

APPENDIX

APPENDIX

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App. 1

APPENDIX A

**ABA
AMERICAN BAR ASSOCIATION**

**Notice in Guardianship Proceedings
Statutory Revisions as of December 2021
ABA Commission on Law and Aging**

App. 2

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|---------------|--|---|---|---|--|---|
| UGPPA | 113(a) Notice of time and place of hearing 309 Petition and notice must be served personally on respondent 309(d) Guardian gives notice of filing of status report 404 | 309(b), 404 To persons listed in petition | 113(a) 14 days before hearing | 113(c) Plain language | 309(a), 404(a) Rights at hearing, description of nature and consequences of appointment | 114 Respondent may not waive notice |
| UGCOPAA | 113(a) Date, time, place 303(b), 403(b), 505(b) | 303(c), 403(c), 505(c) Persons listed in petition and individuals interested in welfare as court determines | 113(a) 14 days before hearing | 113(c) least 16-point font, in plain language, and, to the extent feasible, in language in which the person to be notified is proficient <i>Not stated</i> | 303(b), 403(b), 505(b) Respondent's rights at the hearing, including right to an attorney and to attend hearing. Include description of nature, purpose, and consequences of granting petition. <i>Not stated</i> | 303(b), 403(b), 505(b) Court may not grant petition if notice substantially complying is not served on respondent. |
| Alabama: Code | 26-2A-50 26-2A-103(c) | 26-2A-103(a) spouse, parents, adult children, person having care or custody | 26-2A-50(b)(1) 14 days | | | 26-2A-51 guardian, GAL, conservator, or other fiduciary may waive notice. 26-2A-103(d) alleged incapacitated may not waive notice |

App. 3

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|------------------------------------|-------------------------------|---|--|--|---|---|
| Alaska: Statute | 13-26-135(a)(1) | 13-26-135(a) spouse, parents & adult children, closest adult relative, person having care & custody | 13-26-107(a)(1) upon appointment of visitor | <i>Not stated</i> | 13-26-135(c) notice sets out hearing consequences and respondent's rights at proceeding 13-26-107(a)(3) visitor explains in language can understand and provide in writing | <i>Not stated</i> |
| Arizona: Rev. Stat. Ann. | 14-5309(A)(1) | 14-5309(A) spouse, parents, & adult children, closest adult relative, person having care & custody | 14-5309(B) 14-1401 14 days | <i>Not stated</i> | <i>Not stated</i> | 14-5309(B) Waiver ineffective unless present at hearing or confirmed by visitor. |
| Arkansas: Code Ann. | 28-65-207(b)(1) | 28-65-207(b) parents of minor, spouse, or nearest competent relative, any other person | 28-65-207(c)(2) 20 days before hearing | 28-65-213 notice of rights in native language and manner that will be understood | <i>Not stated</i> | 28-65-207(a)(2) alleged incapacitated may not waive notice; others can waive notice |
| California: Prob. Code | 1823(a) 1824 | 1822(b)(1), (2) spouse & relatives | 1822(a) 15 days before hearing 1824 citation within 15 days | <i>Not stated</i> | 1823(6) Court Investigator explains proceeding and its effect | <i>Not stated</i> |

App. 4

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|---|---|--|--|---|--|--|
| Colorado: Rev. Stat. Ann. | 15-14-309 (1) | 15-14-309(1) spouse, parents & adult children, closest adult relative, person having care & custody | 15-14-113(1) 10 days 15-14-405(1) | 15-14-113(3) plain language | 15-14-309(1) notice inform of rights at hearing and consequences of appointment | 15-14-309(2) waiver ineffective unless present at hearing or confirmed by visitor |
| Connecticut: Gen. Stat. Ann. | 45a-649(a) (2) Personal service on respondent and spouse | 45a-649(a)(3) notice to applicant, named governmental officials, children; if none then parents or siblings; person in charge of institution where residing | 45a-649(a)(1) 10 days before hearing & within 30 days of receipt of application | 45a-649(b) Statement in bold face type, 12 pt. | 45a-649(b) specify legal consequences and rights, hearing be moved to convenient location, right to attorney | Not stated |
| Delaware: Code Ann. tit. 12 | 12 3901(c) | 12 3901(c) such others as ct. may deem desirable | 12 3901(c) reasonable | Not stated | Not stated | Not stated |
| District of Columbia: Code Ann. | 21-2042(c) | 21-2042(a)(3) 21-2042(a)(4) such others as court directs | 21-2031(b)(1) 14 days before hearing for personal service; 17 days by mail | Not stated | 21-2031(e) notice explain rights of parties 21-2033(b)(2) counsel explains consequences, alternatives and rights in language and mode most likely to understand | 21-2032 21-2043(d) |

App. 5

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|-------------------------------|--|--|--|-------------------|---|---|
| Florida: Stat. Ann. | 744-3215(1)(n) 744-331(1) notice must be read to respondent 744-3371(1) | 744-3371 next of kin 744-331(1) attorney, next of kin in petition 744-3371 attorney & any guardian then serving, next of kin, other interested persons as court directs | <i>Not stated</i> | <i>Not stated</i> | 744-331(1) notice of right to attorney | 48.021 for special process servers appointed by sheriff |
| Georgia: Code Ann. | 29-4-11(c) after finding probable cause | 29-4-12 counsel, GAL, petitioner, all adults named in petition | 29-4-12(c) 10 days before hearing | <i>Not stated</i> | 29-4-11(c) right to attend, lost rights, independent counsel | <i>Not stated</i> |
| Hawaii: Rev. Stat. | 560:5-309 (a) | 560:5-405 persons listed in petition | 560:5-113 14 days before hearing 15-1-401 14 days | <i>Not stated</i> | 560:5-404 inform of rights, describe consequences <i>Not stated</i> | 560:5-309(a) shall appear unless excused 15-5-309(b) waiver ineffective unless present at hearing or confirmed by visitor |
| Idaho: Code | 15-5-309(a)(1) | 15-5-309(a) spouse, parents & adult children, closest adult relative, person with care & custody, person requesting, public guardian when nominated | | <i>Not stated</i> | | |

App. 6

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|---|------------------------------|---|---|---|---|------------------------------|
| Illinois: 775/5 Ill. Comp Stat. | 5/11a-10(e) | 5/11a-10(f) those whose names appear in petition | 5/11a-10(e) 14 days before hearing | 5/11a-10(e) summons shall be printed in large, bold type and shall include form in statute | 5/11a-10(e)(1)-(7) consequence and rights included in statutory form | <i>Not stated</i> |
| Indiana: Code Ann. | 29-3-6-1(a)(4)(A) | 29-3-6-1(a)(4) spouse, parents & adult children, closely related, person having care & custody, attorney in fact, any other person directed by court | 29-3-6-1(c) 10 days | 29-3-6-2 form in statute | 29-3-6-2 consequence and rights included in statutory form | 29-3-6-1(a)(4) |
| Iowa: Code Ann. | 633-554 633-568 | 33-554 | <i>Not stated</i> | 633-554 Governed by rules of Civ. Pro. | 633-561(2): Ct. ensure notice of right of representation | <i>Not stated</i> |
| Kansas: Rev. Stat. Ann. | 59-3066(b) | 59-3066(c) attorney & such others as ct. directs | 59-3066(c) no less than 10 days prior to date of trial | <i>Not stated</i> | 59-3066(a)(8) notice of hearing includes notice of right to jury trial | <i>Not stated</i> |
| Kentucky: Rev. Stat. Ann. | 387-550(2) | 387-550(2) attorney & such others as ct. directs | 387-550(2) 14 days before hearing | <i>Not stated</i> | <i>Not stated</i> | <i>Not stated</i> |

App. 7

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|--|------------------------------|---|--|---------------|---|---|
| Louisiana: Civ. Code Ann.; Code of Civ. Pro. Rev. Stat. Ann. | CCP 4543(A) | CCP 4543(B) spouse, adult children, parents, siblings, nearest adult relative | CCP 4543(B) within 3 days of filing petition | Not stated | Not stated | Not stated |
| Maine: Me. Rev. Stat. Ann. tit. 18 | 18-A 5-309(a)(1) | 18-A 5-309(a) spouse, parents & adult children, domestic partner, guardian/conservator, closest adult relative, person with care & custody | 18-A 5-309(b) 14 days before hearing | Not stated | Not stated | 18-A 5-309(b) waiver ineffective unless present at hearing or confirmed by counsel, guardian ad litem, visitor |
| Maryland: Code Ann., Est. & Trusts; MD Rules | R2-124(b) | R74(b) interested persons designated by court | Not stated | Not stated | Not stated | Not stated |

App. 8

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|--|------------------------------|---|---|---------------|--|--|
| Massachusetts : Gen. Laws ch. 190B | 5-304(1) | 5-304(1) Children, parents, if none then siblings, heirs apparent, servings as guardian or have care or custody, nearest adult relative, VA if entitled to benefit | Not stated | Not stated | Not stated | 5-304(d) may not waive |
| Michigan: Comp. Laws Ann. | 700.5311(1)(a) | 700.7311(D)(b) spouse, parents & adult children, closest relative, person having care or custody, attorney in fact | Not stated | Not stated | 700-5311(3) nature, purpose, effects, and rights including right to counsel | 700-5311(2) ineffective unless present at hearing or confirmed by visitor |
| Mississippi. Code Ann. | 93-13-111 | 93-13-11 at least one adult relative who resides in Mississippi and any other person court determines is entitled to notice | 93-13-111 At least seven days prior to the hearing | Not stated | Not stated | Not stated |

App. 9

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|--------------------------------|------------------------------|--|--|-------------------|--|--|
| Missouri: Ann. Stat. | 475-075(2) | 475-075(2) spouse, parents, adult children, guardian, custodian, fiduciary, co-tenant, co-depositor, caregiver | 475-075(2) reasonable time | <i>Not stated</i> | 475-075(2) given copy of due process rights | <i>Not stated</i> |
| Montana: Code Ann. | 72-5-314(1)(a) | 72-5-314(1)(a)(b) Spouse, parents, adult children, guardian or custodian | 72-1-301(1)(a) at least 14 days prior to hearing | <i>Not stated</i> | <i>Not stated</i> | 72-5-314(2) not effective unless attends hearing or confirmed by visitor |
| Nebraska: Rev. Stat. | 30-2625(a)(1) | 30-2625(a)(1) Spouse, parents, adult children, guardian or custodian | 30-2625(a)(3) at least 14 days prior to hearing | <i>Not stated</i> | 30-2625(c) must be listed in the notice | <i>Not stated</i> |
| Nevada: Rev. Stat. | 159-047(2)(a) | 159-034(1) Person entitled to notice, requesting notice, interested, spouse, known relatives, person with care or custody, VA, DHHS, health care providers | 159-0475(1)(b) at least 10 days before hearing | <i>Not stated</i> | 159-048 rights affected, right to attorney, to appear, to oppose | 159-014(5) Respondent must in writing and filed |

App. 10

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|--|------------------------------|--|---|--|---|---|
| New Hampshire: Rev. Stat. Ann. | 464-A:5(I) | 464-A:5(IV) Relatives named in petition, proposed guardian, petitioner, medical director of institution where ward resides | 464-A:5(I) not less than 14 days before hearing | 464-A:5(II) 10 pt. or larger bold face type | 464-A:5(II) informed of right of counsel | <i>Not stated</i> |
| New Jersey: Stat. Ann. | R4:83-4(b) | R4:83-4(a) parents, spouse, adult children, custodian, such others as court directs | R4:83-4(a) 20 days before | <i>Not stated</i> | <i>Not stated</i> | R4:83-4(a) court may for good cause shorten or dispense with notice |
| New Mexico: Stat. Ann. | 45-5-309(B) | 45-5-309(C) Persons listed in petition, any person interested as court determines | | | 45-5-309(B) Inform of rights at hearing and right to attend, describe nature, purpose, consequences | 45-5-309(B) Court not grant petition if notice not served |
| New York: Mental Hyg. Law | 81.07(d)(1)(i) | 81.07(d)(1)(ii) spouse, parents, adult children, siblings, person with whom ward resides, attorney | 81.07(d)(2) not less than 14 days | 81.07(b) large type, plain language, other than English if necessary | 81.07(b) clear and easily readable statement of rights and consequences | <i>Not stated</i> |
| North Carolina: Gen. Stat. | 35A-1211 | 35A-1211 next of kin, counsel, GAL | 35A-1108 within 5 days | <i>Not stated</i> | <i>Not stated</i> | <i>Not stated</i> |

App. 11

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|--|------------------------------|---|---|--|--|--|
| North Dakota: Cent. Code | 30.1-28-09(1)(a) | 30.1-28-09 spouse, parents, adult children, guardian, attorney in fact, custodian | 30.1-03-01 14 days before hearing | 30.1-28-09 double spaced, 12 point type | <i>Not stated</i> | 30.1-28-09 not effective unless ward attends hearing |
| Ohio: Rev. Code Ann. | 2111.04(A)(2) | 2111.04(A)(2)(6) next of kin in the state | 2111.04(A) 7 days before hearing | 2111.04(A)(2) boldface type | 2111.04(A)(2) inform of due process rights | 2111.04(c) May not be waived |
| Oklahoma: Stat. Ann. tit. 30 | 30 3-110(A)(1) | 30 3-110(A)(2) spouse, adult children, parents, or siblings, attorney, custodian, adult children of deceased siblings | 30 3-110(c)(1) at least 10 days prior | 30 3-110(D) form in statute | 30 3-110(D) due process rights listed in notice and explained by judge | 30 3-106B shall not be waived |
| Oregon: Rev. Stat. | 125.060(2)(a) | 125.060(2) spouse, parents, adult children, cohabitor, fiduciary, POA | 125.065(3) 15 days before final date for filing objection to petition | 125.065(1) language reasonably understandable, 12 point type | 125.070 (2) statutory form explains purpose, consequences, rights | <i>Not stated</i> |

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|--|---|--|--|--|--|------------------------------|
| Pennsylvania: Cons. Stat. Ann. | 20-5511(a) | 20-5511(a) all person sui juris and entitled to share in estate if ward died intestate; person providing residential care | 20-5511(a) no less than 20 days before hearing | 20-5511(a) large print, simple language | 20-5511(a) purpose and seriousness of proceeding, rights that can be lost, procedural rights | <i>Not stated</i> |
| Rhode Island: Gen. Laws | 33-15-17.1(c), (d) Notice and petition shall be read to respondent by court officer in plain clothes and experienced in dealing with disability | 33-15-17.1(e) spouse and heirs at law, administration of care facility, any person known to be providing protective services | 33-15-17.1(a) 14 days before hearing | 33-15-17.1(b) plain language, large type | 33-15-17.1(b) possible loss of liberty and inform of due process rights | <i>Not stated</i> |

App. 13

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|--|--|--|--|-------------------|--|---|
| South Carolina: Code Ann. | 62-5-303A(A) As soon as reasonably possible after the filing of the summons and petition, the petitioner shall serve a copy of the summons, petition, and a notice of right to counsel upon the alleged incapacitated individual | 62-5-303(B)(4)(d) Spouse, adult children, person serving as guardian, custodian; 62-5-303C Alleged incapacitated individual, all parties, and any person who has filed a demand for notice, shall be given notice of the hearing. | 62-5-303C (A) As soon as the interests of justice may allow, but after filing a response to the petition has elapsed as to all parties, the court shall hold a hearing on the merits of the petition | <i>Not stated</i> | 62-5-303(A)(c) Notice of right of counsel | 62-5-303C May waive if not in the interest and may proceed without a hearing; [Reporter comment: court should scrutinize any waivers of notice and hearing closely to ensure willingly and voluntarily given.] If no formal hearing held, court shall issue a temporary consent order, which shall expire in 30 days. Ward may request formal hearing during 30-day period. If not requested formal hearing, court shall issue order with terms agreed to by parties and guardian ad litem. |
| South Dakota: Codified Laws Ann. | 29A-5-308 | 29A-5-308 all entities and persons older than 10 years who are named in the petition | 29A-5-204 at least 14 days prior to hearing | <i>Not stated</i> | 29A-5-309 statement of nature, purpose, legal effect and right to appear at hearing and to object to appointment of guardian | 29A-5-308 may not waive |

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|--------------------------------------|---|--|---|---------------------------------------|--|---|
| Tennessee: Code Ann. | 34-1-107(2)(a) | 34-1-106 By mail to closest relative, person having care or custody or with whom ward is living | <i>Not stated</i> | 34-1-108(c) form in statute | 34-1-108(c) due process rights listed on reverse of hearing notice 34-1-107(d)(2)(c) GAL explains petition in understandable language | 34-1-121 Ct. may waive if best interest, if too costly or undue burden to attend |
| Texas: Estate Code Ann. | 1051.103 Sheriff personally serve | 1051.103 Personal service on proposed ward, any court-appointed conservator, parent, spouse, person designated as guardian. 1051.104 By mail to adult children, adult siblings, administrator of facility, operator resident facility, agent under power of attorney, person to serve as guardian. 1051.051 Attorney of record | 1051.101 upon filing of application | <i>Not stated</i> | 1051.102 Clear & conspicuous notice of right of interested person or respondent to request notification of filing of all pleadings | 1051.055(e) attorney ad litem may not waive 1051.251 competent interested person may waive |

App. 15

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|---------------------------------------|--|---|---|--|---|--|
| Utah: Code Ann. | 75-5-309(1)(a) 75-5-405 | 75-5-309(1) spouse, parent, adult children, at least 1 close relative; any person serving as guardian or who has custody 75-5-405 Spouse or parent | 75-1-405 10 days before hearing | 75-5-309(2) plain language, large print | 75-5-309(2) possible adverse consequences, list of rights | 75-5-309(3) 75-5-405 not effective unless person attends hearing or waiver is confirmed by visitor |
| Vermont: Stat. Ann. tit. 14 | 14-3064(a) as provided by rules of probate procedure | <i>Not stated</i> | 14-3064(b) more than 15, but less than 30 days after filing of petition | <i>Not stated</i> | <i>Not stated</i> | <i>Not stated</i> |
| Virginia: Code Ann. | 64-2-2004(A) | 64-2-2004(C) all whose names are in the petition | 64-2-2004(A) reasonable notice | 64-2-2004(D) 14 point font | 64-2-2004(D) warning of consequences in conspicuous bold print, inform of right to counsel | 64-2-2004(A) respondent may not waive |
| Washington: Rev. Code Ann. | 11.88.030(4a) | 11.88.040 parent, spouse, children, GAL, person with whom the ward is residing | 11.88.030(4)(a) less than 5 days after petition is filed | 11.88.030(4)(b) all caps, double spaced, 10-point minimum font | 11.88.030(4)(b) Clear and easily readable statement of legal rights that could be restricted or transferred, right to counsel of choice, and right to a jury trial on whether basis exists for appointment and rights that will be retained or restricted if guardian appointed | <i>Not stated</i> |

App. 16

| State | Hearing Notice To Respondent | Hearing Notice To Others | Notice Timing | Notice Format | Respondent Informed of Consequences or Rights | Waiver Or Substitute Service |
|---------------------------------|------------------------------|--|--|------------------------|--|--|
| West Virginia: Code | 44A-2-6 | 44A-2-6 all individuals older than 7 years named in the petition | 44A-2-6 14 days prior to hearing | 44A-2-6 large print | 44A-2-6 brief statement of purpose, rights, possible consequences | 44A-2-6(b) protected person may not waive |
| Wisconsin: Stat. Ann. | 54.38(a) | 54.38(2) Counsel, GAL, presumptive adult heirs, custodian, agency giving aid | 54.38(2)(a) 10 days after filing of petition | Not stated | Not stated | Not stated |
| Wyoming: Stat. | 3-1-205 3-2-102(a) | 3-2-102 parents, spouse, & adult children, custodian & proposed guardian, as ordered by court | 3-2-102(d) In accordance with WRCP and as ordered by the court. | None stated | Not stated | Not stated |

APPENDIX B

[Filed: March 11, 2020]

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Attorney for Respondent, CHRISTINE CHUI
as Guardian of Estate of Michael Chui in BP145759
and as GAL for Michael Chui in BP145642

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES –
STANLEY MOSK COURTHOUSE**

Case No. BP154245

[Related Cases: 16STPB04524; BP145759; BP137413,
BP143884, BP145642, BP145759, BP155345,
BP162717, BC544149]

[Related Appellate Court Cases: B288425; B286548;
B296150; B301214]

| | |
|--|---|
| In the Matter of the Estate of |) |
| |) |
| KING WAH CHUI, |) |
| |) |
| Deceased |) |
| <hr/> | |
| BENJAMIN TZE-MAN CHUI, as Co-Trustee |) |
| of Trusts A, B, and C of the King Wah Chui |) |
| and Chi May Chui Declaration of Trust, |) |
| |) |
| Petitioner, |) |
| |) |
| vs. |) |
| |) |
| CHRISTINE CHUI, individually, as beneficiary |) |
| of Trust A of the King Wah Chui and Chi |) |
| May Chui Declaration of Trust, and as |) |
| personal representative of the Estate of |) |
| Robert Tak-Kwong Chui, and DOES 1 |) |
| through 60, inclusive, |) |
| |) |
| Respondents. |) |
| <hr/> | |

**MICHAEL CHUI'S VERIFIED REPUDIATION
OF THE ORAL SETTLEMENT OF MAY 14, 2018
AND SUBSEQUENT MODIFICATIONS**

| | |
|---------------|---------------------|
| Dept.: | 20 |
| Judge: | Hon. David J. Cowan |
| Action Filed: | July 24, 2014 |
| Trial Date: | None Set |

MICHAEL CHUI hereby repudiates the fourth Settlement Agreement, which was negotiated among GAL Jackson Chen, Benjamin Chui, Esther Chao, Helena Chui (who is not a beneficiary), and without any consent or participation of Christine Chui, Michael Chui, or Jacqueline on January 16, 2020.

This fourth purported settlement is in addition to the first May 14, 2018 proposal (wherein the Court found that five additional material terms were added to the purported agreement outside of Christine's presence on May 14, 2018, which, contrary to Ben's representation to the Court, did affect Christine and the Minors), the second July 23, 2018 proposal (with various material terms rejected by GAL Chen), and the third August 10, 2018 secret settlement (entered into between GAL Chen and Co-trustees in August 2018, without any participation of Christine, Michael Chui, or Jacqueline Chui, and which the Court rejected with prejudice on July 18, 2019).

Any settlement affecting a minor may be repudiated by the minor or his GAL prior to it being approved by the court, pursuant to California Family Code Section 6710 and *Scruton v. Korean Air Lines Co.* (1995) 39 Cal.App.4th 1596, 1607. Michael Chui will be 16 years old in about two months. He does have a Guardian of his Estate (BP 145759: Christine Chui, who has earlier repudiated the Settlement Agreement in her capacity as the Guardian of the Estate of Michael Chui, the GAL for Michael on the Appellate Court Case No. B286548, and the Trustee of Michael Chui's irrevocable trust dated August 12, 2004, which is to receive all distribution assets from the settlement). As an affected

Minor beneficiary or contingent beneficiary in those matters, he is hereby repudiating the Settlement Agreement on his own.

The guardian ad litem must take a minor's wishes into consideration, especially when the minor approaches the age of majority. *Estate of Ricardo Escobedo v. City of Redwood City*, 2006 U.S. Dist. LEXIS 12457 at 29. Courts generally give enhanced rights to minors over the age 14 and consider their preferences as opposed to younger minors. For example, minors are eligible for emancipation when over 14 (California Family Code § 7120) and the court also considers their preference regarding appointment of Guardians of the Estate under Probate Code § 1514(e)(2). As stated above, Michael Chui will be 16 years old in two months.

Further, it has long been the rule in California that that "a contract of a minor may be disaffirmed by the minor ***before majority***." Cal. Fam. Code, § 6710 (emphasis added). "Except as otherwise provided by statute, a contract of a minor may be disaffirmed by the minor before majority or within a reasonable time afterwards or, in case of the minor's death within that period, by the minor's heirs or personal representative." According to the Ninth Circuit, "reasonable time" is determined by the circumstances of each particular case. *Hurley v. Southern California Edison Co.* (9th Cir. 1950) 183 F.2d 125, 132. Accordingly, Michael has the ability to judge for himself whether the settlement agreement is beneficial or prejudicial to his interests.

For the past 8 years, GAL Chen has never met with or spoken to Michael. Instead, he has unethically

assisted Esther Chao, Margaret Lee, and Benjamin to litigate against Michael, his family, and his interest. Michael is repudiating the Settlement Agreement because it is not in his best interests based on the following facts:

a. It waives his substantial rights and claims including 8 years of past due and future trust accountings.

b. It waives his substantial rights, interests, and claims of over \$100 million against Esther Chao, Margaret Lee, Helena Chui, and Benjamin Chui etc.

c. It waives his constitutional rights to appeal.

d. It waives his substantial rights and interests in his expected inheritance in Christine's \$3 million cash and various properties (including Three Lanterns, Sycamore, Atlantic Tower, Domingo, Jewelry, and Antiques etc.), which Christine and Trustors had intended for Michael, pursuant to various trust records and documents, Christine's assignment, and the detailed 20-page findings of the Court's July 18, 2019 Ruling. **These properties carry priceless sentimental value to Michael and his special memories of his late father and grandparents,** and Michael does not want to lose any rights and annual income from these real properties.

e. Michael doesn't want to settle with Esther Chao, Margaret Lee, Benjamin Chui, and Helena Chui who had conspired to sue his innocent father into an early grave. Instead, Michael would like the justice system to clear up his late father's name and legacy, through the

protection of the court and Christine, his mother, his Trustee, and Guardian of his estate.

f. Michael believes that GAL Jackson Chen has a conflict of interest in being guardian ad litem for both him and his sister because they are situated differently under the Trusts.

g. Michael also believes that there are four cases (B288425, B286548, B296150, and B301214) being heard at the appellate court which directly affect Michael's rights and interests.

h. Michael also believes that if Christine had lost the trial, various properties (including Three Lanterns, Sycamore, and Atlantic Tower) would have gone to him, pursuant to King and May's Trust Amendment No. 3. If Christine had prevailed in the trial, these properties would have gone to him, pursuant to Christine's assignment. The only way that Michael would not receive these properties are through the enforcement of the unjust settlement, a product of fraud and deceit.

i. Michael also believes that GAL Chen misrepresented to the court his inheritance interests by conflating the Trusts together. GAL Chen deprived Michael's rights and interests to all real estate properties in King and May's Trust A, including Three Lanterns (equity value of \$13 million), Sycamore (equity value of over 8 million), and Atlantic Tower (market value of over \$23 million) and their income and savings of over \$5 million, relinquished by Christine for the benefit of Michael in King and May's Trust A, and GAL Chen wrongfully used the income

and savings that Michael is entitled to have from King and May's Trust B, C, and ILIT for a deceitful "buy out" and disinheritance of Michael in King and May's Trust A. Michael did not receive any of these real estate properties with over \$800,000.00 annual income in King and May's Trust A, which Christine and the Trustors King and May had intended for Michael and/or her sister.

j. Michael also believes that he did not receive \$3 million cash relinquished by Christine for the benefit of him and his sister outright.

k. Michael also believes that it is mandatory and important for him to be present at the enforcement of the minors' compromise hearing.

l. Michael also believes that all co-trustees and GAL's legal fees from 2012 to the present must be disclosed and approved, especially those paid from his expected inheritance interests and/or estate.

In many ways, this fourth purported settlement left Michael in a worse position than if Christine had lost at trial, evidenced by the law in the Court's ruling on July 18, 2019. And it is much worse off for Michael than the last GAL' Petition which was denied by the court with prejudice on July 18, 2019. WHEREFORE, based on his repudiation of the Settlement Agreement, Michael Chui requests the Court to deny approval thereof.

Dated: March 11, 2020

By: /s/ Michael Chui
MICHAEL CHUI

VERIFICATION

I, Michael Chui, declare as follows:

I have read the Repudiation of the Settlement Agreement and know its contents.

I am a beneficiary in the above-entitled action. The matters stated in the foregoing document are true of my own knowledge, or I am informed and believe that such allegations are true and make such allegations on the basis of my information and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Palos Verdes Estates, California on this 11th day of March 2020.

Dated: March 11, 2020

By: /s/ Michael Chui
MICHAEL CHUI

*[Proof of Service Has Been
Omitted for Printing Purposes]*

APPENDIX C

[Filed: March 11, 2020]

James G. Bohm, Esq. (SBN 132430)
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Attorney for Respondent, CHRISTINE CHUI
as Guardian of Estate of Michael Chui in BP145759
and as GAL for Michael Chui in BP145642

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES –
STANLEY MOSK COURTHOUSE**

Case No. BP154245

[Related Cases: 16STPB04524; BP145759; BP137413,
BP143884, BP145642, BP145759, BP155345,
BP162717, BC544149]

[Related Appellate Court Cases: B288425; B286548;
B296150; B301214]

| | |
|--|---|
| In the Matter of the Estate of |) |
| |) |
| KING WAH CHUI, |) |
| |) |
| Deceased |) |
| <hr/> | |
| BENJAMIN TZE-MAN CHUI, as Co-Trustee |) |
| of Trusts A, B, and C of the King Wah Chui |) |
| and Chi May Chui Declaration of Trust, |) |
| |) |
| Petitioner, |) |
| |) |
| vs. |) |
| |) |
| CHRISTINE CHUI, individually, as beneficiary |) |
| of Trust A of the King Wah Chui and Chi |) |
| May Chui Declaration of Trust, and as |) |
| personal representative of the Estate of |) |
| Robert Tak-Kwong Chui, and DOES 1 |) |
| through 60, inclusive, |) |
| |) |
| Respondents. |) |
| <hr/> | |

**JACQUELINE CHUI'S VERIFIED
REPUDIATION OF THE ORAL SETTLEMENT
OF MAY 14, 2018 AND SUBSEQUENT
MODIFICATIONS**

| | |
|---------------|---------------------|
| Dept.: | 20 |
| Judge: | Hon. David J. Cowan |
| Action Filed: | July 24, 2014 |
| Trial Date: | None Set |

JACQUELINE CHUI hereby repudiates the fourth Settlement Agreement, which was negotiated among GAL Jackson Chen, Benjamin Chui, Esther Chao, Helena Chui (who is not a beneficiary), and without any consent or participation of Christine Chui, Michael Chui, or Jacqueline on January 16, 2020.

This fourth purported settlement is in addition to the first May 14, 2018 proposal (wherein the Court found that five additional material terms were added to the purported agreement outside of Christine's presence on May 14, 2018, which, contrary to Ben's representation to the Court, did affect Christine and the Minors), the second July 23, 2018 proposal (with various material terms rejected by GAL Chen), and the third August 10, 2018 secret settlement (entered into between GAL Chen and Co-trustees in August 2018, without any participation of Christine, Michael Chui, or Jacqueline Chui, and which the Court rejected with prejudice on July 18, 2019).

Any settlement affecting a minor may be repudiated by the minor or his GAL prior to it being approved by the court, pursuant to California Family Code Section 6710 and *Scruton v. Korean Air Lines Co.* (1995) 39 Cal.App.4th 1596, 1607. Jacqueline Chui will be 18 years old next March. She does have a Guardian of her Estate (BP 145759: Christine Chui, who has earlier repudiated the Settlement Agreement in her capacity as Guardian of the Estate of Jacqueline Chui and the GAL for Jacqueline on the Appellate Court Case No. B286548). As an affected minor beneficiary or contingent beneficiary in those matters, she is hereby repudiating the Settlement Agreement on her own.

The guardian ad litem must take a minor's wishes into consideration, especially when the minor approaches the age of majority. *Estate of Ricardo Escobedo v. City of Redwood City*, 2006 U.S. Dist. LEXIS 12457 at 29. Courts generally give enhanced rights to minors over the age of 14 and consider their preferences as opposed to younger minors. For example, minors are eligible for emancipation when over 14 (California Family Code § 7120) and the Court also considers their preference regarding appointment of Guardians of the Estate under Probate Code § 1514(e)(2). As stated above, Jacqueline Chui will be 18 years old in one year.

Further, it has long been the rule in California that that "a contract of a minor may be disaffirmed by the minor ***before majority***." Cal. Fam. Code, § 6710 (emphasis added). "Except as otherwise provided by statute, a contract of a minor may be disaffirmed by the minor before majority or within a reasonable time afterwards or, in case of the minor's death within that period, by the minor's heirs or personal representative." According to the Ninth Circuit, "reasonable time" is determined by the circumstances of each particular case. *Hurley v. Southern California Edison Co.* (9th Cir. 1950) 183 F.2d 125, 132. Accordingly, Jacqueline has the ability to judge for herself whether the settlement agreement is beneficial or prejudicial to her interests.

For the past 8 years, GAL Chen has never met with or spoken to Jacqueline. Instead, he has unethically assisted Esther Chao, Margaret Lee, and Benjamin to litigate against Jacqueline, her family, and her

interest. Jacqueline is repudiating the Settlement Agreement because it is not in her best interests based on the following facts:

a. It waives her substantial rights and claims including 8 years of past due and future trust accountings.

b. It waives her substantial rights, interests, and claims of over \$100 million against Esther Chao, Margaret Lee, Helena Chui, and Benjamin Chui etc.

c. It waives her constitutional rights to appeal.

d. It waives her substantial rights and interests in her expected inheritance in Christine's \$3 million in cash and various real estate properties (including Atlantic Tower, Domingo, family heirloom jewelry, and antiques etc.) which Christine and the Trustors had intended for Jacqueline, pursuant to various trust documents and records, Christine's assignment, and Court's detailed 20-page findings in its July 18, 2019 Ruling. **These properties carry priceless sentimental value to Jacqueline and her memories of her late father and grandparents.** Jacqueline does not want to lose any rights and annual income from these real properties.

e. Jacqueline does not want to settle with Esther Chao, Margaret Lee, Benjamin Chui, and Helena Chui who had conspired to sue her innocent father into an early grave. Instead, Jacqueline would like the justice system to clear up her late father's name and legacy, through the protection of the court and Christine, her mother, her Trustor, and Guardian of her estate.

f. Jacqueline also believes that GAL Jackson Chen has a conflict of interest in being both her guardian ad litem and her brother, Michael Chui's guardian ad litem as they are situated differently under the Trusts.

g. Jacqueline also believes that there are four cases (B288425, B286548, B296150, and B301214) being heard at the appellate court which affect Jacqueline's rights and interests.

h. Jacqueline also believes that GAL Chen misrepresented to the court her inheritance interests by conflating the Trusts together. GAL Chen deprived Jacqueline's rights and interests to all real estate properties in King and May's Trust A, including Three Lanterns (equity value of \$13 million), Sycamore (equity value of over 8 million), and Atlantic Tower (market value of over \$23 million) and their income and savings of over \$5 million, relinquished by Christine for the benefit of Jacqueline in King and May's Trust A, and he wrongfully used the income and savings that Jacqueline is entitled to have from King and May's Trust B, C, and ILIT for a deceitful "buy out" and disinheritance of Jacqueline in King and May's Trust A. Jacqueline did not receive any of these real estate properties with an annual income of \$800,000.00 in King and May's Trust A, which Christine and the Trustors King and May Chui had intended for her and/or her brother.

i. Jacqueline also believes that she did not receive \$3 million cash relinquished by Christine for the benefit of her and her brother outright.

j. Jacqueline also believes that it is mandatory and important for her to be present at the enforcement of the minors' compromise hearing.

k. Jacqueline also believes that all co-trustees and GAL's legal fees from 2012 to the present must be disclosed and approved, especially those paid from her expected inheritance interests and/or estate.

In many ways, this fourth purported settlement left Jacqueline in a worse position than if Christine had lost at trial, evidenced by the law in the Court's ruling on July 18, 2019. And it is much worse off for Jacqueline than the last GAL's Petition which was denied by the Court with prejudice on July 18, 2019. WHEREFORE, based on her repudiation of the Settlement Agreement, Jacqueline Chui requests the Court to deny approval thereof.

Dated: March 11, 2020

By: /s/ JACQUELINE CHUI
JACQUELINE CHUI

VERIFICATION

I, Jacqueline Chui, declare as follows:

I have read the Repudiation of the Settlement Agreement and know its contents.

I am a beneficiary in the above-entitled action. The matters stated in the foregoing document are true of my own knowledge, or I am informed and believe that such allegations are true and make such allegations on the basis of my information and belief.

App. 32

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct. Executed in Palos Verdes Estates, California on this 11th day of March 2020.

By: /s/ JACQUELINE CHUI
JACQUELINE CHUI

*[Proof of Service Has Been
Omitted for Printing Purposes]*

APPENDIX D

[Filed: March 15, 2022]

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Attorneys for Petitioner, Ben Chui

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF LOS
ANGELES, CENTRAL DISTRICT**

Case No.: 22STPB02557

| | |
|--|---|
| In the Matter of: |) |
| |) |
| THE ESTATE OF SINORA CHAN |) |
| |) |
| BEN CHUI, Surviving Spouse of Sinora Chui, |) |
| |) |
| Petitioner, |) |
| |) |
| Vs. |) |

KODE LI, Successor Trustee of the Sinora)
Chan Separate Property Trust UDO 10-11-21;)
Respondent.)
_____)

Petition filed:

PETITION (Cal. Prob. Code §850):

1. TO INVALIDATE SINORA CHAN'S SEPARATE PROPERTY TRUST DUE TO FRAUD, DURESS, UNDUE INFLUENCE AND LACK OF CAPACITY;
2. TO INVALIDATE THE FIRST AND SECOND TRANSMUTATION AGREEMENTS AND FOR PUNITIVE DAMAGES BASED ON BREACH OF FIDUCIARY DUTY (Cal. Fam. Code §§721 and 1100 et seq.);
3. FOR PROFESSIONAL FEE CONTRIBUTION (Cal. Fam. Code §2030)
4. FOR FAMILY ALLOWANCE (Cal. Prob. Code §§6540, 6541);
5. FOR DETERMINATION OF SPOUSAL PROPERTY RIGHTS (Cal. Prob. Code § 13650); AND
6. FOR DECLARATORY RELIEF

Petitioner, Ben Chui, surviving spouse of Sinora Chan, alleges:

PARTIES

1. Petitioner, Ben Chui (“Ben”), is the surviving spouse of Sinora Chan (“Sinora”). Ben and Sinora married on June 27, 2014, and Sinora died October 16, 2021.

2. Respondent, **Kode Li** (“Kode”), is the successor trustee of the Sinora Chan Separate Property Trust dated October 11, 2021.

JURISDICTION AND VENUE

3. On or about August 4, 2012, Sinora Chan, decedent (“Sinora”) executed the Sinora Chan Amended and Restated Trust (hereafter, the “First Sinora Trust”), a true and correct copy of which is attached hereto as **Exhibit 1**, and incorporated by this reference. The execution of this trust took place in Los Angeles county.

4. On October 11, 2021, Sinora Chan, decedent, executed the Sinora Chan Separate Property Trust (hereafter, the “Second Sinora Trust”), a true and correct copy of which is attached hereto as **Exhibit 2**, and incorporated by this reference. The execution of this trust took place in Los Angeles county.

5. This Court has subject matter jurisdiction over the First Sinora Trust and the Second Sinora Trust pursuant to *California Probate Code* §§850 and 17000 as this action concerns the validity and existence of the Second Sinora Trust, the internal affairs of those

trusts, and certain actions of Sinora regarding her trusts and of Kode Li (“Kode”) as successor trustee of the Second Sinora Trust. Additionally, both trusts were created and executed in the jurisdiction of this Court, and Sinora and Kode performed the acts subject to this Petition in Los Angeles county. This action also concerns alleged breaches of fiduciary duty by Sinora to Ben during marriage over which this Court also has subject matter jurisdiction. Cal. Fam. Code §1101; *Yeh v. Tai* (2017) 18 Cal.App.5th 953, 960.

6. The “principal place of administration,” as defined under *California Probate Code* § 17200 et seq., of the First Sinora Trust and the Second Sinora Trust, is Los Angeles County, State of California. Therefore, pursuant to *California Probate Code* §§ 17003, 17005, and 17200 et seq., this Court has jurisdiction to hear this Petition, and to grant the relief requested herein; and proper venue lies in this Court. The probate Court has exclusive jurisdiction over “proceedings concerning the internal affairs of trust” pursuant to *California Probate Code* § 17000(a), and concurrent jurisdiction over “[a]ctions and proceedings to determine the existence of trusts” pursuant to *California Probate Code* § 17000(b)(1). *California Probate Code* § 17002 provides generally that trustees and beneficiaries of trusts with their principal place of administration in the State of California are subject to jurisdiction of California’s probate Courts. The probate Court is given the broad power and responsibility to supervise and protect the administration of trusts within its jurisdiction. *Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 270; *Schwartz v. Labow* (2008) 164

Cal.App.4th 417, 428(3); *Estate of Hammer* (1993) 19 Cal.App.4th 1621, 1634.

7. The Court has personal jurisdiction over the parties because they are/were residents and/or are doing business in the County of Los Angeles, State of California.

**SUMMARY OF THE PETITION AND
REQUESTED RELIEF**

8. By this Petition, Ben contends the following:

- a. That the Second Sinora Trust executed by Sinora 5 days prior to her death and prepared and presented to Sinora by her brother, Kode, which left about 80% of her approximate \$20 million estate to Kode, 20% to her biological daughter by another marriage, and nothing to Ben is invalid on the grounds of fraud and/or undue influence by Kode and that Sinora lacked the capacity to understand and sign that trust at the time it was presented to her. Accordingly, Ben prays that the Court declare the Second Sinora Trust invalid and declare that Sinora's estate be administered pursuant to the First Sinora Trust;
- b. That Sinora breached her fiduciary duty to Ben by unduly influencing Ben, with the assistance of Kode, to transfer the entirety of Ben's approximate \$20 million separate property estate to Sinora and Kode. Given Sinora's breaches of fiduciary duty, with the assistance of Kode as alleged herein, Ben

prays that those property transfers as alleged herein be set aside, and that the Court orders that Ben be restored his approximate \$20 million in separate property;

- c. That he is entitled to a pre and post trial professional fee contribution from Sinora's estate and Kode;
- d. That he is entitled to a family allowance and a determination of his spousal property rights from and as to Sinora's estate;
- e. That he is entitled to punitive damages from Sinora's estate and Kode based on the conduct alleged herein; and
- f. That he is entitled to an award of his professional fees and costs.

STATEMENT OF FACTS

The Trust Litigation

9. Prior to, and throughout his marriage to Sinora, Ben was involved in extensive litigation with regards to his Grandparent's Trust for which he served as Co-Trustee, and to some extent with his father's trust. Ben's grandparents were King and May Chui; his father was Robert Chui ("Robert"). Those proceedings were venued with the Los Angeles County Superior Court, Central District (hereafter, the "Trust Litigation").

10. The Trust Litigation commenced in 2012, when Robert's sister Esther Chao filed a petition against

Robert (Co-Trustee of Ben's Grandparents' Trust), and his second wife Christine Chui ("Christine"), alleging that Robert and Christine had committed financial elder abuse against Ben's grandfather and fraudulently stolen millions of dollars from Ben's Grandparents' Trust.

11. In January 2013, Robert fell unexpectedly into a coma and died in June 2013. Consequently, Ben became a successor Co-trustee of his Grandparents' trust, and he continued to investigate and eventually prosecute elder abuse claims against Christine. During this protracted litigation, Christine tried to remove and surcharge Ben as co-trustee at least 5 times. Ben filed Anti-SLAPP motions to thwart at least 2 removal attempts.

12. On May 14, 2018, the day trial was set to begin against Christine, the parties reached a global settlement and entered the terms of their agreement on the record. Beginning in July 2018, Christine repeatedly attempted to set aside the global May 14, 2018 settlement. Christine's attempts failed. In September 2018, the trial Court upheld the settlement as to Christine.

13. Because the global settlement included settlements on behalf of Christine's children with Robert ("Christine's Children"), approval of a Minor's Compromise was required. During the Minors' Compromise phase of the litigation, at trial on the July 18, 2019, the trial Court granted Christine's motion for non-suit, disapproving the agreement between the Minors' guardian ad litem ("GAL") and the remaining Trust beneficiaries.

14. On October 2, 2019 the Court ordered the parties to mediation. In January 2020, the Minors' GAL reached a second agreement (the, "Second GAL Agreement"), which was approved by the Court on March 3, 2020 over Christine's objections. On June 20, 2020, the Court issued an Order granting the GAL's petition to approve the Second GAL Agreement.

15. In July 2020, Christine and her children appealed the trial Court's approval of the 2018 Settlement Agreement and the 2020 Second GAL Agreement. On March 2, 2022, the California Court of Appeal affirmed the trial Court's enforcement and approval of the Settlement Agreement and the Second GAL Agreement..

Ben & Sinora Marry

16. On June 27, 2014, Ben and Sinora were married. A true and correct copy of Ben and Sinora's marriage certificate is attached hereto and incorporated by reference as **Exhibit 3**. At the time of marriage, Ben had approximately \$18 million in separate property, while Sinora had approximately \$4 million of her own separate property. Ben and Sinora did not have a premarital agreement.

17. From the outset and during the marriage, Sinora was Ben's primary confidant and source of emotional support. Ben had few friends, and Sinora was aware that Ben was partially estranged from his parents. Ben did not work during marriage, his sole focus being the Trust Litigation and defending Christine's claims against him during that litigation. From the outset of the marriage, Ben confided to

Sinora that he was afraid and intimidated by Christine.

18. In November 2014, Sinora confronted Ben that she did not feel comfortable that Christine could potentially go after his personal assets if he was surcharged in the Trust Litigation. Sinora told Ben that she could not remain married to him or support him in the Trust Litigation unless he agreed to take steps to protect their personal separate and community property assets, which in turn would provide her assurances that he could continue to provide for her financially. Consequently, in December 2014, Sinora arranged for certain of Ben's real estate investment separate properties to be transferred to 3 Hawaiian LLCs which membership interests Ben and Sinora held in tenancy by the entirety. Under Hawaiian law, tenancy by the entirety is a form of joint property ownership which carries with it the right of survivorship, and precludes a creditor from attaching the interest of a non-debtor co-tenant. Ben complied with Sinora's request and instructions.

The First Transmutation Agreement between Ben and Sinora

19. On or around the last quarter of 2015, Sinora told Ben that in order for them to remain married and protect their marital estate they needed a transmutation agreement which transmuted their respective separate property to their collective community property. Such an agreement, Sinora represented to Ben, would make her feel secure about their marriage and Ben's ability to provide for her, knowing, according to Sinora, that at least one-half of

the property they collectively had together would be hers and insulated from any attempt by Christine to take Ben's personal assets, or if something else happened to Ben. Sinora further represented to Ben that she had previously made Ben the sole beneficiary under her separate trust, the First Sinora Trust, **Exhibit 1**, and that if she should predecease him, that meant that her one-half of any transmuted property would become his separate property.¹

20. At the time Sinora proposed to Ben a transmutation agreement, she was threatening to leave Ben, also claiming that she needed the agreement to ensure that he did not leave her. These repeated threats prevented Ben from sleeping at night. Sinora incessantly interrogated, harassed, and badgered Ben until he acquiesced. Sinora further represented to Ben that so long as he did not have a significant relationship with another woman and leave Sinora, she would consider the transmutation agreement as only symbolic, and not enforce its terms against Ben—i.e., Ben's separate property would remain his separate property notwithstanding the transmutation agreement.

21. Sinora alone, and without any involvement from Ben, proceeded to have a transmutation agreement prepared, transmuting her and Ben's separate property to community property. Sinora retained a lawyer, Lee Salisbury, a Certified Family Law Specialist by the State Bar of California Board of Legal Specialization,

¹ See, Exhibit 1, Pg. 8, Para. 6.2, where Ben is designated as the sole beneficiary of Sinora's estate.

as her counsel and to prepare the transmutation agreement. On information and belief, Mr. Salisbury advised Sinora that Ben should have separate counsel to advise Ben on his rights and the legal effect of the transmutation agreement, a lawyer who practices Family Law, and that any such lawyer would need to sign the transmutation agreement providing that he/she did the same.

22. Following Mr. Salisbury's advice, on or about November 11, 2015, Sinora, without Ben's knowledge, contacted Scott Warmuth, a lawyer with whom, on information and belief, she had worked previously, and who practices personal injury, immigration, and employment law. The purpose of the contact was Sinora inquiring on whether Mr. Warmuth's office could represent Ben on the transmutation agreement for a fee of \$1,000. Mr. Warmuth and Sinora spoke, and thereafter agreed that Mr. Warmuth's office would represent Ben on the transmutation agreement for a fee of \$1,000. Ben never spoke with Mr. Warmuth. Mr. Warmuth then directed Sinora to communicate with his associate, Yesenia Acosta, who would be the actual attorney to represent Ben on and sign on Ben's behalf the transmutation agreement. On information and belief, Ms. Acosta had little, if any, experience in Family Law. Sinora and Ms. Acosta thereafter spoke and communicated, and between themselves, to the exclusion of Ben, arranged for Ms. Acosta's representation of Ben on the transmutation agreement.

23. On March 10, 2016, Ben and Sinora, together with their respective lawyers, executed the transmutation agreement prepared by Mr. Salisbury

(hereafter, the “First Transmutation Agreement”). A true and correct copy of the First Transmutation Agreement is attached hereto as Exhibit 4, and incorporated by this reference.

24. The First Transmutation Agreement provides in pertinent part:

- a. Ben transmutes \$18,396,616.30 of his separate property into community property. This consisted of \$16,450,000 in real property and \$1,946,616 in cash assets;²
- b. Sinora transmutes \$4,362,009.70 of her separate property into community property. This consisted of \$2,000,000 in real property and \$2,362,099.70 in cash assets;³
- c. All income derived during marriage is community property;⁴
- d. All gifts, bequests, devises, and inheritance acquired during marriage are community property.⁵

25. As of March 10, 2016, the date Ben executed the First Transmutation Agreement, Ben never met with or had any prior communications with Ms. Acosta regarding the First Transmutation Agreement or

² Exhibit 4, Pg. 6, Para. 1.10; and Pg. 20.

³ Exhibit 4, Pg. 5, Para. 1.5; and Pg. 19.

⁴ Exhibit 4, Pg. 9, Para. 2.1.

⁵ Exhibit 4, Pg. 10, Para. 2.3.

otherwise. Sinora alone arranged the date, time, and location when Ben would meet with Ms. Acosta to sign the First Transmutation Agreement. Further, when Ben met with Ms. Acosta to sign the First Transmutation Agreement, Ms. Acosta did not provide to him with a written or oral explanation of the provisions of the First Transmutation Agreement, nor provide an opinion on the legal effect of the First Transmutation Agreement as it concerns Ben.

26. The separate property that was transferred pursuant to the First Transmutation Agreements were Ben and Sinora's personal assets; the assets of his Grandparent's trust were not transferred under this agreement.

27. In the two years following the execution of the First Transmutation Agreement, Ben received life insurance proceeds in connection with him being a beneficiary to life insurance policies on the lives of his grandfather and father. These life insurance proceeds are Ben's separate property, as they do not fall into the categories of property transmuted under the First Transmutation Agreement.

Sinora Demands Ben to add Her Name to his Bank Accounts

28. On or around August 2016, Sinora demanded Ben to add her name to his bank accounts which were worth approximately \$2 million dollars. Again, Sinora threatened to leave Ben if he did not accede to this request, to which Ben did. Ben thereafter requested that he be put on Sinora's bank accounts, accounts approximating \$2 million, to which Sinora declined.

**The Second Transmutation Agreement
between Ben and Sinora**

29. Following the execution of the First Transmutation Agreement, the Trust Litigation ensued and became increasingly more litigious. Specifically, in or about October 2016, Christine filed a petition against Ben (hereafter, “Christine’s Petition”) seeking Ben’s removal as a trustee over his Grandparent’s estate, alleging that Ben, along with others, caused his Grandparent’s Trust and Robert’s Trust to lose millions of dollars, and sought for Ben to be surcharged for those losses. Ben filed an Anti-SLAPP motion to dismiss Christine’s Petition, but, at hearing on February 20, 2018, the trial Court denied Ben’s motion.

30. The filing and service of Christine’s Petition, coupled with the denial of Ben’s Anti-SLAPP motion, greatly exacerbated Ben’s anxiety and stress from the Trust Litigation, notably his feelings of intimidation and fear of Christine. These events likewise concerned Sinora, prompting Sinora to tell Ben that they needed to take further steps to protect their community property from Christine, and that she would cease providing Ben emotional support in the Trust Litigation and divorce him if he did not agree.

31. Sinora told Ben that she would remain with him and provide him emotional support in the Trust Litigation against Christine only if he agreed to transmute certain community property created under the First Transmutation Agreement to Sinora’s separate property. She also reassured Ben that they together would live off of the transmuted separate property, together with their remaining community

property, and also stated to Ben that he remained the sole trustee and beneficiary of her trust (i.e., the First Sinora Trust), so should she become incapacitated or prematurely die, Ben would receive the transmuted separate property.

32. Sinora further represented to Ben, as with the First Transmutation Agreement, that she would not hold Ben to the terms of this additional transmutation agreement, considering it solely symbolic, and that the property that was originally his separate property would remain his separate property notwithstanding any transmutation agreement between them, provided that Ben did not have a significant relationship with another woman and leave Sinora. Based on Sinora's representations, and her persistent threats, harassment, and interrogations of Ben regarding this transmutation agreement, Ben acquiesced. Accordingly, Sinora, without Ben's involvement, contacted Lee Salisbury to prepare this agreement and to represent her in connection with the same. Sinora also contacted Yesenia Acosta to represent Ben on this agreement, again without Ben's involvement.

33. On March 3, 2018, Sinora, Ben, and their respective lawyers (Mr. Salisbury for Sinora, and Ms. Acosta for Ben) signed a second transmutation (hereafter, the "Second Transmutation Agreement"). A true and correct copy of the Second Transmutation Agreement is attached hereto **Exhibit 5**, and incorporated by this reference.

34. The material terms of the Second Transmutation Agreement were primarily devised by Sinora. Under the Second Transmutation Agreement,

the community property entities known as Avondale Property, LLC, Mountain Water, LLC, and Haven Apartments, LLC (hereafter the, “LLCs,” and which became community property under the First Transmutation Agreement), were to be dissolved, and with the real properties owned by those LLCs being subsequently transferred to Sinora as her separate property.⁶

35. On information and belief, the approximate value of the community property transmuted from Ben and Sinora’s community property to Sinora’s separate property pursuant to the Second Transmutation Agreement is \$17,940,000.⁷

36. The separate and community property that was transferred pursuant to the Second Transmutation Agreement were Ben and Sinora’s personal assets; the assets of his Grandparent’s trust were not transferred under this agreement.

37. Under the Second Transmutation Agreement, Ben received no additional property, community or separate.

38. Sinora alone communicated with Ms. Acosta about the Second Transmutation Agreement, its terms, inclusive of providing Ms. Acosta a draft of the agreement and discussing its terms with her. Sinora also arranged the date, time, and location when Ben

⁶ Exhibit 5, Pg. 2, Para. 2.

⁷ Exhibit 5, Pg. 10.

and Ms. Acosta would meet to sign the Second Transmutation Agreement.

39. Prior to the execution date of the Second Transmutation Agreement, Ben had no contact or communication with Ms. Acosta, nor did Ben receive a written or oral opinion from Ms. Acosta of the legal effect of the Second Transmutation Agreement as to him.

The Transfer of Ben's and Sinora's Cash Holding to Kode Li

40. As the Trust Litigation continued after Ben's and Sinora's execution of the Second Transmutation Agreement, Sinora told Ben that they needed to protect their cash holdings in case Christine came after Ben personally for alleged breaches of Trust. Sinora told Ben that this action was necessary because the trial Court in the Trust Litigation had granted Christine's motion for nonsuit on July 18th, 2019, thereby disapproving the first GAL agreement, and issuing an OSC for removal of Ben as Co-Trustee.

41. Based on this ruling and the threat of removal by the Court and surcharge petitions brought by Christine against Ben personally, Ben's stress and anxiety increased, prompting Sinora to propose a plan to Ben on how to protect her and Ben's cash holdings.

42. Ben's and Sinora's personal cash holdings were primarily Ben's and Sinora's community property (i.e., property not transmuted to Sinora's separate property under the Second Transmutation Agreement), about \$7.5 million, and part Ben's separate property that he

received from his grandparents' and his father's insurance policies about \$2 million--\$9.5 million total.

43. Sinora told Ben that they would transfer their collective cash holdings to CTBC Bank in an account held in her brother's name, Kode Li ("Kode"), that Kode would hold this money for them effectively as a trustee, and that she and Ben would be beneficiaries of that account. At the time Sinora made this proposal, Kode had been living with Sinora and Ben in their home for about 3 years and was trusted by Ben. Sinora further told Ben that Kode would make this money available to them from which they would live during their marriage.

44. Ben was aware that Sinora had previously entrusted Kode with \$1 million of her money during her divorce from her ex spouse, and that Kode returned the money to Sinora after the completion of the divorce. As such, Ben thought that Kode and Sinora would abide by their words.

45. Given the foregoing representations and assurances by Sinora and Kode, Ben agreed to transfer his and Sinora's cash holdings to a CTBC Bank account in Kode's name. Consequently, on or around July 30, 2019, Ben and Sinora went to various banks where their cash holdings were maintained, and, on information and belief, obtained a cashier's check payable to either Sinora or Kode for deposit into an account with CTBC in Kode's name.

46. The separate and community property that was transferred pursuant to the First and Second Transmutation Agreements and above-referenced cash

holdings were Ben and Sinora's personal assets; the assets of his Grandparent's trust were not transferred under these agreements.

47. Thereafter, on information and belief, Sinora and Kode, independent of Ben, established an account with CTBC Bank in Kode's name into which the funds were deposited. Subsequently, Sinora and Ben caused the remainder of their cash holdings to be transferred to that account, as well as Ben's remaining separate property cash—about \$9.5 million in total.

48. After Sinora's death, Ben discovered that he was not a beneficiary of the CTBC account and that Kode had no intention of returning the CTBC account money to him, as Ben asked for the return of his money.

The Creation of Sinora's New Trust and Sinora's Death

49. On September 28, 2021, Sinora was diagnosed with metastatic cancer. Upon being diagnosed, Sinora spent two days in the hospital, then went home for two days under the care of Ben, Kode, and Ben's mother Helena, a physician.

50. The next week, on or about October 5, 2021, Sinora was admitted back into the hospital, her condition seriously declining. Sinora was transferred to the intensive care unit on October 10, 2021, and died on October 16, 2021 only 17 days weeks after her initial diagnosis. A true and correct copy of Sinora's Death Certificate is attached hereto and incorporated by reference as **Exhibit 6**.

51. Five days before Sinora's death, October 11, 2021, Kode came to the hospital to see Sinora. While at the hospital, and Sinora in the intensive care unit, Kode presented Sinora with an instrument entitled "The Sinora Chan Separate Property Trust" consisting of 85 pages (hereafter, the "Second Sinora Trust"), **Exhibit 2** hereto as previously alleged. Sinora signed this trust on October 11, 2021. On information and belief, Kode prepared the Second Sinora Trust.

52. Pursuant to the Second Sinora Trust, Kode is the successor trustee, not Ben, followed by Sinora's biological daughter, Jamie Chan ("Jamie") if Kode is unable to serve.⁸ Further, pursuant to the provisions of this trust, Ben is omitted as a beneficiary, with Kode being a beneficiary and receiving approximately 80% of the Sinora's separate property, and Jamie receiving the approximate 20% balance.⁹ This trust specifically provides that Ben receives none of Sinora's separate property.

53. Sinora never discussed or inferred to Ben her intention to create and establish the Second Sinora Trust and to revoke First Sinora Trust. Kode never advised Ben of the same. Ben did not learn of the Second Sinora Trust until November 4, 2021 after Sinora had died.

54. At the time of Sinora's death, Ben, Sinora, and Kode were still living together.

⁸ Exhibit 2, Pg. 2, Para. 2.C.

⁹ Exhibit 2, Pg. 24, Para. 6.F.

55. Due to recurrent ascites, severe abdominal distention, repeated paracentesis, sleep and nutritional deprivation, triple chemotherapy, hypotension, and progressive renal failure, and the heavy emotional toll of being diagnosed with cancer with just weeks left to live, Sinora's mental capacity was greatly diminished at the time the Second Sinora Trust was presented to her and executed.

56. Ben also learned from CTBC Bank after Sinora's death that he was not named as a beneficiary to the CTBC account, that said account was titled to a trust created by Sinora and Kode, and that Kode contended that all money transferred to that account by Sinora and Ben belonged to him (i.e., Kode).

57. In an effort to retain the money in the CTBC account for Sinora's estate and himself, Kode, following Sinora's death, threatened to Ben to divulge certain unspecified information to Christine that Kode contended demonstrated a conspiracy between Ben and the GAL for Christine's children in the Trust Litigation that would unravel the settlements procured in the Trust Litigation and also result in Ben being surcharged in connection with the same (hereafter, the "Threatened Information"). Kode specifically told Ben that unless he let Kode retain the \$9.5 million, Kode would provide the Threatened Information to Christine's attorneys in the Trust Litigation. Ben refused Kode's extortion. Thereafter, on information and belief, Kode contacted Christine and her attorneys in the Trust Litigation proposing to provide to them the Threatened Information. Kode engaged attorney Robert Chinen to negotiate an agreement under which Kode

would provide the Threatened Information to Christine and her attorneys. On or around February 22, 2022, Christine's attorneys in the Trust Litigation served a subpoena on Robert Chinen for production of the Threatened Information.

58. No information exists demonstrating a conspiracy between Ben and the GAL in the Trust Litigation, nor did Ben or the GAL in the Trust Litigation conspire against Christine and Christine's Children in the Trust Litigation in any manner, let alone in a manner which tortiously damaged them.

ARGUMENT

1. The Second Sinora Trust Should be Deemed Invalid as It Is a Product of Fraud and/or Undue Influence by Kode Li Pursuant to California Probate Code §§ 17200, 86, and 6104.

59. Petitioner hereby realleges and incorporates by this reference paragraphs 1-58, above.

60. A petition under *Prob. Code § 850* may challenge the validity of a trust or seek to set aside conveyances to or from the trust based on lack of capacity, fraud, or undue influence [*Estate of Young (2008) 160 CA4th 62, 72 CR3d 520; Conservatorship of Romo (1987) 190 CA3d 279, 235 CR 377*].

61. A proceeding to challenge title to or possession of real property may be brought under *Prob. Code § 850* by a trustee or other interested person to reclaim property on behalf of the trust [*Prob. Code § 850(a)(3)*]. It also may be brought by a third party against a trustee to reclaim property incorrectly held in the trust.

If a trustee is unwilling to bring such a claim, or it would be futile to seek relief from the trustee, an interested person may bring the action on behalf of the trust [*Estate of Myers (2006) 139 CA4th 434, 42 CR3d 753*].

62. *California Probate Code* § 17000 provides that the superior court has jurisdiction to determine the existence of trusts, i.e., the First and Second Sinora Trust.

63. *California Probate Code* §86 and *Welfare and Institutions Code* §15610.70(a) provide that “undue influence” means “excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity. Factors that must be considered to determine whether a result was produced by undue influence include the vulnerability of the victim, the influencer’s apparent authority, the actions or tactics used by the influencer, and the equity of the result.” *Welfare and Institutions Code* § 15610.70(a)(1)-(4).

64. By this Petition, Ben requests that the Second Sinora Trust be declared invalid on the grounds of fraud or undue influence perpetrated by Kode, as well as lack of capacity by Sinora at the time the trust was prepared by Kode, and thereafter presented to and executed by Sinora.

65. At the time Sinora executed the Second Sinora Trust, Sinora was a dependent adult pursuant to *Welfare and Institutions Code* §15610.23(a-b), which states that a “dependent adult” is a person between the ages of 18 and 64 who has physical limitations that

restrict his or her ability to carry out normal activities or to protect his or her rights. Under this section, a “dependent adult” includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility. At the time she executed the Second Sinora Trust, Sinora met the definition of a “dependent adult” as her cancer, coupled with her associated mental and emotional stress, trauma, and treatment, restricted her ability to carry out normal activities. Further, at the time that she executed the Second Sinora Trust, Sinora was an inpatient in the intensive care unit of a 24-hour health facility.

66. Given that Sinora was a dependent adult at the time the Second Sinora Trust was executed, she would be classified as a protected person under the Welfare and Institutions Code due to her heightened vulnerability caused by her cancer and her associated treatment. (*Welfare and Institutions Code*, § 15600(a) [“The Legislature recognized that...dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect these persons.”]). *Welfare and Institutions Code* §15610.70(a)(1) states that evidence of vulnerability may include “incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim’s vulnerability.”

67. Here, Sinora, at the time the Second Sinora Trust was presented to her, was confined to a 24-hour inpatient facility at USC Norris Comprehensive Cancer Center, and being treated for her advanced terminal

cancer. As alleged, at the time of presentation and execution of the Second Sinora Trust, Sinora suffered from recurrent ascites, severe abdominal distention, repeated paracentesis, sleep and nutritional deprivation, triple chemotherapy, hypotension, and progressive renal failure. These circumstances, coupled with Sinora being informed of her incurable, metastatic cancer diagnosis days before, placed Sinora in an extremely vulnerable state. Further, Kode, Sinora's brother, and who was living at Ben's and Sinora's home at this time was well aware of Sinora's current medical condition and vulnerability at the time of he presented the Second Sinora Trust to her for signing.

68. *Welfare and Institutions Code* §15610.70(a)(2) states that evidence of an influencer's apparent authority may include one with a status as a fiduciary and/or a family member. Here, Kode's apparent authority is demonstrated as he is Sinora's brother who lived with Sinora for the last 3 years of Sinora's life, and in whom Sinora entrusted the \$9.5 million deposited with CTBC Bank.

69. *Welfare and Institutions Code* §15610.70(a)(3) states that undue influence may be found when the influencer uses tactics, including, but not limited to: controlling the necessities of life, medication, the victim's interactions with others, and access to information; the use of affection, intimidation or coercion; or *the initiation of changes in personal or property rights, the use of haste or secrecy in effecting those changes, and effecting changes at inappropriate times and places* (emphasis added). Here, Kade, while his sister was dying of cancer in a care facility, on

information and belief, created without input from Sinora, the Second Sinora Trust, under which he became the majority beneficiary of Sinora's estate (receiving about 80% of the estate), with Sinora's biological daughter, Jamie, receiving the approximate remaining 20%, and Ben receiving nothing. This new trust created by Kode constitutes a drastic change in Sinora's personal and property rights when compared to the First Sinora Trust under which Ben is the sole beneficiary. Further, the Second Sinora Trust was presented to and executed by Sinora without prior notice to Ben, Jamie, or anyone else known to Sinora, in secret when Sinora was in the intensive care unit of the hospital.

70. *Welfare and Institutions Code* §15610.70(a)(4) states that evidence of inequity may include the economic consequences of the victim, *any divergence from the victim's prior intent or course of conduct or dealing*, or the appropriateness of the change in light of the length and nature of the relationship (emphasis added). Per the First Sinora Trust, Ben was the successor trustee and beneficiary of Sinora's approximate \$20 million plus estate. With the Second Sinora Trust, Ben receives nothing, and Kode and Jamie receive about 80% and 20%, respectively of Sinora's estate—i.e., a significant divergence from the First Sinora Trust. Further, it is highly unusual and suspicious that Kode receives 80% of Sinora's estate, whereas her biological daughter receives 20%, reinforcing the inequity of what Kode did.

71. Based on the above, Sinora was a victim of Kode's undue influence under both *California Probate*

Code §86 and *California Welfare and Institutions Code* §15610.7 with the formation and Sinora's execution of the Second Sinora Trust, resulting in injury to Ben as he is no longer a beneficiary of Sinora's estate as a consequence of that trust.

72. *California Probate Code* §§ 6104 and 810 et seq. provide that the execution or revocation of a [trust] or a part of a [trust] is ineffective to the extent the execution or revocation was procured by duress, menace, fraud, or undue influence.

73. The presumption of undue influence affects the burden of proof; when facts triggering the presumption are shown, the proponent of the amendment has the burden of proving that the amendment was not procured by undue influence-- i.e., that they took no unfair advantage of the trustor and that they were natural object of the trustor's bounty. *Estate of Sarabia*, 221 Cal. App. 3d at p. 605; *Estate of Clegg* (1978), 87 Cal. App. 3d 594, 603.

74. While proof of circumstances consistent with undue influence is not itself sufficient—the proof must be of circumstances inconsistent with the testator's voluntary action. [*Lintz v. Lintz* (2014) 222 CA 4th 1346, 1355—“As a matter of law, the probate Court's undue influence finding need not be supported by direct evidence of undue influence at the moment decedent signed the trust instruments”; *Estate of Mann* (1986) 184 CA3d 593, 607].

75. Here, and as alleged, the facts and circumstances surrounding Kode's creation of the Second Sinora Trust, his presentation of the trust to

Sinora, and Sinora's execution of the same create the presumption of undue influence which would then place the burden on Kode to demonstrate otherwise. Kode was Sinora's brother, a confidential relationship; independent of Sinora, and without legal counsel or notice to Ben or Jamie, Kode prepared and presented to Sinora the Second Sinora Trust. As a result of that trust, Kode became an 80% beneficiary to an approximate \$20 million estate, i.e., he unduly profited. Suffice it to state, Kode receiving 80% of Sinora's estate compared to her biological daughter only receiving 20% and her husband, Ben, receiving nothing preponderates as being an "unnatural" testamentary disposition.

76. Further Kode's threat to Ben to provide Christine with unspecified information that would result in the settlements in the Trust Litigation being set aside and Ben being surcharged is conduct by Kode aimed at suppressing or otherwise concealing his fraud and undue influence as alleged herein.

77. Based on the undue influence committed by Kode in the preparation, presentation, and execution of the Second Sinora Trust, coupled with his threat to Ben to disseminate the Threatened Information to Christine and Christine's suppress the same, this Court should find that the Second Sinora Trust is invalid and void, leaving the First Sinora Trust as the controlling testamentary instrument for Sinora's estate.

2. **The Second Sinora Trust Should Be Deemed Void due to Sinora's Lack of Capacity at the Time of Preparation, Presentation and Execution Pursuant to, without limitation, California Probate Code §§810 et seq. and 6100 et seq.**

78. Petitioner hereby realleges and incorporates by this reference paragraphs 1-77, above.

79. *California Probate Code* §6100 provides, as applicable to trusts pursuant to case law, that the testator must be at least eighteen (18) years in age and of "sound mind." "A testator is of sound and disposing mind and memory if, at time of making his will, he has sufficient mental capacity to be able to understand nature of act he is doing, to understand and recollect nature and situation of his property, and to remember and understand his relation to persons who have claims upon his bounty and whose interests are affected by provisions of instrument." *Estate of Sexton*, 199 Cal. 759, 251 P. 778, 780; *In re Lingenfelter's Estate* (1952) 38 Cal.2d 571, 582; *In re White's Estate* (1954) 128 Cal.App.2d 659, 665-666; *In re Krause's Estate* (1945) 71 Cal.App.2d 719, 723-724; *In re Downey's Estate* (1942) 51 Cal.App.2d 275, 284; *In re Reiss' Estate* (1942), 50 Cal.App.2d 398, 402-403; *In re De Graaf's Estate* (1939) 34 Cal.App.2d 120, 122-123.

80. Similarly, the standard for "capacity" set forth in *California Probate Code* §811 may govern whether a testator had capacity to make and sign a trust.

81. Under *California Probate Code* §6100.5, a person is not mentally competent to make a trust if at the time of making the trust he or she either:

- (a) does not have sufficient mental capacity to (1) understand the nature of the testamentary act, (2) understand and recollect the nature and situation of his or her property, or (3) remember and understand his or her relations to living descendants, spouse, parents, and others whose interests are affected by the trust; or
- (b) suffers from a mental disorder with symptoms including delusions or hallucinations that result in his or her devising property in a way that, except for the delusions or hallucinations, he or she would not have done.

Cal. Prob. Code §6100.5.

82. *California Probate Code* §811 sets forth a litany of criteria for the trial Court to consider regarding whether an individual is of unsound mind and lacked capacity to make a trust and the dispositions under that trust. Specifically, this statute provides in pertinent part,

- (a) A determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, to make medical decisions, to execute wills, or to *execute trusts*, shall be supported by evidence of a deficit in at least one of the following mental

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functions, subject to subdivision (b), and evidence of a correlation between the deficit or deficits and the decision or acts in question:

(1) Alertness and attention, including, but not limited to, the following:

(A) Level of arousal or consciousness.

(B) Orientation to time, place, person, and situation.

(C) Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the following:

(A) Short- and long-term memory, including immediate recall.

(B) Ability to understand or communicate with others, either verbally or otherwise.

(C) Recognition of familiar objects and familiar persons.

(D) Ability to understand and appreciate quantities.

(E) Ability to reason using abstract concepts.

(F) Ability to plan, organize, and carry out actions in one's own rational self-interest.

(G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:

(A) Severely disorganized thinking.

(B) Hallucinations.

(C) Delusions.

(D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.

Cal. Prob. Code, § 811.

83. Here, applying both §§6100.5 and 811 to the circumstances under which Sinora was presented and executed the Second Sinora Trust indicates more likely than not that she was of unsound mind and lacked capacity to understand and sign that instrument. As alleged, at the time of presentation and execution, Sinora was terminally ill, was suffering significant pain and discomfort, renal failure, hypotension, sleep, and nutritional deprivation, and was undergoing repeated invasive procedures and triple chemotherapy. These circumstance provide the conclusion that Sinora did not have testamentary capacity under §6100.5, and correlate with the majority of the criteria set forth under §811—i.e., without limitation, Sinora could not have been alert and attentive to read through and understand an 85 page trust given her state on October 11, 2021, she likely was not oriented and able to concentrate given the level of her medications, and her ability to understand and her thought processes would have been greatly diminished.

84. Based on the foregoing, this Court should find that Sinora lacked the requisite capacity at the time she was presented and signed the Second Sinora Trust, and, therefore, that such trust is invalid, making the

First Sinora Trust the controlling instrument of Sinora's estate.

3. The Transfers of Ben's Separate Properties to the Hawaiian LLCs, the First Transmutation Agreement, and the Second Transmutation Agreement Should be Deemed Void due to Sinora's Breach of Fiduciary Duty Pursuant to California Family Code §§ 721 and 1101.

85. Petitioner hereby realleges and incorporates by this reference paragraphs 1-84, above.

86. A spouse may bring a claim for breach of fiduciary duty upon the death of the other spouse. Cal. Fam. Code § 1101 (d)(2); *Yeh v. Tai* (2017) 18 Cal.App.5th 953, 960. In that same vein, marital agreements procured through undue influence remain voidable for the duration of the confidential relationship. *Starr v. Starr* (2010) 189 CA4th 277, 286-287—(set-aside of W's quitclaim deed to H on basis of constructive fraud and undue influence; *Marriage of Balcof* (2006) 141 CA4th 24 1509, 1519-1524—transmutation agreement giving W 20% interest in H's SP business and all of his interest in parties' residence unenforceable due to duress and undue influence; *Marriage of Baltins* (1989) 212 CA3d 66, 89—H's threats and misrepresentations in violation of confidential relationship duty constituted constructive fraud and duress, entitling W to equitable set-aside relief.]

87. The elements of a claim for breach of a fiduciary duty are 1) the existence of a fiduciary duty, 2) the breach of that duty, and 3) damage proximately caused

by that breach. [*IIG Wireless, Inc. v. Yi*, 22 Cal.App.5th 630, 646.] A breach is a violation or infraction of an official duty, through neglect, refusal, resistance or inaction. (Black's Law Dictionary (11th ed. 2019))

a. Existence of a Fiduciary Duty Between Ben and Sinora.

88. The duties and responsibilities between spouses are governed by the *California Family Code*. The duties owed between spouses in transactions between themselves, and by virtue in management and control of community property, are the same elevated duties owed by any parties in a fiduciary relationship. (*In Re Marriage of Georgiou & Leslie*, (2013) 218 Cal.App.4th 561, 569.)

89. *California Family Code* §721 sets forth the fiduciary duty between spouses. Specifically,

In transactions between themselves, *spouses are subject to the general rules governing fiduciary relationships that control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other.* This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners, as provided in Sections 16403, 16404, and 16503 of the Corporations Code...

Cal. Fam. Code §721.

90. As Ben and Sinora were married, all transactions between them, including the real property transfers to the Hawaiian LLCs, and the First Transmutation Agreement and the Second Transmutation Agreement, are subject to *Family Code* §721 and various related statutes provided under the *California Family Code*, as well as the case law relating to the same.

b. Sinora Breached Her Fiduciary Duty to Ben with the Transfers to the Hawaiian LLCs, the First and Second Transmutation Agreements, and the Transfer of the \$9.5 Million to CTBC Bank Based on Undue Influence and Her Obtaining an Unfair Advantage as a Consequence.

91. A rebuttable presumption of undue influence arises when one spouse obtains an unfair advantage over the other in a transaction between them—i.e., when, in a property transaction, one spouse improves his or her position, obtains a favorable opportunity, or otherwise gains, benefits or profits, to the exclusion of the other. *In Re Marriage of Burkle*, (2006) 139 Cal.App.4th 712, 717; *In Re Marriage of Starr*, (2010) 189 Cal.App.4th 277, 284. The presumption attaches without any showing that the advantaged spouse practiced actual fraud, deceit, or coercion. *In Re Marriage of Fossum*, (2011) 192 Cal.App.4th 336, 346. However, in a transaction between spouses, the “advantage” giving rise to the presumption must be an unfair advantage. *In Re Marriage of Burkle*, 2006) 139 Cal.App.4th. 712, 717.] [Emphasis added.

92. Regarding transmutation agreements, because transmutations are subject to the Family Code § 721 (b) fiduciary standards, a transmutation that unfairly advantages one spouse (or registered domestic partner) over the other is presumed to have been induced by undue influence. As a result, when the “disadvantaged” party contests the alleged transmutation, the advantaged party has the burden of proving by a preponderance of the evidence that the transaction was not consummated in violation of his or her fiduciary duties (i.e., evidence showing the transaction was freely and voluntarily consummated, with full knowledge of all the facts and a complete understanding of the effect of the transfer). *Marriage of Haines*, (1995) 33 CA4th at 296-297; *see also Marriage of Balcof* (2006) 141 CA4th 1509, 1519-1522; *Marriage of Lund* (2009) 174 CA4th 40, 55.

93. The nature of the transmutation is immaterial (whether from joint title to SP or vice versa). Fam.C. § 721(b) and its concomitant presumption of undue influence apply to any interspousal property transaction where evidence is offered that one spouse has been unfairly disadvantaged by the other. [Marriage of Delaney (2003) 111 CA4th 991, 999, 4 CR3d 378, 384; *see also Lintz v. Lintz* (2014) 222 CA4th 1346, 1354, 167 CR3d 50, 56—presumption applicable to multiple unfair property transactions between elderly H (now deceased) and W.]

94. The spouse who obtained the unfair advantage from the transaction bears the burden of rebutting the presumption: He or she must demonstrate by a preponderance of the evidence that the other spouse

entered into the transaction freely and voluntarily, with full knowledge of all the facts, and with a complete understanding of its effect. [*Marriage of Balcof* (2006) 141 CA4th 1509, 1520; *Marriage of Burkle*, (2006) 139 CA4th at 738, (rejecting higher “clear and convincing evidence” standard of proof); *Marriage of Fossum*, (2011) 192 CA4th at 344.]

95. Here, Sinora obtained an unfair advantage over Ben from the transfers to the Hawaiian LLCs, the First and Second Transmutation Agreements, as well as the transfer of the approximated \$9.5 million to CTBC Bank.

96. The transfer of the Ben’s separate property to the Hawaiian LLCs conferred to Sinora a one-half interest in real property valued at about \$12.5 million, for which she provided to Ben in return, nothing which is an unfair advantage to Sinora.

97. Based on the First and Second Transmutation Agreements, the transfer of property between Ben and Sinora is summarized as follows:

- a. Ben had approximately \$18 million in separate property to Sinora’s approximate \$4 million pre-marriage.
- b. Under the First Transmutation Agreement, Ben’s and Sinora’s separate property became community property, so Ben went from \$18 million in separate property to \$11 million in community property, and Sinora went from \$4 million to \$11 million.

- c. Under the Second Transmutation Agreement, with the transfer of the 3 LLCs to Sinora as her separate property, Ben's community estate was decreased by about \$6.25 million, leaving him with about \$4.75 million in community property, with Sinora's estate now being \$4.75 million in community property and \$12.5 million in separate property.

98. The approximate \$4.75 million of community property that Ben had after signing the Second Transmutation Agreement was his one-half share of the \$9.5 million in cash holdings that Sinora arranged to be transferred to CTBC Bank. Sinora is the individual who proposed and executed the transfer of that money to CTBC bank. Accordingly, that transfer of that money constitutes a marital transaction between Ben and Sinora subject to Family Code §721.

99. With the Second Transmutation Agreement, the remainder of Ben's community property under the First Transmutation Agreement (consisting of LLC interests in real property) was transmuted to Sinora's separate property, and with Sinora taking the approximate \$9.5 million and transferring it to CTBC Bank, Sinora acquired another \$4.75 million from Ben, leaving Ben with virtually nothing. Currently, Ben only has about \$500,000 to his name. Accordingly, Sinora was unfairly advantaged by these transactions, resulting in the presumption that she acquired Ben's property by undue influence, subject to Sinora's estate demonstrating otherwise.

100. The above described transfers of property to Sinora from Ben pursuant to the transmutation agreements and Ben's delivery of his \$4.5 million to her deposited with CTBC Bank demonstrate that Sinora obtained an unfair advantage from Ben by those transactions, causing Ben damage, which places the burden of proof on Sinora's to establish otherwise.

c. Sinora's Breach of Her Fiduciary Duty to Ben Entitles Ben to the Transfers to the Hawaiian LLCs and Transmutation Agreements Being Set Aside and the Return of all Property Transmuted Under Those Agreements, the Return of the Entirety of the Funds Transferred to CTBC, as well as Punitive Damages.

101. In constructing the property transfers to the Hawaiian LLCs, the First and Second Transmutation Agreements and the transfer of the \$9.5 million to CTBC Bank, Sinora breached her fiduciary duty to Ben, subjecting her estate to the remedies set forth in the *California Family Code* and governing case law.

102. Based on Sinora's breaches of her fiduciary duty to Ben, the property transfers to the Hawaiian LLCs and the First and Second Transmutation Agreements are void and unenforceable. As such, Ben is entitled to the return of his separate property that was transmuted under those transfers and agreements—i.e., the approximate \$18 million of Ben's separate property.

103. Sinora's breaches of her fiduciary duty to Ben as alleged herein, as well as Kode's complicity in the

transfer of the \$9.5 million to CTBC Bank and his threatened dissemination of the Threatened Information falls within the ambit of *California Civil Code* §3294 as malicious and despicable conduct, as they performed intentional acts aimed at taking from Ben his property, and thereby entitling Ben to an award of punitive damages, and the remedy set forth under Family Code § 1101 (h). Pursuant to *California Family Code* § 1101 (h), the Court may award Ben “100 percent, or an amount equal to 100 percent, of any asset undisclosed or transferred in breach of the fiduciary duty” (Cal. Fam. Code § 1101 (h), which in this case would be the entirety of his \$18 million transmuted under the First and Second Transmutation Agreements and the \$9.5 million transferred to CTBC Bank.

104. Pursuant to Family Code § 1101 (g), Ben is entitled to his attorney’s fees and costs given Sinora’s breaches of fiduciary duty.

4. Ben Is Entitled to a Professional Fee Contribution from Sinora.

105. Petitioner hereby realleges and incorporates by this reference paragraphs 1-104, above.

106. Ben’s request to invalidate the First and Second Transmutation Agreements is founded in the *California Family Code* and related case law. As such, this confers on Ben the right to request a professional fee contribution from Sinora’s estate in accordance with the Family Code and case law.

107. Pursuant to Family Code §2030 (a)(1), “the Court shall ensure that each party has access to legal

representation ... to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party ... to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding." [Emphasis added].

108. The purpose of § 2030 is "*parity*: a fair hearing with two sides equally represented. The idea is that both sides should have the opportunity to retain counsel, not just (as is usually the case) only the party with greater financial strength." (*Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 251. (emphasis in original)).

109. Per *Marriage of Ciprari*, (2019) 32 Cal.App.5th 83, "[i]f the findings demonstrate disparity in access and ability to pay [by the requesting party], the Court *shall* make an order awarding attorney's fees and costs." (*Ibid.*, italics added.) The word "shall" has been italicized to emphasize the mandatory nature of these provisions. *Marriage of Ciprari*, (2019) 32 Cal.App.5th 83, 112 (See *In re Marriage of Morton* (2018) 27 Cal.App.5th 1025, 1050, 238 Cal.Rptr.3d 407, 425–426 (*Morton*).)"

110. Here, Ben has approximately \$500,000 to his name, whereas Sinora's estate has control of the \$9.5 million deposited with CTBC Bank, and the approximate \$12.5 million in real property transmuted to her under the Second Transmutation Agreement. Accordingly, a huge disparity in access to funds to litigate this matter in Sinora's favor, and Ben will need

a fee contribution from Sinora's estate to maintain parity in this litigation.

111. Based on the foregoing, Ben is entitled to move this Court for a professional fee and cost contribution from Sinora, subject to proof.

5. Family Allowance Under Probate Code §§ 6540(a)(1), 6541(a)

112. Petitioner hereby realleges and incorporates by this reference paragraphs 1-111, above.

113. Under *California Probate Code* §6540(a)(1), the surviving spouse of the decedent is entitled to a reasonable family allowance out of the estate of the decedent spouse as is necessary for their maintenance during the administration of the decedent's estate. The duration of the marriage is irrelevant to the surviving spouse's ability to obtain a family allowance. *Estate of Wallace* (1977) 74 CA3d 196.

114. Under *California Probate Code* §6541(a), the Court may grant a family allowance on petition of any interested party.

115. *California Probate Code* §6540(c) sets forth that if a person who is otherwise eligible for the family allowance has a reasonable maintenance from other sources and there are one or more other persons entitled to a family allowance, the family allowance shall be granted only to those who do not have a reasonable maintenance from other sources.

116. Here, Ben is Sinora's surviving spouse, and therefore an interested party, and as such, he is entitled to a family allowance.

117. Ben was entirely dependent on the property that was wrongfully transferred to Sinora as alleged herein, notably the approximate \$9.5 million transferred to CTBC Bank and to which Ben currently has no access, which cash was used to pay Ben's and Sinora's living expenses.

118. Currently, Ben has approximately \$500,000 left to his name and no source of income, as he is unemployed, and was unemployed during the entirety of his marriage to Sinora.

119. Ben's estimated annual living expenses are \$400,000 after tax, \$33,333 per month, after tax, and subject to proof.

6. Determination of Spousal Property Rights Pursuant to California Probate Code §§ 13650 and 100.

120. Petitioner hereby realleges and incorporates by this reference paragraphs 1-119, above.

121. *California Probate Code* §13650 et seq. provides that a surviving spouse may petition the Court for determination or confirmation of property passing or belong to a surviving spouse. The criteria for the petition are set forth in § 13651.

122. *California Probate Code* § 100 (a) provides in pertinent part as to a decedent spouse domiciled in this state that "upon the death of a person who is

married..., one-half of the community property belongs to the surviving spouse and the other one-half belongs to the decedent.”

123. *California Probate Code* §101 (a) provides in pertinent part as to a decedent spouse domiciled in this state that “upon the death of a person who is married..., one-half of the quasi-community property belongs to the surviving spouse and the other one-half belongs to the decedent.”

124. As alleged, Sinora died in Los Angeles, California on October 16, 2021.

125. Ben contends that the transfers to the Hawaiian LLCs and the First and Second Transmutation Agreements are invalid, and, therefore, his separate property should be returned to him as his separate property (i.e., the approximate \$18 million) based on Sinora’s alleged breach of fiduciary duty. That contention notwithstanding, should this Court determine that only the Second Transmutation Agreement only is invalid, not the transfers to the Hawaiian LLCs and the First Transmutation Agreement, then the property which Ben seeks confirmed to him is as follows:

- a. One-half of the property subject to the First Transmutation Agreement which made the property designated in that agreement Ben’s and Sinora’s community property. Specifically, Ben’s approximate \$16,450,000 in real property and \$1,946,616 in cash assets transmuted by that agreement, and Sinora’s approximate \$2 million in real

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property \$2,362,099.70, for a total of \$22,758,715.70.

126. Notwithstanding Ben's contentions that the majority of the \$9.5 million transferred to CTBC Bank is his separate property, Ben, in the alternative, seeks determination that the \$9.5 million deposited with CTBC Bank is community property, to which he is entitled to one-half, as those funds were not transmuted by the Second Transmutation Agreement. Further, regardless of those funds being transferred to CTBC Bank to an account to which Ben was not on title, given that Sinora and Ben were married at the time of transfer, the deposit of those funds with CTBC Bank does not transmute the funds community property characterization in accordance with *California Family Code* §852. *In re Marriage of Valli* (2014) 58 Cal.4th 1396, 1400. Accordingly, the \$9.5 million remained Ben's and Sinora's community property notwithstanding the deposit of those funds with CTBC Bank.

127. If the \$9.5 million remained with CTBC at a branch in California, those funds would be characterized as community property. If the \$9.5 million are with CTBC bank or any other institution, or elsewhere, said funds would be quasi-community property.

128. The persons entitled to notice of this petition are set forth below.

129. Ben and Sinora did not have any written agreement between them which set forth how their

community or quasi-community property was to be divided.

7. Ben's Is Entitled to Declaratory Relief.

130. Petitioner hereby realleges and incorporates by this reference paragraphs 1-129, above.

131. An actual controversy has arisen and now exists between Ben and Sinora's estate, and each of them, as to the following:

- a. the validity of the property transfers to the Hawaiian LLCs;
- b. the validity of the First and Second Transmutation Agreements;
- c. whether the approximate \$9.5 million transferred to the CTBC account belongs to Ben in whole or in part; and
- d. Whether the Second Sinora Trust is valid.

132. Ben seeks a judicial determination of whether the transfers to the Hawaiian LLCs and First and Second Transmutation Agreements are valid, whether the approximate \$9.5 million transferred to the CTBC account belongs to him in whole or in part, and whether the Second Sinora Trust is valid.

133. A judicial determination of the rights and responsibilities of the parties as to the foregoing is necessary and appropriate, given that the parties cannot resolve these issues between themselves, and Ben is entitled to such a determination.

134. Ben therefore seeks a judicial determination that the property transfers to the Hawaiian LLCs are invalid, that the First and Second Transmutation Agreements are invalid, that the approximate \$9.5 million transferred to the CTBC account belongs to him in whole or in such other amount as determined by the Court, and that the Second Sinora Trust is invalid making Sinora's Estate subject to the First Sinora Trust.

NOTICE

Jamie Erin Chan, the decedent's daughter
408 West Leslie Drive
San Gabriel, CA 91775
Jamiee.chan33@gmail.com

Kode Li, the decedent's brother
200 S Los Angeles St Apt 321
Los Angeles, CA 90012
Likode@gmail.com

Kevin Li, the decedent's brother
Address unknown, but in the possession of Kode Li

WHEREFORE, Petitioner prays for the following:

1. That the Second Sinora Trust dated October 11, 2021 be deemed invalid and set aside based on the fraud and undue influence committed by Kode Li, and that the First Sinora Trust be deemed controlling over Sinora's estate;

2. That the Second Sinora Trust dated October 11, 2021 be deemed invalid and set aside based on Sinora being of unsound mind and/or lacking capacity at the

time of that instrument's presentation and her execution of the same, and that the First Sinora Trust be deemed controlling over Sinora's estate;

3. That the real property transfers to the Hawaiian LLCs and First and Second Transmutation Agreements be deemed invalid and set aside, based on Sinora's breach of fiduciary duty;

4. That the transfer of the approximate \$9.5 million to CTBC Bank be set aside based on Sinora's breach of fiduciary duty assisted by Kode Li, with 100% of that money being returned to Ben pursuant to *California Family Code* §1101(g-h);

5. For punitive damages as to Sinora's breach of fiduciary duty and Kode Li's complicity as alleged herein, subject to proof;

6. For attorney's fees and costs pursuant to *California Family Code* § 1101(g-h);

7. For a professional fee contribution from Sinora's estate and Kode Li pursuant to *California Family Code* §2030;

8. For a family allowance award to Ben, pre and post-trial, subject to proof;

9. For a determination of Ben's spousal property rights;

10. For a judicial determination that the property transfers to the Hawaiian LLCs are invalid, that the First and Second Transmutation Agreements are invalid, that the approximate \$9.5 million transferred to the CTBC account belongs to Ben in whole or in such

other amount as determined by the Court, and that the Second Sinora Trust is invalid making Sinora's Estate subject to the First Sinora Trust; and

11. For such other and further orders as the Court may deem proper.

STEARNS KIM STEARNS & RYAN

By: /s/ Ryan E. Stearns
Ryan E. Stearns
Attorney for Ben Chui, Petitioner

Dated: March 15, 2022

VERIFICATION

I am the Petitioner in the above entitled proceeding, have read the foregoing Petition and all its attachments thereto and know its contents.

The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration is executed on March 15, 2022, at Pasadena, California.

/s/ Benjamin Chui
Benjamin Chui, Declarant

APPENDIX E

**OLDMAN, COOLEY, SALLUS, BIRNBERG,
COLEMAN & GOLD**

[LETTERHEAD]

[Dated: September 21, 2017]

Via Email Only
Julia L. Birkel, Esq.
Hill Farrer & Burrill LLP
300 S. Grand Avenue, 37th Floor
Los Angeles, CA 90071

Re: Chui Trust
Meet and Confer

Dear Julie:

Thanks for your response to my initial meet and confer letter. I obviously disagree with your position, but even though you offered no possible compromise in your letter, your explanation in your letter gives me hope that we can resolve this without a motion.

Specifically, you wrote the following:

“Let me cut to the chase on this one. You were obviously successful on behalf of your client in obtaining trust documents from the trustees voluntarily. Whether they were provided to Esther, or to you, and then to Mr. Switlyk doesn’t matter-what I want to see produced is exactly what Mr. Switlyk received in that regard.”

I understand what you are seeking, and do not dispute that you can be entitled to see what documents we received directly from the Co-Trustees. However, I believe you are doing this in the most invasive way possible, and making it much more difficult than it needs to be. Furthermore, I believe your letter constitutes an admission that this discovery is aimed at your removal petition, not at the pending Probate Code §850 Petitions. I'll deal with each issue separately.

1. You Can Obtain The Documents You Seek In A Much Simpler, Less Invasive Way.

If what you indicated in your letter is true, and I have no reason to believe that you are not being forthright, then it would seem that a simple request for production of documents to Esther and her attorneys/agents seeking all documents received from the Trustees and/or communications related to such documents (or communications in general) would be sufficient to accomplish what you are seeking. Why can you not simply make that discovery request?

Because you are trying to obtain the documents through a subpoena to Esther's consultant you are, at the very least, trying to get communications between Esther's agent and her counsel regarding trial preparation. If what you say is true, then you do not need or want the work product since I am telling you a simpler way to obtain the documents, which will almost assuredly not trigger any objection which precludes production of any such document.

2. Assuming You Are Entitled To The Work Product Document, Your Request Is Overbroad.

Your letter (and subpoena) confirms that you are seeking all communications between Esther's counsel and Mike Switlyk, regardless if it is related to the Switlyk Declaration or not. In the event there was a waiver, the waiver would only be as to communications regarding the Declaration, not anything before or after as Mr. Switlyk did not "testify" to anything else.

3. There Was No Waiver Because Switlyk Did Not Testify At Trial

All of the authority you cited in your letter is related to an expert witness who testifies at trial. I have no quarrel with the concept that a designated expert witness or witness who testifies at trial waives any word product protection related to such testimony. However, Mr. Switlyk did not testify at trial. Instead, he signed a Declaration which will not be and cannot be used at trial, since it is inadmissible hearsay at trial. Thus, there was no trial testimony, and to the extent that you consider his Declaration itself to be "testimony", it has not been the basis of any Court ruling that I am aware of, and my client is happy to withdraw it.

4. Mr. Switlyk Will Not Testify at Trial.

To be clear, Mr. Switlyk will not be an expert witness at trial. We would be willing to sign a stipulation to that effect to assuage any fears your client has of gamesmanship on this issue. As such, since he will not be an expert witness at trial, his

testimony and any communications with him from Esther and her counsel is irrelevant, per the authority I cited in my initial letter.

Since he will not testify at trial, since the “Switlyk Declaration” will not be offered as evidence at trial, and since you admit that the core of this subpoena is aimed at ascertaining breaches of fiduciary duty by the Co-Trustees (which is not part of the 850 Petitions and has been ruled by the Court to be trailing the 850 Petitions), the discovery you seek is not relevant, and is still objectionable, notwithstanding your belief that his Declaration constitutes “testifying.”

5. This Discovery Is Applicable to the Removal Litigation

The “fundamental issue” you cite at the end of your letter justifying this subpoena is not related to the 850 Petition, but instead related to “breaches of trust by the trustees...” Understanding that we have a trial on the 850 Petitions looming, it would seem that the discovery battles should be focused on issues pertaining to the 850 Petitions, not on your client’s Petition to Remove Benjamin. I know nothing of “30-40 boxes” that you keep referring to, and until you entered the picture years after this litigation started, this is the first request I have become aware by your client regarding these purported boxes. In any case. I have no objection to your client reviewing trust records. But that is an issue between you and the Co-Trustees. It should not be a basis for you to try to subpoena Esther’s consultant.

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Please let me know if you are willing to accept our offer to provide any existing responsive documents via a Request for Production of Documents to my client, and if not, why that does not accomplish the very goals you stated in your letter.

Sincerely,

**OLDMAN, COOLEY, SALLUS,
BIRNBERG, COLEMAN &
GOLD**

/s/ Justin B. Gold
Justin B. Gold

cc: Edmond Hoy, Esq. (via email only)
Alex Weingarten, Esq. (via email only)
James Grant, Esq. (via email only)