaret, and Esther had misappropriated trust property and tortiously interfered with Christine's and the Minors' expected inheritance. Among other relief, Christine sought: the return of property “wrongfully taken”; punitive damages; an order disinheriting Esther, Margaret, and Benjamin; and the removal of Benjamin and Margaret as co-trustees of the Trust.

Appendix B

Minors (case No. BP145759);²⁰ (2) The court denied without prejudice Christine’s petition for removal of Chen as the Minors’ guardian ad litem; and (3) The court overruled Christine’s demurrer to Chen’s petition for approval of the second GAL agreement and granted the petition. The court also discharged its OSC regarding removal of Benjamin and Margaret as co-trustees.

Initially, the court stated that the co-trustees and Christine lacked standing to challenge Chen’s petition for approval of the second GAL agreement. “Proceedings on a [guardian ad litem’s] [p]etition for [a]pproval,” the court explained, “are fundamentally between the [M]inors, the [guardian ad litem], and the [c]ourt—and nobody else.” The court also rejected the need for an evidentiary hearing because “proceedings on a [p]etition for [a]pproval are generally non-adversarial in nature, as the proceeding is purely between the [c]ourt and its officer, the [guardian ad litem], to determine whether a proposed agreement is a good deal for the [M]inors.”

In evaluating the second GAL agreement, the court considered the Trust document and evidence of what the Minors would receive under the second GAL agreement. The court noted that the second GAL agreement provided “substantially better economic terms for the Minors than the [first] GAL agreement,” which the court had rejected eight months earlier. In addition to greater economic benefits, the second GAL agreement also “disentangles

20. The court subsequently corrected this order to the extent it appointed Chen as guardian ad litem in case No. BP145642, involving the ILIT.

Appendix B

the Minors' assets from Ben[jamin]'s assets, substantially mitigating the possibility of future disputes." Although the Minors were waiving their right to future accountings, the court determined that this waiver had no "negative effect" on the Minors because, as a result of the property exchanges between the Minors and Benjamin, and the co-trustees' agreement to cover the Minors' liabilities for estate taxes and trust expenses, the co-trustees "will no longer hold any of the Minors' assets," and "the Minors no longer had any financial interest in the Trust."

The court approved of the second GAL agreement's handling of Three Lanterns, Sycamore, and Atlantic Towers. The Minors would receive a total of \$1,480,000 for their share, as residuary beneficiaries, of the Trust's interest in the Sycamore property—an amount "corresponding to the Minors' 20 [percent] interest in the [T]rust residue." Three Lanterns will be sold to pay estate taxes in accordance with the terms of the Trust document,²¹ and the Minors' share of that property's value and the Atlantic Towers sale proceeds—equal to approximately \$1.75 million—will, in effect, be exchanged for a "waiver" of the Minors' \$3.2 million share of estate taxes, producing "a net improvement of \$1.45 million" for the Minors. The court expressly declined to consider "hypothetical trial

21. Pursuant to the 2008 amendment to the Trust, estate taxes attributable to the gifts made of Trust A property were to be paid from the residue of the Trust and from the Three Lanterns property. According to evidence submitted by the co-trustees, there were insufficient assets in the residue to pay all the taxes due. The sale of Three Lanterns was therefore necessary to pay the taxes.

Appendix B

results—where the evidence is unknown” and rejected “[u]nnecessary speculation as to the outcome of a highly contested, lengthy and expensive trial,” which “would not clarify the merits of the [a]greement.”

In overruling Christine’s demurrer to Chen’s petition to remove Christine as guardian ad litem and her demurrer to Chen’s petition for approval of the second GAL agreement, the court rejected Christine’s reliance on her and the Minors’ repudiations of the second GAL agreement. The repudiations filed by the Minors, the court explained, “are not legally operative documents, as they are unverified and not prepared by or with the Minors’ [guardian ad litem].” Because the Minors “have no legal authority to file repudiations without the representation of a guardian ad litem,” the repudiations are “ineffective and improper.”

The court stated that although Christine, as the Minors’ parent, “would generally have a right to object or repudiate, she is precluded from doing so here because her objection is inconsistent with the Minors’ interest.” Moreover, “Christine has expressly waived her right to bring claims on the Minors’ behalf or object to the terms of the [second] GAL [a]greement” under the settlement agreement. The court struck Christine’s repudiations “as improper and irrelevant.”

In granting Chen’s petition to remove Christine as guardian ad litem and appointing Chen in her place in certain cases, the court found that Christine “waived her right to represent the Minors as their guardian for

Appendix B

purposes of the settlement agreement” and that she has a conflict of interest arising “from her persistent opposition to any possibility of settlement,” which precludes “her from acting on the Minors’ behalf in this litigation.” The court further explained that, although the court had previously deemed the other cases related to the case in which Chen had been appointed guardian ad litem and had indicated to Chen that he should seek appointment in the related cases, Chen had not done so “until now.” By extending his appointment of Chen as guardian ad litem to the other cases, the court stated that it was “remedying an administrative defect” and “curing its own oversight.”

In denying Christine’s petition to remove Chen as guardian ad litem, the court noted that Christine waived her right to seek Chen’s removal when she agreed that the Minors’ claims “‘can only be brought by their guardian ad litem[,] ... Chen.’ ” Moreover, the court found that “there is no basis to remove Chen where he has successfully done his job by negotiating an approvable settlement for the Minors, leaving them far better off than they were under the [first] GAL [a]greement.”

On March 23, 2020, the court entered an order incorporating the March 3 rulings.

Christine filed a motion for reconsideration of the consolidated rulings on March 13, 2020, and a motion for new trial on March 27, 2020.

On April 28, 2020, the court denied Christine’s motion for a new trial. The court rejected Christine’s reliance on

Appendix B

the Minors’ repudiations of the second GAL agreement because Christine lacked the authority to prepare and file the repudiations on the Minors’ behalf without Chen. Chen, the court explained, “must be involved in any [r]epudiations by the Minors.”

On June 24, 2020, the court granted Christine’s motion for reconsideration of the court’s March 3, 2020 rulings with respect to her removal as guardian ad litem in the ILIT case (case No. BP145759), and otherwise denied the motion. On the same date, the court entered an order: approving the second GAL agreement; appointing Chen guardian ad litem of the Minors in case Nos. BP145642, BP154245, BP162717, 16STPB04524, BC544149; denying without prejudice Christine’s petition to remove Chen as guardian ad litem; and discharging the OSC regarding removal of the co-trustees.

On July 23, 2020, Christine, Jacqueline, and Michael filed separate notices of appeal from the court’s orders issued on March 3, 2020, April 28, 2020, and June 24, 2020.

Chen filed a motion in this court to dismiss the appeals filed by Jacqueline and Michael. We summarily denied that motion on March 22, 2021. Christine, Jacqueline, and Michael—each represented by separate counsel—thereafter filed separate appellant’s briefs. The co-trustees, Esther, and Chen filed respondent’s briefs.

*Appendix B***DISCUSSION****A. The Effect of Pending Appeals on the Trial Court Proceedings**

Christine and the Minors argue that the trial court lacked jurisdiction to make the challenged orders enforcing the settlement and approving of the second GAL agreement because appeals on other rulings were pending in this court.²² We reject this argument.

1. Background: The Pending Appeals

The pending appeals are case Nos. B286548, B288425, and B301214. Case No. B286548 is an appeal from a judgment in the ILIT litigation (L.A. Superior Court case No. BP145642) (the ILIT appeal). In that case, the trial court determined that Benjamin is the sole remainder beneficiary under Robert’s life insurance trust “and is entitled to ... 100 [percent] distribution of the assets in the [trust].” The court entered a judgment in favor of Helena (Robert’s first wife) and Benjamin (Robert and Helena’s

22. Esther contends that we should not consider the appeals by Jacqueline and Michael because they were represented by a guardian ad litem, Chen. Esther argues that the Minors can speak through only “[o]ne [v]oice”—in this case, Chen’s—and there cannot be a “second voice” speaking for the Minors on appeal, even their own. As we explain below, even if we assume that the Minors may appeal, they have failed to establish prejudicial error. We do not, therefore, need to decide whether Chen’s trial court appointment as the Minors’ guardian ad litem precludes the Minors from challenging the court’s orders on appeal.

Appendix B

child) and against Christine (Robert's second wife), in her capacity as guardian of the estates of Jacqueline and Michael (Robert and Christine's children). Christine filed her notice of appeal in November 2017.

Under the settlement agreement reached in May 2018, Christine agreed to dismiss the ILIT appeal.

On February 21, 2019, we granted Benjamin's motion to stay proceedings in the ILIT appeal pending resolution of Christine's challenges to the settlement agreement and the second GAL agreement.

Case no. B288425 is an appeal by Benjamin from an order issued on February 20, 2018 (L.A. Superior Court case No. BP155345) denying his anti-SLAPP motion to dismiss Christine's petition to remove Benjamin as a trustee of the Trust. Benjamin filed his notice of appeal on February 23, 2018. Under the settlement agreement, Benjamin agreed to dismiss the appeal.

On January 29, 2020, we granted Benjamin's motion to stay proceedings on appeal in case No. B288425 "pending determination of the proceedings before the probate court."

Case No. B301214 is an appeal by Christine of an order issued on March 29, 2019 (L.A. Superior Court case No. BP154245) granting Benjamin's anti-SLAPP motion dismissing Christine's petition to set aside the settlement agreement and for other relief. On January 31, 2020, we granted Benjamin's motion to stay proceedings on appeal

Appendix B

in this case “pending determination of the proceedings before the probate court.”²³

2. Discussion

Under section 1310, an appeal of a judgment or order in proceedings governed by the Probate Code generally “stays the operation and effect of the judgment or order.” (§ 1310, subd. (a).) The question is thus whether the statutory stay of the “operation and effect” of the judgment in the ILIT case and the anti-SLAPP orders precluded the court from ruling on the motion to enforce the settlement agreement and Chen’s petition to approve the second GAL agreement.

The purpose of the automatic stay under section 1310, like the automatic stay imposed in civil actions generally, “ ‘is to protect the appellate court’s jurisdiction by preserving the status quo until the appeal is decided. The [automatic stay] prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it.’ ” (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189 (*Varian*) [discussing Code of Civil Procedure section 916, subdivision (a)].)

In considering the analogous Code of Civil Procedure section that generally imposes a stay of proceedings

23. We take judicial notice of the notices of appeal and our orders staying proceedings on appeal in case Nos. B286548, B288425, and B301214.

Appendix B

“in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby” (Code Civ. Proc., § 916, subd. (a)), our Supreme Court has explained that the “fact that [a] postjudgment or postorder proceeding may render the appeal moot is not, by itself, enough to establish that the proceeding ... should be stayed.” (*Varian, supra*, 35 Cal.4th at p. 189.) “Rather, something more is needed. For example, the trial court proceeding must directly or indirectly seek to ‘enforce, vacate or modify [the] appealed judgment or order.’ [Citation.] Or the proceeding must substantially interfere with the appellate court’s ability to conduct the appeal.” (*Id.* at pp. 189–190, fn. omitted.) A stay of trial court proceedings may also be required when “the possible outcomes on appeal and the actual or possible results of the proceeding are irreconcilable.” (*Id.* at p. 190.)

Here, the motion to enforce the settlement agreement and petition to approve the second GAL agreement had two possible outcomes with respect to the pending appeals: (1) the motion or petition (or both) would be denied, in which case the provisions in the settlement agreement requiring the dismissal of the ILIT and anti-SLAPP appeals would be ineffective, the ILIT judgment and anti-SLAPP orders would be unaffected, and the appeals would proceed as if there had been no settlement agreement; or (2) if the motion and petition were granted, the appeals would be dismissed pursuant to the settlement agreement. Under the first possible outcome, there would be no impact on the effect or operation of the ILIT judgment and the anti-SLAPP orders and no interference with our ability to conduct the appeals from such judgment and

Appendix B

orders. Under the second possible outcome, although the dismissal of the appeals necessarily interferes with our ability to conduct those appeals, it is an interference that the law encourages. As our Supreme Court has explained, settlement and dismissal of cases on appeal are favored “because it will preclude the need for *future* expenditures of time and money by the parties and the judiciary. Requiring parties to continue to litigate a matter over which there is no longer a real dispute ‘is wasteful of the resources of the judiciary.’ ” (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 277.) We therefore reject the argument that the pending ILIT and anti-SLAPP appeals had the effect of staying the proceedings that are the subject of this appeal.

Christine further argues that Chen was required to bring his petition for approval of the second GAL agreement in this court. She relies on *Anderson v. Latimer* (1985) 166 Cal.App.3d 667 (*Anderson*). In that case, a minor was injured in an auto accident and sued the drivers of the two cars involved. (*Id.* at p. 670.) A jury found in his favor and against each defendant, and judgment was entered thereon. The defendants appealed. While the appeal was pending, one of the defendants settled with the minor’s guardian ad litem. (*Id.* at p. 676.) The guardian ad litem filed a petition in the superior court for approval of the settlement. Based on the statutory requirement that a minors’ compromise be approved by “the court in which the action or proceeding is pending” (Code Civ. Proc., § 372, subd. (a)(1)), the Court of Appeal held that the superior court “lacked jurisdiction to address the petition”; the Court of Appeal “was the only court

Appendix B

possessing jurisdiction to hear and determine whether to approve or disapprove the compromise.” (*Anderson, supra*, 166 Cal.App.3d at p. 676.)

The *Anderson* court’s analysis implies that the action or proceeding in that case was “pending” *only* in the Court of Appeal. A motion in a case in which an appeal is pending may go forward in the trial court, however, so long as the motion is not precluded by a stay put in place by statute or a court order. (See, e.g., *Henry M. Lee Law Corp. v. Superior Court* (2012) 204 Cal.App.4th 1375, 1383 [trial court can proceed on matters not stayed by appeal].) As to such postappeal motions, the action or proceeding continues to be “pending” in the trial court even while the appeal is pending in the Court of Appeal. As set forth above, the related appeals did not stay Chen’s petition for approval of the second GAL agreement in the trial court. Chen was not required, therefore, to file his petition in this court.

B. The Order Granting Motion to Enforce the Settlement Agreement

Christine and the Minors contend that the court erred in granting the co-trustees’ motion to enforce the settlement agreement because: (1) The court failed to hold an evidentiary hearing on the motion; (2) The agreement the court enforced contains terms to which Christine did not agree; (3) Christine did not agree that the money she paid to Benjamin’s counsel would be delivered to Esther; (4) The court failed to make a finding as to the meaning of “residue”; (5) Chen rejected the settlement agreement;

Appendix B

(6) The agreement is unconscionable; (7) The court failed to consider “inseverability”; and (8) The agreement was the result of extrinsic fraud. We reject these arguments.

1. Failure to Hold an Evidentiary Hearing

In connection with the motion to enforce the settlement, the co-trustees (in support of the motion) and Christine (in opposition to the motion) submitted declarations and documentary evidence in support of their positions. The court held a hearing at which counsel for Christine and the co-trustees appeared and argued. Chen also appeared as guardian ad litem for the Minors.

Christine contends that she was denied due process because the court failed to hold a “full evidentiary hearing,” where she could present witness testimony. We agree with the trial court that, even if Christine had a right to present testimony at the hearing, she waived that right by failing to request an evidentiary hearing or to seek to introduce evidence at the hearing on the motion.

Although Christine’s counsel indicated at the hearing that he had sought to present testimony and other evidence in connection with Christine’s earlier motion to set aside the settlement, that motion was not before the court when the motion to enforce the settlement was heard. The court had previously denied Christine’s motion to set aside the settlement without prejudice on the ground that it was procedurally improper, and Christine did not challenge that ruling. Christine does not refer us to any point in the record where she requested an evidentiary hearing or the

Appendix B

right to present testimony during *the motion to enforce the settlement*. Therefore, even if she had a due process right to present evidence at that hearing, she waived that right.

Christine also relies on section 1022, which provides that “[a]n affidavit or verified petition shall be received as evidence when offered in an uncontested proceeding under this code.” Under this rule, “‘affidavits and verified petitions may not be considered as evidence at a contested probate hearing’ ” “‘when challenged in a lower court.’ ” (*Estate of Bennett* (2008) 163 Cal.App.4th 1303, 1309.) When, however, “the parties did not object to the use of affidavits in evidence, and both parties adopted that means of supporting their positions” and “participated in such presentation of the evidence as a matter of convenience ..., they cannot question the propriety of the procedure on appeal.” (*Estate of Fraysher* (1956) 47 Cal.2d 131, 135; accord, *Estate of Nicholas* (1986) 177 Cal.App.3d 1071, 1088; see *McMillian v. Stroud* (2008) 166 Cal.App.4th 692, 704 [trial court did not err in failing to hold evidentiary hearing where appellants “neither expressly requested an evidentiary hearing ... nor made an offer of proof establishing the necessity for a hearing”].)

Here, both sides submitted and relied on declarations and documentary evidence to support their views and, although Christine filed objections to the moving parties’ evidence, she did not object to the use of declarations generally or rely on section 1022. She has therefore forfeited the argument on appeal.

*Appendix B***2. Alleged Changes to the Settlement Agreement**

Code of Civil Procedure section 664.6 permits a court to “‘enter judgment pursuant to the terms of a settlement if the parties stipulate orally before the court or in writing to settle all or part of a case. [Citation.]’ ” (*Leeman v. Adams Extract & Spice, LLC* (2015) 236 Cal.App.4th 1367, 1373–1374 (*Leeman*)). A settlement is enforceable under Code of Civil Procedure section 664.6 if some parties stipulate orally in court while others agree in writing. (See *Elyaoudayan v. Hoffman* (2003) 104 Cal.App.4th 1421, 1432 [Code of Civil Procedure section 664.6 allows “a ‘mix and match’ approach to the *manner* of agreement as long as all parties agree to the *same material terms*”]; accord, *Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1259.)

In ruling on a motion to enforce a settlement under Code of Civil Procedure section 664.6, “the court may interpret the terms of the parties’ settlement agreement” and decide “ ‘what terms the parties themselves have previously agreed upon,’ ” but may not “ ‘create the material terms of a settlement.’ ” (*Leeman, supra*, 236 Cal.App.4th at p. 1374, quoting *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810 (*Weddington Productions*)). A new or altered term is material if “it changes the rights or duties of the parties, or [any] of them.” (*Consolidated Loan Co. v. Harman* (1957) 150 Cal. App.2d 488, 491; see *Humphreys v. Crane* (1855) 5 Cal. 173, 175 [a change that “does not vary the meaning, the nature, or subject matter, of the contract is immaterial”].)

Appendix B

We review the court’s factual findings to determine if they are supported by substantial evidence and review legal conclusions de novo. (*Weddington Productions, supra*, 60 Cal.App.4th at p. 815; *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.)

Christine contends that the “purported settlement” the court enforced “‘was different from the terms of the parties’ stipulated settlement agreement.’” She discusses 10 terms of the settlement agreement, which she argues were changed, and describes 15 terms that appear only in the second GAL agreement. Michael makes a similar argument, asserting that the agreement the court enforced included “30 modified and new terms.” More specifically, Michael lists 10 terms of the settlement agreement that were allegedly changed and 20 “new terms” that were added in the second GAL agreement.

Christine’s and Michael’s arguments improperly conflate the settlement agreement and the second GAL agreement. Although the second GAL agreement relates to the settlement agreement and Chen’s approval of the settlement agreement is a condition to the effectiveness of the agreement, Christine is not a party to the second GAL agreement and that agreement does not impose any obligation on her or deprive her of any right or interest she acquired in the settlement agreement. Although the terms of the second GAL agreement are relevant to challenges to the court’s approval of the second GAL agreement (see Discussion part C, *post*), the purported 15 terms that Christine identifies and the 20 terms Michael identifies that were purportedly added in the second GAL agreement in January 2020 are irrelevant to the issue

Appendix B

whether the court erred in granting the motion to enforce the settlement agreement in September 2018.

As for the 10 terms that Christine and Michael contend the court had changed when it granted the motion to enforce the settlement agreement, a close examination reveals that the contentions are without merit.

The first term of the settlement agreement is that Christine “waives all rights to Trust A, including but not limited to claims regarding Three Lanterns, Sycamore, and Atlantic Towers. Such interest goes to the residue.” According to Christine, under the agreement the court enforced, “Michael gets only \$740,000 of the ‘net fair market’ value of Sycamore” and “Atlantic Tower and Three Lanterns will be sold to pay for estate tax, and neither Minor receives anything from these properties.” The reference to Michael’s receipt of \$740,000 is to language in the second GAL agreement and does not appear in the court’s order enforcing the settlement agreement. Nor does that payment change or affect any of Christine’s rights or obligations under the settlement agreement.

Michael contends that under the first term he “should receive Sycamore and Three Lanterns outright.” The first term, as recited by Christine’s counsel before the court, however, does not provide for Michael to receive any interest in Sycamore or Three Lanterns. Instead, Christine—the devisee of Sycamore and Three Lanterns under the Trust document—expressly waived her interest in these properties and agreed that they would go “to the residue.”

Appendix B

Under the second term of the settlement agreement, the “parties consent to the sale of Hellman for fair market value, and shall cooperate as needed.” According to Christine and Michael, these terms were changed because Hellman is part of the Trust residue and the Minors are 10 percent residual beneficiaries, yet the Minors “would each receive only [five percent] of the proceeds” from the sale of Hellman. Christine and Michael again refer to the second GAL agreement for the allegedly changed term, not the order enforcing the agreement, which did not specify what, if anything, the Minors would receive from the sale of the Hellman property. Moreover, Christine does not explain how the Minors’ receipt of five percent of the sale of Hellman affects any of her rights or obligations under the settlement agreement.

Under the third term, certain jewelry and other items specified in discovery responses shall be provided to counsel for Benjamin within one week. According to Christine and Michael, the enforced agreement differed because the Minors will not receive the specified items. The agreement as recited by Christine’s counsel in court, however, did not specify who would ultimately receive the items. There is thus no difference.

The fourth term of the settlement agreement required Christine to pay \$3 million to Benjamin’s lawyers’ “trust account.” Contrary to Michael’s assertion, the parties did not agree that the “Minors will receive \$3 million”; in fact, the parties did not specify the ultimate recipients of the money.

Appendix B

According to Christine, this provision was changed in the second GAL agreement by requiring that Jacqueline and Michael each receive \$500,000 of the \$3 million. Even if the provision for such payments in the second GAL agreement is deemed a change to the settlement agreement, it does not change any right or obligation of Christine's; it merely provides Michael with \$500,000 he did not have a right to receive under the settlement agreement.

Under the fifth term, the Minors' interests in the Trust will be distributed to their respective irrevocable trusts established by King, Robert, and Christine. Christine asserts that this was changed to provide for distribution "to those trusts that are under [c]ourt supervision." She cites only to the second GAL agreement, and the citation does not support the assertion.

Under the sixth term, Christine disclaims any rights as a beneficiary under the Trust and the Minors' "claims, if any, can only be brought by" Chen, his designee, or his court-appointed successor until they reach the age of majority. According to Christine and Michael, this term was changed because Chen waived the Minors' "claims of \$100 million" and the Minors do not "want to waive [their] claims." Again, Christine cites only to the second GAL agreement, and the citation does not support the alleged change. Michael refers also to his and Jacqueline's repudiations of the agreements. The repudiations (which are discussed below), were not asserted until after the court ruled on the enforcement of the settlement agreement. Therefore, although they may bear upon the

Appendix B

effectiveness of the second GAL agreement, they cannot be relied on to challenge the court's September 2018 ruling enforcing the settlement agreement. (See *Sacramento Area Flood Control Agency v. Dhaliwal* (2015) 236 Cal. App.4th 1315, 1328 [we review a court's ruling based on the record as it existed at the time of the ruling].)

Under the ninth term, the provisions of the agreement affecting the Minors' interests and rights are subject to approval by the guardian ad litem. Christine notes that Chen was appointed "in only one case of nine cases and had no power to bind the Minors for the remaining cases." Michael adds that he "did not want to dismiss his ILIT appeal." These points, however, do not indicate any change in the term in the settlement agreement. Indeed, in ruling on the motion to enforce the settlement, the court explained that the settlement agreement was "subject to the condition precedent of Chen's agreement."

The 10th term provides that "the parties shall work together to cause the Trust to be amended to effectuate the settlement with the resulting tax treatment that is fair and equitable to all parties." Christine argues that this "[n]ever occurred and is not part of the final judgment," and that "the tax treatment achieved by the final judgment is unfair and inequitable." Michael makes a similar argument. The references to "final judgment" appear to be to the second GAL agreement or the court's order approving the second GAL agreement, not to the order enforcing the settlement agreement, which made no change to this provision. Moreover, Christine's and Michael's comments indicate an alleged breach of the

Appendix B

agreement, which is irrelevant to the determination of whether the agreement was enforceable under Code of Civil Procedure section 664.6.

Under the 11th term, the parties dismissed with prejudice all objections to accountings and waived rights to future accountings. Christine and Michael assert that this was changed in the second GAL agreement where the minors “waived all rights to full and independent past due, current, and future trust accountings.” They do not refer to any change in the agreement as enforced by the court and, in any case, they do not explain how any change in the second GAL agreement has any effect on their rights or obligations.

Lastly, under the 12th term, “the parties are to prepare a long form agreement, with all disputes regarding the long form agreement to be resolved ... via binding arbitration.” Christine and Michael argue that this provision was changed because they were excluded from any long form negotiations, and refer to the second GAL agreement as a “long form” to which they never consented. As with the arguments regarding the 10th term, the alleged exclusion from negotiations suggests a possible breach of the settlement agreement, not a changed term.

Christine makes a cursory assertion that the court “had no power to enforce a settlement that, as the [t]rial [c]ourt found here, had been procured by fraud.” The undeveloped assertion is made without citation to the record. We therefore decline to consider it. (See *Alki*

Appendix B

Partners, LP v. DB Fund Services, LLC (2016) 4 Cal. App.5th 574, 590, fn. 8 [“courts will decline to consider any factual assertion unsupported by record citation at the point where it is asserted”].)

For the foregoing reasons, we reject Christine’s and Michael’s arguments that the court enforced an agreement with terms different from the agreement Christine made in May 2018.

3. Christine’s Alleged Lack of Consent to Esther as the Recipient of \$3 Million

Christine contends that she did not consent to the “additional material terms” recited by Benjamin’s counsel on May 14, 2018, after Christine and her attorneys left the courtroom.²⁴ Because these terms were added in her absence, she argues, there was no meeting of the minds as to these terms and therefore no contract.

In particular, Christine points to the agreement reached among Benjamin, Esther, Margaret, and Helena that the \$3 million that Christine agreed to pay to Benjamin’s law firm’s trust fund “goes to Esther.” Christine asserts that she “would never have agreed to

24. Christine asserts that she “was precluded from all knowledge of the additional material terms added on May 14, 2018,” and that “[r]espondent coerced [her] into leaving the [c]ourtroom to record Esther’s name.” The record, however, indicates that the court invited Christine and her counsel to remain in the courtroom “just in case,” but that Christine and her counsel left voluntarily.

Appendix B

give a penny to Esther” and “would have never consented to this term.” According to Christine, her \$3 million payment should have been added to the Trust corpus, which would have benefited her children as residuary beneficiaries. Christine, however, could have bargained for a provision requiring the money be added to the Trust or distributed to particular persons (such as her children) or not distributed to particular persons (such as Esther). Christine made no such bargain, however, and upon transferring the money as agreed, she had no right to direct what happens to the money thereafter.

4. The Court’s Failure to Make a Finding as to the Meaning of “Residue”

Christine next contends that the court never made a factual finding concerning the meaning of the word, “residue,” as used in the settlement agreement. Pursuant to term one of the agreement, Christine agreed to waive “all rights to Trust A, including but not limited to claims regarding Three Lanterns, Sycamore, and Atlantic Towers. Such interest goes to the residue.” According to Christine, the word “residue” could mean the “[r]emainder” of the trust estate as defined in the Trust document or, as she understood it, “the corpus of Trust A, since the family often referred to Trust A as the Residue Trust.” If residue means the remainder of the Trust, her interests in Trust A assets, including Three Lanterns and Sycamore, would be distributed to the residuary beneficiaries. According to Christine, however, she understood that she was relinquishing her interests in Three Lanterns and Sycamore to Michael.

Appendix B

Christine did not, however, raise this point in her opposition to the motion to enforce the settlement. She refers us to her declaration in support of her motion to set aside the settlement agreement. But in that declaration, she states only that she learned “what it meant for [her] property to enter into the ‘residue’ of [the] ... Trust” after her accounting expert evaluated the settlement. She does not state what her understanding was of the Trust residue either before or after the accountant explained it to her. Thus, even if the court considered her declaration in connection with the motion to enforce the settlement, her declaration is insufficient to raise the issue she asserts on appeal.

In any case, the meaning of “residue” in the context of trust and probate litigation has a readily understandable meaning as the surplus of the estate remaining after the payment of debts and the distribution of specific bequests and devises. (See *Estate of Lawrence* (1941) 17 Cal.2d 1, 8; *Blech v. Blech* (2018) 25 Cal.App.5th 989, 1003; *Estate of Keller* (1955) 134 Cal.App.2d 232, 241; § 21117, subd. (f).) Here, with respect to Trust A—in which Three Lanterns and Sycamore were held and which was the subject of term 1 of the settlement agreement—the reference to the “residue” unambiguously refers to the provision of the Trust document that provides for the distribution of “[t]he remainder of Trust ‘A,’ after any payments and distributions by the [t]rustee [of specific bequests] pursuant to the provisions of [specified] subparagraphs” of the Trust document. Although the treatment of such “remainder” under the Trust document is somewhat complex, there is no reasonable reading of the Trust document that supports Christine’s interpretation by

Appendix B

which the Trust's entire interest in Three Lanterns and Sycamore as part of the residue, would be given to Michael.

5. Chen's Alleged Rejection of the "Settlement Offer"

Christine next contends that Chen rejected the "settlement offer" in his July 23, 2018 report to the court on a proposed "long form" agreement, and that his rejection "killed Christine's offer." She argues further that Chen could not "revive" "the offer" by his subsequent "purported acceptance." The argument is fundamentally flawed because, as the trial court found, the settlement reached by the parties in court on May 14, 2018, was not an offer, but an agreement subject to a condition, namely, Chen's approval. Specifically, Christine and the other parties present in court agreed that the terms "affecting the Minors' interests and rights are subject to approval by the guardian ad litem." The phrase "[s]ubject to" is generally construed to impose a condition precedent." (*Rubin v. Fuchs* (1969) 1 Cal.3d 50, 54.)

The court found that this condition of Chen's approval was met when Chen entered into the first GAL agreement and stated that he "agrees to the terms of the Settlement Agreement" reached in court on May 14, 2018. Chen reiterated his approval of the settlement terms in his declaration filed in support of the motion to enforce the settlement, in which he states his "agreement to the terms of the settlement agreed to by the other parties on the record before the [c]ourt on May 14, 2018." The court's finding is thus supported by substantial evidence.

Appendix B

Christine further argues that even if Chen approved of the settlement agreement, the additional terms in the first GAL agreement differed from the settlement agreement and constituted a rejection of the settlement terms. Christine, however, again erroneously conflates the settlement agreement with Chen’s separate agreement with other parties in the first GAL agreement. Christine was not a party to the first GAL agreement and nothing in that agreement alters any of Christine’s rights, interests, or duties under the settlement agreement.

6. Alleged Unconscionability

Christine contends that the trial court erred in rejecting her argument that the settlement agreement is unconscionable. “The unconscionability doctrine ensures that contracts, particularly contracts of adhesion, do not impose terms that have been variously described as “ ‘overly harsh’ ” [citation], “ ‘unduly oppressive’ ” [citation], “ ‘so one-sided as to “shock the conscience” ’ ” [citation], or “ ‘unfairly one-sided” [citation].’ ” (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 910–911, 190 Cal.Rptr.3d 812, 353 P.3d 741.) The doctrine “ ‘has both a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results.’ ” (*Id.* at p. 910, 190 Cal.Rptr.3d 812, 353 P.3d 741.) Both elements must “ ‘be present in order for a court to exercise its discretion to refuse to enforce a contract or clause.’ ” (*Ibid.*)

Christine contends that the settlement agreement “was procedurally unconscionable because it contained

Appendix B

terms that were unknown to Christine prior to their announcement on the record.” Although she uses the plural, “terms,” she refers only to her lack of understanding of the word “residue.” She argues that the agreement “was substantively unconscionable because its terms were drastically harmful to Christine and her children, and any bargain therein was illusory.” The arguments are without merit.

When the settlement was placed on the record, Christine was present and represented by three attorneys from different law firms.²⁵ After the terms were recited by her counsel, the court asked her if she heard and understood “all of the terms,” and she responded, “Yes.” She also answered affirmatively to the question whether she “had enough time to speak to [her] lawyer about [the terms],” and whether she agreed “to all of those terms.” Under these circumstances, Christine has failed to establish procedural unconscionability.

Regarding substantive unconscionability, we note that Christine was facing claims by Benjamin, Margaret, and Esther that she had committed financial elder abuse against King and used her position as trustee *de son tort* to misappropriate more than \$12 million in cash and \$12.5 million in other property interests from the Trust. In addition to damages for these losses, the petitioners were seeking \$14.4 million in statutory damages and attorney

25. One of Christine’s attorneys, Vikram Brar, was not present for the trial. When later asked why he was not there, he explained that being Christine’s attorney “doesn’t mean [he] would attend all hearings.”

Appendix B

fees (§ 859), punitive damages, and a determination that Christine predeceased King pursuant to section 259.

The trial court, which was familiar with the case, explained that, “even assuming [the petitioners] have likely exaggerated their probability of prevailing at trial, proving *unconscionability* is still a heavy burden for Christine: It is not enough to assert merely that she may have prevailed but rather that the settlement terms ‘shock the conscience.’ This they do not where it appears there was at least some probability Benjamin and the others might have prevailed. Given their showing that Christine might not have prevailed, it is not inconceivable to the [c]ourt that she might have elected to avoid potentially greater losses by entering into an agreement that may not be particularly favorable to her.”

On appeal, Christine does not attempt to show that she might have prevailed at trial. Instead, she argues that the settlement left her and the children “over \$35 million worse off than if she had lost the case on the merits.” She explains that if she had lost, she could have been deemed to have predeceased King under section 259. In that case, she contends, Michael would have received her share of the Three Lanterns and Sycamore because the Trust document provides that Michael is to receive these properties if both Robert and Christine predecease King. Therefore, she argues, by preventing her from losing at trial, the settlement “effectively disinherited ... Michael, thus leaving her family over \$35 million worse off than if she had lost the case.” (Boldface omitted.)

Appendix B

Christine’s argument is based on a misunderstanding of section 259. Under subdivision (a) of section 259, a person who, among other requirements, is liable for physical or financial abuse or neglect of a decedent, will be deemed to have predeceased the decedent “to the extent provided in subdivision (c).” (§ 259, subd. (a).)²⁶ Under subdivision (c), a person who is liable under subdivision (a) shall not “receive any property, damages, or costs that are awarded to the decedent’s estate in an action described in subdivision (a).” (§ 259, subd. (c).)

As one court has explained, a “person found liable under subdivision (a) of section 259 is deemed to have predeceased the decedent only to the extent the person would have been entitled through a will, trust, or laws of intestacy to receive a distribution of the damages and costs the person is found to be liable to pay to the estate as a result of the abuse. Section 259 does not necessarily eliminate the abuser’s entitlement to a share of the estate; it simply restricts the value of the estate to which the abuser’s percentage share is applied and prevents that

26. Subdivision (a) of section 259 provides that a “person shall be deemed to have predeceased a decedent [for certain purposes] where all of the following apply: [¶] (1) It has been proven by clear and convincing evidence that the person is liable for physical abuse, neglect, or financial abuse of the decedent, who was an elder or dependent adult. [¶] (2) The person is found to have acted in bad faith. [¶] (3) The person has been found to have been reckless, oppressive, fraudulent, or malicious in the commission of any of these acts upon the decedent. [¶] (4) The decedent, at the time those acts occurred and thereafter until the time of his or her death, has been found to have been substantially unable to manage his or her financial resources or to resist fraud or undue influence.”

Appendix B

person from benefiting from his or her own wrongful conduct.” (*Estate of Dito* (2011) 198 Cal.App.4th 791, 803–804, fn., 130 Cal.Rptr.3d 279 omitted.) Thus, if the co-trustees established Christine’s liability under section 259, subdivision (a), and recovered property, damages, or costs from Christine as a result of such liability, Christine could not receive any share of the recovered property, damages, or costs. The statute would not operate, as Christine suggests, to give Michael alone property that is “awarded to the decedent’s estate.” (§ 259, subd. (c).) Christine and “her family,” therefore, could not win by losing, and her substantive unconscionability argument fails.

7. The Court’s Alleged Failure to Consider Inseverability

Christine next argues that “the court failed to consider inseverability by enforcing a modified agreement with terms to which [she] did not consent.” (Boldface and capitalization omitted.) She asserts that her “deal was inseparable from her children’s” and, until the court approved the “precise terms” affecting Jacqueline and Michael, “there was no settlement to enforce.” In placing the terms of the settlement on the record on May 14, 2018, however, the parties and their counsel made clear that they were setting forth the terms of a binding agreement, enforceable under Code of Civil Procedure section 664.6, subject only to Chen’s approval. There is nothing in the record to suggest that Christine was withholding her acceptance of the agreement pending her review of other terms to which the Minors, through their guardian ad litem, and others agreed. We therefore reject the argument.

*Appendix B***8. Michael's Claim of Extrinsic Fraud by the Court**

Michael contends that the order enforcing the settlement agreement is unenforceable because the court did not intend to perform it. He discusses at some length the law that permits a contracting party to rescind a contract that was induced by extrinsic fraud. He refers to orders made after his appeal in this case in which the court allegedly required the Minors to pay \$500,000 in Chen's legal fees and to sell the Taylor property. These orders, he argues, are contrary to the terms of the settlement agreement and indicate that "[t]he trial [c]ourt enforced the settlement without any intention of performing it." (Boldface omitted.)

Aside from the fact that the trial court is not a party to the settlement agreement and has no duty to perform any of its terms, Michael's assertions are made without citation to the record and, in any case, are not encompassed within the scope of Michael's notice of appeal. Therefore, we reject the argument.

C. The Court's Approval of the Second GAL Agreement

Christine and the Minors challenge the court's order granting Chen's petition approving of the second GAL agreement on the following grounds: (1) Chen, as a guardian ad litem appointed in one case only, did not have capacity to make the second GAL agreement; (2) the court failed to hold an evidentiary hearing on the petition; (3) the lack of notice to the Minors deprived them of due process; (4) the agreement was not in the Minors' best interests; (5)

Appendix B

the court failed to approve Chen’s attorney fees; and (6) Christine and the Minors repudiated or disaffirmed the settlement agreement and the second GAL agreement. We address each in turn.

1. Chen’s Capacity to Make the Second GAL Agreement

Jacqueline contends that Chen lacked capacity to make a contract in Jacqueline’s name because, prior to March 2020, Chen had been formally appointed the guardian ad litem in only one of the many cases involving or related to the Trust. We reject this argument.

Initially, we note that in proceedings under the Probate Code, the court is not necessarily required to appoint a guardian ad litem for minors involved in the proceedings. Under section 1003, the court “may, on its own motion or on request of a personal representative, guardian, conservator, trustee, or other interested person, appoint a guardian ad litem” for a minor “if the court determines that representation of the interest otherwise would be inadequate.” (§ 1003, subd. (a).)²⁷ The word “may”

27. Section 1003’s discretionary appointment power contrast with the requirement under section 372 of the Code of Civil Procedure that “[w]hen a minor ... is a party, that person *shall* appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending.” (Code Civ. Proc., § 372, subd. (a)(1), italics added.) “The general provisions for appointment of a guardian ad litem” under Code of Civil Procedure section 372, however, “do *not* apply in probate proceedings. Instead, the matter is governed

Appendix B

implies discretionary decision-making authority (*People v. Moine* (2021) 62 Cal.App.5th 440, 448, 276 Cal.Rptr.3d 668), and, as the statutory text indicates, such discretion is to be guided by the court’s determination regarding the adequacy of the representation of the minor’s interest in the absence of a guardian ad litem.

In the absence of an appointment of a guardian ad litem, the Minors were not, as Jacqueline asserts, representing themselves “in pro[.] per.” Rather, the court is “the guardian of the minor” (*Serway v. Galentine* (1946) 75 Cal.App.2d 86, 89, 170 P.2d 32 (*Serway*)), and the guardian ad litem is appointed, if at all, “ “merely to aid and to enable the court to perform that duty of protection.” ’ ” (*Williams v. Superior Court* (2007) 147 Cal.App.4th 36, 49–50, 54 Cal.Rptr.3d 13 (*Williams*); see *Cole v. Superior Court of City & County of San Francisco* (1883) 63 Cal. 86, 89 (*Cole*) “[t]he court is, in effect, the guardian—the person named as guardian *ad litem* being but the agent to whom the court, in appointing him (thus exercising the power of the sovereign [s]tate as *parens patriae*) has delegated the execution of the trust”). Therefore, the fact that a guardian ad litem had not been appointed for the minors in particular probate proceedings does not mean that the minors were representing themselves.

In light of the discretionary authority provided by section 1003, the absence of an appointment of a guardian ad litem would ordinarily imply that the court found that

by [section] 1003.” (Ross & Cohen, Cal. Practice Guide: Probate (The Rutter Group 2021) ¶ 3:558.)

Appendix B

it could adequately protect a minor's interest, if any, and that the aid of a guardian ad litem was not required. Here, however, the court indicated that its failure to appoint a guardian ad litem was an "oversight" on its part and a "clerical issue" and "administrative defect," which it "cur[ed]" when the court granted Chen's request to be appointed guardian ad litem in the related cases.

Whatever the reason for failing to appoint a guardian ad litem in particular related cases, there is no merit to Jacqueline's assertion that she represented herself in pro. per. in those cases. Where a guardian ad litem was not appointed to act as the court's aid or agent in performing the court's duty to protect the Minors' rights, the court merely proceeded without the aid of a guardian ad litem in performing that duty. In this light, we see no legal significance in the fact that Chen had not been appointed guardian ad litem in the related cases when he negotiated the second GAL agreement. As guardian ad litem in at least one of the Trust litigation cases, he negotiated an agreement ostensibly to aid the court in its duty of protecting the Minors' interests. The fact that the agreement encompasses claims the Minors may have in related cases—over which the court acted as the Minors' guardian without the aid of a guardian ad litem—means only that Chen arguably provided more aid to the court than his case-specific appointment required. Although the court had the power and duty to reject such aid if it determined that the agreement was not in the Minors' best interests, there is no bar to accepting such aid. Therefore, the fact that Chen had not been appointed guardian ad litem in all cases in which the second GAL agreement

Appendix B

affected the Minors' rights did not preclude the court from approving of the second GAL agreement.

2. Christine's Standing to Oppose the Petition for Approval of the Second GAL Agreement

Among other rulings made at the hearing held on March 3, 2020, the court denied standing of the co-trustees and Christine to object to Chen's petition for approval of the second GAL agreement. "Proceedings on a [guardian ad litem's] [p]etition for [a]pproval," the court explained, "are fundamentally between the [M]inors, the [guardian ad litem], and the [c]ourt—and nobody else." Christine and the Minors challenge this ruling.

The approval of a petition or motion to approve a minor's compromise is governed by section 3500, subdivision (b), sections 3600–3612, Code of Civil Procedure section 372, and rules 7.950 through 7.952 of the California Rules of Court.²⁸ None of these statutes or rules requires notice or an adversary hearing to approve a minor's compromise. (*Pearson v. Superior Court* (2012) 202 Cal.App.4th 1333, 1337, fn. 2 (*Pearson*); Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2021)

28. Although the *appointment* of a guardian ad litem in probate proceedings is governed by section 1003, the Probate Code does not provide for a guardian ad litem to compromise a minor's claim. Code of Civil Procedure section 372, which does permit a guardian ad litem to compromise a minor's claim with court approval, thus provides the applicable rule. (See § 1000 [except where Probate Code provides an applicable rule, the rules of practice in civil actions applies].)

Appendix B

¶ 12:579; see *Burge v. City and County of San Francisco* (1953) 41 Cal.2d 608, 614 [“[a]lthough it would ordinarily be better practice to hold a hearing and take testimony, the [predecessor to section 3500] does not require it”].) Thus, the *Pearson* court stated, albeit in dictum, “it would appear that a petition to approve or disapprove a minor’s compromise may be decided by the superior court, ex parte, in chambers.” (*Pearson, supra*, 202 Cal. App.4th at p. 1337, fn. 2; see 4 Witkin, Cal. Procedure (6th ed. 2021) Pleading, § 80 [application for approval of a minor’s compromise is made ex parte and may be heard in chambers].)

The question whether Christine had standing to oppose Chen’s position is complicated by that fact that she was the Minors’ parent and their guardian ad litem in one case—the ILIT litigation—directly affected by the settlement agreement. A person in her position is arguably entitled to participate in the hearing at which her children and wards have much at stake. The weight of such status, however, is arguably diminished by the fact that, although Christine is a parent and guardian ad litem, the court found that she had a conflict of interest with the Minors and “appears to be using the Minors to pursue her own agenda”—an agenda that is “inconsistent with the Minors’ interest[s].”

We need not decide whether the court erred in determining that Christine lacked standing with respect to the petition for approval. Even if the court erred, Christine has failed to establish prejudice. The record demonstrates that the court considered Christine’s

Appendix B

demurrer to Chen's petition for approval on the merits and addressed her arguments on the petition at the hearing. In her demurrer, Christine argued, among other arguments: (1) her repudiation of the second GAL agreement precluded the court's approval; (2) Chen is not the guardian ad litem in all matters affected by the agreement; (3) the pending appeals bar consideration of Chen's petition for approval; and (4) Chen failed to provide any basis to show that the second GAL agreement is better than the previously rejected agreement. The court was also aware of Christine's and the Minors' positions as expressed in their repudiations of the agreements.

In addition, after the court's ruling, Christine filed a motion for reconsideration and a motion for new trial, each supported by voluminous evidence, including the declaration of an accounting expert addressing the economic aspects of the second GAL agreement. The court addressed Christine's arguments in these motions on the merits and at length in written rulings denying the motion for new trial and granting in part and denying in part the motion for reconsideration.²⁹

On appeal, Christine does not point to any evidence or argument that the trial court failed to consider and address at one hearing or another, and she does not

29. Due to the COVID-19 pandemic, the court did not hear oral argument on the motion for new trial, which was set for April 23, 2020. It did hold a hearing on Christine's motion for reconsideration via remote video or audio conferencing on June 24, 2020. In addition to Christine's counsel, Christine, Jacqueline, and Michael were present by telephone.

Appendix B

explain how she has been prejudiced by the court's ruling. Prejudice is not presumed, and the appellant has the duty to show that an error is prejudicial. (*Vaughn v. Jonas* (1948) 31 Cal.2d 586, 601; see *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106 ["the appellant bears the duty of spelling out in his brief exactly how the error caused a miscarriage of justice"].) Christine has failed to make that showing here. In any case, based on our review of the record, it is not reasonably probable that, in the absence of the alleged error, Christine would have obtained a more favorable result. (See Cal. Const., art. VI, § 13; *People v. Watson* (1956) 46 Cal.2d 818, 836.) We therefore conclude that, if the court erred by ruling that Christine lacked standing to oppose the petition, the error was harmless.

3. The Court's Approval of the Second GAL Agreement

In determining whether to grant a guardian ad litem's petition to approve a settlement of the ward's claims, a court must determine whether it is reasonable and in the minor's best interest. (See *Pearson, supra*, 202 Cal. App.4th at p. 1338; *Scruton v. Korean Air Lines Co.* (1995) 39 Cal.App.4th 1596, 1607 (*Scruton*); *Espericueta v. Shewry* (2008) 164 Cal.App.4th 615, 626; see also Cal. Rules of Court, rule 7.950 [petition for approval of a minor's compromise "must contain a full disclosure of all information that has any bearing upon the reasonableness of the compromise"].) We review the probate court's ruling for an abuse of discretion. (*Breslin v. Breslin* (2021) 62 Cal.App.5th 801, 806; *Estate of Green* (1956) 145 Cal. App.2d 25, 28.)

Appendix B

Here, in approving the second GAL agreement, the court relied in part on its comparison of what the Minors would receive under the Trust document in the absence of a settlement and the second GAL agreement with what the Minors would receive under the second GAL agreement.

According to evidence submitted in support of the petition, if the terms of the Trust document are applied without regard to the settlement or the second GAL agreement, Jacqueline and Michael would collectively receive \$600,000 pursuant to the terms of Trust B and \$351,024 pursuant to an “Insurance Trust.” These amounts do not appear to be in dispute. Because Robert predeceased King, Benjamin, Jacqueline, and Michael would each receive one-third of the Trust’s interest in the Taylor, Derek, Paularino, Calle Cristina, and Domingo properties. Based on appraisals of the properties reported by Christine’s expert, the values of the Minors’ collective two-thirds interest in these properties, as of the date of the May 2018 settlement, was \$2,880,000, \$2,260,000, \$5,405,860, \$161,111, and \$3,144,510, respectively, for a total of \$13,851,481. As residuary beneficiaries, they would also receive interests, collectively valued at \$91,736, in the Hellman property. Jacqueline would also receive the Monterey Park residence valued at \$840,000. In addition, pursuant to the provisions of Robert’s separate property trust, the Minors held remainder interests in the Paularino and Domingo properties with present values of \$1,678,623 and \$2,074,763, respectively. Their share of estimated estate taxes and unpaid trust administration fees would be \$2,153,660, and \$328,516, respectively. Therefore, based on these amounts, the net value of the

Appendix B

Minors' collective beneficial interests in the Trust in the absence of the settlement agreement and the second GAL agreement would be approximately \$17 million.

Under the settlement agreement and second GAL agreement, the Minors would receive the same amounts due them under Trust B (\$600,000) and the insurance trust (\$351,024), and the same values attributed to the Hellman property (\$91,736) and the Monterey Park residence (\$840,000). The primary differences between the Minors' entitlement under the Trust document and the second GAL agreement arise from (1) what Chen refers to as the "property swap"; (2) payments of cash to the Minors; (3) the absence of the Minors' liability for estate taxes and the Trust's litigation and administration expenses; and (4) the mutual releases and the Minors' waivers of past and future accountings.

Pursuant to the property swap, the Minors would receive Benjamin's one-third of the Trust's interest in the Taylor, Derek, Paularino, and Calle Cristina properties. The Minors' interest in these properties would thus increase by 50 percent and be valued at \$4,320,000, \$3,390,839, \$8,108,988, and \$241,667, respectively.³⁰ The minors would swap, or disclaim to Benjamin, their combined two-thirds interest in the Domingo property (valued at \$3,144,510), as well as their remainder interest in that property (valued at \$2,153,660).

30. Under the second GAL agreement, the Calle Cristina property is to be "sold on the open market for fair market value." Jacqueline and Michael will receive their share of the net proceeds as defined.

Appendix B

The additional cash payments under the second GAL agreement include, collectively, \$1 million (out of the \$3 million Christine paid to Benjamin’s counsel’s trust account)³¹ and payments totaling \$1,480,000 in exchange for the Minors’ 20 percent interest in Sycamore—an interest they gained as residuary beneficiaries after Christine waived her right to that property in the settlement agreement.³²

31. Arguably, the \$3 million Christine paid to Benjamin’s counsel’s “trust account” should have been considered part of the Trust corpus and distributed to the residual beneficiaries. If so, the Minors, as residuary beneficiaries, were entitled to receive, collectively, 20 percent of the \$3 million. Even if this argument is accepted, the amount they received from this source under the second GAL agreement—\$1 million—is 66 percent more than the \$600,000 they could have received as residuary beneficiaries in the absence of the second GAL agreement.

32. Under the Trust, neither Minor had an interest in Three Lanterns, Sycamore, or Atlantic Towers; because Robert had predeceased King and Christine had not, these properties were to be distributed to Christine. Under the settlement agreement, Christine agreed to waive her interest in these properties, which would then become part of the residue of the trust estate. The Minors, as 10 percent residuary beneficiaries under the Trust, would thus be entitled to a share of these properties. According to Chen’s petition, Three Lanterns and Atlantic Towers are to be “liquidated and used to pay the [e]state [t]axes for the Trust.” As a result, “[t]here is no portion of those assets that remain to be distributed to the Minors.”

The \$1,480,000 payment is for the Minors’ residuary share of Sycamore’s fair market value based upon the net fair market value as determined by “Christine’s designated expert appraiser.”

Appendix B

The provisions protecting the Minors from liability for estate taxes and unpaid litigation and Trust expenses are valued at \$2,482,176.

Based on these amounts, the Minors' collective net value under the settlement agreement and second GAL agreement would thus be approximately \$22 million—approximately \$5 million more than what they were entitled to receive under the terms of the Trust. In addition, Chen produced evidence that the additional income to the Minors resulting from the increased interest in the Taylor, Derek, and Paularino properties would more than offset, by approximately \$100,000 per year, the loss of income that results from disclaiming the Domingo property to Benjamin.

Christine and the Minors contend, however, that the second GAL agreement deprived the Minors of “real and unique properties” worth between \$25 million and \$35 million. The theory is based primarily on the assumption that Michael had an interest in, or “stood to inherit,” Three Lanterns, Sycamore, and Atlantic Towers. The assumption, however, is unfounded, as the Trust document unambiguously provides for such properties to be given to Christine. Michael was a contingent beneficiary under the Trust who would have been entitled to Three Lanterns and Sycamore only if Christine predeceased King. Because that did not occur, Michael was not entitled to these properties.

The further assumption that “unique properties,” such as family heirlooms and jewelry, were bequeathed to the Minors is similarly without support. Christine

Appendix B

relied on a provision of the Trust document stating that the gifts of certain real properties includes “any personal property located on and used in connection with such real properties,” for the assertion that Jacqueline stands to inherit the antiques located in the Monterey Park residence, which King had bequeathed to her. The provision Christine relied on, however, relates only to real properties held in Trust C; the Monterey Park residence is held in Trust A. The provision devising the Monterey Park residence to Jacqueline expressly entitles Jacqueline to “the real property and improvements” only.

Christine also contends that the Minors would be entitled to undistributed income from the Taylor, Domingo, Derek, and Paularino properties, and that the \$500,000 that each Minor will receive out of the \$3 million she paid to Benjamin’s counsel should be compared with “the accumulated income of \$6 million from [the Minors’] expected inheritance properties.” She does not, however, point to any provision of the Trust or other evidence to support the Minors’ entitlement to any such income.

Christine and Michael also refer to claims the Minors have against the co-trustees for “\$100 million.” The purported claims appear to be based upon allegations in a petition Christine filed in February 2020, six days before the hearing on Chen’s petition for approval of the second GAL agreement. Aside from their belatedness, they are unsubstantiated in our record and the court reasonably could, as it did, consider them speculative and decline to give them any weight in evaluating the benefits of the agreement to the Minors.

Appendix B

In addition to the economic benefits for the Minors obtained in the second GAL agreement, the court also noted the benefit of terminating this costly litigation and its drain on trust assets,³³ and considered favorably the fact that the property swap provisions would disentangle the interests of the Minors and Benjamin. Instead of Benjamin, Jacqueline, and Michael holding undivided one-third interests in several properties, Jacqueline and Michael will jointly hold interests in some properties while relinquishing their entire interest in one property—Domingo—to Benjamin. The separation will presumably avoid or reduce future litigation among these individuals as well as avoid the need for future Trust accountings to the Minors and the litigation that could arise therefrom.

In light of the economic benefits the Minors obtained under the second GAL agreement, the extrication of the Minors from a situation where they would jointly hold property interests with a half sibling hostile to them, the end to costly litigation, and the peace that the settlement should provide for all sides, the court did not abuse its discretion in approving the second GAL agreement.

4. The Failure to Provide Notice of Chen's Petition to the Minors

Michael and Jacqueline contend that they were entitled to notice of Chen's petition. They cite to sections 1460 and 1511. Section 1460 governs the manner and timing of notice

33. According to Chen, attorney fees and costs relating to Trust administration and litigation, for the period between June 1, 2016 and September 30, 2019, amounted to \$14,693,290.

Appendix B

to a “ward” (§ 1460, subd. (b)(2)), among others, “if notice of hearing is required under this division.” (§ 1460, subd. (a).) The referenced division covers the Guardianship-Conservatorship law (§ 1400 et seq.). Section 1511 is also concerned with proceedings under that law. Neither section 1460 nor section 1511 applies to a guardian ad litem appointed pursuant to section 1003, nor to petitions to approve a minor’s compromise, which are governed by Code of Civil Procedure section 372.

Although the Minors had a right to be present at the hearing on Chen’s petition (see Cal. Rules of Court, rule 7.952(a)), that right can be “dispense[d] with” for good cause. Here, the court waived that requirement at the request of Christine’s counsel with respect to the hearing on the first GAL agreement. In response to Christine’s motion for new trial after the ruling on the second GAL agreement, the court noted that Christine did not seek “any update on that requirement and did not herself attempt to bring the Minors to the March 3, 2020 hearing.”

Even if the absence of the Minors at the hearing was error, the Minors fail to establish that the error was prejudicial. Although the court rejected the Minors’ repudiations of the second GAL agreement, the court acknowledged that the “[r]epudiations made the [c]ourt and Chen aware of the Minors’ positions” regarding the second GAL agreement and, in response to Christine’s motion for new trial, stated that, even if the court had considered the repudiations, it is not “ ‘reasonably probable that a result more favorable to [the Minors] would have been reached.’ ” Other than the repudiations, which

Appendix B

are discussed below, and the arguments they assert on appeal, which we have rejected, the Minors do not point to any argument they would have asserted if they had been present. In light of the benefits to the Minors provided by the second GAL agreement, as discussed above, and our rejection of the arguments asserted on appeal, they have not established that the Minors' absence at the hearing was prejudicial.

Michael further contends his right to due process was violated because Chen had waived his rights under the Trust, his right to appeal, and his right to object to the second GAL agreement, and his "right to claims of \$100 million against the [co-trustees and Chen]." His argument that Chen deprived him of his right to appeal is moot because we have permitted Michael and Jacqueline to appeal. Michael's contention regarding the alleged loss of \$100 million in claims is, like Christine's similar contention, without support in the record. We reject the further claims that Chen and the court deprived them of other rights as beneficiaries under the Trust because they received countervailing benefits under the second GAL agreement. (See *In re Christina B.* (1993) 19 Cal.App.4th 1441, 1454 [guardian ad litem can compromise minor's rights with "some countervailing and significant benefit"].)

5. Michael's Argument Concerning the Omission of Approval of Attorney Fees

Michael contends that the court erred "by omitting to approve that [c]o-[t]rustees' \$20 million legal fees was funded by Michael's expected inheritance." The

Appendix B

somewhat incoherent argument lacks apposite authority and pertinent citations to the record. It appears to be based on the assumption that Michael was entitled to the Three Lanterns property and to “expected accumulated income from his various expected inheritance properties,” including Sycamore, and the co-trustees breached a duty owed to him by encumbering that property with a \$6 million debt. Michael was not, however, entitled under the Trust document or otherwise to acquire Three Lanterns or Sycamore. We reject this argument.

6. Christine’s Repudiations

Christine filed purported repudiations of the settlement agreement and the first and second GAL agreements. She purported to repudiate the agreements in her capacity as guardian ad litem for the Minors in the ILIT case, as guardian of the Minors’ estates, as the Minors’ parent, and as trustee of a trust established for Michael’s benefit.

In its March 3, 2020 consolidated ruling, the court acknowledged that Christine would ordinarily have a right to object or repudiate agreements made by her children, but stated that “she is precluded from doing so here because her objection is inconsistent with the Minors’ interests.” Christine contends that this was error. We disagree.

Christine relies on *Scruton, supra*, 39 Cal.App.4th at p. 1606, 46 Cal.Rptr.2d 638. In that case, a guardian ad litem of two minors settled the minors’ tort claims against

Appendix B

an airline and petitioned the court for approval of the settlement. (*Id.* at p. 1600, 46 Cal.Rptr.2d 638.) Prior to the hearing on the petition, the guardian ad litem repudiated the settlement and withdrew the petition. The defendant airline then filed a motion to enforce the settlement, which the trial court granted. (*Ibid.*)

The Court of Appeal reversed. The court held that the guardian ad litem could repudiate the settlement at any time prior to the court's approval of it, and the guardian ad litem's repudiation was entitled to "some deference." (*Scruton, supra*, 39 Cal.App.4th at p. 1608, 46 Cal.Rptr.2d 638.) Notwithstanding such deference, the *Scruton* court further explained that the trial court had the power to enforce a settlement repudiated by a guardian ad litem if it finds that the repudiation is "adverse to the best interests of the minors." (*Ibid.*)³⁴ Because the trial court in *Scruton* failed to make such a finding, the Court of Appeal reversed the judgment. (*Ibid.*)

Scruton reflects the general principles discussed above that, with respect to minors, the "court is, in effect, the guardian" and the guardian ad litem's actions are subject to court supervision. (*Cole, supra*, 63 Cal. at p.

34. According to Jacqueline, *Scruton* held that the trial court can consider whether the agreement is in the best interest of the minor only if the guardian endorses the agreement. This is incorrect. (See *Scruton, supra*, 39 Cal.App.4th at p. 1608, 46 Cal. Rptr.2d 638 ["we hold the trial court here could not unilaterally and summarily enforce the repudiated compromise without first determining whether, in rejecting the agreement, [the guardian ad litem] had acted contrary to the best interests of the minors"].)

Appendix B

89; accord, *McClintock v. West* (2013) 219 Cal.App.4th 540, 549, 162 Cal.Rptr.3d 61; *County of Los Angeles v. Superior Court* (2001) 91 Cal.App.4th 1303, 1311, 111 Cal.Rptr.2d 471 (*County of Los Angeles*); *Serway, supra*, 75 Cal.App.2d at p. 89, 170 P.2d 32.) Under such supervision, the court may “rescind” a guardian ad litem’s actions that are “inimical to the legitimate interests of the ward.” (*Regency Health Services, Inc. v. Superior Court* (1998) 64 Cal.App.4th 1496, 1502, 76 Cal.Rptr.2d 95; accord, *Zapanta v. Universal Care, Inc.* (2003) 107 Cal.App.4th 1167, 1175, 132 Cal.Rptr.2d 842.) Thus, as *Scruton* indicated, the court could reject a guardian ad litem’s repudiation of an agreement if the court determines the repudiation is “adverse to the best interests of the minors.” (*Scruton, supra*, 39 Cal.App.4th at p. 1608, 46 Cal.Rptr.2d 638.)

Although *Scruton* was concerned with guardian ad litem’s repudiation of an agreement, the same principles apply to a parent of a minor. Because the “court has the responsibility to protect the rights of a minor who is a litigant in court,” it “has the inherent authority to make decisions in the best interests of the child, *even if the parent objects.*” (*Williams, supra*, 147 Cal.App.4th at p. 49, 54 Cal.Rptr.3d 13, italics added; accord, *In re Marriage of Metzger* (2014) 224 Cal.App.4th 1441, 1448, 169 Cal.Rptr.3d 382.)

Here, Christine and the Minors analogize Christine to the guardian ad litem in *Scruton*, whose repudiation was entitled to some deference. (*Scruton, supra*, 39 Cal.App.4th at p. 1608, 46 Cal.Rptr.2d 638.) Christine,

Appendix B

however, is not in the same position as the guardian ad litem in *Scruton*. There was only one guardian ad litem in *Scruton*; here, there are two—Chen and Christine—each presumably entitled to some deference under *Scruton*, yet with diametrically opposing views as to the benefits of the agreements for the Minors. As between these two, the scope of Chen’s appointment, which encompasses the Trust litigation that is the primary focus of the settlement and second GAL agreement, would appear to warrant greater deference to his view than to Christine’s. Although Christine is the guardian ad litem in the ILIT case and the guardian of the children’s estates, the relationship of these cases to the settlement appears to be incidental.

More importantly, the court found that Christine has a conflict of interest in purporting to represent the Minors in repudiating the agreements. We review that determination for an abuse of discretion and any underlying factual findings for substantial evidence. (See *Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 713, 76 Cal.Rptr.3d 250, 182 P.3d 579 [abuse of discretion standard applies where trial court is in better position to “evaluate the consequences of a potential conflict [of interest] in light of the entirety of a case”].)

Christine’s interest in defending the co-trustees’ claims against her is in conflict with the Minors’ interests because what the co-trustees recover from Christine for her alleged misappropriation of Trust assets would be available to the residuary Trust beneficiaries, including the Minors. If, on the other hand, Christine successfully defended against such claims, she would retain what the

Appendix B

co-trustees were seeking in damages and there would be correspondingly less to distribute to the beneficiaries, including the Minors.

Christine's conflict of interest is also apparent with respect to the settlement and second GAL agreements. If Christine is successful in opposing the second GAL agreement (thereby causing the settlement agreement to fail due to the failure of that condition), she would benefit by retaining her claims under the Trust document to Three Lanterns, Sycamore, and Atlantic Towers, while the Minors would be denied the benefits of having such properties added to the Trust residue, as well as denied the receipt of Benjamin's interests in the Taylor, Paularino, Derek, and Calle Cristina properties and the additional income these properties would produce. They would also be denied the receipt of cash payments and favorable tax provisions that would be unavailable to them without the settlement. The Minors, along with other trust beneficiaries, would also have to endure further litigation at the expense of the Trust estate.

The court, therefore, did not abuse its discretion in finding that Christine has a conflict of interest with the Minors. In light of these conflicts, any deference she would argue otherwise be due as a guardian ad litem under *Scruton* is negated or severely limited.

Christine contends, however, that she made an irrevocable assignment of her interest in Three Lanterns and Sycamore to Michael and that her and Michael's interests are therefore "completely aligned." She has not

Appendix B

developed this point, and Christine does not explain how such an assignment would avoid the conflicts between her and the Minors. In any case, the purported assignment was made in April 2019, almost one year after she waived her rights to Three Lanterns and Sycamore in the May 2018 settlement agreement. By that point, she had no interest in these properties to assign. As the co-trustees contend, the assignment “had no legal effect.”

Even if Christine has no conflict of interest with the Minors and her repudiations were entitled to some deference under *Scruton*, the court could reject the repudiations if they are “adverse to the best interests of the [M]inors.” (See *Scruton, supra*, 39 Cal.App.4th at p. 1608, 46 Cal.Rptr.2d 638.) Although the court did not expressly rely on this rationale, it is implicit in its determination that the second GAL agreement is in the Minors’ best interest and its finding that Christine’s repudiations were intended to deny the Minors the benefits of that agreement. Because the court did not abuse its discretion in determining that the second GAL agreement was in the Minors’ best interests, the court’s implied determination that Christine’s repudiations were adverse to the Minors’ best interests is also not an abuse of discretion.

7. The Minors’ Repudiations

The Minors contend that they disaffirmed the settlement agreement and the second GAL agreement when they filed their repudiations of the agreements. They rely on the general principle that “a contract of a minor may be disaffirmed by the minor before majority

Appendix B

or within a reasonable time afterwards.” (Fam. Code, § 6710; see, e.g., *Berg v. Traylor* (2007) 148 Cal.App.4th 809, 820, 56 Cal.Rptr.3d 140 (*Berg*) [“ ‘[a] contract (or conveyance) of a minor may be avoided by any act or declaration disclosing an unequivocal intent to repudiate its binding force and effect’ ”].) This rule exists to protect minors “against [their] own improvidence and the designs of others. The policy of the law is to discourage adults from contracting with an infant and they cannot complain if as a consequence of violating the rule they are injured by the exercise of the right of disaffirmance vested in the infant.” (*Burnand v. Irigoyen* (1947) 30 Cal.2d 861, 866, 186 P.2d 417.)

As the cases Jacqueline cites illustrate, the principle has been applied to permit minors to disaffirm a minor’s execution of a deed of trust (*Lee v. Hibernia Savings & Loan Society* (1918) 177 Cal. 656, 659, 171 P. 677), a minor’s contract for personal services (*Berg, supra*, 148 Cal. App.4th at p. 817, 56 Cal.Rptr.3d 140), a minor’s execution of a deed (*Sparks v. Sparks* (1950) 101 Cal.App.2d 129, 137, 225 P.2d 238), a minor’s execution of a promissory note (*Niemann v. Deverich* (1950) 98 Cal.App.2d 787, 793, 221 P.2d 178), and a minor’s contract for the purchase of real property (*Maier v. Harbor Center Land Co.* (1919) 41 Cal. App. 79, 80–81, 182 P. 345). The Minors, however, have not referred us to a case in which a minor disaffirmed an agreement entered into by the minor’s guardian ad litem subject to court approval.

The general principle the Minors rely on—that a minor may disaffirm a contract before reaching majority—

Appendix B

is subject to the proviso: “Except as otherwise provided by statute.” (Fam. Code, § 6710.) Code of Civil Procedure section 372, subdivision (a)(1) expressly provides that a court-appointed guardian ad litem “shall have power, with the approval of the court in which the action or proceeding is pending, to compromise the same, to agree to the order or judgment to be entered therein for or against the ward ..., and to satisfy any judgment or order in favor of the ward ... or release or discharge any claim of the ward ... pursuant to that compromise.” This statute thus authorizes a guardian ad litem to make settlement agreements in judicial proceedings subject only to the approval of the court. (See *County of Los Angeles, supra*, 91 Cal.App.4th at p. 1311, 111 Cal.Rptr.2d 471; *Safai v. Safai* (2008) 164 Cal.App.4th 233, 245, 78 Cal.Rptr.3d 759.) To allow a minor to disaffirm a contract negotiated by the guardian ad litem would negate this authority. It thus falls squarely within the “otherwise provided by statute” exception to the general rule under Family Code section 6710 allowing minors to disaffirm contracts.

The exception is also supported by sound policy. The policy of discouraging adults from contracting with a minor is outweighed by the policy that favors settlement of litigation; if a minor could disaffirm a settlement agreement negotiated by his or her guardian ad litem, litigants opposing minors would have little incentive to seek a settlement with the minor, resulting in a waste of the litigants’ and judicial resources. The policy concern supporting the general rule of protecting minors against their own improvidence and the design of others is accommodated by the requirement that the court must approve the agreement reached by the guardian ad litem.

Appendix B

Jacqueline relies on a statement in *Pearson, supra*, 202 Cal.App.4th 1333, 136 Cal.Rptr.3d 455, that while a guardian ad litem’s “petition for approval of [a minor’s settlement agreement] is pending[,] the settlement agreement is voidable only at the election of the minor or his guardian.” (*Id.* at p. 1339, 136 Cal.Rptr.3d 455.) Jacqueline points to the disjunctive “or” to argue that, prior to judicial confirmation of the settlement agreement, the agreement is voidable at the election of the minor. The statement in *Pearson*, however, is dictum that does not withstand scrutiny.

In *Pearson*, a minor, represented by a guardian ad litem, sued a defendant to recover damages for personal injuries. (*Pearson, supra*, 202 Cal.App.4th at p. 1336, 136 Cal.Rptr.3d 455.) The parties settled and the guardian ad litem filed a petition to approve the settlement with the court. After the settlement was reached and before the court approved it, the minor died. If the litigation had not settled, the minor’s death would have extinguished his claim for damages for pain and suffering. (*Ibid.*) The settling defendant then opposed the petition for approval of the settlement. The trial court granted the motion because, as a result of the extinguishment of pain and suffering damages, the settlement “would result in a ‘windfall’ for plaintiffs.” (*Id.* at pp. 1336–1337, 136 Cal.Rptr.3d 455.)

The guardian ad litem in *Pearson* filed a petition for writ of mandate in the Court of Appeal to compel the trial court to grant the motion for approval of the settlement. The court issued the writ, and explained that “while the

Appendix B

motion for approval of the minor’s compromise is pending, the settlement agreement is voidable only at the election of the minor or his guardian. Neither the letter nor the spirit of [Code of Civil Procedure] section 372 confers any right on the defendant ... to object when the court approves or disapproves of a settlement agreement.” (*Pearson, supra*, 202 Cal.App.4th at p. 1337, 136 Cal.Rptr.3d 455.)

Pearson was thus concerned solely with the question whether a defendant who enters into a settlement agreement with a guardian ad litem “can object to court approval of the settlement.” (*Pearson, supra*, 202 Cal. App.4th at p. 1339, 136 Cal.Rptr.3d 455.) The court had no occasion to consider whether a minor can “void” a settlement agreement entered into by his or her guardian ad litem. The language Jacqueline relies on suggesting that the minor can do so—that “the settlement agreement is voidable ... at the election of the minor” (*id.* at p. 1339, 136 Cal.Rptr.3d 455)—even when the guardian ad litem continues to seek the court’s approval of the agreement, is thus dictum. Because the statement in *Pearson* is unsupported by authority or sound policy, and contrary to our analysis of the interplay between Code of Civil Procedure section 372 and Family Code section 6710, we decline to adopt such dictum or extend *Pearson*’s holding to the facts in this case.

D. Christine’s Additional Arguments

At pages 102 to 108 of her opening brief, Christine asserts a series of arguments that lack citations to the record and citations to pertinent legal authority, and are

Appendix B

at times incoherent and conclusory. These include the following assertions: The trial court “failed its duty to carry out the Trustors’ [i]ntent and Christine’s purpose of relinquishing assets of \$35 million, to oversee [the guardian ad litem] and [c]o-[t]rustees’ breach of fiduciary duty, and to protect the minors”; “The Trustors and Christine had expected that it should be the duty of the [c]ourt, [the guardian ad litem] and the [t]rustees’ [*sic*] to carry out the Trustors’ irrevocable and indisputable intent that these real properties relinquished by Christine should have gone to the [c]hildren, not Esther, Margaret, Benjamin, Benjamin’s mother and wife (who are not even the Trust beneficiaries)”; The minors “were deprived by their expected inheritances, namely over \$35 million in real and unique real properties, including Sycamore, Three Lanterns, Atlantic Towers, Taylor, family heirloom jewelries, and antique [*sic*] in the amount, which carry a sentimental value from the Trustors to the Minors and had generated substantial annual income of over \$1 million for over 50 years”; “Christine would not agree to give Esther a penny (let alone \$3 million cash, family heirloom jewelry and antique [*sic*], and Three Lanterns and Atlantic Tower), since Esther had sued Robert into an early [*sic*] and was the major cause of Robert’s death”; The court “erroneously removed Christine from protecting her children when enforcing the settlement on June 24, 2020”; and “The [c]ourt erred in restricting Christine from advocating for her purpose [*sic*] of relinquishing \$35 million, carrying out the Trustors’ intent and protecting her children, by enforcing the settlement with adding 25 material terms, which Christine has never consented to.” Because these points are undeveloped or incoherent and lack pertinent

Appendix B

citations to the record or legal authority, we decline to address them.

E. Order Denying Christine’s Petition to Remove Chen as Guardian Ad Litem

1. Chen’s Alleged Conflict of Interest

Christine and Michael contend that the court erred in denying Christine’s petition to remove Chen as the Minors’ guardian ad litem because Chen’s representation of both allegedly created an unavoidable conflict of interest. The argument is based on the same misunderstanding of section 259 discussed in Discussion part B.6, *ante*.

Christine and Michael rely on the provision of the Trust document that provides for the Three Lanterns and Sycamore properties to be given to Robert if Robert is living when the last trustor dies and, if Robert is not then living, to Christine and, if neither Robert nor Christine is then living, to Michael. Christine argues that due to this provision, Michael and Jacqueline had divergent views as to whether Christine, if the case had gone to trial, could have been deemed to have predeceased King for purposes of section 259. Under Christine’s view of section 259, if she is deemed to have predeceased King, Michael would receive the Trust’s entire interests in Three Lanterns and Sycamore, and Jacqueline would receive no interest in these properties. But if Christine’s view of section 259 is incorrect, Three Lanterns and Sycamore would be distributed as part of the Trust residue of which Michael and Jacqueline are 10 percent beneficiaries. Christine

Appendix B

therefore contends that Michael's interests are aligned with her view of section 259, while Jacqueline's interests are aligned with the opposing view. Chen, Christine concludes, was thus conflicted by the opposing interests of his wards.

Christine's view of section 259, as discussed above, is based on an untenable construction of the statute. According to Christine, if she is deemed to have predeceased King under section 259, she has also predeceased King for purposes of the Trust bequest that Michael shall receive Three Lanterns and Sycamore if she predeceases King. The scope of the determination that one has "predeceased a decedent" under section 259, however, is expressly limited "to the extent provided in subdivision (c)" of that statute. Subdivision (c) extends no further than to prevent a person found liable under subdivision (a) or convicted of a specified crime under subdivision (b) from receiving any of the property, damages, and costs awarded to the decedent's estate in an action described in subdivisions (a) or (b). That is, it limits what the abuser can receive; it does not expand the rights of others or create a rule for interpreting provisions of a trust document. A determination that Christine has predeceased King for purposes of section 259, therefore, does not mean that Christine has predeceased King for purposes of the bequest of Three Lanterns and Sycamore.

In this light, Christine's and Michael's argument that Chen had a conflict of interest amounts to an argument that Chen had a duty to assert an untenable position on behalf of Michael. He did not. There was thus no conflict

Appendix B

of interest and, therefore, no error in denying Christine's motion to remove Chen as guardian ad litem.

2. *Chen's Alleged Misconduct*

Michael further contends that Chen should have been removed because he made false statements regarding the co-trustees' legal fees in this litigation. Michael relies on alleged statements and actions for which he provides no citation to the record. He also relies on Chen's involvement in certain post-appeal orders, which Michael contends violate the terms of the settlement agreement and the second GAL agreement. These allegations are also made without citation to the record and, in any case, are not encompassed within the scope of Michael's notice of appeal. Michael further points to Christine's experts' declarations to the effect that the second GAL agreement deprived the Minors of more than \$6 million in income from the Sycamore and Three Lanterns properties. Even if these statements are credited, they are expressly based on the assumptions that the settlement agreement is not enforceable and that Michael "stood to inherit Christine Chui's interests in Sycamore." These assumptions, however, are unsupported by the record. For all these reasons, we reject these contentions.

F. The Court's Discharge of OSC Regarding Removal of Co-trustees

On July 18, 2019, when the court granted Christine's motion for judgment as to the first GAL agreement, the court further ordered that the co-trustees be suspended

Appendix B

as trustees and issued “an OSC why they should not be removed.” The court did not, however, set a date for a hearing on the OSC. The parties (other than Christine) thereafter entered into the second GAL agreement and Chen petitioned for its approval. Replacement trustees for Benjamin and Margaret were never appointed and the OSC does not appear to have been addressed again until the court issued its consolidated rulings on March 3, 2020. At that time, the court discharged the OSC because the settlement agreement had “been approved and [the] litigation [was] concluded.” The court thus found “it unnecessary to proceed on the OSC.”

Christine and Michael argue that the court erred in discharging the OSC. Because we have affirmed the court’s ruling enforcing the settlement agreement and its approval of the second GAL agreement, which effectively terminate Christine’s and the Minors’ interests in the Trust, Christine and Michael do not have standing to seek removal of the co-trustees. Accordingly, we reject this argument on that basis.

DISPOSITION

The orders are affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

/s/ F. Rothschild
ROTHSCHILD, P. J.

88a

Appendix B

We concur:

/s/ Chaney
CHANNEY, J.

/s/ Bendix
BENDIX, J.

**APPENDIX C — OPINION OF THE SUPERIOR
COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
DATED JUNE 24, 2020**

SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY
OF LOS ANGELES

Case No.: 2 BP154245

(Related Cases: BP137413, BP143884, BP145642,
BP145759, BP155345, BP162717, BC544149)

In the Matter of:

THE ESTATE OF KING WAH CHUI

Date: June 24, 2020

Time: 1:30 PM.

Dept.: 20

**ORDER GRANTING IN PART AND DENYING
IN PART MOTION FOR RECONSIDERATION**

The Motion for Reconsideration of Christine Chui (“Christine”),¹ filed March 16, 2020, came on for hearing at the above-referenced date and time before the undersigned. After review of the motion, opposition, and reply, the Court rules as follows:

1. The Court refers to the family members by their first name for ease of reference, consistent with accepted practice, and without intending thereby any disrespect.

*Appendix C***STATEMENT OF FACTS
AND PROCEDURAL HISTORY**

On March 18, 2013, the Court appointed Jackson Chen (“Chen”) as guardian ad litem (“GAL”) for the Minors, Jacqueline Chui (“Jacqueline”) and Michael Chui (“Michael”), in response to allegations of Esther Chao (“Esther”) that Christine had mismanaged the Trust.² Christine objected that she would adequately represent the Minors’ interests, but the Court appointed a GAL over her objection. The 850 Petition of Co-Trustees Benjamin Chui (“Benjamin”) and Margaret Tak-Ying Chui Lee (“Margaret”) (“CO-Trustees”) in BP154245 raised the same allegations as Esther regarding Christine’s mismanagement of the Trust. Trial on Co-Trustees’ petition was set to begin on May 14, 2018, but trial was not conducted on these allegations because the parties reached a global settlement before trial.

On May 14, 2018, the parties (Benjamin, Margaret, Esther, Helena Chui (“Helena”), and Christine) reached a global settlement (the “Settlement”) and read the terms onto the record. The Settlement provided that Christine “waives all rights to Trust A, including but not limited to

2. The “Trust” refers to the King Wah and Chi May Chui Trust (Case no. BP137413). Cases BP137413, BP154245 (King’s Estate), and BP143884 (Robert Chui’s Estate), and BC544149 (*Chao v. Chui*) were related in 2016. (See 10/24/16 Minute Order in BP137413) Cases BP145642 (Robert and Helena’s Irrevocable Trust), BP145759 (In re Guardianship of Michael and Jacqueline Chui), BP155345 (Trust A), and BP162717 (King and Chi’s Insurance Trust) were subsequently deemed related.

Appendix C

claims regarding Three Lanterns, Sycamore, and Atlantic Towers,” and “disclaims any rights as beneficiary of King’s Trusts.” (RT 5/14/2018, 3:4-8: 4:8-9) The Settlement also provided that the “Minor Children’s claims, if any, can only be brought by their guardian ad litem Jackson Chen, his designee, or his court-appointed successor, until such time as they reach the age of majority.” The Settlement’s validity was made “subject to approval by the guardian ad litem” to the extent it affected the Minors’ interests.

On July 5, 2018, Christine filed a motion to set aside the Settlement. The Court denied this motion without prejudice, finding no statutory basis for a motion to set aside.

On August 15, 2018, Co-Trustees filed a motion to enforce the Settlement against Christine.

On September 12, 2018, the Court granted Co-Trustees’ motion, finding the Settlement enforceable against Christine even though the Settlement is conditioned upon the Court’s approval of a GAL Agreement for the Minors’ claims.

On September 27, 2018, Christine filed a motion for reconsideration of the Court’s order enforcing the Settlement. The Court denied this motion.

On November 12, 2018, Chen filed a petition for approval of minor’s compromise for the first version of the GAL Agreement (“the Initial GAL Agreement.”) Trial was set for April 11, 2019. The Initial GAL Agreement

Appendix C

provided for a “property swap” under which Benjamin and the Minors would exchange their shares of interest in various trust properties to separate their assets. Trust C contained several properties: Taylor, Derek, Paularino, Calle Cristina, Hellman,³ and Domingo. Before the property swap, the Minors jointly had: a \$2,880,000 interest in Taylor, a \$2,260,560 interest in Derek, a \$5,405,860 interest in Paularino, a \$161,111 interest in Calle Cristina, and a \$3,144,510 interest in Domingo. Under the property swap, Ben surrenders his shares of interest in Taylor, Derek, Paularino, and Calle Cristina while the Minors surrender their interest in Domingo. Thus, after the property swap, the Minors would jointly have a \$4,320,000 interest in Taylor, a \$3,390,839 interest in Derek, a \$8,108,988 interest in Paularino, a \$241,667 interest in Calle Cristina, and no interest in Domingo. Robert’s separate property trust also had interests in Domingo and Paularino; the property swap provided for the Minors to surrender their \$2,074,763 interest in Domingo as remainder beneficiaries of Robert’s trust. The Initial GAL Agreement also redeemed the Minors’ interests under Trust B and the ILIT Trust, worth \$600,000 and \$380,000 respectively. Chen also negotiated \$1,000,000 in additional cash for the Minors. Regarding Trust A, the Initial GAL Agreement provided for some recovery in connection with Three Lanterns and Atlantic Towers but no recovery regarding Sycamore.

On December 18, 2018, Christine filed a petition to set aside the Settlement.

3. The Minors’ \$91,736 interest in Hellman is not altered by the property swap but is redeemed by GAL Agreement.

Appendix C

On February 15, 2019, Co-Trustees filed an anti-SLAPP motion to strike against Christine's petition to set aside the Settlement.

On March 29, 2019, the Court granted Co-Trustees' anti-SLAPP motion, noting Christine's repetition of the same arguments across multiple attempts to vacate or set aside the Settlement.

On April 11, 2019, the Court began trial on Chen's petition for approval of the Initial GAL Agreement. Trial took place over six days: April 11, 12, 15, and 22, and May 13 and 15. Christine presented expert testimony out of turn, per her request, and Chen testified regarding the merits of the Initial GAL Agreement.

On May 15, 2019, Chen rested his case and Christine filed a motion for nonsuit.

On July 1, 2019, Chen filed a motion to reopen his case on the petition.

On July 18, 2019, the Court granted Christine's motion and denied Chen's petition without prejudice, finding Chen had not carried his burden of showing the Initial GAL Agreement was in the Minors' best interests. The Court also indicated its intent to suspend Co-Trustees, noting concerns with their "scorched earth" litigation tactics and corresponding expenses, ability to act impartially, and "hijacking" or "spearheading" of Chen's GAL petition for approval. The Court did not identify a replacement trustee at that time but issued an immediately effective

Appendix C

order prohibiting Co-Trustees from using trust funds for attorney's fees without court approval.

On July 29, 2019, Co-Trustees filed motions for reconsideration of the July 18 Order.

On August 22, 2019, Chen filed an amended motion to reopen his case on the petition.⁴ Co-Trustees also filed a motion to reopen their alleged case on the petition.

On December 13, 2019, Co-Trustees filed a status report stating Co-Trustees, Chen, Esther, Helena and Ruth Chang had negotiated a new GAL Agreement (the "Amended GAL Agreement") during mediation with Hon. Aviva K. Bobb, retired. This report and Christine's concurrently filed report indicated Christine did not join in the Amended GAL Agreement.

On December 16, 2019, the Court took Chen and Co-Trustees' motions for reconsideration and to reopen off calendar as moot in view of the anticipated petition for approval of the Amended GAL Agreement.

On January 17, 2020, Chen and Co-Trustees filed separate petitions for approval of the Amended GAL Agreement. Co-Trustees also filed a motion to intervene. The Amended GAL Agreement did not modify the property swap in the previous agreement, focusing

4. Chen's earlier filed motion to reopen was denied without prejudice to be able to address the Court's intervening July 18, 2019 ruling.

Appendix C

instead on the remaining liabilities tying the Minors to this litigation—future accountings, estate tax liability, and legal and administrative expenses.

On March 3, 2020, the Court issued a Consolidated Ruling on the several connected motion and petitions:

The Court granted in part Chen’s petition for removal, appointing Chen as GAL in all the related cases that had been consolidated for trial in which he had not yet been formally appointed. The Court otherwise denied Chen’s requests for Christine’s removal as unnecessary for purposes of approval of the petition for approval of the Amended GAL Agreement, and so denied Chen’s request for removal of Christine as guardian in the Minors’ guardianship case, BP145759, and as trustee of trusts in which the Minors had interests. The Court overruled Christine’s demurrer to this petition, finding Chen had standing to seek Christine’s removal in other cases involving the Minors and that Christine had not established any stay pending appeal. The Court rejected several arguments relating to the merits of the Amended GAL Agreement and the Initial GAL Agreement.

The Court denied Christine’s petition for removal of Chen as GAL, finding no basis to remove Chen and noting Christine’s own conflicts of interest. The Court concluded Christine lacked standing to participate despite her status as the Minors’ parent, guardian and trustee due to Chen’s status as GAL. (Consolidated Ruling, 22:14-15)

The Court also denied Co-Trustees’ motion to intervene, finding Co-Trustees lacked standing to

Appendix C

participate due to their separate conflicts of interest regarding the Minors and the *sui generis* nature of proceedings on a GAL's petition, particularly in view of the previous trial where Co-Trustees attempted to take over the prosecution of Chen's petition. The Court denied Co-Trustees' petitions for removal and approval for lack of standing and denied Christine's demurrers to those petitions as moot.

The Court overruled Christine's demurrer to Chen's petition for approval, finding alleged inadequacies of the Amended GAL Agreement did not constitute defects on the face of the petition for approval itself, and that she lacked standing to object to the petition based on her conflicts of interest.

The Court granted Chen's petition for approval, noting several improvements over the previous GAL Agreement that addressed the Court's concerns and substantially benefited the Minors. As noted earlier, the Amended GAL Agreement fully incorporated the property swap from the Initial GAL Agreement. The Amended GAL Agreement also addressed the ongoing dispute over Helena and Ruth's purported right to purchase Sycamore at its book value of \$400,000, far below its market value of \$7,400,000, by providing that Helena and Ruth will purchase the Minors' 20% share of Sycamore for \$1,480,000—20% of Sycamore's market value. The Minors will each receive \$740,000 for their 10% shares.

More significantly, however, the Amended GAL Agreement provided for a full redemption of Jacqueline's

Appendix C

and Michael's interests in trusts involved in this litigation by resolving their remaining liabilities for taxes and legal expenses. The Amended GAL Agreement reimbursed the Minors for their 20% share of already-paid legal and administrative expenses attributable to the Trust, estimated at \$3 million, and over \$300,000 in outstanding legal expenses in exchange for a waiver of the Minors' right to future accountings. The Amended Agreement also relinquishes the Minors' interests in Atlantic Towers and Three Lanterns, estimated at \$1.75 million under the Initial GAL Agreement. The Amended Agreement applies the reimbursement credit against the Minors' \$3.2 million estate tax liability (calculated post-property swap), thereby redeeming the Minors' swap-enhanced interests free of estate tax in exchange for a waiver of future accountings and their interests in Atlantic Towers and Three Lanterns. Those two properties will be used to pay the Trust's estate tax liabilities.

On March 13, 2020, Christine filed a motion for reconsideration of the Court's order approving [he Amended GAL Agreement.

On April 10, 2020, Chen filed an opposition to Christine's motion for reconsideration. Co-Trustees also filed an opposition and evidentiary objections.⁵

5. Consistent with the Court's finding that Co-Trustees do not have a role to play in litigating the GAL's petition, the Court will not reach their opposition or evidentiary objections. Co-Trustees lack standing to support or oppose the order approving the Amended GAL Agreement. (*Pearson v. Superior Court* (2012) 202 Cal.App.4th 1333, 1339 ("a defendant . . . has no right to object

Appendix C

On April 28, 2020, the Court entered a detailed order denying Christine’s motion for new trial On the order approving the Amended GAL Agreement (the “New Trial Order”).

On June 17, 2020, Christine filed a Reply.

DISCUSSION**Reconsideration Standards**

“After an order is granted by a court, any party affected by the order may seek reconsideration based upon a showing of new or different facts. . . .The party seeking reconsideration must provide not just new evidence or different facts, but a satisfactory explanation for the failure to produce it at an earlier time.” (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1457) A party may move for reconsideration “within 10 days after service upon the party of written notice of entry of the order.” (CCP § 1008(a)) “[F]acts of which the party seeking reconsideration was aware at the time of the original ruling are not ‘new or different.’” (*In re Marriage of Herr* (2009) 174 Cal.App.4th 1463, 1468; *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690) Christine’s motion for reconsideration was timely filed March 13, 2020, within ten days of the Court’s Consolidated Ruling filed March 3, 2020.

to the petition”); *Scruton v. Korean Air Lines Co.* (1995) 39 Cal. App.4th 1596, 1608) (non-GAL parties lack authority to move to enforce settlement of minor’s claims))

*Appendix C***Arguments Already Addressed**

Reconsideration is not warranted without “a satisfactory explanation for the failure to produce [new or different facts or law] at an earlier time.” (*Glade, supra*, 38 Cal.App.4th at 1457) The Court has already fully addressed most of Christine’s arguments here in its New Trial Order. As these issues have been previously raised and resolved fully in the New Trial Order, reconsideration is not warranted on those points and the Court will not address the following arguments:

- the Court’s conflict findings were erroneous;
- the Court misinterpreted the terms “residue” and “remainder of interests”;
- Christine reserved the right to marshal assets and advocate for the Minors;
- the Court improperly struck the Minors’ Repudiations and Christine’s Repudiation;
- Chen did not comply with California Rules of Court 7.950 and 7.952;
- Bradford Lund’s pending federal action is a basis to disqualify the undersigned; and
- that the Court was required to provide an evidentiary hearing.

Appendix C

The Court incorporates by reference its discussion of these issues in the New Trial Order.

The Court also rejects Christine’s argument that its Consolidated Ruling should be reconsidered because of purported inconsistencies with its Nonsuit Ruling. Reconsideration is justified by “new or different facts, circumstances, or law”—by definition, a previous ruling in the same case cannot be “new” fact or law. “[F]acts of which the party seeking reconsideration was aware at the time of the original ruling are not ‘new or different.’” (*Herr, supra*, 174 Cal.App.4th at 1468) In discussing the Court’s inherent ability to reconsider its own interim rulings, one appellate court opined that courts “could not operate successfully under the requirement of infallibility in its interim rulings.” (*People v. Castello* (1998) 65 Cal. App.4th 1242, 1248-49) Judges necessarily have discretion to change their views in light of new information, whether evidence or experience with the parties. The Court therefore rejects Christine’s arguments that the Consolidated Ruling should be reconsidered for inconsistencies : with the Nonsuit Ruling on the issues of standing and the right to repudiate.

Arguments

Christine argues the Court improperly relied upon Chen’s affidavits in approving the Amended GAL Agreement. Probate Code sec. 1022 provides that an “affidavit or verified petition shall be received as evidence when offered in an uncontested proceeding under this code.” Section 1022 is “inconsistent with the use of

Appendix C

affidavits to decide contested facts,” but “does not conflict with the use of affidavits . . . where the truth of the facts themselves are not contested.” (*Key v. Tyler* (2019) 34 Cal.App.5th 505, 520) As explained in the New Trial Order, proceedings on a GAL’s petition are fundamentally between the GAL and the Court alone. (*Pearson v. Superior Court* (2012) 202 Cal.App.4th 1333, 1339 (no right to object to GAL’s petition for approval); *Scruton v. Korean Air Lines Co.* (1995) 39 Cal.App.4th 1596, 1608 (only the GAL has the right to petition for approval of minor’s compromise)) Thus, proceedings on a GAL petition are *not* contested and Section 1022 does not prohibit the use of affidavits. The Court incorporates by reference its discussion of in the New Trial Order.

Christine argues the Court’s denial of Chen’s petition for approval of the first GAL Agreement constituted a rejection of the Settlement such that the Amended GAL Agreement improperly “revived” a dead agreement. The Court’s denial “with prejudice” of Chen’s first petition for approval did not constitute a rejection of the underlying Settlement, only the original GAL Agreement. In granting Co-Trustees’ motion to enforce the settlement against Christine, the Court addressed this issue and recognized that “the parties agreed the settlement would remain in force if there were disagreements over the drafting of its terms,” whether between the parties or between the parties and Chen. The Court found the settlement was “*not an offer to Chen* but rather an enforceable oral agreement *subject to the condition precedent of Chen’s agreement.*” As a result, the Court found Chen’s rejection of the terms of the original Settlement in his

Appendix C

July 23 report was “not a rejection of Christine and the other parties’ offer.” By extension, the Court’s rejection of Chen’s first GAL Agreement was not a rejection of the underlying Settlement. The Court already held that the Settlement is enforceable against Christine, so offer and acceptance is not an issue regarding that agreement and Christine’s further consent is not required for proposed GAL Agreements.

Christine argues Chen failed to address “substantial tax consequences” from the property swap, specifically the taxable event created by the transfer of the Minors’ interest in Domingo from Robert’s Q-TIP to Ben. Chen asserts Christine “chooses not to protect her husband’s estate from this potential tax issue,” arguing the tax liabilities are avoidable.⁶ Neither Christine nor Chen clearly address this issue. Christine fails to provide any argument or evidence that “substantial tax consequences” would ensue from this distribution and Chen equally fails to show these tax consequences are avoidable. As Christine has not offered any reason to think substantial tax consequences will ensue, or that such consequences are unavoidable, the Court does not see any basis for reconsideration.

6. Chen did in fact address this issue—the Petition for Approval states: “The issue concerning the possible acceleration was taken into consideration by the GAL. Christine has her tax counsel and should understand if the transaction is structured properly there should be no estate tax charged to Robert’s estate for the termination of QTIP property.” (Petition for Approval, 17:16-20) This is consistent with Chen’s position in his Opposition.

Appendix C

Christine objects to the Court's approval of five additional terms. This is not an issue with the Amended GAL Agreement, but an issue with the underlying Settlement. Those five additional terms were a concern for the Court, but Christine has had ample opportunity to address this issue in her repeated attempts to set aside the Settlement. One additional term provides that Christine's \$3 million payment under the Settlement goes to Esther; the Amended GAL Agreement provides that \$1 million of that will go the Minors. Another term provides that Helena and Ruth have the right to purchase Sycamore at book value, but the Amended GAL Agreement requires Helena and Ruth pay market value for the Minors' 20% share of Sycamore. The remaining terms on the record do not appear to affect the Minors' or Christine's interests.⁷

Christine objects to the Court appointing Chen as GAL in other cases despite Christine's alleged status as GAL in

7. The Settlement provides that Helena has a right to purchase Walnut "similar" to her right to purchase Sycamore, but also provides that she will not exercise it. The Settlement gives Esther a right of first refusal on any offer on Three Lanterns without commission. This cannot affect Christine, who "waive[d] all rights to Trust A, including but not limited to claims regarding Three Lanterns." (RT 5/ 14/2018, 3:4-8) This does not affect the Minors either, as the Amended GAL Agreement provides for the liquidation of Three Lanterns to pay estate taxes. The Settlement further provides for a waiver of the time limit on Esther's full access to trust, which is not obviously relevant to Christine or the Minors. The Court therefore finds no prejudice to Christine notwithstanding the unusual entry of those terms. Additionally, these new terms are not "new or different facts," as all parties have been aware of this issue since Court's Nonsuit Order addressed it. (*Glade, supra*, 38 Cal.App.4th at 1457)

Appendix C

pending appellate case B286548, *Chui v. Chui*.⁸ The subject of that appeal in B286548 is the August 17, 2017 judgment after trial and October 23, 2017 order denying Christine’s motion for new trial in BP145642 (the “ILIT” case).⁹ In the Consolidated Ruling, the Court appointed Chen as GAL in the ILIT case; this was an inadvertent error. In the ILIT case, Christine did not have any conflict of interest regarding the trust assets because she was not a beneficiary of the ILIT Trust; that was an issue between the Minors and Ben. Chen’s appointment in that action was not necessary. The Court therefore grants reconsideration on this issue alone.

The Court orders its Consolidated Ruling filed March 3, 2020 corrected to remove language appointing Chen as GAL in the ILIT case, BP145642. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108 (court has inherent authority to “reconsider its prior interim orders so it may correct its own errors”); see *In re Marriage of Barthold* (2008) 158 Cal.App.4th 1301, 1312-13 (“a court may reconsider final as well as interim orders on its own motion”); *Farmers Ins. Exchange v. Superior Court* (2013) 218 Cal.App.4th 96, 106 fn. 17 (trial court may reconsider and correct a prior ruling “even in the absence of a change in law”)) However, as Christine has already waived her right to advocate on the Minors’ behalf under the Settlement, her status as GAL in the ILIT case does not give her any right to repudiate the Amended GAL Agreement—particularly in view of her

8. Christine also asserts GAL status in that action in the Minors’ Verified Repudiations filed March 11, 2020.

9. The Court takes judicial notice of the Notice of Appeal filed November 20, 2017 and Amendment to Notice of Appeal filed December 5, 2017 in the ILIT case.

Appendix C

conflict regarding settlement of the Minors' claims. This correction therefore does not warrant reconsideration of the Court's conclusions on any other issues.

Christine requests that this case be returned to the Probate Division of the Court. The Court does not need to reach that issue because this motion, Christine's motion for a preliminary injunction and Chen's motion for a Section 1310(b) order are the last motions to be heard by the undersigned. Per the Court's January 31, 2020 Minute Order, in connection with his assignment to the Civil Division, the undersigned found it was only necessary for him to continue to hear Chen's pending petition for approval of the Amended GAL Agreement and related motions. The order provided that "[n]ew petitions or motions not related to the above-referenced settlement petitions shall be heard by Dept. 3 by a different bench officer once the cases are returned there subsequent to Judge Cowan's decision on the above-referenced matters." Therefore, after this hearing, all other motions and petitions will be heard in Probate. Thus, the request is moot as satisfied.

Finally, Christine's Reply raises for the first time numerous claims that are difficult to understand. Most if not all make unsupported assumptions, including that Christine has standing to assert them and that GAL committed fraud, and are neither logical nor credible. Other claims relate to disputed contentions in the underlying petitions that were settled and hence are no longer relevant in evaluating the approval of the Amended GAL Agreement. Most of the claims also pertain to

Appendix C

specific properties, as well as heirlooms; none of which were raised in the motion. A reply may not properly assert new issues not raised in the motion — where the Court does not then have the opportunity to determine the other party’s response to those claims; leaving aside that such issues may not properly be raised by motion for reconsideration in the first place where they could have been asserted earlier. The Court strikes all issues raised for the first time in the Reply.

CONCLUSION

Christine’s Motion for Reconsideration is GRANTED IN PART. The Court finds the appointment of Chen as GAL in the ILIT case, BP145642, was inadvertent and erroneous and should be corrected. Specifically, all references to “BP145652” shall be omitted on the following pages of the Consolidated Ruling: 7:8, 17:16, and 28:4. Additionally, on page 14:6, the following phrase shall be omitted: “BP145642 (Robert and Helena Chui Irrevocable Trust [“ILIT” case]).”

The Motion is otherwise DENIED. Christine has not shown new or different facts or law warranting reconsideration of any other issue addressed in the Consolidated Ruling. The grounds raised for reconsideration are virtually all arguments previously addressed by Chen and the Court. The remaining issues are collateral at best to approval of the Amended GAL Agreement and relate primarily to Christine’s issues with the underlying Settlement—which has already been enforced against her. Thus, the motion is denied.

107a

Appendix C

IT IS SO ORDERED.

DATED; June 24 2020

/s/ David J Cowan
Judge of the Superior Court

108a

**APPENDIX D — OPINION OF THE SUPERIOR
COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
FILED MARCH 3, 2020**

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Case No.: BP154245

(Related Cases: BP137413, BP143884,
BP145642, BP145759, BP155345, BP162717, BC544149,
and 16STPB04524)

In the Matter of:

THE ESTATE OF KING WAH CHUI.

**CONSOLIDATED RULING ON PETITION FOR
APPROVAL OF AMENDED GAL AGREEMENT,
PETITION FOR REMOVAL OF CHRISTINE
AS GUARDIAN FOR THE MINORS, AND ALL
RELATED MOTIONS AND PETITIONS**

Date: March 3, 2020

Time: 8:30 A. M.

Dept.: 20

The Petition for Approval of the Amended GAL Agreement of Jackson Chen, filed January 17, 2020, came on regularly for hearing at the above-referenced date and time before the undersigned. The Court is also considering several related motions and petitions by Chen, Benjamin

Appendix D

Chui and Margaret Lee (“Co-Trustees”), and Christine Chui. After review of the pleadings and hearing oral argument, the Court rules as follows:

BACKGROUND

On July 1, 2016, several underlying Chui cases were deemed related. Further Chui cases were deemed related thereafter.

On May 14, 2018, the parties reached a global settlement (the “Settlement”) and twelve terms were read into the record. Benjamin, Margaret, Esther, Helena, and Christine confirmed their understanding of and consent to these terms. The agreement was made subject to GAL Chen’s consent on behalf of the Minors, as Chen was not present at the time.

On July 5, 2018, Christine filed a Motion to Set Aside the Settlement.

On July 31, 2018, after Chen filed a report on his view of the Settlement, the Court denied Christine’s Motion to Set Aside without prejudice. The Court indicated that there was no statutory basis for the motion and advised filing a Motion to Enforce Settlement if needed.

On August 10, 2018, Chen signed off on a modified version of the Settlement (the “Original GAL Agreement”).

On August 15, 2018, Co-Trustees filed a Motion to Enforce Settlement.

Appendix D

On September 12, 2018, the Court granted Co-Trustees' Motion to Enforce Settlement, finding the Settlement was enforceable against Christine even though it was subject to the Court's later approval of a proposed minors' compromise.

On September 27, 2018, Christine filed a Motion for Reconsideration of the Court's order granting the Motion to Enforce Settlement, again arguing it was unenforceable.

On November 12, 2018, Chen filed a Petition for Approval of Minors' Compromise (the "Original GAL Petition") seeking the Court's approval of the Original GAL Agreement. The Court set trial on this Petition for April 11, 2019.

On December 14, 2018, the Court denied Christine's Motion for Reconsideration.

On December 18, 2018, Christine filed a Petition to Set Aside the Settlement after her unsuccessful Motion to Set Aside and Motion for Reconsideration.

On February 15, 2019, Co-Trustees filed an anti-SLAPP Motion to Strike against Christine's Petition to Set Aside.

On March 29, 2019, the Court granted Co-Trustees' anti-SLAPP motion. The Court noted that Christine continued to make repetitive and erroneous arguments against the Settlement that the Court had already rejected multiple times.

Appendix D

On April 11, 2019, the Court began trial on the Original GAL Petition. During the 6-day trial, it became apparent that Chen was relying heavily on Co-Trustees to show the Original GAL Agreement should be approved, despite Co-Trustees' lack of standing. The Court denied the Original GAL Agreement, noting insufficient testimony by Chen on several points and multiple concerns with the substance of the Agreement and whether it would truly guarantee peace for the Minors.

On May 15, 2019, Christine made an oral Motion for Nonsuit against the Original GAL Petition, followed by a written Motion for Nonsuit on May 29, 2019.

On July 18, 2019, the Court granted Christine's Motion for Nonsuit as a Motion for Judgment, finding the Court could not approve the Original GAL Agreement. The Court found it unclear what exactly the Minors would recover, took issue with Co-Trustees' attempts to participate in the proceedings, noted Chen had not yet been appointed GAL in all related cases, and indicated that the proposed agreement would likely not guarantee meaningful peace to the Minors if it did not address the Minors' right to seek accountings from Co-Trustees for litigation expenses and administrative costs incurred. The Court also suspended Co-Trustees, issued an OSC re: removal of Co-Trustees, and ordered Co-Trustees not to pay any attorney's fees out of trust assets without first obtaining the Court's approval.

On July 29, 2019, Co-Trustees filed Motions for Reconsideration of the Court's order granting nonsuit (as

Appendix D

a motion for judgment) and the Court's order suspending them.

On July 30, 2019, the Court indicated to Co-Trustees that their suspension "will not take effect until a new trustee is appointed." No interim trustee has been appointed. In exchange for not being immediately suspended, Co-Trustees stipulated to the requirement of court approval before payment of attorney's fees.

On September 27, 2019, Co-Trustees filed a Motion to Confirm Enforcement of Settlement after the Court rejected the Original GAL Agreement. Christine opposed this Motion, contending the Settlement was unenforceable despite the Court's prior order granting Co-Trustees' Motion for Enforcement.

On December 5, 2019, the parties began mediation with Hon. Aviva K. Bobb, retired, to reach a new GAL Agreement.

On December 13, 2019, Christine filed her Post-Mediation Status Report, where she again contended the May 14, 2018 Settlement was unenforceable and claimed Co-Trustees and Chen entered into another "secret settlement" without standing. Christine also filed another 850 Petition for misappropriation of trust property seeking the removal of Ben and Margaret as trustees and removal of Chen as GAL.

On December 26, 2019, Christine filed a Repudiation of the Amended GAL Agreement, well before the

Appendix D

Agreement was submitted to the Court. Christine argued the Amended GAL Agreement was fraudulent and unapprovable on the typical grounds—i.e., that Chen lacked standing to enter the Agreement, that Christine did not agree with its terms, and that she and the Minors had repudiated it.

On January 16, 2020, the parties (other than Christine) executed the Amended GAL Agreement with several new provisions addressing the Court's stated concerns.

On January 17, 2020, Chen and Co-Trustees filed separate Petitions for Approval of Amended GAL Agreement and Co-Trustees filed a Motion to Intervene in the GAL proceedings, as the Court previously indicated Co-Trustees would need to do if they wished to participate. Chen and Co-Trustees also filed separate Petitions for Removal of Christine as guardian in related cases and requesting Chen's appointment as GAL in those cases.

On January 28, 2020, Christine filed a "Supplemental Repudiation" of the Amended GAL Agreement, stating substantially the same arguments as her previous Repudiation. Of note, this was Christine's (at least) seventh attempt to set aside the May 14, 2018 Settlement on the same grounds previously asserted and rejected.

On January 31, 2020, Christine's attorney filed Jacqueline Chui's Repudiation and Michael Chui's Repudiation of the Amended GAL Agreement. Neither Repudiation was verified, nor was Chen involved in the preparation of either Repudiation.

Appendix D

On February 3, 2020, Christine filed separate Demurrers to the Petitions for Removal and Petitions for Approval filed by Chen and Co-Trustees.

On February 6, 2020, Co-Trustees filed a Motion in Limine pertaining to the Petitions for Approval of the Amended GAL Agreement, seeking to exclude Christine from introducing evidence of “nonexistent” claims by the Minors, exclude evidence of hypothetical trial outcomes, and limit the trial’s scope to the Amended GAL Agreement’s economic impact on the Minors.

On February 13, 2020, Christine filed Oppositions to Co-Trustees’ Motion to Intervene and Motion in Limine.

On February 19, 2020, Co-Trustees filed Oppositions to Christine’s demurrers. Chen also filed Oppositions to Christine’s demurrers.

On February 24, 2020, Christine filed a Consolidated Reply to the Oppositions.

On February 25, 2020, Co-Trustees filed Replies to Christine’s Oppositions to their Motion to Intervene and Motion in Limine.

On February 26, 2020, Christine filed a Petition for Removal of Chen as GAL and a new 850 Petition against Co-Trustees for misappropriation of trust property.

On February 27, 2020, Co-Trustees filed Responses to the Repudiations filed by Christine.

*Appendix D***DISCUSSION****Co-Trustees' Motion to Intervene**

Co-Trustees assert mandatory and permissive rights to intervene in proceedings on the Petition for Approval of the Amended GAL Agreement under CCP § 387 and assert a right to join as interested persons under Probate Code § 48, noting that Co-Trustees are both trustees and beneficiaries of trusts affected by the GAL Agreement. As an initial point, the Court rejects any assertions of a right to intervene under CCP § 387, which is inapplicable in probate proceedings. (*Estate of Davis* (1990) 219 Cal.App.3d 663, 667-68 (finding CCP § 387 inapplicable in probate proceedings because Probate Code § 48 provides an alternative to intervention uniquely suited to probate))

Co-Trustees are not interested persons for proceedings relating to the Petition for Approval. “The meaning of ‘interested person’ as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of . . . any proceeding.” (Prob. Code § 48(b)) “[S]tanding for purposes of the Probate Code is a fluid concept dependent on the nature of the proceeding before the trial court and the parties’ relationship to the proceeding, as well as to the trust (or estate).” (*Arman v. Bank of America, N.T. & S.A.* (1999) 74 Cal.App.4th 697, 702-3) Probate Code § 48 “requires [the probate court] to *evaluate the underlying policy considerations regarding a specific probate proceeding* in determining whether the person or party is sufficiently interested to intervene.” (*Estate of Maniscalco* (1992)

Appendix D

9 Cal.App.4th 520, 524 (emphasis added)) “[S]ection 48 gives the trial court more flexibility in controlling probate proceedings than [CCP] section 387. A party permitted to participate as an interested person . . . might not have been permitted to intervene in a probate proceeding. At the same time, the *trial court may limit a party’s participation.*” (*Estate of Davis* (1990) 219 Cal.App.3d 663, 669 (emphasis added))

Proceedings on a GAL’s Petition for Approval are fundamentally between the minors, the GAL, and the Court—and nobody else. (See *Pearson v. Superior Court* (2012) 202 Cal.App.4th 1333, 1339; *Scruton v. Korean Air Lines Co.* (1995) 39 Cal.App.4th 1596) CCP § 372 only provides for the participation of the GAL, the minor(s), and other guardians (where applicable) in proceedings on a Petition for Approval. (*Id.* (minors’ compromise is voidable only by the minor or guardian and no other parties have a right to object to petition for approval); *Scruton, supra*, at 1608 (non-GAL parties have no statutory right to seek enforcement of minors’ compromise on grounds that it is in minors’ best interests)) There is no reason to permit other parties to participate because the function of a petition for approval is for the probate court to confer on the GAL alone “the legal power to enforce that agreement.” (*Scruton, supra*, at 1606)

Co-Trustees have failed to show how they would play any role in this process. Co-Trustees still largely seek to stand in Chen’s shoes and present his case for him, which Chen failed to do before resting in the previous trial. Instead, Christine and Co-Trustees effectively

Appendix D

hijacked that past trial, leaving Chen to play only a small role in litigating his own Petition. Indeed, Chen's role in presenting his own case was so minimal that the Court found itself unable to approve the Original GAL Agreement on the basis of Chen's testimony. The Court does not want a repeat incident; Chen should be taking the lead on his own Petition, as contemplated by CCP § 372. Chen is now in a better position to present his own case, as he has a better idea of the issues to address and his role in addressing them. After review of relevant authorities on the nature of a petition for approval, and in light of the previous trial, the Court finds Co-Trustees may not participate this time for two main reasons.

First, Co-Trustees' participation is inconsistent with CCP § 372, as there is no statutory authorization for non-GAL parties to move to approve or enforce a minor's compromise. (*Scruton, supra*, at 1607-8 ("Section 372 does not provide authority for KAL to bring its 'motion' to enforce the compromise. . . . The rules of the Superior Court of Los Angeles County provide only for the guardian ad litem's petition for approval of the compromise of the ward's claims.")) This procedure is purely intended "to protect the minor involved in litigation by adding an extra layer of scrutiny to the settlement of the minor's claims." (*Pearson, supra*, at 1339) The requirement of court approval "is a 'shield' to protect the interests of a minor. . . . It was not enacted to be a 'sword' for a defendant and/or its insurance carrier." (*Id.*) Thus, Co-Trustees cannot be permitted to use the GAL proceedings to defend their own interests—potentially at the Minors' expense—in having the case settled.

Appendix D

Second, Co-Trustees seek to introduce evidence damaging to the Minors, evidence which the GAL could not ethically introduce on his own. (*Regency Health Services, Inc. v. Superior Court* (1998) 64 Cal.App.4th 1496, 1502 (probate court has supervisory authority to ensure GAL does not take actions “inimical to the legitimate interests of the ward”)) Co-Trustees cannot use the GAL Petition as their “sword” to cut down the Minors’ rights to recover under the Trust by introducing evidence that the Minors’ interests are the product of undue influence, which the GAL could not introduce on his own consistent with his fiduciary duties to the Minors. Indeed, in Co-Trustees’ Responses to the Minors’ Repudiations, Co-Trustees argued certain bequests to the Minors were the result of undue influence or otherwise ineffective or overridden. In addition, as noted in earlier rulings, Ben, as a beneficiary, will benefit if the Minors’ interests are reduced, and so Ben is necessarily conflicted. Co-Trustees’ participation to protect their own interests is clearly inconsistent with the purpose of a Petition for Approval and with the interests represented by the GAL they seek to join.

By the same token, Christine appears to be using the Minors to pursue her own agenda as well; an agenda similarly inconsistent with the Minors’ interests. Christine has been staunchly unwilling to accept the May 14, 2018 Settlement the Court has already found enforceable against her, using her children to pursue her own personal interests. And, like Ben, Christine fares better if the Minors do worse. As Christine seeks to set aside the Settlement in which she surrendered assets to the trust residue, her interests necessarily diverge from the Minors

Appendix D

because the Minors are residual beneficiaries. If Christine recovers surrendered assets, the trust residue—and thus the Minors’ recovery—will dwindle. Christine is unavoidably conflicted here.

The Court was previously more open to the participation of Co-Trustees and Christine—but in the previous GAL Agreement trial and the leadup to this hearing, both sides have been unable to separate their own agendas from the interests of the Minors. “[T]he trial court may limit a party’s participation,” and properly does so here where the policy considerations underlying a GAL’s petition would be seriously undermined by Co-Trustees’ continued participation. (*Estate of Davis* (1990) 219 Cal.App.3d 663, 669) Therefore, Co-Trustees are not interested parties for purposes of proceedings on the Petition for Approval.

Co-Trustees also seek to join on the basis of the Court’s prior ruling and oral comments. For example, in its Ruling on Co-Trustee’s Motion to Dismiss Objections to the Original GAL Petition, the Court ruled that, “as parties to the agreement at issue, co-trustees are necessarily interested persons with a financial stake in the decision.” (Ex. 34, 2:14-15) But the Court has never previously ruled that Co-Trustees have a right, as interested parties, to present Chen’s case on his behalf. In fact, the Court previously expressed its view that it would be improper for Co-Trustees to do so. As the Court stated at the March 5, 2019 hearing: “The Court views this as Mr. Chen’s petition, not the Co-Trustees’ petition. . . . [Chen] needs to take the lead on it, not the Co-Trustees, because I don’t know what the outcome is going to be.” (Ex. 51, 7:1-7)

Appendix D

The Court stated that “the true real parties in interest are Mr. Chen and Christine Chui,” although Co-Trustees have some interest in the outcome. (*Id.* at 5:4-7) Circumstances have changed as to Christine’s participation; the Court still sees no reason to allow Co-Trustees to participate.

The Court also notes that its prior oral comments cannot be used to impeach a later final order that reached different conclusions. (*Silverado Modjeska Recreation & Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 300) Here, the Court ruled that Co-Trustees are not interested parties for the trial on the GAL Petition under Prob. Code § 48 and CCP § 372. Prior oral remarks that Co-Trustees have interest in the outcome of the Petition cannot be used to impeach this finding.

As discussed above, policy considerations underlying a GAL’s petition for approval strongly suggest non-GAL parties should be excluded. And as Chen is independently represented and capable of presenting his own case, there can be no reasonable contention that Co-Trustees’ assistance is required for Chen to properly litigate the new Petition. Thus, the Motion to Intervene is DENIED.

Co-Trustees’ Petition for Approval of Amended GAL Agreement is also DENIED as Co-Trustees lack standing and the Petition is unnecessary in light of Chen’s Petition for the same. As a result, Christine’s Demurrer to Co-Trustees’ Petition for Approval is DENIED AS MOOT.

*Appendix D***Christine’s Demurrer to Chen’s Petition for Removal**

A demurrer to a petition is appropriate “[w]hen any ground for objection . . . appears on the face [of the petition] or from any matter of which the court is required to or may take judicial notice.” (CCP § 430.30(a)). By contrast, “[w]hen any ground for objection to a complaint or cross-complaint does not appear on the face of the pleading, the objection may be taken by *answer*.” (CCP § 430.30(b)) The Court notes several of Christine’s arguments are based on external facts rather than allegations in the Petition or judicially noticed matters—and therefore improper on demurrer. To the extent Christine’s arguments are based on such matters, the Court will reject those arguments. as improper.

Here, Christine has requested judicial notice of: Christine’s Repudiation, Christine’s Supplemental Repudiation, Jacqueline’s Repudiation, Michael’s Repudiation, the Court’s Non-Suit Order in BP154245 (July 18), the Order Appointing Guardian of Minors in BP1455759 (1/24/2014), the Vacating Order in BP145642 (2/11/2014), and the Co-Trustees’ 2019 Report. The Court grants judicial notice of all these documents, which have been filed with the Court—but notes that Jacqueline’s Repudiation and Michael’s Repudiation are not legally operative documents, as they are unverified and not prepared by or with the Minors’ GAL.

Christine argues Chen lacks standing to seek her removal because he “is not an interested person in Minors’ existing irrevocable Trusts[], Robert’[s] ILIT, and Minors’

Appendix D

Guardianship estates.” Christine also argues Chen lacks standing because he is not GAL in nine of ten of the Chui matters. Both of these arguments are meritless. First, under Probate Code § 48(c), a “fiduciary representing an interested person” is an interested person. The Minors are undisputedly interested persons in each of the referenced trusts and estates, as beneficiaries. Therefore, Chen, as their guardian, is an interested person. Second, Christine’s other standing argument is illogical. Christine argues Chen cannot seek appointment as GAL in other matters unless he is already GAL in those other matters. Under this view, Chen’s requested relief could not be granted whether or not he has standing. Christine’s argument is thus rejected, and the Court finds Chen has standing to seek removal and appointment under Probate Code § 48(c).

Christine argues the Court lacks jurisdiction over this Petition because four of ten matters (BP288425, BP286548, BP296150, BP310214) are currently on appeal. (CCP § 916) CCP § 916 automatically stays any proceedings on the appealed order or “matters embraced . . . or affected thereby.” Here, Christine has not identified any of the appealed orders, requested judicial notice of those orders or notices of appeal, or argued that her removal is “embraced or affected” by appellate proceedings on any of those orders. There is no showing whatsoever that Christine’s removal or Chen’s appointment would interfere with the effectiveness of proceedings on appeal. Christine’s argument is, for these reasons, improper on demurrer and potentially meritless. If Christine believes the Petition for Removal is stayed pending appeal, the Court has no interest in stepping on the appellate court’s

Appendix D

toes—but Christine should have filed a Motion for Stay instead of raising the issue on demurrer.

Christine argues Chen’s Petition is barred by collateral estoppel. Here, Chen has alleged that Christine has waived her rights to represent the Minors by settling and that Christine is conflicted, and seeks Christine’s removal and his own appointment as GAL in other cases. The Court did not previously adjudicate any of these issues. Instead, Christine points to the Court’s holdings on deficiencies in the already-rejected GAL Agreement. None of these deficiencies have anything to do with Chen’s arguments or requested relief. The rest of Christine’s argument attacks the merits of Chen’s and Co-Trustees’ Petitions for Approval of the Amended GAL Agreement. These arguments are patently improper on demurrer to a separate petition and therefore rejected.

Christine argues Chen’s Petition for *Removal* “does not state facts sufficient to constitute a cause of action” and is “uncertain” and violates CRC 2.112 because Chen’s Petition for *Approval* “does not provide any basis as to why the Amended GAL Agreement . . . is superior to the previous agreement.” Again, this argument is obviously improper on demurrer and equivocates between two separate petitions which raise different issues and request different relief. The Court rejects any argument that Chen’s right to seek Christine’s removal hinges on the merits of the Amended GAL Agreement.

Christine argues Chen’s Petition “fails in its entirety” because Christine has also filed a petition to remove Chen,

Appendix D

meaning there could be inconsistent results. Christine cites no authority for her claim that an earlier removal petition somehow bars Chen's Petition. The Court knows no rule barring parties from seeking mutually exclusive relief. The argument is rejected.

Christine argues Chen's Petition violates Article I, Section 7 of the California Constitution, but again cites no authority showing any of Chen's actions violated the Minors' due process rights. Instead, Christine cites to CRPC 3-510, requiring an attorney to communicate settlement offers to the client Christine has not shown this provision applies given the stark differences between the attorney's role in an ordinary attorney-client relationship and in a guardian-minor relationship. Here, the guardian is acting for the Minors—not on the Minors' behalf like an ordinary attorney would. Therefore, the Court rejects this argument. Additionally, this point is now immaterial where Christine has had the Minors file repudiations, all but guaranteeing further conflict between the GAL and the Minors and/or the Minors and Christine. If the repudiations are taken at face value—as Christine no doubt contends they should be—then this issue is immaterial because Chen is now familiar with the Minors' positions on the Amended GAL Agreement as stated in their repudiations.

Christine argues Chen's Petition “lacks [a] cause of action” because of Material Term No. 5 of the May 14, 2018 Settlement. Christine claims she “specifically added Material Term No. 5 to ensure that she will marshal all assets for the minors, being the Trustee for

Appendix D

Michael's Trust, the Trustor for Jacqueline's Trust, and in her additional role as the court's appointed Guardian for the minors." Material Term No. 5 does not mention anything about Christine marshalling assets, and states that "[w]hen King's trusts are distributed, the Minor Children's interest will be distributed to their respective irrevocable trusts that were established by King, Robert, and Christine." Material Term No. 6 then provides that "[t]he Minor Children's claims, if any, can only be brought by their guardian ad litem Jackson Chen." Christine therefore explicitly waived any right to bring claims on the Minors' behalf. Christine fails to offer any other interpretation of Material Term No. 6 that would save her right to act on the Minors' behalf. Instead Christine, with no basis whatsoever, claims Material Term No. 5 "supersedes" Term No. 6. It does not. (*Retsloff v. Smith* (1926) 79 Cal.App.443, 452 ("It is fundamental in the interpretation of contracts that the various terms will be harmonized, if possible")) This argument is rejected.

Christine argues "three late Trustors, three judges, and two minors" intended her to be the Minors' guardian. Of note, the undersigned—who is inclined to appoint Chen and remove Christine—is one of the three judges Christine references here, and the most recent judge to handle this case, as well as the judge most familiar with the current positions of the parties. The late trustors' intent is simply irrelevant here where Christine has already surrendered her right to represent the Minors' claims and is conflicted in any event. The Court cannot allow Christine to continue to represent the Minors, and this has become increasingly clear after Christine's continuing refusal to accept the

Appendix D

already-enforced Settlement. Similarly, the Minors' wish to have their mother be their guardian for litigation is irrelevant where Christine has agreed not to represent them and has shown her interests diverge from the Minors.

Christine argues Chen's Petition is barred by the Co-Trustees' statements in their January 25, 20, 19 Report stating Christine is not conflicted. This argument is misguided for two reasons. First, Christine cannot seek to bind Chen to Co-Trustees' words. Chen never signed onto that Report, and now contends Christine is conflicted. Second, it is unclear what significance the Court should ascribe to that Report since it is over a year old and Co-Trustees are currently contending that Christine *does* have a conflict of interest. Co-Trustees' opinions on Christine's conflict are also of little significance where the Court has denied Co-Trustees' Motion to Intervene in the GAL Proceedings, so they are not parties providing input on the conflict issue.

For the foregoing reasons, each of Christine's arguments is meritless and the Demurrer to Chen's Petition for Removal is OVERRULED.

Chen's Petition for Removal

Chen's Petition for Removal is GRANTED IN PART. The Court finds Christine has waived her right to represent the Minors as their guardian for purposes of the May 14, 2018 Settlement. The Court finds Christine has a conflict of interest independently precluding her from

Appendix D

acting on the Minors' behalf in this litigation. Accordingly, Chen, who is GAL for the Minors in BP1 37413 and BP1 55345 (Chui Trusts A, B, and C), is hereby appointed GAL in this case and related cases BP145642 (Robert and Helena Chui Irrevocable Trust ["ILIT" case]), BP162717 (King Chui and Chi Chui Insurance Trust), 16STPB04524 (Robert's Separate Property Trust), BC544149 (*Esther Chao v. Estate of Robert Chui*), and BP143884 (Robert Chui's Estate). Christine is not removed as Trustee of Robert's Separate Property Trust—though Chen is the Minors' GAL for purposes of that action.

Chen's Petition is DENIED IN PART as to his requested appointment in BP145759 (In re Guardianship of Jacqueline and Michael). Christine's status as guardian of the Minors' Estate is irrelevant to these proceedings; as guardian, Christine has control only over property of the Estate. Christine's inventories and accountings in the guardianship action have never attributed to the Estate any assets affected by the Amended GAL Agreement. The only assets identified as belonging to the Estate are proceeds under several life insurance policies taken out by King Wah Chui and Robert Chui. As none of these proceeds are relevant to the Amended GAL Agreement, Christine lacks standing, and so there is no need to appoint Chen in that case or remove Christine. Additionally, Chen's appointment as GAL is similarly unnecessary in the estate case because the Amended GAL Agreement does not affect the Minors' Estate assets.

Christine's status as trustee of Robert's Separate Property Trust is similarly irrelevant, as Chen is now

Appendix D

GAL for the Minors in that, and Christine’s status as trustee does not entail any representation of the Minors. Moreover, Christine’s conflict of interest arises from her persistent opposition to any possibility of settlement and, for that reason, does not extend to these matters which are unaffected by the Amended GAL Agreement. Christine’s status as GAL in the ILIT case is also irrelevant because, under the May 14, 2018 Settlement, Christine has; explicitly waived her right to act as the Minors’ GAL and agreed to dismiss her appeal—which was the only issue remaining after trial in that case. Thus, Christine’s separate demurrers to the Petitions for Removal filed in those cases are also OVERRULED as moot.

On May 14, 2018, Christine agreed to the Settlement containing Material Term No. 6, which provides that “any claims on the Minors’ behalf can only be brought by their guardian ad litem Jackson Chen.” On September 12, 2018, over Christine’s objections, the Court held that the settlement is enforceable and binds Christine. Christine fails to offer any interpretation of Material Term No. 6 that would allow her to retain any right to act on the Minors’ behalf in this litigation. Moreover, Material Term No. 9 of the Settlement provides that “[a]ll provisions of this agreement affecting the Minors’ interests and rights are subject to approval by the guardian ad litem”—not Christine. Christine lacks any authority to act on the Minors’ behalf in determining whether the terms of the Amended GAL Agreement are, in her eyes, fair. Rather, all that authority is already vested in Chen, even if he has not previously been appointed GAL in each related case.

Appendix D

Chen contends Christine has a conflict of interest with the Minors because she is unwilling to agree to anything other than setting aside the May 14, 2018 Settlement. This assertion is supported by Christine’s persistent reliance on the same narrative and arguments against the Amended GAL Agreement as she made against the Original GAL Agreement. Christine has consistently shown she is unwilling to negotiate any settlement for the Minors due to her view that the Minors would do better if she lost at trial without settling at all. Christine’s view is erroneous; Christine has already entered into a settlement. There is no longer an issue of whether the Minors would do better had Christine not settled. Christine has already tried and failed to set aside her settlement—the Court has enforced it. The only issue remaining is whether the Amended GAL Agreement sufficiently provides for the Minors, and Christine has proven unwilling to engage with the merits of the Amended GAL Agreement to determine whether it could be a better deal for the Minors than the previous GAL Agreement.

A parent’s conflicts of interest are grounds to “disqualify parents from waiving or asserting privileges on behalf of their minor children and [may] support the appointment of an independent guardian ad litem.” (*People v. Superior Court* (2008) 43 Cal.4th 737, 753) Notably “[w]hen there is potential conflict between perceived parental responsibility and an *obligation to assist the court in achieving just and speedy determination of the action*, a court has the right to [appoint] a guardian ad litem”. (*Williams v. Superior Court* (2007) 147 Cal.App.4th 36, 49) Here, Christine is clearly unwilling to “assist the

Appendix D

court in achieving just and speedy determination of the action,” and thus unfit to represent the Minors’ interests in litigation. Christine appears more interested in escaping the Settlement than in negotiating good terms for the Minors. Hence, the Court’s prior statements relating to her rights as a parent are not applicable where Christine’s conflict has become even more apparent.

Moreover, Christine’s consistent focus on vindication against her late husband’s siblings—who she claims sued him “into an early grave”—is demonstrably inconsistent with the economic interests of the Minors. Indeed, Christine appears to be using the Minors for her own agenda, stating in her Supplemental Repudiation that “[t]he Minors do not want to settle with Esther, Margaret, and Benjamin, who had lived off their father’s hard work and largess and had sued their father (who had no wrongdoings) into an early grave. The Minors insist to clean up their father’s name and legacy through our justice system. “Christine has made quite clear she is not interested in settlement at all—regardless of any benefits to the Minors. Thus, the Court finds Christine is conflicted.

In granting this Petition, the Court is curing its own oversight more than anything else. Chen was appointed GAL in one case on March 18, 2013, and the Court then deemed that case related to several other cases but did not appoint Chen as GAL in those cases. The Court thereafter indicated to Chen—at least twice—that he should seek appointment in those related cases, though he did not do so until now. This clerical issue was not

Appendix D

raised by anyone for years until Christine opposed the first GAL Agreement—potentially waiving any argument that expanded appointment now is improper. In granting Chen’s Petition, the Court is first and foremost remedying an administrative defect.

As a result of this error, Christine has made use of Chen’s non-appointment to unnecessarily complicate this litigation. Expanding Chen’s role as GAL is the obvious next step given the Court’s conclusion that Christine is conflicted in this case. Additionally, Christine has failed to give the Court any reason not to find she is conflicted in related cases, as her conflict pertains to the Settlement and GAL Agreements affecting those related cases.

Christine is not now removed from any of her current positions. Chen, as GAL, has exclusive authority to act for the Minors in litigation regardless of Christine’s status as a guardian or trustee. Moreover, Christine has waived her right to assert claims on behalf of the Minors or dispute the terms of the Amended GAL Agreement—making her removal from any positions unnecessary. Chen is not now appointed GAL in BP145759 (In re Guardianship of Jacqueline and Michael) and BP143884 (Robert Chui’s Estate) as the Amended GAL Agreement does not encompass assets in those cases. Christine’s status as guardian and trustee in those case do not afford any standing to participate in GAL proceedings here.

For the foregoing reasons, Chen’s Petition is GRANTED IN PART as stated above. Chen, who is the Minors’ GAL in case no. BP137413 and BP155345, is

Appendix D

hereby appointed GAL for the Minors in cases BP154245, BP145642, BP162717, BP143884, 16STPB04524, and BC544149.

Christine's Demurrer to Chen's Petition for Approval

Christine's Demurrer to Chen's Petition for Approval is also OVERRULED.

Christine argues Chen's Petition for Approval fails because Christine, Jacqueline, and Michael have repudiated the Amended GAL Agreement. The Court rejects this argument because Jacqueline's and Michael's (unverified) Repudiations are ineffective and improper. The Minors have no legal authority to file repudiations without the representation of a guardian ad litem. (CCP § 372) The Minors' purported Repudiations were submitted by Christine's attorney—not Chen or Chen's attorney. "A proposed compromise is always voidable *at the election of the minor through his guardian ad litem* unless and until the court's imprimatur has been placed on it." (*Pearson, supra*, at 11334) Additionally, a repudiation may be ineffective when not in the best interests of the minors. (*Scruton, supra*, at 1607-8 (court may reject guardian's repudiation when guardian's conduct is "inimical to the best interests of the court's ward")) Here, these Repudiations bear minimally on the Minors' best interests and instead serve to further Christine's agenda of setting aside settlements and extending litigation. Though as the Minors' parent, Christine would generally have a right to object or repudiate, she is precluded from doing so here because her objection is inconsistent with the

Appendix D

Minors' interests. Thus, the Court STRIKES the Minors' Repudiations as improper and irrelevant. (CCP § 436)

Christine's Repudiation and Supplemental Repudiation are similarly ineffective and improper. Christine has expressly waived her right to bring claims on the Minors' behalf or object to the terms of the Amended GAL Agreement on the Minors' behalf under Material Terms 6 and 9 of the May 14, 2018 Settlement. The Court also observes that Christine's interests have diverged from the Minors' best interests, as shown by Christine's total unwillingness to engage with the Amended GAL Agreement providing substantially better terms for the Minors, Christine's persistent relitigation of issues already decided in this litigation and perpetuation of her own false narrative, and the evidence of conflict set out above. It appears that Christine is essentially using the Minors to pursue her own agenda of attempting to set aside the settlement, which the Court has already enforced over Christine's repeated objections and challenges. This is precisely why the Court has expanded Chen's role as GAL—Christine is unable to separate her own goals from the Minors' best financial interests. The Court also notes Christine has filed another 850 Petition on February 26, 2020, seeking substantially the same relief against Co-Trustees sought in previous petitions which were dismissed pursuant to the Settlement; further evidence of Christine's unwillingness to accept the Court's order enforcing the Settlement.

Though the Court previously indicated Christine may have had a right to repudiate, circumstances have

Appendix D

changed. Chen has been appointed GAL in the other cases and the Court now recognizes Christine's conflict of interest precluding her from representing the Minors' interests, and the effectiveness of a repudiation generally depends on whether it is in the minors' best interests. (See *Scruton, supra*, at 1608 ("when the guardian repudiates the settlement . . . the decision . . . deserves some deference. Consequently, . . . the court has limited power to direct a settlement unilaterally, but to do so, the court must first find that the guardian ad litem[s] . . . conduct is inimical to the best interests of the court's ward")) The Court STRIKES Christine's Repudiation and Supplemental Repudiation as improper and irrelevant. (CCP § 436)

Christine argues Chen's Petition for Approval fails because Chen has not been appointed GAL in all related cases. This argument is rejected because the Court is now appointing Chen as GAL in all necessary cases.

Christine argues the Court lacks jurisdiction over Chen's Petition for Approval due to pending appeals in four related cases. As explained earlier in denying Christine's Demurrer to Chen's Petition for Removal, Christine has not made even a minimal showing that the automatic stay applies to Chen's Petition for Approval. As Christine recognizes, determining whether an automatic stay applies to specific proceedings requires consideration of the nature of the appeal and its possible outcomes in relation to the trial court proceeding and its possible results. (*Varian Med. Sys. Inc. v. Delfino* (2005) 35 Cal.4th 180, 189) Nonetheless, Christine once again fails to even

Appendix D

identify the appealed orders or show how this proceeding would affect the appeals. Instead, Christine simply claims “[d]ecisions on those appeals would obviously have material effect on the matters addressed in the Amended GAL Agreement *as they are one and the same*.” Christine does not elaborate on her vague, confusing assertion that “they” are “one and the same.” The Court cannot find an automatic stay applies to these proceedings on such a threadbare showing; if Christine believes the Petition must be stayed, she should have filed a Motion for Stay.

Christine argues Chen’s Petition is barred by collateral estoppel due to the July 18, 2019 Order denying Chen’s previous Petition for Approval. Collateral estoppel only applies if “the issue sought to be precluded from relitigation [is] identical to that decided in a former proceeding[;] this issue [was] actually litigated in the former proceeding[;] the issue [was] necessarily decided in the former proceeding[;] the decision in the former proceeding [was] final and on the merits[; and] the party against whom preclusion is sought [is] the same as . . . the party to the former proceeding.” (*Pacific Lumber Co. v. State Water Resources Control Ltd.* (2006) 37 Cal.4th 921) Initially, the Court notes that it declined to approve the previous agreement without prejudice to any future agreement.

Christine notes four holdings from the July 18, 2019 Order in support of her argument. The Court found the Original GAL Agreement defective because Chen failed to assess any potential liability by Co-Trustees, failed to show “what price the wards are paying for . . . peace,” held

Appendix D

the Minors responsible for litigation expenses racked up solely by adult litigants, and retained the Minors' rights to seek accountings—which could lead to substantial followup litigation. Here, Christine's argument veers off course, arguing Chen has failed to comply with these holdings but identifying completely unrelated defects with the original GAL Agreement—some of which the Court never recognized and does not now recognize, such as Christine's allegation that the Minors have claims against the Co-Trustees that must be resolved before approving a GAL Agreement. The Court never held that the Minors have claims against Co-Trustees, and indeed, rejects that contention where the Minors have never asserted claims against the Co-Trustees through Christine or Chen.

Christine contends that Chen's Petition violates prior orders by "relitigating" issues relating to Sycamore, Three Lanterns, and Atlantic Towers. The Court rejects this view. The Court previously took issue with Sycamore being sold at book value (\$400,000) to Helena and Ruth, which would be detrimental the Minors' interests. Now, the Amended GAL Agreement directly addresses this issue (and does not thereby "relitigate" it) by noting that Christine has already given Sycamore back to the Trust, meaning it is part of the residue, and providing that Helena and Ruth will purchase each Minor's 10% residual interest in Sycamore at market value for *\$740,000 each*. It is undisputable that Sycamore is part of the residue under the terms of the May 14, 2018 Settlement, so this is a demonstrably improved outcome.

Appendix D

Additionally, the Amended GAL Agreement notes that Three Lanterns and Atlantic Tower are now trust residue under the terms of the Settlement and provides that the Minors will bear no liability for estate taxes. To pay those taxes, Three Lanterns and Atlantic Towers will be liquidated—pursuant to the Sixth Amendment to Trust. Christine fails to show this in any way “relitigates” the Court’s conclusions. Rather, Chen seems to sensibly address the Court’s stated concerns about the Minors bearing excessive expenses. Ultimately, Christine’s argument is not a collateral estoppel argument, but rather an argument that the Amended GAL Agreement should be denied for the same reasons as the Original GAL Agreement. This goes to the merits of Chen’s Petition for Approval, which is between the GAL, the Minors, and the Court. That Christine believes the Amended GAL Agreement is still defective is no basis for a demurrer.

Christine then argues that Chen’s Petition fails to state a cause of action because, in her view, Chen has; failed to show the Amended GAL Agreement is superior to the previous Agreement. Again, this goes to the merits of the new agreement, which the Court will consider in ruling on the Petition for Approval. It is not a defect on the face of Chen’s Petition—especially where Christine’s argument is based on factual issues not discussed in the Petition or judicially noticed matters.

Christine argues the Petition is fatally uncertain. “[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.” (*Lickiss v.*

Appendix D

Financial Industry Regulatory Authority (2012) 208 Cal.App.4th 1125, 1135) Here, Christine argues the Petition “fail[s] to identify which trust or sub trust is seeking damages, and what settlement proceeds and expenses are related to the Minors in each trust and estate, even though each is a different entity with different tax identification number.” Chen’s failure to set out an exact plan for distribution of the settled assets does not render the Petition “so incomprehensible” that Christine “cannot reasonably respond.” Indeed, Christine has offered several arguments specifically pertaining to the merits of the Amended GAL Agreement—the Petition is clearly not “incomprehensible.”

Christine also argues Chen “failed to disclose Minors’ inheritance interests from each of eight trusts and estates at the time of Trustors’ date of death or the date of settlement,” and “further failed to disclose the amount of expenses that the Minors have paid for each subtrust annually from 2014 to the present.” These arguments are obviously improper on demurrer, and especially on a demurrer for uncertainty, as they do not bear on any defect of the Petition or the comprehensibility of the overall Petition. Instead, Christine is simply listing facts Chen has not alleged. As this argument is improper on demurrer, the Court rejects it.

Christine argues again that Chen’s Petition violates the Minors’ due process rights under Article I, Section 7 of the California Constitution and that the Petition is barred by Christine’s pending 850 Petition. Christine once more fails to cite any due process case law showing

Appendix D

that Chen violated any such rights, and fails to show why a competing 850 Petition would bar Chen's Petition for Approval. These arguments are rejected for the same reasons stated above in ruling on Christine's Demurrer to Chen's Petition for Removal.

Thus, Christine's Demurrer to Chen's Petition for Approval is OVERRULED.

Chen's Petition for Approval

Chen's Petition for Approval of the Amended GAL Agreement is GRANTED.

Initially, the Court notes that an evidentiary hearing or trial appear to be unnecessary here. Christine and Co-Trustees have failed to establish standing to participate in these proceedings. Moreover, Chen has now addressed in his verified Petition the Court's stated concerns from trial on the original GAL Agreement. Indeed, proceedings on a Petition for Approval are generally non-adversarial in nature, as the proceeding is purely between the Court and its officer, the GAL, to determine whether a proposed agreement is a good deal for the minors. For the foregoing reasons, there can be no evidentiary disputes here, since only Chen will present argument; the procedural protections of trial and evidentiary hearings are thus not needed here. (*See also In re Esmeralda S.* (2008) 165 Cal.App.4th 84, 92 ("[t]he effect of the guardian ad litem's appointment is to transfer direction and control of the litigation from the parent to the guardian ad litem, *who may waive the parent's right to a contested hearing*"))

Appendix D

The Court also notes that it granted a motion for nonsuit against the previous Petition for Approval without prejudice to any future agreement. The Amended GAL Agreement largely addresses the Court’s previously stated concerns that compelled it to grant nonsuit—hence the different result on this Petition.

Generally, in determining whether to approve a GAL’s proposed compromise, the Court must consider whether the GAL has obtained a “countervailing and significant benefit” making up for rights waived. (*In re Christina B.* (1993) 19 Cal.App.4th 1441, 1453; *Leonardini v. Wells Fargo Bank & Union Trust Co.* (1955) 131 Cal.App.2d 9, 18) Here, Chen identifies several benefits over the previous Agreement, such as ending this litigation and the continuing expenditure of trust assets, providing finality and certainty by avoiding trial, disentangling the interests of Christine and the Minors from Ben’s interests, allowing Co-Trustees to conclude the administration of the Trust and pay estate taxes, and several substantial economic advantages over the previous Agreement. (Petition at ¶¶ 23, 27) The Court finds the Amended GAL Agreement approvable.

Here, the Amended GAL Agreement provides substantially better economic terms for the Minors than the previous GAL Agreement. The Amended Agreement provides for the Minors to recover roughly \$22 million total—roughly \$3 million more than they received under the previous GAL Agreement. Like the previous Agreement, this Agreement also disentangles the Minors’ assets from Ben’s assets, substantially mitigating the

Appendix D

possibility of future disputes—just on even more favorable terms to the Minors. Under the terms of the property swap, the Minors’ disentangled property will also generate roughly \$100,000 more yearly income.

In rejecting the previous GAL Agreement, the Court noted it was unclear exactly what the Minors would recover under the Agreement. Here, Chen has clearly and precisely laid out what each Minor will recover. The Amended GAL Agreement provides for “full redemption of Jacqueline’s and Michael’s interests” broken down to indicate the exact recovery for each property and trust in which the Minors have an interest. (Petition at ¶ 22(j)) In total, Jacqueline will receive an estimated \$11,471,438 while Michael will receive an estimated \$10,631,438. Jacqueline’s interest in 1280 Grand Vista, valued at \$840,000, accounts for the difference in recovery between the two. Additionally, the Amended GAL Agreement releases the Minors from \$3.2 million in estate tax liability to cover the Minors’ 20% share of already-paid attorney’s fees and administrative expenses in this case, any property taxes arising from the Minors’ property interests until distribution, and over \$300,000 in outstanding legal expenses. The Agreement therefore waives about \$3.5 million in expenses in disentangling the Minors, exchanging the Minors’ estate tax liabilities for their liability for fees and costs.

The Court indicated concerns that the previous GAL Agreement would provide a false peace pending future litigation on the Minors’ requests for accountings. In response to these concerns, Chen agreed to waive the

Appendix D

Minors' rights to future accountings in exchange for the Minors being "reimbursed for whatever attorneys' fees and costs relating to Trust administration and liquidation" paid between June 1, 2016 and September 30, 2019. The Minors' share of these fees amounted to just under \$3 million. Chen also recognized that the Minors' estate tax liability of \$3.2 million was "a continual issue," and so negotiated for the Minors' reimbursement to be "applied against" their estate tax liability. As a result of this provision and the property swap, the Minors no longer had any financial interest in the Trust, so the Minors' rights to accountings could be waived without negative effect.

Chen's solution proactively addresses the need for future accountings by waiving the maximum amount of costs and taxes potentially attributable to the Minors. There will be no need for future accountings because Co-Trustees will no longer hold any of the Minors' assets. Moreover, compared to the previous agreement not waiving accountings, the Minors recover an additional \$3 million from the property swap, an additional \$100,000 in annual income, and a full release from further litigation. This is no doubt a significant and countervailing benefit in this long-running case.

Significantly, this Agreement also addresses Helena and Ruth's purported right to purchase Sycamore at book value of \$400,000, substantially below Sycamore's fair market value. The Court previously indicated it was uncertain whether Sycamore could properly be sold at book value without harming the Minors' interests. Now, Helena and Ruth have agreed to purchase each Minor's

Appendix D

proportionate share of the fair market value of Sycamore, at a price of \$740,000 per minor—a total of \$1,480,000, comprising 20% of Sycamore’s total market value and corresponding to the Minors’ 20% interest in the trust residue. This is an extraordinary improvement over the Minors’ limited recovery of roughly \$60,000 relating to Sycamore under the previous Agreement. In fact, each Minor is recovering almost double the value Helena and Ruth would have otherwise paid for Sycamore as a whole.

The Amended GAL Agreement also addresses the Court’s previous concerns about Three Lanterns and Atlantic Towers. Christine contended these properties, which she relinquished to the Trust, should have gone to the Minors, while Co-Trustees argued these properties could be sold to pay estate taxes pursuant to the Sixth Amendment of Trust. The Court rejects Christine’s contention that these assets are not part of the Trust residue; thus, the issue is what benefit—if any—the Minors will receive from these properties. Here, it seems the Minors are effectively exchanging \$1.75 million for these two properties under the previous Agreement for a waiver of \$3.2 million in estate taxes, which those properties will be sold to pay, for a net improvement of \$1.45 million. This is undoubtedly a better deal for the Minors than the previous Agreement, as the Minors recover more and no longer carry estate tax liability on their interests.

Chen also provided a useful comparison of the Minors’ recovery under three different scenarios. (Petition at ¶27) “The first scenario was the amounts to the Minors prior

Appendix D

to the May 14, 2018 Agreement, the second scenario was the amounts to the Minors under the [Original] GAL Agreement, and the third scenario was the amounts to the Minors under the [Amended] GAL Agreement.” Chen broke down the Minors’ interests under each of these scenarios, concluding the Minors would recover \$17,006,011 under the first scenario, \$18,885,049 under the second scenario “subject to liabilities for Estate Tax and other unpaid liabilities”, and \$22,102,877 under the third scenario without any further liabilities. This direct comparison shows that Chen has substantially improved the Minors’ recovery, with over \$5 million gained from the additional terms of the Amended GAL Agreement and no further liabilities other than fees to Chen and his attorney.

The Court is not now considering hypothetical trial results—where the evidence is unknown—to see whether the Agreement provides significant benefits to the Minors as it did before. Instead, the Court has considered economic benefits and intangible benefits like the termination of litigation. Unnecessary speculation as to the outcome of a highly contested, lengthy and expensive trial would not clarify the merits of the Agreement—it would obscure them by returning the parties to the same issues they intended to resolve by settling. As a result, the Court does not need to reach the *Estate of Dito* issue it previously raised in rejecting the previous GAL Agreement. The Court is persuaded the Agreement provides meaningfully more money than the previous Agreement and provides genuine peace and complete separation from the litigation and Co-Trustees, unlike the previous Agreement, which reserved the rights to future accountings. The Court did

Appendix D

not previously indicate concerns with the property swap in Trust C—which has been incorporated again here.

For the foregoing reasons, the Court GRANTS the Petition for Approval of the Amended GAL Agreement.

Christine’s Petition for Removal of Chen as GAL

Christine’s Petition for Removal of Chen as GAL is DENIED WITHOUT PREJUDICE. Christine waived the right to seek Chen’s removal when she agreed to the Settlement providing that “[t]he Minor Children’s claims, if any, can only be brought by their guardian ad litem Jackson Chen.” Additionally, there is no basis to remove Chen where he has successfully done his job by negotiating an approvable settlement for the Minors, leaving them far better off than they were under the Original GAL Agreement. Christine also requested appointment in several cases to replace Chen, which the Court cannot grant due to Christine’s conflict of interest with the Minors, as explained above.

Co-Trustee’s Petition for Removal and Christine’s Demurrer

As Chen’s Petition for Removal has been granted, Co-Trustees’ Petition for Removal requesting the same relief and Christine’s Demurrer to Co-Trustees’ Petition for Removal are both DENIED WITHOUT PREJUDICE, as they are now moot and unnecessary.

Appendix D

As Christine is not permitted to participate in proceedings on Chen's current Petition for Approval, Co-Trustees' Motion in Limine and Motion to Confirm Enforcement are DENIED WITHOUT PREJUDICE. The relief requested in these motions is no longer necessary. in Christine's role in approval of the Amended GAL Agreement. Christine and Co-Trustees will not participate in proceedings on the Amended GAL Petition, rendering the motion in limine unnecessary. Similarly, the Court no longer needs to decide whether the provisions of the Settlement relating to Christine are severable and enforceable notwithstanding disapproval of a GAL Agreement because the Court is now approving the Amended GAL Agreement. The foregoing makes the Settlement whole and renders the Motion to Confirm unnecessary.

Co-Trustees' Motion for Reconsideration of Suspension Order and the OSC Re: Removal

The Court's OSC re: removal of Co-Trustees is hereby discharged. As the settlement has now been approved and litigation is concluded, and no replacement trustees were ever appointed to effectuate Co-Trustees' suspension, the Court finds it unnecessary to proceed on the OSC re: removal. The order requiring that Co-Trustees obtain court approval before paying attorney's fees is still effective pursuant to Co-Trustees' stipulation on July 30, 2019.

Accordingly, Co-Trustees' Motion for Reconsideration is DENIED WITHOUT PREJUDICE as moot. Co-

Appendix D

Trustees' suspension was never effectuated and Co-Trustees have separately stipulated to the requirement of court approval. The relief requested in the Motion for Reconsideration can no longer be granted, rendering the motion moot.

CONCLUSION

Chen's Petition for Approval of Amended GAL Agreement is **GRANTED**.

Chen's Petition for Removal is **GRANTED IN PART**. Chen is appointed GAL for the Minors in cases BP154245, BP145642, BP155345, BP162717, 16STPB04524, and BC544149. Chen's Petition is **DENIED IN PART**—Christine is not removed from any existing role as guardian or trustee in these cases and Chen is not appointed GAL in case BP145759.

Co-Trustees' Motion to Intervene is **DENIED**. Co-Trustees' Motion in Limine and Motion to Confirm Enforcement of Settlement are **DENIED WITHOUT PREJUDICE**.

Christine's Demurrers to Chen's Petition for Removal and Petition for Approval are **OVERRULED**. Christine's Demurrers to Co-Trustees' Petition for Removal and Petition for Approval of Amended GAL Agreement are **SUSTAINED**.

Christine's Petition for Removal of Chen as GAL is **DENIED WITHOUT PREJUDICE**.

148a

Appendix D

The Court hereby **DISCHARGES** the OSC re: removal of Co-Trustees. Co-Trustees' Motion for Reconsideration of Suspension Order is **DENIED WITHOUT PREJUDICE**.

This case and the related cases, now that the litigation with which this bench officer was familiar is concluded, are now transferred back to Probate Department 3 in the Stanley Mosk Courthouse.

DATED: March 3, 2020

/s/_____
DAVID J. COWAN
Judge of the Superior Court

**APPENDIX E — OPINION OF THE SUPERIOR
COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
FILED SEPTEMBER 17, 2018**

SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY
OF LOS ANGELES

Case No.: BP154245
[Related Cases: BP137413, BP143884, BP145642,
BP145759, BP155345, BP162717, BC544149]

IN RE:

ESTATE OF KING WAH CHUI,

Decedent.

BENJAMIN TZE-MAN CHUI,

Petitioner,

v.

CHRISTINE CHUI, *et al.*,

Respondents.

**RULING ON BENJAMIN CHUI AND
MARGARET LEE'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

Date: September 12, 2018

Time: 8:30 a.m.

Dept.: 3

Appendix E

The Court has considered the motion, opposition and reply, as well as accompanying papers, together with the evidentiary objections. After hearing oral argument of counsel, as stated on the record, and taking the motion under submission, the Court now finds and rules as follows:

Benjamin Chui (“Benjamin”) and Margaret Lee (“Margaret”) bring this motion to enforce a settlement agreement on the grounds that all of the parties to the settlement confirmed their agreement to and understanding of the terms of the settlement read on the record on May 14, 2018 and that therefore a judgment should issue pursuant to its terms in view of the unwillingness of Christine Chui (“Christine”) to further consummate the settlement. Christine opposes this motion on the grounds that there is no enforceable agreement, as well as that she lacked capacity to enter into any settlement and moreover that any agreement was unconscionable. Jackson Chen (“Chen”), as Guardian Ad Litem (“GAL”) for Christine’s minor children, Jacqueline Chui and Michael Chui, joins in the motion.

STATEMENT OF FACTS

On May 14, 2018, on what was to be the start of trial, Benjamin, Margaret, Esther Chao (“Esther”), Helena Chui (“Helena”) and Christine confirmed their understanding of and consent to a settlement agreement consisting of twelve terms read on the record; to be supplemented by a long-form agreement. (Bakewell Decl., Exh. 29, 2:16-11:28.) Chen was not then present to agree to the settlement on behalf of Christine’s minor children.

Appendix E

The agreement was therefore made subject to Chen's agreement where his clients' rights were also impacted.

Christine and her attorneys exited the courtroom after the parties confirmed their understanding of and consent to the settlement. (Bakewell Decl., Exh. 29, 12:20-21.) Benjamin, Margaret, Esther, Helena and their counsel then read on the record their separate agreement relating to the details of the settlement that did not concern Christine ("the side agreement"). (Bakewell Decl., Exh. 29, 12:28-13:24.) The parties agreed to this two-part settlement. There was no objection by Christine or her counsel to not participating in or being present while the other parties put on the record their separate settlement.

The global settlement resolved: 1) all litigation relating to the King Wah Chui and Chi May Chui Declaration of Trust dated March 11, 1988, as amended and restated (the "Trust"), King Chui's estate, the Robert Chui and Helena Chui Irrevocable Life Insurance Trust (the "ILIT"), the Robert Chui Separate Property Trust, 2) pending appeals relating to the Trust and ILIT cases and 3) multiple petitions filed in the above-referenced related cases.

On May 31, 2018, two weeks later, Christine's counsel informed the Court that Christine partially performed her settlement obligations by 1) executing three cashier's checks totaling \$3 million and delivering them to Benjamin's counsel, and 2) delivering jewelry to Benjamin's counsel with a memorandum describing the items delivered. (Bakewell Decl., Exh. 29, 3:21-27.)

Appendix E

On June 28, 2018, Christine filed a substitution of attorney.

On July 5, 2018, Christine filed a Motion to Set Aside the Tentative Settlement.

On July 19, 2018, the Court ordered Chen to file a GAL Report on July 23, 2018 before the hearing on Christine's motion. (Bakewell Decl., Exh. 29 13:23-14:9.)

On July 23, 2018, Chen filed a GAL report (in the Trust case). Chen concludes his report to the Court by stating: As [GAL] for the Minors, I *will* insist on certain changes to the longform agreement *before* I can agree to sign it." (Emphasis added) It was apparent Chen had not made a final decision and discussions were ongoing. Moreover, his decision relates to the long form agreement. Chen does not make any statement specific to the terms of the May 14 agreement.

On July 31, 2018, the Court denied, without prejudice, Christine's Motion to Set Aside. The Court found that there was no cited statutory basis for the motion and that the proper remedy would be for moving parties to move to enforce the agreement if they wished to go forward with it.¹ The motion to vacate was based on Christine's claims

1. Seeking to vacate an agreement is not a procedural motion matter but requires the filing of a civil complaint or if an agreement that involves a Probate issue, the filing of a petition - with all the rules applying thereto. For this reason, CCP sec. 664.6 provides an expedited procedure to avoid otherwise having to go through the foregoing longer route.

Appendix E

that 1) she lacked capacity to consent to the settlement on May 14, 2018 and 2) the settlement was unconscionable.

On August 10, 2018, Chen signed a written agreement, on behalf of the minors, agreeing to the terms of the settlement reached by the parties on May 14, 2018 (“the GAL agreement”). (See Chen Decl.; Bakewell Decl., Exh. 2.) See also Chen Decl., filed herein August 16, 2018.

On August 15, 2018, Benjamin and Margaret filed the instant motion.

DISCUSSION**General Rules**

“If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement.” (Code Civ. Proc. (“CCP”), § 664.6.) The trial court may enter judgment pursuant to a stipulated agreement to settle in one of two ways: (1) in a writing signed by the parties; or (2) by oral agreement made “before the court.” (*Murphy v. Padilla* (1996) 42 Cal.App.4th 707, 711-12.) If, however there are disputed facts on a motion to enforce a settlement agreement pursuant to section 664.6, the trial court has the authority to determine whether the parties have entered into a valid and binding settlement of all or part of the case. (*In re Marriage of Hasso* (1991) 229 Cal.App.3d 1174; *Corkland v. Boscoe* (1984) 156 Cal.App.3d 989.)

Appendix E

The ultimate issue is whether the parties formed an enforceable contract, since a settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement agreements. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 815) The essential element of any contract is “consent,” which must be mutual, and whose existence is determined by objective rather than subjective criteria, i.e., what the outward manifestations of consent would lead a reasonable person to believe. (*Weddington, supra*, 60 Cal.App.4th at 811.)

A settlement agreement is enforceable when there is “a ‘mix and match’ approach to the manner of agreement as long as all parties agree to the *same material terms*.” (Emphasis in original.) (*Elyaoudayan v. Hoffman* (2003) 104 Cal.App.4th 1421, 1429.) *Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1259 further emphasizes that this “mix and match” approach creates an enforceable settlement agreement when all parties agree to the same material terms.

Application

Here, two manners of agreement “mix and match” to create one enforceable settlement agreement: the May 14, 2018 oral agreement and the August 10, 2018 written GAL agreement.

First, under *In Re Marriage of Assemi* (1994) 7 Cal.4th 896, 911, the oral agreement meets the necessary conditions of an enforceable oral settlement: 1) counsel

Appendix E

recited the material terms of the settlement on the record before the Court (Bakewell Decl., Exh. 29, 2:7-8:21), the parties' counsel confirmed the terms of the settlement (*Id.*, 5:27-8:21), 2) the Court questioned the parties regarding their understanding of the terms. (*Id.*, 8:22-11:21), and 3) each party (Co-Trustees Margaret and Benjamin, Esther Chao, Helena Chui, and Christine) agreed to the settlement; after confirming they understood its terms. (*Id.*, 8:22-11:21.)

Second, the written GAL agreement is an enforceable written settlement because Chen signed a binding agreement incorporating by reference the material terms of the May 14 settlement: the twelve points of the oral agreement read on the record. (Chen Decl., Exh 2, ¶ 1-2; Bakewell Decl., Exh. 29, 2:12-8:2.)

Christine's argument that the settlement agreement is not enforceable because Benjamin, Margaret, Esther, Helena, and Christine accepted it orally while Chen accepted it later in writing ignores *Elyaoudayan's* "mix and match" principle. The law does not permit Christine to use Chen's initial GAL report and need for time to consider the best interests of the minors to evade performance on a settlement agreement she entered into.

The "mix and match" of different manners of agreement creates an enforceable agreement here because, like *Elyaoudayan* and unlike *Critzer*, all parties agreed to the same twelve material terms. (Bakewell Decl., Exh. 29, 2:7-8:21; Chen Decl., Exh 2, ¶ 1-2.) Christine argues the terms of the oral agreement and written GAL

Appendix E

agreement are not the same. The written agreement, however, explicitly states Chen's agreement to the terms of the settlement agreed to by the other parties on the record before the Court on May 14, 2018: "Approval of May 14, 2018 Settlement. GAL agrees to the terms of the Settlement Agreement." (Chen Decl., ¶ 2.) Therefore, all of the parties to the settlement have agreed to its terms as required by CCP sec. 664.6.

Christine argues Chen's written agreement includes additional terms; however, the twelve listed terms constitute the agreed upon material terms and the disputes Christine raises regarding the details of the settlement do not impact the settlement's enforceability:² That the \$3 million was to be deposited to the attorney client trust account of Venable, Benjamin's attorneys, without further specificity, makes no difference. Christine does not show why it should matter to her where the \$3 million she agreed to pay goes. By necessity, if she had any continuing interest in that money, she would not have agreed to pay it. Indeed, for this reason, she and her counsel agreed on May 14 that the terms as between the others, the side agreement, was irrelevant to her and they therefore left the courtroom before those terms were recited on the record. For the same reason, Christine has not shown what difference it makes to the enforceability of the agreement the amount Helena would pay for the Sycamore property or the terms by which Esther may

2. An oral settlement remains "binding and enforceable" under CCP sec. 664.6 even "[i]f difficulties or unresolvable conflicts arise in drafting the written agreement." (*Elyaoudayan* supra, 104 Cal.App.4th at 1431.)

Appendix E

receive the Three Lanterns property. Christine waived any interests in these properties under the terms of the May 14 agreement.

The agreement with the GAL did not change the material terms of the settlement. Therefore, the oral agreement and the written agreement consist of the same twelve material terms. Moreover, the motion does not seek to enforce the GAL agreement with Chen or the side agreement with the other parties.

Christine also argues the written GAL agreement includes contradictory terms and terms that she would have never agreed to for the distribution of funds and property. When Christine agreed to the settlement, she agreed to pay \$3 million dollars and disclaimed her interest in certain property. The distribution of these disclaimed properties is not relevant to her legal obligation to perform on the settlement agreement or as to what she receives thereunder. If she believed the money was going to the Trust, and not Esther, and that this was significant to what her children received, this would be an issue as to which Chen, as GAL, was the relevant person to choose to agree or disagree. Therefore, the settlement agreement does not contain terms to which Christine did not agree as to her interests.

The Court also does not find relevant here that the parties contemplated a subsequent long-form agreement to execute and implement the obligations provided for by the settlement. (Bakewell Decl., Exh. 29, 2:16-8:4.) The parties agreed that any disputes relating to drafting or

Appendix E

agreeing to the long-form agreement would be resolved through binding arbitration in front of the mediator, Judge Steele, retired. The issues here are not about the long-form agreement but enforceability.

Alleged “Rejection”

Christine argues Chen *rejected* the settlement when he filed his July 23, 2018 GAL Report which precludes his August 10, 2018 agreement to the Settlement.

“It is hornbook law that an unequivocal rejection by an offeree, communicated to the offeror, terminates the offer.” (*Guzman v. Visalia Cmty. Bank* (1999) 71 Cal. App. 4th 1370, 1376.) “... [A] manifestation of an intent not to accept, short of an unequivocal rejection, can also terminate the offer. If the offeree’s words or acts either indicate that the offeree is declining the offer or justify the offeror in so inferring, the offeree will be considered to have rejected the offer.” *Ibid.* A manifestation of intention not to accept an offer is a rejection unless the offeree manifests an intention to take it under further advisement.” (Restatement (Second) of Contracts § 38(2) cmt. a.) “[T]he test of the true meaning of an acceptance or rejection is not what the party making it thought it meant or intended it to mean. Rather, the test is what a reasonable person in the position of the parties would have thought it meant.” (*Id.* at 1376–77.)

Chen’s report states: “At the present time, with the long-form agreement as drafted, I do not believe that the proposed settlement is in the best interest of the Minors

Appendix E

and I am unable to sign the agreement.” (Cohen Decl., Exh. B, 2:19-21.) Chen concludes his report by stating “As guardian ad litem for the Minors, I will insist on certain changes to the long-form agreement before I can agree to it.” (Cohen Decl., Exh. B, 5:20-21.)

For the following reasons, the foregoing does not constitute a “rejection” of the May 14 agreement:

First, the GAL Report does nothing more than evidence an intention by Chen to take the settlement under further advisement which does not constitute a rejection under Restatement (Second) of Contracts § 38(2) cmt. a.

Second, Chen never stated that he rejected the terms of the settlement. He stated merely that he would not sign the proposed long form agreement as drafted. (Bakewell Decl., Exh. 53, 6:20-21.)

Third, the report was communicated to the Court, pursuant to prior order, rather than to Christine and therefore does not constitute a rejection.

Fourth, the offerors manifested an intent for the offer to remain open when they agreed the settlement would remain in force if there were disagreements over the drafting of its terms. Christine argues that though Chen states that he cannot agree with the long-form as drafted, his concerns in fact relate to the material terms of the agreement and that Chen’s rejection of the long-form agreement amounts to a rejection of the oral agreement. Chen’s consideration and expression of disagreement with

Appendix E

terms of the long-form agreement cannot reasonably be interpreted as a rejection of the settlement here because the parties agreed the settlement would remain in force if there were disagreements over the drafting of its terms.

Finally, the settlement was in any event not an *offer* to Chen but rather an enforceable oral agreement subject to the condition precedent of Chen's agreement. A condition precedent is a condition that must be performed before the rights or duties of a party to an agreement become binding. (Civ. Code § 1434.) A condition precedent exists in a contract where there is a "subject to" provision. (See *Rubin v. Fuchs* (1969) 1 Cal.3d 50, 54.) The Court stated: "Subject to, with the exception of Mr. Chen on behalf of the two minor children, everybody appears to have agreed to these terms, and the Court can, with that one exception, assuming they agree, find that there's a binding settlement of all issues, and all petitions will be disposed of per the agreement." (Bakewell Decl., Exh. 29, 11:23-28.)

As a result, Christine cannot prevail on her argument that there was a "rejection" of an offer that cannot be resurrected without her further consent. Chen's July 23 report to the Court is not a rejection of Christine and the other parties' offer - as Christine phrases it. Rather, the report states concerns about what would be in the long form agreement – an issue in any event under the settlement as to which the parties agreed to arbitration. To the extent the issues Chen raised were not about the proposed long form agreement, Chen makes clear in his report that he has not made a final decision and his review is still pending. Chen has further stated in his Declaration

Appendix E

that he was still negotiating and seeking changes to the long form agreement as to his clients.

Even if Chen's report were deemed a rejection of an offer, for sake of argument, he and the other parties were still able thereafter to further negotiate a GAL agreement whereby he withdrew his initial report related to the agreement and the parties came to an agreement on terms that addressed the GAL's concerns – so long as those did not modify the separate terms as to which Christine agreed. Christine does not offer any authority that persons cannot modify their positions and reach further agreement -- where to do so does not impact the rights of Christine under the agreement. Christine does not make any showing how her rights were impacted by the GAL agreement or why she would be entitled to preclude the other parties negotiating terms that did not affect her rights.

Need for Court Approval

CCP sec. 372, subdivision (a)(1) provides a GAL may only enter into a settlement agreement on behalf of a minor *with the approval of the court.* (See also Probate Code sec. 2505(a).) Issues regarding the protection of the minors' interests may be properly addressed when Chen seeks Court approval of this settlement by separate petition. If Christine does not believe that the Court should approve the agreement, this is a different issue than now as to whether there is an enforceable agreement. Christine is likely an interested person (as a parent) who may be able to argue in opposition to object to its approval if, for example, she believes Chen has not adequately represented their

Appendix E

interests. However, Christine is not the GAL and therefore does not have the right to displace Chen in speaking on behalf of the children and entering into the settlement agreement. Presumably, for this reason, Christine was not asked to attend the further mediation that led to the GAL agreement. Christine does not point to any legal obligation of the other parties which required them to give her an opportunity to participate.

Scruton v. Korean Air Lines Co., (1995) 39 Cal. App.4th 1596, 1605 holds that a GAL may void a contract in settlement of litigation until the court approves of the proposed compromise. *Scruton* does not support an argument that no enforceable agreement exists here.

Issues raised in Motion to earlier vacate agreement

Christine seeks to reserve the right to later assert the grounds for her earlier Motion to Vacate the Tentative Settlement - incapacity and unconscionability: Christine needs to argue now any claim of incapacity and unconscionability in opposition to this motion to avoid the Court entering judgment pursuant to the agreement.

The Court has reviewed that earlier motion and rejects the evidence Christine provided regarding incapacity and unconscionability:

Capacity

Dr. Daniel A. Martell, upon whose declaration Christine relies, did not have personal knowledge of Christine's capacity at the time of the May 14, 2018 hearing.

Appendix E

The Court is not persuaded that the alleged combination of stress, sleep deprivation and certain medication caused her to be incapacitated. The declaration of Dr. Edward Boyer, a Harvard Medical School toxicologist, offered by Benjamin and Margaret, was instructive in this regard: He questions the plausibility of the claimed side effects, as well as raises issue as to Dr. Martell's expertise - as a psychologist and not medical doctor or toxicologist. In addition, more importantly, he notes that Dr. Martell met Christine over two months after the incident in question; on July 25. Necessarily, any forensic opinion is open to claim of conjecture or speculation and that is also true here. Christine has not rebutted the presumption that all persons have capacity to make and be responsible for their own decisions. (Prob. Code § 801, subd. (a).)

The Court did not notice any inability on her part to enter into the agreement. Nor did her several attorneys who were with her voice any concern for their client.³ The Court's only surprise was that that the parties had until the trial been very actively litigating the case and readying for trial – and did not appear to be in a settlement mode. The Court did not know the parties were trying to settle prior to trial.

3. One attorney for Christine, Vikram Brar, who was her counsel of record in a related case that had already been tried, and was on appeal, was not present. The settlement agreement also resolved that appeal. The Court has not been presented with any authority that Christine could not also resolve that other matter without Mr. Brar's involvement where she was advised at the May 14 hearing by three other law firms which were her counsel of record in the matters that were to be tried.

Appendix E

Most significantly, after the settlement, Christine performed specific duties she agreed to under the settlement evidencing her understanding of the settlement including securing and completing the delivery of the \$3 million payment and jewelry pursuant to the settlement and withdrawing her *lis pendens* on two properties pursuant to her waiver of rights to those properties under the settlement. (Bakewell Decl., Exh. 47, ¶ 8, Exh. 2; Exh. 47, Exh. 7-8.) In addition, nobody advised the Court of Christine's inability to have entered into the settlement, or that she contended there was no settlement, at further hearings concerning concluding the settlement process on May 31 or June 22.

Hence, even if Christine was in a weakened state on May 14, her later conduct implied her continuing consent to or ratification of the agreement. (See *Esparza v. KS Industries, L.P.* (2017) 13 Cal.App.5th 1228, 1238.) In addition, this later conduct also discounts her credibility in asserting that she lacked capacity. If she lacked capacity, it makes no sense she would have taken the further material steps she did thereafter. Finally, it is also worthy of note that Christine's position concerning her alleged lack of capacity is not supported by any declarations of her three former lawyers, or her husband, Vincent Jue; all of whom were with her when she entered into the agreement.

Unconscionability

Christine does not provide supporting evidence relating to what terms exactly might be deemed to be unconscionable or why. The only argument she presents

Appendix E

relates to what her children are receiving under the settlement. However, this Court appointed Chen in March, 2013, in lieu of Christine, to represent their interests – in view of the allegations against her.⁴ Christine does not point to how the agreement is unconscionable as to her own individual interests. Further, Christine does not adequately explain why the contentions made in the motion as to the reasons it made sense for her to settle are erroneous.

Moreover, even assuming moving parties have likely exaggerated their probability of prevailing at trial, proving *unconscionability* is still a heavy burden for Christine: It is not enough to assert merely that she may have prevailed but rather that the settlement terms “shock the conscience.” This they do not where it appears there was at least some probability Benjamin and the others might have prevailed. Given their showing that Christine might not have prevailed, it is not inconceivable to the Court that she might have elected to avoid potentially greater losses by entering into an agreement that may not be particularly favorable to her. However, by definition, most settlement agreements involve a party accepting less than expected given potentially even worse consequences at trial.

4. Though Chen was appointed initially as GAL in just one case, thereafter the parties stipulated that the pending petitions in all these related cases were to be tried together. The Court understood that he was GAL for all of these cases – as did Chen. See GAL report, para. 1.

166a

Appendix E

CONCLUSION

For these reasons, this Motion to Enforce Settlement is GRANTED. The agreement still remains subject to Court approval of the minors' compromise.

DATE: September 17, 2018

/s/ David J. Cowan
DAVID J. COWAN
Judge of the Superior Court