APPENDIX

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APPENDIX A

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION ONE

B308574
(Los Angeles County Super. Ct. No. BP154245)

[Filed November 30, 2022]

BENJAMIN TZE-MAN CHUI, as Trustee, etc., et al.,
Plaintiffs,

v.

CHRISTINE CHUI,
Defendant;

JACQUELINE CHUI et al.,
Appellants;

JACKSON CHEN,)
as Guardian, etc.,)
Respondent.)
_____)

APPEALS from an order of the Superior Court of Los Angeles County, Gus T. May, Judge. Dismissed in part and reversed in part with directions.

Law Offices of Michael S. Overing, Michael S. Overing and Edward C. Wilde for Appellant Jacqueline Chui.

Ambrosi & Doerges and Mary E. Doerges for Appellant Michael Chui.

Hinojosa & Forer, Jeffrey Forer and Shannon Burns for Respondent Jackson Chen, as Guardian, etc.

Jacqueline and Michael Chui are beneficiaries of a trust.[1] When they were 10 years old and 8 years old, respectively, the probate court appointed Jackson Chen to act as their guardian ad litem in connection with litigation concerning the trust.[2] When they were 17 years old and 16 years old, respectively, they retained attorneys and filed petitions to remove Chen as their

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[1] To avoid confusion and to enhance the opinion's readability, we will refer to the individuals by their first names. We mean no disrespect.

[2] The probate and trust litigation is described in a partially published opinion this court filed in March 2022. (*Chui v. Chui* (2022) 75 Cal.App.5th 873 (*Chui*), petns. for cert. pending, petns. filed Sept. 12, 2022, 22-251, 22-253 & Sept. 13, 2022, 22-247.)

guardian ad litem. Chen responded by filing motions to strike the petitions and disqualify Jacqueline's and Michael's attorneys. The court granted the motions to disqualify the attorneys and struck the removal petitions.

Jacqueline and Michael appealed. In the meantime, they reached the age of majority and the trial court has permitted them to appear in proceedings with their retained counsel. Chen, however, continues to act as their guardian ad litem.

We conclude that the appeals from the order granting the disqualification motions are moot. We reverse the orders striking the removal petitions and, because the statutory authorization for Chen's appointment terminated when Jacqueline and Michael became adults, we direct the court to terminate the appointment forthwith.

FACTUAL AND PROCEDURAL SUMMARY

A. *Background*

In October 2012, Esther Chao filed a petition in the probate court concerning a trust established by her parents, King Wah Chui and Chi May Chui. Jacqueline and Michael are two grandchildren of the trust settlors and among the beneficiaries of the trust. Their mother is Christine Chui.

In March 2013, when Jacqueline was 10 years old and Michael was 8 years old, the court appointed Chen as the guardian ad litem for them because they were minors.

In May 2018, Esther, Christine, and the trustees of the trust resolved disputes among them in a settlement agreement, the terms of which were set forth orally in court. The agreement was subject to approval by Chen, as Jacqueline's and Michael's guardian ad litem, and, because the agreement compromised claims the minors held, also required the court's approval. (Code Civ. Proc., § 372.) The settlement terms were subsequently set forth in a writing, which Chen approved.

Disputes arose concerning the validity and enforceability of the settlement agreement. Christine, Jacqueline, and Michael disapproved of the agreement and filed documents purporting to repudiate it. According to Jacqueline and Michael, Chen never met or spoke with them or sought their input concerning the agreement.

On March 3, 2020, the trial court resolved the disputes in an order granting Chen's petition for approval of the written agreement. In its ruling on the petition, the court rejected the ostensible repudiations of the agreement and stated that "Chen, as [guardian ad litem], has exclusive authority to act for the [m]inors in litigation."

Christine, Jacqueline, and Michael, each represented by different attorneys, appealed from the court's March 3, 2020 order. (*Chui v. Chui* (Mar. 3, 2022, B306918).)

On May 15, 2020, Chen filed a petition in the trial court for approval of his and his counsel's fees.

On June 15, 2020, Jacqueline, represented by the Law Offices of Michael S. Overing (the Overing firm),

filed a petition in the trial court on Jacqueline's behalf to remove Chen as her guardian ad litem. The next day, Michael, represented by the Law Offices of Angela Hawekotte (the Hawekotte firm), filed a petition to remove Chen as his guardian ad litem. On October 1, 2020, the Overing firm, on behalf of Jacqueline, and the Hawekotte firm, on behalf of Michael, filed amended petitions to remove Chen. (We refer to the amended petitions as the removal petitions.) At the time they filed the removal petitions, Jacqueline was 17 years old and Michael was 16 years old.

According to the removal petitions, Jacqueline and Michael are competent and have "no further need for a guardian." They further asserted that Chen had breached his duties toward them as a guardian ad litem, had conflicts of interest, and had "taken overt actions in court pleadings against" them.

On June 24, 2020, in an order concerning issues unrelated to the disqualification motions and the removal petitions, the court noted the then-recent filing of the original removal petitions and stated: "[A] minor is unable to hire an attorney. It is unclear how [the Overing and Hawekotte firms] can represent these minor children. Neither has sought this [c]ourt's consent to do so."

Chen responded to the removal petitions by filing demurrers and anti-SLAPP motions to strike the petitions.

On July 31, 2020, Chen also filed a motion to recuse, disqualify, or remove the Overing firm as counsel for Jacqueline; and, on August 26, 2020, a similar motion

to recuse, disqualify, or remove the Hawekotte firm from representing Michael. (We refer to these motions as the disqualification motions.)

Chen based the disqualification motions on the following grounds: (1) Jacqueline and Michael are unemancipated minors; (2) the Overing and the Hawekotte firms were retained by Christine, who has a conflict of interest with Jacqueline and Michael; and (3) the actions taken by the Overing and Hawekotte firms are sanctionable under Code of Civil Procedure section 128.7.

Between June 15 and October 16, 2020, the parties filed numerous documents in support of and in opposition to the removal petitions and the disqualification motions.

On October 20, 2020, the court granted the disqualification motions. The court explained: "[U]nder [Code of Civil Procedure section] 372, minors can only appear through the guardian ad litem[,] who the court has previously appointed to represent them in this matter. The court further notes that the bench officer previously assigned to this matter ruled on March 3rd, 2020 that the guardian ad litem has exclusive authority to act for the minors in this litigation and further, that Family Code section 6602 makes it clear that a contract for attorneys['] fees made by or on behalf of a minor is void unless it is approved by the court."[3] The court also struck the removal petitions

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[3] During the hearing on the disqualification motions, counsel for Christine asked the court to "clarify" that "these orders would cease" as to Jacqueline when she turns 18 years of age and she

without ruling on their merits, and struck Chen's demurrers and the anti-SLAPP motions to the removal petitions as moot.

The court appointed separate counsel to represent Michael and Jacqueline for the limited purpose of reviewing and responding to Chen's petition for fees.

Jacqueline and Michael filed timely notices of appeal from the October 20, 2020 order.

B. *Post-Appeal Events*

As noted above, Jacqueline and Michael, through counsel, filed notices of appeal from the March 3, 2020 order approving of the settlement agreement. (*Chui v. Chui*, *supra*, B306918.) Chen then moved this court to dismiss Jacqueline's and Michael's appeals because he "is the only person who properly represents the [m]inors, and he does not approve of or authorize [the] appeal[s]." On March 22, 2021, we summarily denied Chen's motion and permitted Jacqueline and Michael to prosecute their appeals.[4]

On March 4, 2021, the trial court granted Chen's ex parte application authorizing him to file a respondent's brief in connection with the appeal in *Chui v. Chui*, *supra*, B306918. The court rejected Jacqueline's

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"would no longer need a [guardian ad litem] or a court[-]appointed attorney." The court responded that it was "not making that ruling" and was "only ruling on what's before [the court] today."

[4] We grant Michael's unopposed request to take judicial notice of our March 22, 2021 order, of our remittitur, and opinion. (See *Chui v. Chui*, *supra*, B306918.)

argument that the court "ha[d] no choice but to remove" Chen as her guardian ad litem upon her 18th birthday, which was to occur four days hence. The court, citing Probate Code section 2627, subdivision (b),[5] explained that "a court appointment in such circumstances does not expire upon a minor reaching the age of majority. . . . Rather, representation terminates when the court discharges [the guardian ad litem]."

Five days later, on March 9, 2021—the day after Jacqueline's 18th birthday—the Overing firm filed on her behalf an ex parte application for clarification of the trial court's March 4 order. Jacqueline argued that Chen's appointment as her guardian ad litem "necessarily lapse[d]" when she reached the age of majority. Probate Code section 2627, she explained, is concerned with "the guardian of an estate," and "has nothing to do with the appointment of a . . . guardian ad litem for an adult." The court denied Jacqueline's application, explaining that its March 4 order "was simply confirming [guardian ad litem] Chen's understanding that he remains the appointed [guardian ad litem] as to both Jacqueline and Michael."

On March 2, 2022, this court issued its opinion in *Chui v. Chui, supra*, B306918. (See *Chui*, *supra*, 75 Cal.App.5th 873, petns. for cert. pending [affirming the court's March 3, 2020 rulings].)

On May 22, 2022, Michael turned 18 years of age.

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[5] Probate Code section 2627, subdivision (b) provides: "Except as otherwise provided by this code, a guardian is not entitled to a discharge until one year after the ward has attained majority."

On July 14, 2022, we issued our remittitur in *Chui v. Chui, supra,* B306918. The next day, we informed the parties that we are considering dismissing the instant appeal as moot, and requested the parties brief the issue. We have received and considered supplemental briefs from Jacqueline and Michael, who argue that the appeal is not moot. Chen did not file a supplemental brief.

In connection with Michael's supplemental brief, he requests judicial notice of a probate court order filed on March 30, 2022—while Michael was 17 years old—which states that the Hawekotte firm and its attorneys "remain disqualified from representing Michael pursuant to the [c]ourt's order on October 20, 2020 . . . and are not authorized to participate in any [t]rust-related proceedings on behalf of Michael until he turns 18 years old, at which time he may retain his own counsel. Jackson Chen remains guardian ad litem for Michael pending further order of the [c]ourt."[6] (Italics omitted.) This order was issued approximately two months prior to Michael's 18th birthday.[7] According to Michael, this ruling has the effect of "modifying [the court's] prior order disqualifying Michael's counsel to expire at the time Michael turns 18 [years]" and Michael "is now entitled to retain his own lawyers."

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[6] Christine, Jacqueline, and Michael have appealed from the March 30, 2022 order. (*Chui v. Chui* (B321374, app. pending).)

[7] We grant Michael's unopposed request for judicial notice of the court's March 30, 2022, for the purposes of determining whether this appeal is moot.

Michael further states that "the [t]rial [c]ourt realized its error in disqualifying Jacqueline['s] and Michael's counsel" and "has allowed Michael['s] and Jacqueline's law firms disqualified by the [t]rial [c]ourt to be heard or advocate for Michael and Jacqueline actively at many hearings for the past [two] years."

Regarding Jacqueline, who was then 19 years old, the probate court's March 30, 2022 order states: "Regarding the question of who is representing Jacqueline Chui, the [c]ourt finds that the existing order appointing Jackson Chen as [guardian ad litem] remains in place and he is to continue to serve in that capacity until discharged by the [c]ourt. Nevertheless, the [c]ourt finds that since [Jacqueline] is 18 years old, she has the ability to retain independent counsel and the [c]ourt recognizes that she has retained [counsel]."

In her supplemental brief, Jacqueline does not indicate that the court is currently denying her the right to retain and appear in court through counsel.[8] She states, however, that the probate court has "recently renewed Chen's role as her [guardian ad litem]" and "has continued to impose a [guardian ad

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[8] At oral argument in this case, the attorneys for Jacqueline and Michael each stated that they agreed with our tentative ruling that the appeals from the order granting the disqualification motions are moot. Counsel for Jacqueline stated, however, that the trial court subsequently erroneously precluded Jacqueline and Michael from being represented by counsel of their own choosing in opposing Chen's fee petition. The ruling on Chen's fee petition is the subject of another pending appeal. (*Chui v. Chui* (B310325, app. pending).) As we note below, we express no view on this issue in this opinion.

litem] upon Jacqueline well[ ]after she reached majority. Even though Jacqueline is now 19 years of age, . . . the trial court reaffirmed its order and reappointed Chen as her [guardian ad litem]."

DISCUSSION

A. *Mootness*

It is " 'the duty of this court, as of every other judicial tribunal, . . . to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the [respondent], an event occurs which renders it impossible for this court, if it should decide the case in favor of [appellant], to grant him [or her] any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal.' " (*Consol. etc. Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 862–863, quoting *Mills v. Green* (1895) 159 U.S. 651, 653.)

Here, the trial court made two orders on October 20, 2020 pertinent to this appeal: (1) an order granting Chen's disqualification motions; and (2) an order striking Jacqueline's and Michael's removal petitions.

Based on our review of the record and the supplemental briefs submitted by Michael and Jacqueline, we conclude that the appeals from the order granting Chen's disqualification motions are moot. As a result of the order granting the

disqualification motions, Jacqueline and Michael were precluded from appearing in the underlying proceedings through counsel of their choosing. Michael informs us that, on March 30, 2022, the court issued an order permitting Jacqueline "to retain independent counsel," which she has done, and permitted Michael to "retain his own counsel" upon turning 18 years of age. In his supplemental brief, which was filed after Michael turned 18 years old, Michael states that the court's March 30, 2022 ruling has the effect of "modifying [the court's] prior order disqualifying Michael's counsel to expire at the time Michael turns 18 [years]" and Michael "is now entitled to retain his own lawyers."

Michael further states that, after our March 2021 ruling in *Chui v. Chui*, *supra*, B306918, denying Chen's motion to dismiss Jacqueline's and Michael's appeals in that case, the trial court has allowed the Overing and Hawekotte firms to advocate for them and to participate in hearings during the preceding "two years." The March 30, 2022 order supports this statement by reciting that counsel for Jacqueline and Michael were permitted to submit briefs and appear on their behalf in court at the hearing related to the March 30, 2022 order.

Jacqueline's supplemental brief on the question of mootness focuses on the court's ongoing "impos[ition]" of a guardian ad litem "upon" Jacqueline, and does not address her present ability to retain counsel. She does not disagree with Michael's statements concerning the effect of the court's March 30, 2022 order and her ability to retain and appear in the proceeding through

counsel. Nor does Chen, who did not file a response to Michael's supplemental brief, indicate any disagreement with Michael's statements.

If we reversed the order disqualifying Jacqueline's and Michael's counsel, we would allow Michael and Jacqueline to retain and be represented by counsel of their choosing in the underlying proceeding. It appears from the supplemental briefs, however, that Jacqueline and Michael are now—and have been for some time—permitted to do so. There is thus no further effective relief on this issue we can grant with respect to the disqualification orders. Therefore, the appeals are, to that extent, moot.[9]

Turning to the order striking the removal petitions, it does not appear from our record or the supplemental briefs that the appeals from that order are moot. The March 30, 2022 order states that "Chen remains guardian ad litem for Michael pending further order of the [c]ourt" (italics omitted), and that Chen's appointment as Jacqueline's guardian ad litem "remains in place" until he is "discharged by the [c]ourt." We have not been informed of any further order on the subject. According to Jacqueline's supplemental brief, although she is 19 years old, the court continues "to impose a [guardian ad litem] upon [her]."

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[9] In concluding that the order disqualifying Jacqueline's and Michael's counsel is moot, we express no view as to whether the denial of the right to counsel of their choosing in connection with Chen's petition for approval of his and his counsel's fees constituted prejudicial error in the court's ruling on that petition.

We further note that Chen has filed a respondent's brief in this appeal and appeared (through counsel) at oral argument in his capacity as guardian ad litem. He asserted that he should continue as guardian ad litem for two purposes: to seek recovery of his fees; and, in the event the United States Supreme Court reverses this court's judgment in *Chui v. Chui*, *supra*, B306918, to preserve the settlement until there is a final decision.

We therefore conclude that the instant appeals are not moot to the extent they challenge the order striking the removal petitions.

B. *The Removal Petitions*

At the time Chen's disqualification motions were heard on October 20, 2020, a hearing on Jacqueline's and Michael's removal petitions was scheduled to take place on November 6, 2020. When the court granted the disqualification motions on October 20, it advanced the hearing date on the removal petitions to that date and ordered the removal petitions stricken. Although the court did not explain its reasoning for striking the removal petitions, it appears that it did so solely because the court had disqualified the attorneys who had filed the removal petitions on behalf of Jacqueline and Michael. The court did not, therefore, address the merits of the removal petitions.

Jacqueline and Michael contend that the court erred in striking the petitions. We agree.

The Probate Code provides for the appointment of guardians ad litem (Prob. Code, § 1003), but includes no substantive or procedural provisions governing their

removal. Courts have, however, allowed interested persons to petition to remove a guardian ad litem, and Chen does not dispute that right. (See *Estate of Emery* (1962) 199 Cal.App.2d 22, 25–26; accord, *Estate of Lacy* (1975) 54 Cal.App.3d 172, 185.)[10] Although we have not been referred to a case in which a minor ward has petitioned for removal of his or her guardian ad litem, we find support for such a rule in the provisions of the Guardianship-Conservatorship Law. (Prob. Code, § 1400 et seq.) Probate Code section 1601 provides for the removal of a guardian of the minor's person or estate "[u]pon petition of . . . the minor ward," among others. (Prob. Code, §§ 1600, 1601; see also Prob. Code, § 2651 [a "ward or conservatee" may petition for removal of a guardian or conservator].) We can see no reason why a minor ward who can petition for the removal of his or her guardian of the person or estate should not be permitted to seek the removal of his or her guardian ad litem in proceedings under the Probate Code.[11] Indeed, to hold otherwise could effectively preclude a minor from bringing to the court's attention a guardian ad litem's conflicts of interest or failures to fulfill duties owed to the ward or the court. We therefore conclude that minors for whom a guardian ad litem is appointed may petition for removal of the

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[10] We note that Chen successfully petitioned the trial court to remove Christine (Jacqueline and Michael's mother) as guardian ad litem in the underlying trust litigation.

[11] As Jacqueline points out, precluding a minor from petitioning to remove a guardian ad litem would create an irrational anomaly in that a minor is permitted to petition for emancipation from the minor's parents (Fam. Code, § 7120, subd. (a)), but not to be "emancipated" from a guardian ad litem.

guardian ad litem. (See *Guardianship of Gilman* (1944) 23 Cal.2d 862, 864 ["[t]he rule that a person under disability must appear by general guardian, or guardian *ad litem,* does not apply to a case where the very question involved is the validity of the order of guardianship itself"].)

If, as we hold, a minor capable of making informed decisions can petition the court for removal of a guardian ad litem, it follows that the minor has the right to have counsel assist with such a petition and to appear on the minor's behalf in court to advocate for the petition. (See *Mendoza v. Small Claims Court* (1958) 49 Cal.2d 668, 673 ["[t]he right to a hearing includes the right to appear by counsel"].) We therefore conclude that a minor capable of making informed decisions has the right to petition for the removal of a guardian ad litem and to appear in court with the aid of retained counsel for that purpose. Thus, the trial court's striking of the petitions for removal on the ground that the petitions were filed by Jacqueline's and Michael's chosen counsel is error.[12] We emphasize that our holding is limited to the right of a minor to have independent counsel in connection with a petition for the removal of his or her guardian ad litem. We express no view as to whether or under what circumstances a minor for whom a guardian ad litem has been

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[12] The trial court stated that, under Family Code section 6602, a contract for attorney fees made by or on behalf of a minor is void unless approved by the court. This statute, however, merely governs the ability of an attorney to recover fees pursuant to a contract with a minor; it does not preclude a minor from retaining counsel or having his or her counsel represent them in court.

appointed may otherwise retain or be represented by counsel of their choosing.

Because the court struck the removal petitions without addressing the merits, we would ordinarily remand the matter so that the court could exercise its discretion in determining whether to grant the petitions in the first instance. (See *Estate of Emery*, *supra*, 199 Cal.App.2d at p. 26 [whether to remove a guardian ad litem is ordinarily a matter "within the sound discretion of the trial court"].) As we explain, however, because Jacqueline and Michael are no longer minors, there is no discretion to exercise with respect to whether Chen's appointment can continue; the law requires the termination of his appointment.

The only basis for appointing a guardian ad litem for Jacqueline and Michael was that they were minors. Although a guardian ad litem may be appointed for other reasons, such as when a party is incapacitated (Prob. Code, § 1003, subd. (a)(2)), Chen does not assert that any such other reason exists here, and our record discloses none.

The fact that Jacqueline and Michael are both adults and yet Chen appears to continue to act as their guardian ad litem raises the question whether a guardian ad litem, appointed to represent minors, may continue in that position once his wards reach the age of majority. Although the parties do not refer us to California authority squarely addressing this point, we read the statutory authorization for the appointment of a guardian ad litem in proceedings under the Probate Code as authorization for maintaining such appointment only so long as the grounds for the

appointment continue to exist. This is the rule in other jurisdictions that have addressed the issue, and Chen offers no authority or sound reason why the rule should be otherwise in this state. (See *Mason v. Royal Indemnity Co.* (N.D.Ga. 1940) 35 F.Supp. 477, 480 ["the authority of a guardian ad litem of an infant defendant to represent him in the conduct of a cause expires with the minority of the infant"]; *Maryland Casualty Co. v. Owens* (Ala. 1954) 74 So.2d 608, 611 ["it is well settled that the authority of a guardian ad litem of an infant defendant to represent him in the conduct of a cause expires with the minority of the infant"]; *Staggenborg v. Bailey* (Ky.Ct.App. 1904) 80 S.W. 1109, 1110 [duties of guardian ad litem are "terminated by the arrival of the infant at the age of majority"]; *West St. Louis Trust Co. v. Brokaw* (Mo.Ct.App. 1937) 102 S.W.2d 793, 795 ["the function and authority" of a guardian ad litem terminates when infant reaches the age of majority]; *Malik ex rel. O'Brien v. Malik* (N.Y.Sup.Ct. 2007) 15 Misc.3d 883, 888 ["guardian ad litem is without authority to continue his representation of the former infant plaintiff" once the plaintiff "attained the age of her majority"]; *Spell v. William Cameron & Co.* (Tex.Ct.Civ.App. 1910) 131 S.W. 637, 638 [guardian ad litem's authority to represent an infant "expires with the minority of the infant"]; see generally 42 Am.Jur.2d (2022) Infants, § 159.....[t]he authority of a . . . guardian ad litem to represent an infant in the conduct of a cause . . . expires with the minority of the infant"]; 6A Wright & Miller, Federal Practice and Procedure (3d ed. 2022) § 1570 [guardian ad litem's "power is dependent upon the continued disability of the person being protected" and once the disability has ended, the representative "loses authority to maintain the suit on

behalf of the former infant or incompetent"]; cf. *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1067 [appointment of court-appointed special advocate for dependent child necessarily ends when child is adopted].)

Because Jacqueline and Michael are adults and there is no other ground for continuing Chen's appointment as their guardian ad litem, the appointment must terminate.[13]

DISPOSITION

To the extent the appeals are from the order granting Chen's disqualification motions, the appeals are dismissed as moot.

To the extent the appeals are from the orders striking Jacqueline's and Michael's removal petitions, the orders are vacated and the court is directed to enter new orders terminating Chen's appointment as guardian ad litem of Jacqueline and Michael forthwith.

Appellants Jacqueline and Michael are awarded their costs on appeal.

NOT TO BE PUBLISHED.

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[13] On November 7, 2022, Michael filed a request for judicial notice of the enactment of Assembly Bill No. 1663 (2021–2022 Reg. Sess.) and four documents filed in the superior court in cases unrelated to the instant case. The referenced legislation and the court filings are not relevant to this appeal, and the request for judicial notice is denied.

s/_____
ROTHSCHILD, P. J.

We concur:

s/_____
CHANEY, J.

s/_____
BENDIX, J. BENDIX J

APPENDIX B

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

No. S273980

[Filed May 12, 2022]

BENJAMIN TZE-MAN CHUI, et al., *Plaintiffs and Respondents,*	)
v.	)
CHRISTINE CHUI, *Defendant and Appellant.*	)

Court of Appeal of California Second District,
Division One No. B306918

Superior Court of California Los Angeles County
No. BP154245 Hon. David Cowan

APPELLANT MICHAEL CHUI'S REPLY TO RESPONDENTS' ANSWER ON HIS PETITION FOR REVIEW

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(****Table of Contents and Tables of Authorities omitted in this appendix*****)

REPLY TO RESPONDENTS' ANSWER ON HIS PETITION FOR REVIEW

INTRODUCTION

Respondents spend most of their Answer arguing the merits of the opinion they fabricated, not whether there are good reasons for this Court to grant review.

Appellant Michael Chui ("Michael"), who will be 18 years old in two weeks, respectfully requests this Court's review, because it is time for this Court to hear the wards' voice and to protect the wards' rights, liberty, and property. This way, millions of wards will not go through guardianship abuse while grieving their parents' passing.

I. Review Has a Statewide Interest and Is Critical to Ensure Millions of Wards' Constitutional Right of Due Process in Probate and Civil Proceedings

Respondents wrongly claim that Michael is not entitled to an evidentiary hearing prior to approval of a minor's compromise. (Answer at 24–26.) Review will settle an important question of law, secure uniformity of decisions and serve public interest, especially since this Court has never shied away from addressing "difficult issues of broad application..." (Dear & Jessen, *Followed Rates' And Leading State Cases,* 1940–2005 (2007) 41 U.C. Davis L.Rev. 683, 707–709.) That is among the reasons why "the California Supreme Court has been, and continues to be, the most 'followed' state high court in the nation." (*Id.* at p. 693.)

A. Review Will Protect the Rights of Millions of California Wards Under Conservatorships

Respondents, who have fiduciary duties to Michael, allege that no notice and no appearance for Michael is required at any probate or settlement proceedings (RA. 22–23) despite Michael never having any wrongdoing or had any claims against him. Michael should have a choice and voice on whether to settle with Respondents, but he did not. Michael should have a choice to pursue his claims against Respondents (19 AA T-55 7509:11–18, 20 AA T-73 8611.) and clear his beloved late father's name by cross examining Respondents, but he did not.

The review will effectively guide and protect millions of wards' freedom of choice and liberty in settlement proceedings.

B. Judicial Economy Will Be Served by Avoiding Senseless Motions Through Evidentiary Hearing; Neither Michael Nor Christine Waived Michael's Rights for Evidentiary Hearings

After filing 500 motions/petitions largely funded by Michael's family's expected inheritances to burden the Court for the past 10 years, Respondents did not allow Michael a single evidentiary hearing. Respondents falsely alleged that Christine waived Michael's rights for evidentiary hearing, contradicting the record of Christine's 10 requests:

> Christine first sought an evidentiary hearing on July 31, 2018. (Christine's Appendix ("C. App.") 1 RT 149:3–14.) In her oppositions filed on August 29, 2018, Christine again stated that an evidentiary hearing is required. (Respondents' Appendix ("R. App.") T-9 1531:26–28, 1532:1–2 [emphasis added].) On September 12, 2018, Christine's counsel brought this up again on the hearing on the motion to enforce and on her motion to vacate. (C. App. 1 RT 168:13–16.) On September 27, 2018, Christine filed a motion for reconsideration to set aside the settlement, in which she specifically argued that she had been denied an evidentiary hearing. (C. App. 3 AA T-15 1993:4–5.) At the hearing on that motion on December 14, 2018, Christine again made this request on the record. (C. App. 1 RT 236:5–10.)

> On December 17, 2018, Christine sought this relief in a petition to set aside the settlement. (C. App. 8 AA T-29 2764.) On March 27, 2020, in her motion for new trial, Christine clearly raised the issues of being denied an evidentiary hearing and her right to cross-examine GAL Chen. (C. App. 24 AA T-88 11265:15–16.) On March 13, 2020, in her motion for reconsideration of the Court's March 3, 2020 ruling, Christine also stated the need for an evidentiary hearing. (C. App. 23 AA T-82 10131:2–14.) Finally, at the trial on the First GAL Petition, Christine specifically requested the Court to delay her testimony and to allow Michael and Jacqueline to be present at the Court. (C. App. 7 RT 1376:15–22.)
>
> If every litigant follows Respondents' scorched earth tactics to prevent due process, the entirety of California Courts would be grid locked. This is a good case for the Court to set guidance to prevent wasteful and fraudulent practices which tarnish our judicial system.

C. Public Needs This Court's Judgment that California Wards Have Rights to Expose Fiduciary Fraud Under Guardianships

Guardianship abuse is a clear public perception and an indictment of the Justice system: "[the system] has been perverted from the laws that were supposed to help people into laws that are subverted into a money-making scheme, because guardianship is all about money — particularly professional guardianships that

result in the abuse and exploitation of the very people who are vulnerable." (https://www.usnews.com/news/health-news/articles/2021–10–18/how-13-million-americans-became-controlled-by-conservatorships)

Here, Respondents spent $14,693,288 in legal fees within 3 years. (AA 20 AA T-73 8611:15–17.) The trial court observed "lawyers' courtroom manner of "*snickering and laughing*" and "*viewing this litigation as Sport*" for their unjust enrichment. (2 CT 495:11.) GAL Chen has never spoken to or advocated for Michael and retained the law firm that conspired with Esther to sue Michael's father. (Pet. pp. 20–21.)

In fact, on his 2nd Agreement, GAL Chen took $35 million real and irreplaceable properties relinquished by his mother Christine Chui ("Christine") for the benefit of Michael through his 2nd Petition that Michael nor his sister or mother consented to. (*See* Pet. 43–44, MOB 54–82, and 86–93.) GAL waived his rights, interests, and claims of $100 million in the settlement. (21 AA T-74 8688–8697.)

Respondents fabricated that under the settlement, Michael and Jacqueline received $5 million more than they were entitled under the Trust, solely based on their declarations. (Answer 1, 33.) Respondents have withheld Michael's interests and Trust accountings from Michael from 2011 to present, violating the duty of loyalty, the duty to avoid conflicts of interest, the duty to preserve trust property, the duty to make trust property productive, the duty to dispose of improper investments, and the duty to report and account. (*Pierce v. Lyman* (1991) 1 Cal.App.4th 1093, 1102–03; Prob. Code, §§ 16002–16006, 16060; Rest.2d Trusts,

§§ 175–176, 181, 230–231.) Significantly, Respondents' voluminous declarations/pleadings filed at GAL 1st petition were not credible and were denied with prejudice, when GAL could not even present a prima facia case (2 CT 494.) and the Court ruled there were 25 counts of Respondents' breach of duties, including their substantial liability by withholding accounting for years. (19 AA T-55 7509:11–18.)

This Court's review is critical to ensure due process in which wards have the right to cross examine fiduciaries and to expose their fraud. (20 AA T-73 8611.)

II. Review Will Effectively Define the Validity of a Settlement Entered into by a GAL Without Wards' Consent or Knowledge and Whether It Shall Bind the Wards

Respondents allege that the settlement binds Michael. (Answer 26.) Michael respectfully disagrees.

First, Michael did not know and consent to any of the oral settlement terms on May 14, 2108, the long form settlement, or the GAL's 1st and 2nd written settlement. (Opn. at pp. 9–19.)

Second, as the lower court found, Co-Trustees had no standing to participate in the minor's compromise, which meant they were not parties to GAL's 1st and 2nd settlement. (*See* 21 AA T-77 8951:14–25 [citing lack of standing pursuant Code of Civil Procedure section 372, *Scruton*, and *Pearson*].) Thus, GAL Chen's 1st and 2nd Agreements, entered only between GAL

and Respondents who lacked standing, are invalid. (Opn. at pp. 13–14 and 17–19.)

Third, GAL's 2nd Agreement has 30 modified terms negotiated among Respondents and GAL, without any of knowledge, consent, or participation from Michael, Jacqueline, or Christine. (*See* MOB 54–82, and 86–93.)

"A settlement agreement is a contract, and the legal principles [that] apply to contracts generally apply to settlement contracts. Its validity is thus 'judged by the same legal principles applicable to contracts generally.'" *Stewart v. Preston Pipeline, Inc.* (2005) 134 Cal.App.4th 1565, 1585 (internal citations omitted). *See also Stewart v. Preston Pipeline, Inc.* (2005) 134 Cal.App.4th 1565, 1585. The principles of contract formation are well settled.

> It is fundamental that without consent of the parties, which must be mutual (*Civ. Code, § 1565*), no contract can exist (*Civ. Code § 1550*). Consent cannot be mutual unless all parties agree upon the same thing in the same sense (*Civ. Code § 1580*).
>
> Hence, terms proposed in an offer must be met exactly, precisely and unequivocally for its acceptance to result in the formation of a binding contract and a qualified acceptance amounts to a new proposal or counteroffer putting an end to the original offer.
>
> An offer must be approved in the terms in which it is made. **The addition of any condition or limitation is tantamount to a rejection of**

> **the original offer and the making of a counter offer**.
>
> A counter offer containing a condition different from that in the original offer is a new proposal and, if not accepted by the original offeror, amounts to nothing.

Apablasa v. Merritt & Co. (1959) 176 Cal.App.2d 719, 726 (internal citations omitted) (emphasis added). *See also* Code Civ. Proc., § 1585 ("A qualified acceptance is a new proposal"); *Born v. Koop* (1962) 200 Cal.App.2d 519, 524 ("An acceptance to result in the formation of a binding contract, must meet exactly, precisely, and unequivocally the terms proposed in the offer."); *Am. Aeronautics Corp. v. Grand Cent. Aircraft Co.* (1957) 155 Cal.App.2d 69, 79–80 *(Am. Aeronautics Corp.)* (superseded by statute on unrelated point in *Beaver v. Allstate Ins. Co.* (1990) 225 Cal.App.3d 310, 324–25); *Fugate v. Cook* (1965) 236 Cal.App.2d 700, 704; *Ajax Holding Co. v. Heinsbergen* (1944) 64 Cal.App.2d 665, 669–70; *Bias v. Wright* (2002) 103 Cal.App.4th 811, 820; *Converse v. Fong* (1984) 159 Cal.App.3d 86, 90–91. It is only on evidence of mutual consent that the law enforces the terms of a contract or gives a remedy for the breach of it. *Am. Aeronautics Corp.*, *supra*, at p. 79. If an acceptance contains conditions not embraced in the offer or adds new terms thereto, there is no meeting of the minds. *Landberg v. Landberg* (1972) 24 Cal.App.3d 742, 752.

Lastly, a rejected GAL Chen's 1st agreement by the Court cannot be revived by GAL's 2nd agreement among Respondents and GAL without Michael, Jacqueline and Christine's consent. "A proposal to

accept, or an acceptance, upon terms varying from those offered, is a rejection of the offer, and puts an end to the negotiation, unless the party who made the original offer renews it, or assents to the modification suggested. **The other party, having once rejected the offer, cannot afterwards revive it by tendering an acceptance of it**." *Minneapolis & St. Louis Ry. Co. v. Columbus Rolling-Mill Co.* (1886) 119 U.S. 149, 151 (emphasis added). *See also Eliason v. Henshaw* (1819) 17 U.S. 225, 228 ("Any qualification of, or departure from, those terms, invalidates the offer, unless the same be agreed to by the person who made it."); *Niles v. Hancock* (1903) 140 Cal. 157, 161 ("where an offer has once been rejected, the party rejecting cannot afterwards, at his option, accept the rejected offer, and thus convert the same into an agreement by acceptance."); *Stanley v. Robert S. Odell & Co.* (1950) 97 Cal.App.2d 521, 534 ("The rejection of an offer kills the offer.")

The Review is essential to clarify whether any settlement is valid or binds wards, without their knowledge and consent.

III. The Review Is Necessary to Set Standards That Individual Wards' Repudiations of Settlement and By Their Lawyers Must Be Valid

A. There Is No Dispute the Petition Presents an Important Legal Question of First Impression Regarding Whether a Minor Beneficiary Can Ever Disaffirm a Settlement Agreement Entered into by a Guardian Ad Litem

Respondents cannot dispute that the issue of whether a minor can disaffirm a settlement agreement entered into by a guardian ad litem, despite the minor's objections, is a heavily contested issue of first impression. The Opinion itself provides, "The court had no occasion to consider whether a minor can "void" a settlement agreement entered into by his or her guardian ad litem." (*Chui v. Chui* (2022) 75 Cal.App.5th 873, 904.) The statewide importance of this legal issue of first impression decided in the Second District Opinion, alone, is a sufficient basis for warranting review. (Cal. Rules of Court, rule 8.500(b)(1).)

B. Respondents' Answer Highlights the Need for Guidance from this Court Regarding the Conflicts in Court Opinions Related to Repudiations

1. Respondents' Attempt to Minimize the Conflicts in the Law Does Not Mean They Do Not Exist

Respondents deny conflicting rulings exist and fail to admit there is a real potential for conflicts in other Appellate Districts if this Court does not settle this important question. Respondents contend that "there is no inconsistency that requires further review" because "[t]he Court of Appeal correctly applied *Scruton* and *Pearson* in finding the trial court did not abuse its discretion by striking the repudiations as "adverse to the Minor's best interests." (Answer at p. 33.) However, the Court of Appeal specifically declined to extend *Pearson*'s holding in this case. (*Chui v. Chui*, *supra*, 75 Cal.App.5th at p. 904 ["[W]e decline to adopt such dictum or extend *Pearson*'s holding to the facts in this case."].)

Moreover, Respondents argue that "[t]he *Scruton* and *Pearson* courts set forth guidelines to analyze whether a repudiation of a minor's compromise should be granted or struck to aid in the protection of minors from harmful acts by a guardian ad litem." (Answer at p. 32.) However, Respondents evaluate the facts of the case as if Christine were the guardian ad litem, contending that "Christine's repudiations were 'arbitrary and capricious'". If anything, Respondents' argument further supports the Petition for Review because, if the Opinion stands, the *Scruton* and

Pearson opinions which aim to protect minors will be thwarted not only in this case, but in numerous other cases that raise this question throughout the state. (See Pet. at 35 ["Following its holding in *Scruton*, the Court in *Pearson* held that a settlement agreement is also voidable at the election of the minor through the guardian ad litem prior to its approval by the Superior Court… Neither the defendant nor the trial court may enforce the agreement over the minor's objections."].)

2. Respondents Distinguish Other Case Law, But the Second District's Holding Does Not, Thereby Creating Conflicts

Respondents distinguish the *Michaelis v. Schori* case by arguing that the *Michaelis* Court "did not require express language of disaffirmance for Family Code section 6711 (formerly Civ. Code, § 37) to apply." (Answer at p. 28.) However, in *Michaelis v. Schori*, the statute in question expressly provided that a minor could enter into a contract for pregnancy related medical care and "that consent shall not be subject to disaffirmance because of minority." Code of Civil Procedure section 372, on the other hand, is completely silent on the right of disaffirmance. In analyzing Code of Civil Procedure section 372 in a similar fashion to how the *Michaelis* Court analyzed whether Family Code section 34.5 (now repealed) applied to bar a minor from disaffirming a contract "entered into by the minor under the express authority or direction of a statute" pursuant to Family Code section 6711, it is doubtful that Code of Civil Procedure section 372 can be construed as express authority for a minor to enter into

a settlement agreement such that Family Code section 6711 would prohibit disaffirmance.

Respondents further argue that *Michaelis v. Schori* involved "public policy considerations" finding "minors should not be allowed to disaffirm their consent to prenatal medical care because physicians might refuse to render such medical care without a guardian's consent" and thus, the concept of whether a statute can be construed as express authority for a minor to enter into a settlement agreement such that Family Code section 6711 would prohibit disaffirmance is entirely irrelevant to the legal question presented in this Petition. (Answer at p. 28.) If the Opinion was limited to the unique facts and circumstances of this case, such distinction might have merit, but it is not. As it stands, the Opinion's far-reaching ruling restricts a minor's right to ever disaffirm a settlement agreement entered into the minor's behalf, when such settlement fundamentally alters the minor's rights. As such, the apparent inconsistencies left unaddressed in the Opinion support review by this Court to ensure uniformity of decisions and the protection of every minor in all cases who may have their claims settled by a guardian ad litem.

IV. Review Is Important to Protect the Wards' Rights to Disqualify Conflicted Fiduciaries

Respondents' conflict and animosity against Michael and his family was found by their emails (21 AA T-74 8706:21 AA T-74 8704) and the Court's ruling. (2 CT 493:27–28; 494:1–5.) Respondents alleged that Michael is not entitled to Sycamore and Three Lanterns

properties and, thus, has no conflict with Jacqueline. (Answer 34–35, 39).

Trustors' favoritism of Michael was due to their cultural brief of favoring male heirs (MOB 19–22) and Michael was intended to have $20 million more than Jacqueline with Sycamore and Three Lanterns, as his birth bequest, based on clear extrinsic evidence from the Trustors, including King video, (19 AA T-62 7882) King's lawyer's testimony, (24 AA T-86 11309–11310; 23 AA T-82 10023:8–10) and Respondents' emails (2 AA T-64 7920:20–25). (*See also* Pet. Rehg. 24–28.)

The primary duty of a court in construing a trust is to give effect to the settlor's intentions. (*Barefoot v. Jennings* (2020) 8 Cal. 5th 822.)

"The right to testamentary disposition of one's property is a fundamental one which reaches back to the common law." (*Estate of Fritschi* (1963) 60 Cal.2d 367, 372.) This Court described the basic rule in *Brock v. Hall* (1949) 33 Cal.2d 885 *(Brock).* Implied gifts - that is, effectuating intended testamentary gifts that may be "imperfectly expressed" in a will - date back in California at least a century. (*Id.* at p. 885.) Court must ascertain the intention of testator from instrument read as a whole and give effect to such intention if possible, and where intention to make a gift clearly appears in will, though imperfectly expressed, court will raise a gift by implication.

It is well settled that, where the intention to make a gift clearly appears in a will, the court will raise a gift by implication. (*Brock*, *supra*, 33 Cal.2d at pp. 887–888, citing among others *Estate of Blake* (1910) 157 Cal.

448, 467–468.) Pursuant to *Estate of Campbell* (1967) 250 Cal.App.2d 576, 582: doctrine of an implied bequest to issue in similar situations appears to be well established in California law.

Moreover, Respondents wrongfully alleged that this Ruling was tentative and moot. (Answer 35–37.)

Untrue. While strictly not an order, depending on the issuing judge's intentions, a statement of decision may be treated as an order where "it constitutes the trial judge's determination on the merits." (*Estate of Lock* (1981) 122 Cal.App.3d 892, 896.) In *Estate of Conroy* (1977) 67 Cal.App.3d 734, the court noted that the decision was "signed and filed," stated that an amended report of the inheritance referee was "'hereby approved'" and provided the judge's reasons for the ruling. (*Id.* at p. 737, fn. 1.) The court stated "'since no particular language is requisite for an order, a trial judge's written statement of his views on the law and the proper decision may be treated as an order when signed and filed and when it constitutes his final judicial determination on the merits.' [Citation.]" (*Ibid.*)

The circumstances here are stronger than those in Conroy and Lock, since it is the order to deny GAL Chen's 1st petition with prejudice (19 AA T-55 7509:7–8); that Respondents potentially breached their duty (Pet. for Rehg. 17–18); and that Michael is entitled to Sycamore and Three Lanterns if Christine had lost the trial, pursuant to section 259. The July 18, 2019 Ruling was verified, signed, and entered by the Judge as the order to deny GAL Chen's 1st petition with prejudice. (2 CT 478–492). And at the hearing on March 3, 2020, the Judge specifically stated on the

record that the ruling was not moot. (8 RT 1609–1610:1–10.) Clearly, based on this order, GAL Chen has a conflict to represent Michael and Jacqueline simultaneously, while allying with Benjamin whose interests conflicted with Michael as ruled by the Court. (2 CT -493:27–29; 294:1–5.) GAL Chen must be disqualified as matter of law. (2 CT 478–492; Pet. for Rehg. 9–10; Michael's Reply Brief ("MRB") 53–54.)

Lastly, Respondents knew that a conflicted GAL must be disqualified, since their lawyers Mr. Weingarten and Mr. Gold argued in an unrelated case before the Court of Appeals, Second District, Case No. B306191:

> "The Probate Code is clear that a guardian ad litem cannot simultaneously represent several persons whose interests conflict. (Prob. Code, § 1003, subd. (b); cf. In re Corotto (1954) 125 Cal.App.2d 314, 324 ["when there is a conflict of interest between beneficiaries, it is well settled that all beneficiaries are entitled to individual representation"].)

(MOB 105.)

The Court must set guidance or law so that its millions of wards are able to disqualify conflicted fiduciaries, who know the law and act on a double standard for their self-dealing.

V. The Review is Critical to Clear Conflict of Law and to Ensure All Parties Must Agree with All Terms Under CCP 664.6 Even with a Separate "Mix and Match" Agreement

The published opinion provides that 20 modified terms to which Michael and his family have never consented were enforced against them. (Opn. at pp. 35, 18–19, 24, 54–59.) Yet, Respondents alleged that GAL is allowed to enter into separate agreement with added 20 terms under a "mix and match" method. They rely on the Opinion's finding that the 20 terms added by GAL Chen through this method on his 2nd petition in January 2020 are irrelevant. (Answer at pp. 40–44, Opn.pp. 35.)

GAL Chen was not present at the oral settlement on May 14, 2018 and unethically entered into secret written settlement with Respondents (not Michael, Jacqueline and Christine) on January 17, 2020 (1 CT 147), despite knowing that when enforcing the settlement, the Court ruled: Here two manners of agreement 'mix and match' to create one enforceable agreement: the May 14, 2018, oral agreement and the August 10, 2018 written GAL agreement." (See 3 AA T-14 1982:24–25.)

In order to be enforceable under section 664.6, both oral and written forms of settlements require the personal consent of all parties. (*Johnson v. Dep't of Corr*. (1995) 38 Cal.App.4th 1700, 1708; *Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1258.)

Moreover, this is precisely the case of Critzer v Enos: "because two of the defendants were not present and thus never stipulated to the settlement read into the court record—but later signed a document containing numerous additional terms—they cannot be said to have agreed to the same provisions as the other parties.... Since the parties here did not all agree to the same terms, [section] 664.6 is, as a matter of law, inapplicable to the 'agreement' which defendants seek to enforce…" (*Critzer v. Enos*, *supra*, 187 Cal.App.4th at p. 1261.)

Lastly, Michael detailed that in GAL Chen's 2nd agreement, over 30 terms were added (MOB 54–82.), including 6 material terms, which Christine did not consent on May 14, 2018, (MOB 33–34,) let alone 20 added new and modified terms on GAL's 2nd Petition, without Michael, Jacqueline and Christine' participation, knowledge, and consent. (MOB 86–94.)

Above all, Michael, as the real party, was completely precluded from any participations in the settlement, by Respondents and GAL. In *Conservatorship of John L.* (2010) 48 Cal.4th 131, the Supreme Court made the sweeping statement that, "*[l]ike all lawyers,* the court-appointed attorney is obligated to keep her client fully informed about the proceedings at hand, to advise the client of his rights, and to vigorously advocate on his behalf." *Id.* at p. 151.

The public needs the Court's guidance if the settlement under Code of Civil Procedure section 664.6 is binding against the ward, without his knowledge, consent, participation, and due process. Moreover, it is

time to make fiduciaries accountable for their concealment in the settlement.

VI. Conclusion

Michael respectfully requests the Court to grant his petition for review or transfer the matter back to the Court of Appeal with directions to resolve the issues which will benefit millions of wards under guardianships.

Dated: May 12, 2022

AMBROSI & DOERGES, APC

Respectfully submitted,

By: /s/ Mary E. Doerges

Attorney for Appellant
Michael Chui

(***Certificates omitted in this appendix***)

APPENDIX C

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE

B306918

[Filed March 28, 2022]

IN RE: ESTATE OF KING WAH CHUI	)
----------	)
	)
BENJAMIN CHUI et al.,	)
Respondents and Petitioners Below,	)
	)
v.	)
	)
CHRISTINE CHUI et al.,	)
Appellants and Respondents Below.	)
	)

APPEAL FROM LOS ANGELES COUNTY SUPERIOR COURT
CASE NOS. BP154245,
HONORABLE DAVID J. COWAN

DECLARATION OF GERARD FOX IN SUPPORT OF CHRISTINE CHUI'S PETITION FOR REHEARING

Declaration of Gerard Fox

I, Gerard Fox, declare as follows:

1. I am a member of the bar of the State of California and a Partner at Gerard Fox Law, P.C., and I was formerly counsel of record for Appellant Christine Chui ("Christine"). I make this declaration of personal, firsthand knowledge of reviewing the public records and my conversations with Christine and Mr. Keith Van Dyke at Hess-Verdon ("Mr. Van Dyke") and if called and sworn as a witness, I could and would testify as set forth below.

2. I was retained as counsel of record for Christine in the matter *In the Matter of the Estate of King Wah* Chui, Los Angeles Superior Court ("LASC") Court Case No. BP154245, in 2018 (the "Appealed Matter"). I was also counsel of record for Christine in this present appeal.

3. The purpose of my retention was and has always been to investigate potential fraud that was perpetrated by the Respondents Benjamin Tze-Man Chui ("Benjamin") and Margaret Tak-Ying Chui Lee ("Margaret") (collectively, "Co-Trustees"), Esther Chao Guardian Ad Litem Jackson Chen ("GAL Chen") and the alleged abuse of their fiduciary duties.

4. It is my belief that this alleged fraud is ongoing, and that further evidence of such fraud will be revealed pending further investigation. Once a party actually becomes aware of facts which would make a reasonably prudent person suspicious of wrongdoing by a fiduciary, the party is put on inquiry notice and has a duty to investigate. (*Bennett, supra,* 47 Cal.2d at p. 563, 305 P.2d 20; *Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1394, 124 Cal.Rptr.3d 271.) While

fraud on the court has been recognized for centuries as a basis for setting aside a final judgment, it has been used for several other purposes under California's Rules of Civil Procedure. Such a fraud "directed to the judicial machinery itself where the impartial functions of the court have been directly corrupted."

5. It is my understanding by reviewing the public records and my conversation with Christine that on January 11, 2022, Christine and her family received a handwritten note which was dropped off in their family's mailbox which read:

> *"Christine, are you still interested **in the appeal case** with Benjamin Chui? If so, I think I have some info for you. You can reach me at sin20211016@gmail.com."*

Attached hereto as **Exhibit 1** is a true and correct copy of this letter.

6. Christine has explained that on January 29, 2022, Mr. Kode Li ("Mr. Li") came to Christine's house again and represented himself as the representative of the late wife of Co-Trustee Benjamin Chui ("Benjamin"), Sinora Chan ("Sinora"). It is my understanding that he informed Christine that Sinora died on October 16, 2021. Before her passing, Sinora wanted Mr. Li to deliver a package to Christine and her children with evidence of fraud and conspiracy between Benjamin, his lawyers and GAL Chen.

7. On that same night, Mr. Li left a note with his contact information as follows: "Are you still involved with the lawsuit with Ben? If so, I might have some information you would be interested.

Sin20211016@gmail.com. 626-210-6522." Attached hereto as **Exhibit 2** is a true and correct copy of this letter.

8. Attached hereto as **Exhibit 3** is a true and correct copy of the picture of Mr. Kode Li from the security camera at Christine's residence. Notably, it is my understanding that Christine and her children had never known or met with Mr. Li prior to his visit. It is my understanding that Christine and her children have never spoken with Sinora for the past 20 years.

9. It is my understanding that on January 29, 2020, based on conversations had between Mr. Li and Michael (Christine's son), Christine, and Christine's counsel, James G. Bohm, ("Christine's Counsel"), it is revealed that Mr. Li is the biological brother of Sinora and is the trustee for Sinora's trust. Mr. Li also provided the following:

a. His sister, Sinora, was married to Benjamin and died recently on October 16, 2021.

b. Prior to her death, Sinora wanted Christine and her children to know she was sorry for what Christine and her family had gone through due to Benjamin at the Probate Court.

c. Sinora told Mr. Li that she wanted him to provide documents to Christine and her children and both the Appellate Court and the Probate Court that there was a conspiracy among Benjamin, his lawyers, and Guardian ad Litem Jackson Chen ("GAL Chen"), to harm Christine and her children.

d. Further, there were certain e-mail communication exchanged between GAL Chen and Benjamin's counsel which Christine and her children should subpoena.

10. The Declarations of Mr. James Bohm and Christine are attached as attached hereto as **Exhibit 4 and Exhibit 5.** Notably, **Exhibits 1 to 3** on this declaration are public records attached to Mr. Bohm's Declaration.

11. It is my understanding that on February 18, 2022, due to Benjamin's threat to sue Mr. Li, Christine and her children received the release and the waiver request from Mr. Kode Li's counsel, Mr. Richard Chinen ("Mr. Chinen"). Attached hereto as **Exhibit 6** is a true and correct copy of this email correspondence.

12. It is my understanding that Mr. Li also asked that Christine and her children sign a waiver not only to release any potential claims from Benjamin, but alos to indemnify Sinora's estate, because his release of Sinora's organized documents to Christine. Attached hereto as **Exhibit 7** is a true and correct copy of this waiver.

13. On February 23, 2022, Christine served a subpoena to Mr. Chinen's office, per Mr. Li's request, in the Appealed Matter (the "Subpoena"). Attached hereto as **Exhibit 8** is a true and correct copy of the Subpoena.

14. On March 8, 2022, two days prior to the production of subpoena was due, Benjamin filed a motion to quash the Subpoena (the "Motion"). Attached

hereto as **Exhibit 9** is a true and correct copy of this Motion. Hearing on this Motion is set for July 6, 2022.

15. On March 7, 2022, Benjamin also moved *ex parte* to stay the Subpoena pending the motion to quash the Subpoena (the "Ex Parte"). Attached hereto as **Exhibit 10** is a true and correct copy of the Ex Parte.

16. On that same day, Christine filed her opposition to the Ex Parte. Attached hereto as **Exhibit 11 is** a true and correct copy of Christine's opposition. Attached hereto **Exhibit 12** is a true and correct copy of Mr. Bohm's declaration related to all exhibits.

17. In a minute order issued on March 8, 2022, the Trial Court scheduled June 6, 2022, for the hearing on the Ex Parte and stayed the Subpoena until that date. Attached hereto as **Exhibit 13** is a true and correct copy of the Minute Order.

18. It is my understanding from Mr. Van Dyke, Mr. Kode Li's newly retained lawyer that on March 17, 2022, Mr. Van Dyke allegedly returned Mr. Bohm's call that Mr. Li recently opened the envelop from Sinora to Christine that made the suspicious statement.

19. On March 23, 2023, I also called Mr. Van Dyke in person. His comments further contradicted to the Records and his conversation with Mr. Bohm:

A. Mr. Van Dyke denied any knowledge that Mr. Li had demanded Christine and her children to sign a waiver and indemnification before he could release any documents from Sinora. This contradicted to the records from Mr. Li. See **Exhibit 6 and 7;**

B. Mr. Van Dyke alleged that it was Sinora, not Mr. Li who told Christine about the fraud. This contradicts the facts that Mr. Li came to Christine's house twice to report the conspiracy, that Christine had never known about Mr. Li prior to his visits, and that Christine had never spoken or met with Sinora for about 20 years.

20. The Court must know that Benjamin testified that Sinora had reviewed trust records with Helena (who is not a trust beneficiary) at least 50 times (**See Exhibit 14**, Benjamin's deposition, pp. 49-51.) and took possession of Trust records by herself. (**See Exhibit 14**, Benjamin's deposition, pp. 56-57.)

21. This settlement was enforced solely based on declarations among GAL and Co-Trustees, without any evidentiary hearings. In light of AB 1663, introduced on January 19, 2022, *fundamental liberties and property rights can be taken away with little opportunity for legal recourse by Guardianship*. It is the legislation's intent to value and hear conservatee's wishes, especially since Jacqueline is 19-years-old and Michael will be 18-year-old in a few weeks.[14]

22. This Court should allow for the investigation of this potential fiduciary abuse fraud especially since the Trial Court observed GAL Chen and Co-Trustees'

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[14] On September 28, 2021 Sen Cruz stated in "Toxic Conservatorships: The Need for Reform: *"Conservatorship abuse has come to the forefront of a political, pop culture, and civil rights conversation like never before in America. Britney Spears' conservatorship has shown fundamental liberties can be taken away with little opportunity for legal recourse.*

lawyers' courtroom manner of "*snickering and laughing*" and "*viewing this litigation as Sport*." (19 AA T-55, p. 7511:6-12.) And Benjamin's late wife Sinora who recently passed away had intended this Court and the Probate Court to know the conspiracy and fiduciary abuse among Benjamin, his mother, his lawyers, and GAL Chen and sent her executor Mr. Li to Christine and her children's house twice.

23. Based on my phone conversation with Mr. Van Dyke on March 23, 2022, his explanation to me was not credible given the fact that Mr. Li, his new client, unexpectedly went to Christine's house twice to report the conspiracy between GAL Chen and Benjamin, which was to harm Christine and her children in January and February, 2022, weeks prior to this Court issuing its decision.

24. This Court must know that GAL Chen was appointed at the request of Esther Chao ("Esther"). (See Opn. p. 6.) GAL Chen retained Hinojosa & Forer LLP, which has a personal relationship with Esther. In fact, in her lawsuit against Robert Chui (the father of Christine's children) filed on July 25, 2013, Esther appointed Mr. Hinojosa at this law firm to replace Robert as the Guardian Ad Litem for the Trustor King in her litigation against Robert, prior to his passing. **(See Exhibit 15, P2:20-21)** Clearly, leaving Christine's children in GAL Chen and the hands of Mr. Forer, the business partner with Mr. Hinojosa at the firm of Hinojosa & Forer LLP, is no different from leaving Christine's children in the hands of Esther, the adverse litigant who had sued Robert into an early grave.

25. As this Court knows, Esther had threatened to sue the Trustors King and May for more money **in the 1990s,** 10 years prior to Christine and her children joining the family (*See* 10 AA T-34, p. 3782:17–21). Esther and her litigation conspired with Hinojosa & Forer LLP were the major cause of Robert's death, based on Declarations from co-Trustee Margaret Lee, Kevin Lutz, Joe Petrillo, and Roger Richards, who had directly conversations with Robert, prior to his passing. (10 AA T-34, p. 3778; 10 AA T- 34, p. 3788; 29 AA T-97, p. 14282.).

26. Based on the settlement material term No. 6: The minor children's claims, if any, can only be brought by their guardian ad litem Jackson Chen, his designee, or his court-appointed successor, until such time as they reach the age of majority." (See Opn. p. 10) Neither Jacqueline (who is now 19-years-old) nor Michael (who will be 18-years-old in 7 weeks) had intended to waive their claims against Respondents, especially since Sinora's records related to the Trust and Respondents much be fully investigated. Christine, as Guardian of Estate, the Trustee, and the Guardian ad Litem for her children has a fiduciary duty to protect her children. See Christine's Appellate Opening Brief, PP. 103-104.

27. As evidenced in the records, I have personally requested for evidentiary hearings, in verbal and in written, prior to the Court enforcing the settlement. (*See*, *e.g.*, 1 Reporter's Transcript ("RT") 168:13-16, 185:2-14, RT 236:5-10; Co-Trustees' Respondents' Appendix ("RA") T-9 1531:26-28, 1532:1-2; 3 Appellant's Appendix ("AA") T-15 1993:4-5; 8 AA T-29

2764; 24 AA T-88 11265:15-16; 23 AA T-82 10131:2-14.) My requests were denied.

28. Pursuant to Conservatorship of O.B., our Supreme Court held an appellate court applying the substantial evidence standard of review must account for the standard of proof required in the underlying proceeding when determining whether a finding is supported by the evidence. (Id. at pp. 995-996, 266 Cal.Rptr.3d 329, 470 P.3d 41.) Thus, "[w]hen reviewing a finding that a fact has been proved by clear and convincing evidence, the question before the appellate court is whether the record as a whole contains substantial evidence from which a reasonable fact finder could have found it highly probable that the fact was true." (Id. at p. 1011, 266 Cal.Rptr.3d 329, 470 P.3d 41.) Here, the decision made no evidence that Christine's children are better off under GAL's 2nd settlement than under the trust (without the settlement).

29. Here, the decision produced no support for the fact that Christine's children are better off under GAL's 2nd settlement than under the trust with the settlement. In fact there is no evidence on "who gets what" in Trust A, B, and C separately for all parties.

30. Most importantly, the Decision conflicted with Critzer v. Enos (2010) 187 Cal.App.4th 1242, 1259, since CCP 664.6 only allows "a 'mix and match' approach to the manner of agreement as long as all parties agree to the same material terms." Here, in the September 17, 2018 ruling on the motion to enforce the settlement, the probate court stated: "Here two manners of agreement 'mix and match' to create one

enforceable agreement: the May 14, 2018 oral agreement and the August 10, 2018 written GAL agreement." (See Christine's Appendix No. 3 AA T14 1982:24-25.) So, the Court found one agreement— the May 14, 2018 agreement recorded before the judge (including 7 material terms which Christine has never agreed to) and the August 10, 2018 agreement filed by GAL Chen, which was denied by the Trial Court, with Prejudice on July 18, 2019. Yet, GAL Chen and Benjamin entered into another secrete settlement without Christine and her children's participation on January 17, 2020 and the decision was based on this GAL's 2nd agreement on January 17, 2020, which has over 25 material terms (including 7 material terms recorded on May 14, 2018), which Christine and her children have never consented to. See Christine's Appellate Opening Brief, PP. 55-56 and 92-98.

31. There was no evidence allowed by the court below on whether as a matter of law there was an enforceable settlement and an aura of corruption that should cause this court to pause in letting this case end in this manner. I respectfully recommend this Court to remand with instruction to investigate a potential scheme among Respondents and to set an evidentiary hearing on the settlement and removal of GAL Chen and Co-Trustees.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on March 28, 2022, at Los Angeles, California.

s/_____
Gerard Fox
Gerard Fox Law, P.C.,

APPENDIX D

LAW OFFICES OF MICHAEL S. OVERING, APC
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Attorneys for Jacqueline Chui

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

Case No. BP154245

[Related Cases: BP137413, BP143884, BP145642, BP145759, BP155345, BP162717, BC44149, and 16STPB04524]

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

[Filed August 28, 2020]

In the Matter of the ESTATE OF)
KING WAH CHUI, Deceased.)
)

JACQUELINE CHUI'S NOTICE OF MOTION AND MOTION TO SET ASIDE THE COURT'S MARCH 3, 2020 ORDERS (1) CONFIRMING SETTLEMENT WITH MINORS, AND (2) APPOINTING JACKSON CHEN AS GUARDIAN AD LITEM IN SIX ACTIONS

[Code Civ. Proc. § 473]

[FILED WITH REQUEST FOR JUDICIAL NOTICE]

Hon. Gus T. May
Department: 2D

Hearing Date: December 16, 2020
[Reserved with Department]

Time: 3:00 P.M.

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD, PLEASE TAKE NOTICE THAT on December 16, 2020 at 3:00 p.m. or as soon thereafter as the matter may be heard in department 2D of the above-referenced court located at 111 N. Hill Street, Los Angeles, CA, 90012, Jacqueline Chui will move and hereby does move for two orders of the court.

First, she seeks an order setting aside the March 3, 2020 order of the court appointing Jackson Chen as guardian *ad litem* in cases BP154245, BP145642, BP155345, BP162717, 16STPB04524, and BC544149. Moving party was precluded from participating in that March 3, 2020 hearing because she was not given notice of it as required by law. In particular, Chen was appointed in violation of *Probate Code* section 1511, in that the ward—who was over the age of 12 at the time

of the appointment—was not given 15-days' notice of any petition to appoint Chen. Further, no notice of the petition was given as required by *Probate Code* section 1460, subdivision (b)(2). Thereafter, the Court failed to take evidence from the ward and the proposed GAL, who had never before communicated with the ward. Chen's failure to provide moving party with notice as required by statute violated moving party's due process rights. Accordingly, the trial court was without authority to make such an appointment. Since she did not receive notice as required by law, it was mistake, inadvertence, surprise, or excusable neglect to not appear in the action and object to the appointment of Chen. Therefore, she respectfully requests that this court set aside such order. She was denied her due process rights to participate in litigation.

Second, moving party seeks an order of the court setting aside the approval of the settlement agreement made on March 3, 2020, and the order denying reconsideration of the settlement agreement made on June 24, 2020, based on her mistake, inadvertence, surprise, or excusable neglect. The moving party was precluded from participating in those hearings due to the malfeasance and misfeasance of her prior attorneys and guardian *ad litem*. Moving party did not receive any notice of the petition to confirm the settlement as required by *Probate Code* section 1460(b)(2). When she attempted to repudiate the action, Chen, Mr. Forer, and the Court dismissed the repudiation as being in the improper form and a ruse by moving party's mother. Such casual dismissal of the repudiation of Ms. Jacqueline Chui as a "ruse" by Ms. Christine Chui was made without personal knowledge of any party –

including Chen, who has never communicated with Ms. Jacqueline Chui—and frankly smacks of sexism and a malignant sort of patriarchy. (The sexism and patriarchal attitude of Mr. Chen has poisoned this entire litigation.) Since moving party was unable to participate in the hearings because of the misrepresentations of Chen and his counsel, her failure was due to her mistake, inadvertence, surprise, or excusable neglect.

This motion to set aside is made pursuant to *Code of Civil Procedure* section 473 on the additional grounds that Chen was not properly appointed as Ms. Jacqueline Chui's guardian *ad litem*, and that her former attorneys and court-appointed guardian *ad litem* (GAL) have failed to communicate with her, give her required legal notice, and have breached various fiduciary, ethical, and legal obligations to her.

This motion is based upon this notice of motion and motion, the accompanying memorandum of points and authorities, the declarations concurrently filed herewith, and upon such oral and documentary evidence as may be presented by defendant at or before the hearing on this motion.

DATED: August 27, 2020

LAW OFFICES OF
MICHAEL S. OVERING, APC

s/_____
Michael S. Overing, Esq.
Edward C. Wilde, Esq.
Thomas J. Placido, Esq.
Attorneys for Jacqueline Chui

(*** *Table of Contents and Table of Authorities omitted in this appendix****)

MEMORANDUM OF POINTS AND AUTHORITIES

Jacqueline Chui ("Jacqueline") respectfully submits the following memorandum of points and authorities in support of her motion to set aside the settlement agreement and the denial of the motion for reconsideration of the settlement agreement.

I. INTRODUCTION

Moving party, Jacqueline Chui, is a minor who is approaching her 18th birthday. She has petitioned separately to have her court-appointed guardian *ad litem* (GAL) removed. (Req. for Jud. Notice, Ex. M.) As set forth therein, he is no longer necessary and is not adequately representing her interests to (and before) the Court. Admittedly, this motion to set aside the work of Mr. Chen would have been better heard after the Court's ruling on moving party's petition to remove Mr. Chen as GAL. However, due to the Court's calendar, the petition to remove Mr. Chen cannot be heard until November 2020. Since the time for bringing a motion under *Code of Civil Procedure* section 473 expires prior to that date, Ms. Chui cannot wait to bring her motion after that time. It is anticipated the Court will rule in her favor in November.

As set forth herein, this motion requests that the Court revisit and set aside certain orders (dated March 3, 2020, and June 24, 2020) because Jacqueline's acquiescence in those orders occurred as the result of her mistake, inadvertence, surprise, or excusable

neglect; to wit, the misrepresentation to the Court of her concurrence by her guardian *ad litem*.

As set forth herein, in the seven years that Chen has been her GAL, he has never spoken with her; he has never consulted her about the case; he has never provided her with documents; he has never served her with due process; he has never talked to her about her role as a beneficiary under the various trusts; and he has never discussed the numerous depositions, motions, hearings, and trial that have occurred in those 7 years. (See also Req. for Jud. Notice, Ex. M.) In fact, his strategy has been entirely imperious, making legal decisions that adversely affect her interests and justifying those decisions on the grounds that he needn't consult her at all! His actions fall far below the minimum standard of care for an attorney and run counter to his duties as a GAL. In this litigation, his attorney has been standing behind the proposition that one cannot sue a GAL. There is caselaw that a GAL who is acting in a custody proceeding, and thus acts as an agent of the Court, cannot be sued for any misconduct. However, the question of whether Chen can be personally liable for his malfeasance and nonfeasance in this litigation (particularly as attorney of record) is irrelevant to the question of whether the Court may correct the errors and injury which have resulted from his conduct.

Chen's actions are insulting to anyone with a reasonable intelligence and represent a patriarchal pathology that has infected his attitude in this case. Frankly, his conduct smacks of misogyny. Chen dismisses anything said or done by Jacqueline with a

perverse use of a "father knows best" mentality: "You just be quiet little girl while I spend your inheritance on my fees." He denies her any agency and claims that her conduct is the plot of another woman, Christine Chui. His sexism is unmistakable throughout. Whether by design or by neglect, Jacqueline has been systematically prevented from participating in litigation concerning her interests in the following ways:

1. She has never been provided with notice of any of the proceedings despite the law requiring notice.

2. She has had zero communication from her GAL in the 7 years he has purported to act for her.

3. Her GAL acted as her attorney without her permission or authority. In his position as her attorney, he has consistently violated his professional duties required by law.

4. Her GAL acted without her knowledge or consent by negotiating agreements with other parties and representing those to the court as her own.

5. When she has tried to speak in this matter, the GAL tried to squelch her voice by objecting to her participation, attacking her personally, attacking her family, and attacking her attorneys with no proper basis to do so. His conduct has been demeaning, degrading, and vicious.

Based upon the foregoing and as set forth more fully below, Jacqueline asks this Court to grant her motion.

II. BACKGROUND

The Court is aware this litigation has been long and expensive. Imagine how learning of that litigation feels to a ward waking up in 2020 to find herself amid scorched-earth litigation that has been undertaken by her GAL without her knowledge or permission; and not in her best interests.

The litigation began at a time when Jacqueline was only ten years old (she is currently just shy of her 18th birthday). She was appointed a guardian *ad litem* by the Court. In fact, she has had two GAL's in the nine separate lawsuits: her mother and, following his appointment by the court to replace Christine 7 years ago, Jackson Chen, Esq.

Following attorney Chen's appointment as GAL, he has acted as attorney[1] as well as

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[1] A guardian *ad litem,* like a conservator or a corporation, cannot appear *in pro per*, because under the law of California, only a licensed attorney is permitted to represent another party in a lawsuit. (*Bus. & Prof. Code* §1625; *J.W. v. Superior Court* (1993) 17 Cal.App.4th 958, 966 ["Such a person is clearly engaged in the practice of law" [Citation].]; accord, *Azmat v. Bauer* (Ky. 2018) 588 S.W.2d 441; *Yulin Li ex rel. v. Rizzi*o (Iowa Ct. App. 2011) 801 N.W.2d 351; *Epstein v. Hutchinson* (Tex.App. 2004) 175 S.W.3d 805.)

For reasons unknown to Jacqueline, Chen was permitted to act as the GAL without appointment of counsel because he is a licensed attorney in the State of California. Over the last 7 years, Chen has appeared numerous times as counsel of record; his declaration in support of his request for fees details work which can only be described as the work of an attorney: As such, he is bound by the California Rules of Professional Conduct, even when performing services as GAL that could be rendered by a non-

GAL[2] for Jacqueline. This dual role has created a significant conflict of interest over the 7 years. Chen only recently recognized said conflict when he petitioned the court in January 2019 for leave to retain separate counsel. (Req. for Jud. Notice, Ex. K.)

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attorney. (*Kelly v. State Bar* (1991) 53 Cal.3d 509, 517.) In recent filings, Chen has advanced the ridiculous position that he is not Jacqueline Chui's lawyer, even though he has filed petitions and appeared in Court on behalf of another person. Only an attorney may legally undertake such actions.

[2] As GAL, it was Chen's duty to direct the litigation on behalf of his ward. (*In re Josiah Z* (2005) 36 Cal.4th 664, 678; *In re Marriage of Lloyd* (1997) 55 Cal.App.4th 216, 220-21.) This duty includes a duty to communicate and know the facts relevant to the circumstances. (*Persons Coming Under the Juvenile Court Law. San Bernardino Cnty. Children v. In re Los Angeles* (2016) 243 Cal.App.4th 1220, 1244; *In re Jennifer* (Wis. Ct. App. 2009) 323 Wis. 2d 126, 133; *In re Guardianship of Robert D* (Neb. 2005) 269 Neb. 820, 821 [""A guardian *ad litem's* duties are to investigate the facts and learn where the welfare of his or her ward lies and to report these facts to the appointing court".]; *Smith v. Smith* (Neb. Ct. App. 2001) 9 Neb. App. 975 ["The guardian ad litem's duties are to investigate the facts and learn where the welfare of his or her ward lies and to report these facts to the appointing court."]; *In re Baby Girl Baxter* (Ohio 1985) 17 Ohio St. 3d 229, 232 ["The role of guardian ad litem is to investigate the ward's situation and then to ask the court to do what the guardian feels is in the ward's best interest."].) **This Court has the power to review Chen's conduct as GAL and to correct errors which he made**. (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 644; see, *Regency Health Services, Inc. v. Superior Court* (1998) 64 Cal.App.4th 1496, 1502 ["His duty was to 'provide a voice' for his ward – a ward did not even know."]; *San Diego Cnty. Health & Human Servs. Agency v. M.M. (In re Charlotte C.)* (2019) 33 Cal.App.5th 404, 415-16; *In re Jaclyn S* (2007) 150 Cal.App.4th 278, 288-89.)

A. The First Settlement Petition Chen Filed

In November 2018, Chen, acting as attorney and GAL for Jacqueline, petitioned the court to approve a settlement agreement allegedly entered into by all parties (there is dispute as to whether there was an actual underlying agreement, which is not relevant here). That petition was heard and denied by Judge Cowan following trial on April 11, 2019. According to the order of Judge Cowan issued on March 3, 2020, "The court denied the Original GAL Agreement, noting insufficient testimony by Chen on several points and multiple concerns with the substance of the Agreement and whether it would truly guarantee peace for the minors." (Req. for Jud. Notice, Ex. D, p. 3, ll. 6-9). Significantly, Chen offered no testimony at trial regarding any communication with Jacqueline about the settlement **because he never spoke about it with her!**[3]

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[3] In his recently filed petition to disqualify counsel for Jacqueline's brother, Michael Chui, Mr. Chen admits that he has never communicated with the minors in 7 years of litigation. (Req. for Jud. Notice, Ex. L, pp. 11–13.) It is apparently Mr. Chen's position that (1) there was no need for him to communicate with the minors because he was somehow able to intuit what was best for them without ever consulting them; and (2) if the minors wanted to communicate with Mr. Chen, then the impetus was on the minors to contact him directly, even though they didn't know who he was and had never met him. Only now has Mr. Chen made an effort to communicate with the minors, for the first time in 7 years of litigation after they have already retained their own counsel, upon Mr. Chen's realization that his fee request may be in jeopardy due to his repeated breaches of his legal and fiduciary obligations to the minors.

B. Chen's Second Petition to Approve Settlement; Improper Appointment of Chen as GAL

"On January 16, 2020, the parties (other than Christine) executed the Amended GAL Agreement with several new provisions addressing the Court's stated concerns." (Req. for Jud. Notice, Ex. D, p. 3, ll. 17-18.) How Chen could address the Court's concern for the minors without talking with them defies explanation, but for his gross paternalism. Immediately thereafter, on January 17, 2020, Chen filed a second petition to approve a settlement agreement between the parties. (Req. for Jud. Notice, Ex. A.) Noticeably absent, yet again, was any attempt to communicate with Jacqueline regarding the settlement agreement, its terms, or how it would affect her. Worse, Chen denied Jacqueline her due process rights as he never served notice of that petition to Jacqueline, as required by *Probate Code* section 1460(b)(2).

That petition was heard on March 3, 2020. Prior to the hearing, Jacqueline was informed by her mother's counsel about the hearing and was asked to sign a declaration under penalty of perjury repudiating the settlement agreement, if she so agreed. Jacqueline did agree, as she did not like the settlement's terms and did not consent to any of its provisions. Her repudiation was disregarded, ostensibly because it had been prepared on the letterhead of her mother's attorney.

According to the March 3, 2020 order, "On January 31, 2020, *Christine's* attorney filed Jacqueline Chui's Repudiation and Michael Chui's Repudiation of the Amended GAL Agreement. Neither Repudiation was verified, nor was Chen involved in the preparation of

either Repudiation." (Req. for Jud. Notice, Ex. D, p. 5, ll. 1-3, emphasis added.) Jacqueline's repudiation was, in fact, ***verified***. What led the court to such an obvious factual error is unknown. **But, it appears that had Jaqueline filed the repudiation of the agreement in her own name it would have been considered and given effect. Hence the need for this motion: Jacqueline hereby submits a new repudiation with her new counsel and requests that the Court give it effect. In fact, she asks this Court to consider this motion, in part, as her repudiation.**

Had Jacqueline known that the Court would require a separate document from her, she would have submitted one before the hearing. Moreover, since Chen as attorney and as GAL never communicated with her,[4] her ignorance is understandable. As her attorney, Chen had a duty to consult with his client and provide her sound legal advice. After she filed the allegedly defective repudiation, he should have helped her prepare a proper repudiation. This again is indicative of Chen's apparent sexism and patriarchal

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[4] California Rules of Professional Responsibility, Rule 1.4 requires a lawyer to maintain "prompt" and "reasonable" communications with the client on all matters of interest to the client and the litigation. Neither Chen (nor Jeffrey Forer, Esq.) had any communication with Jacqueline Chui at any time prior to her retention of her own counsel, the Law Offices of Michael S. Overing. (See Req. for Jud. Notice, Ex. M.) Therefore, her rights have been wrongfully compromised because her prior attorneys have failed to properly communicate with her. Accordingly, any failures to advocate for a different position are a matter of excusable error or neglect as to Jacqueline, even if they are matters of negligence as to Messrs. Chen or Forer.

disrespect. Moreover, not only did Chen not give her notice, neither has any other party or attorney to this action, in violation of the requirements under *Probate Code* section 1460(b)(2). Thus, on March 3, 2020, the Court, over the sworn repudiations of both wards, approved the settlement as proffered by Chen, who continued to advocate for its approval despite having the ward's repudiation in his possession. Thus, knowing the ward's position on the settlement made no difference to Chen, who "knew best."

In the same hearing, the Court granted in part Chen's Petition for Appointment as GAL in actions BP154245, BP145642, BP155345, BP162717, 16STPB04524, and BC544149. (Req. for Jud. Notice, Ex. B.) *Probate Code* section 1511 requires that **prior to** the appointment of a GAL in an action, personal notice must be given to the ward. No such notice was given to Jacqueline Chui. (See Req. for Jud. Notice, Ex. C.) Accordingly, the order appointing Chen as GAL in the additional lawsuits was obviously defective at the time it was made and therefore could not bind Jacqueline to the settlement as to those cases. Simply put, the Court did not have the legal authority to make such an appointment. Mr. Chen has served as an attorney and been appointed as a guardian in numerous other actions and undoubtedly knows the applicable law, particularly the notice requirements. His complicity (as well as the complicity of Mr. Forer, who also knows the law extremely well) in this improper appointment demonstrates once again his arrogance toward the wards. Why would he behave this way? It is apparent: The appointment was for Chen's personal benefit. Of course he did not insist upon the

law; both he and Mr. Forer want to receive over $500,000 from the wards! Chen did not object and did not inform the Court of the error. He refused to follow the law put in place to protect the ward.[5] At this point, this case is about Chen and Forer's desires to get $500,000. They plainly have no regard for the ward. They are litigating against the ward solely based upon greed.

Following the granting of the motion to approve the settlement on March 3, 2020, Christine Chui filed a motion for reconsideration and a motion for new trial. After the March 3, 2020 order and prior to the hearing on Christine's motions (which were heard on June 24, 2020), Jacqueline, concerned that she was not being protected by Chen, retained her own counsel who instructed Mr. Chen to join the motion for reconsideration and seek to overturn the March 3, 2020 order confirming the settlement.[6] Chen refused to

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[5] An "attorney owes his client a zealous representation and the highest duty of care to protect his client's interests. (ABA Code of Prof. Responsibility, canon 7; *Simmons v. State Bar* (1970) 2 Cal.3d 719, 729 [87 Cal.Rptr. 368, 470 P.2d 352].)" (*Munoz v. Davis* (1983) 141 Cal.App.3d 420, 430.) Mr. Chen and Mr. Forer have failed to zealously advocate for Jacqueline. In fact, they have been most zealous in attacking her. Moreover, as GAL he had a fiduciary duty to his ward. Whether he can be held to account for that breach of fiduciary in monetary compensation is beside the point.

[6] Chen has argued that Jacqueline really has not retained counsel. True to his sexist rhetoric throughout, he argues that her mother retained counsel. That is false. And since Chen has never communicated with his wards, he could not know who retained counsel. Chen has even brought a motion to disqualify counsel simply for the purpose of running up fees and punishing the ward.

receive instruction from his ward. Ever since, he has sought to punish the ward for having the temerity to question him for "doing what is best" for her (even though he never has spoken with her). Again, this demonstrates sexism, patriarchal abuse, and greed.

III. MOVING PARTY HAS MET THE REQUIREMENTS UNDER CCP § 473

Jacqueline has been prevented from participating in the litigation because (1) she has never received notice of any proceeding in this court; (2) her attorney and GAL, Mr. Chen, has failed and refused to communicate with her and has wrongfully and inappropriately contended that any action she has undertaken to protect herself has been forced upon her by her mother.

Although it could be argued that Jacqueline should have sought her own counsel earlier than she did in this instance, her inaction is excusable as she was never apprised of the events unfolding until 2020. The person charged with keeping her apprised, Mr. Chen,

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Think about it: According to Chen, Jacqueline cannot bring the petition to remove or replace her GAL because she first needs to have the court appoint a GAL in the action to bring the petition. But she cannot bring a petition to appoint this second GAL, because she needs a GAL to bring that petition. She cannot object to Chen's conduct or fees, because she cannot appear in the action. Chen can mislead the Court, because Jaqueline is not permitted to speak. But since she has tried to speak, he has brought an anti-SLAPP motion to intimidate her and make it impossible to participate in the litigation. If Chen prosecuted the ward's case as vigorously as he has been seeking to preserve his demand for $500,000 of the wards' money, she would have received a much better settlement in the first instance.

failed to do so. And, even now, when she has tried to participate by retaining counsel, he has used every opportunity available to him to stop her.[7] Given the lengths to which Chen has acted *in contravention of his ward's interest* and the extent to which *he has acted against his own ward*, it is doubtful that he would have cared what she would have said or done. He has demonstrated a sexist, patriarchal disdain for his wards and their family throughout. The tone he takes towards his wards in his most recent petition to disqualify counsel for Michael Chui makes this abundantly clear. (Req. for Jud. Notice, Ex. L.)

The Court should note that according to Chen's position announced in other court documents, the case is over with the approval of the settlement (following reconsideration on June 24, 2020): the "settlement has been confirmed and the wards have waived any right of appeal or accounting." Thus, the only interest Chen has remaining in the litigation is collecting money from his wards. Chen and his attorney Mr. Forer are seeking in excess of $500,000. No doubt he will object to Jacqueline's Opposition to that motion, as well. Nevertheless, at this stage, the only motivation for Chen's unnecessary and extremely aggressive tactics must be personal desire for money. He apparently wants to make sure that no one can contest his fee

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[7] *Without prior court approval*, Chen has filed a "Motion to Recuse, Disqualify &/or Remove" her counsel. He has filed an "Anti-Slapp Motion to Strike" her petition to remove him as GAL and requested sanctions against her attorneys in an attempt to force her to "behave" as he wants and not in her best interests.

petition and that Jacqueline and her brother pay half a million dollars to him and his lawyer, unchallenged!

A. Relief Requested

Jacqueline contends the circumstances of her case are such as warrant an order of the Court in the following respects:

First, an order reversing the March 3, 2020, order appointing Jackson Chen as GAL in actions BP154245, BP145642, BP155345, BP162717, 16STPB04524, and BC544149. The order was made in violation of Jacqueline's due process rights and cannot stand.

Second, an order that the March 3, 2020, order confirming the settlement (and the subsequent denial of the motion of reconsideration) allegedly made on her behalf be reversed.

B. Existing Prejudice if Relief is not Granted

Code of Civil Procedure section 473 subdivision (b) provides that: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." Section 473 should be interpreted liberally:

> "It is well settled that appellate courts have always been and are favorably disposed toward such action upon the part of the trial courts as will permit, rather than prevent, the adjudication of legal controversies upon their merits." (*Benjamin v. Dalmo Mfg.* (1948) 31

> Cal.2d 523, 525 (Benjamin).) Thus, "the provisions of section 473 of the Code of Civil Procedure are to be liberally construed and sound policy favors the determination of actions on their merits." (*Riskin v. Towers* (1944) 24 Cal.2d 274, 279.)

(*Zamora v. Clayborn Contracting* (2002) 28 Cal.4th 249, 255-56.) In *Zamora*, the court utilized the statute to permit the undoing of a voluntary settlement. "[I]t has been the fixed policy of the law always to allow a controversy to be tried and determined on its merits." (*Burbank v. Continental Life Ins. Co.* (1934) 2 Cal.App.2d 664, 667; see *Beckley v. Reclamation Board* (1957) 48 Cal.2d 710, 716–718 [noting that relief under section 473 was proper where "Plaintiff was prevented by extrinsic accident and mistake of fact from presenting her defense" and due to "an attorney's neglect"]; see also *White v. Allied Mutual Ins. Co.* (Kan. Ct. App. 2001) 31 P.3d 328, 328 ["Even after court approval, the minor may escape the settlement if the review hearing was inadequate to protect his or her interests."].)

Like any other officer of the court (receiver, conservator, referee, etc.), a guardian *ad litem* is subject to court supervision. Should a guardian *ad litem* take an action inimical to the legitimate interests of the ward, the court retains the supervisory authority to rescind or modify the action taken. (*Regency Health Services, Inc. v. Superior Court* (1998) 64 Cal.App.4th 1496, 1502.)

Here, moving party has been prejudiced by Chen (and his counsel) acting as her attorney and her GAL,

in that they have (1) breached their duties as attorneys toward her, (2) concealed a conflict of interest from her and from the Court, (3) failed to communicate with her at any time, (4) actively sought to prevent her from voicing her opinions and have spent their efforts attacking her and her family, (5) failed to accurately communicate her interests to the Court, (6) failed to resolve a conflict of interest in their current representation, (7) failed to see that she receives legally required notice, and (8) tried to prevent her from having her own, independent counsel.

By means of this motion, moving party seeks to have this Court set aside the settlement confirmed on her behalf and set aside the court's ruling on the motion for reconsideration to set aside that settlement.

IV. THE DETERMINATION OF THE COURT WAS EXCUSABLE ERROR AS TO JACQUELINE CHUI, IN THAT MR. CHEN WAS NOT PROPERLY APPOINTED AS GAL IN SIX ACTIONS IN WHICH HE HAS APPEARED

On March 3, 2020, Mr. Chen was appointed as petitioner's GAL in actions BP154245, BP145642, BP155345, BP162717, 16STPB04524, and BC544149. (Req. for Jud. Notice, Ex. D.) *Probate Code* section 1511 requires that prior to appointment of a GAL in an action, personal notice must be given to the ward. No such notice was given to Jacqueline Chui. (Req. for Jud. Notice, Ex. C.) Accordingly, the appointment was defective at the time it was made. This is an additional basis upon which Chen must be removed as GAL—at least as to those matters in which he was improperly appointed in derogation of petitioner's constitutional

right to notice. "It is a fundamental concept of due process that a judgment against a defendant cannot be entered unless he was given proper notice and an opportunity to defend. (U.S. Const., art. XIV; *Mullane v. Central Hanover Bank* (1950) 339 U.S. 306, 313-315 [94 L.Ed. 865, 872-874, 70 S.Ct. 652].)" (*In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166; *Grinbaum v. Superior Court* (1923) 192 Cal. 528, 554.) Since Mr. Chen was not properly appointed as GAL, he has no legal authority to take actions on behalf of the wards with respect to those action. Accordingly, moving party requests that this Court reverse the ruling of the court as to the motion to confirm the settlement seeing that it was legally infirm at the time it was rendered.

V. THE CONFIRMATION OF THE SETTLEMENT SHOULD BE REVERSED BECAUSE JACQUELINE ATTEMPTED TO REPUDIATE THAT AGREEMENT

While a minor may enter in a valid contract prior to the age of majority (*Fam. Code* § 6700), that contract is voidable at the election of the minor at any time prior to the age of majority. (*Fam. Code* § 6710.) Therefore, to enforce a settlement agreement made on behalf of a minor, the GAL will petition a court to confirm the settlement (which obviates the potential the contract will be voided). (*Code Civ. Proc.* § 372; see also *Prob. Code* §§ 3600 et seq.)

Thus, a minor has the ability to *repudiate* a settlement agreement made in her name. (*Pearson v. Superior Court of San Luis Obispo Cnty.* (2012) 202 Cal.App.4th 1333, 1338–1339; *Scruton v. Korean Air Lines Co.* (1995) 39 Cal.App.4th 1596, 1605–1606;

Dacanay v. Mendoza (9th Cir., 1978) 573 F.2d 1075.) The Court determined that the *form* of the repudiation was defective and refused to consider it or its consequences. The Court did not find that a minor cannot repudiate (which would be an error of law); only that the ward did not repudiate via the proper process or the proper document. Jacqueline was never given the opportunity to cure the defect; nor did Chen inform the Court that the repudiation had been legitimately requested by his ward. Thus, it is was excusable error on the part of Jacqueline to not repudiate in such a means as would have satisfied the Court. Accordingly, Jacqueline requests that this Court find that she did properly repudiate or else grant to her the opportunity to repudiate, or simply reverse the decision affirming the settlement agreement.

VI. JACQUELINE'S PARTICIPATION IN THE LITIGATION HAS BEEN HAMPERED DUE TO THE CONDUCT OF THE ATTORNEYS RETAINED BY MR. CHEN

When Christine Chui sought to remove Jackson Chen and replace him with a different GAL, Chen petitioned the Court for authority to hire a lawyer for the limited purpose of defending against that petition.[8]

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[8] In his ex parte application for appointment of counsel, Chen (without consulting Jacqueline or even telling her about his plan), represented to the court, "Applicant believes that it is in the best interest of GAL and the Minors that the Court authorize GAL to retain counsel to represent him in defending against the claims made in the Motion to Remove." (Req. for Jud. Notice, Ex. K, p. 2, l. 27 – p. 3, l. 2.) He received permission solely to hire Mr. Forer for the purpose of defending against the motion to remove. Yet, Mr.

All work done by Mr. Forer after defending against the motion to remove Jackson Chen has been done in excess of his limited appointment. Having successfully defeated that motion, Mr. Forer, Chen's chosen attorney, has managed to rack up over $300,000 in legal fees, which he expects Jacqueline and her brother to pay!

Yet, Mr. Forer, as the attorney for the GAL, ultimately owes a duty to the ***real party in interest***, Jacqueline Chui. (*Lucas v. Hamm* (1961) 56 Cal.2d 583; *Paul v. Patton* (2015) 235 Cal.App.4th 1088; *Osornio v. Weingarten* (2004) 124 Cal.App.4th 304; *Meighan v. Shore* (1995) 34 Cal.App.4th 1025, 1041 [the scope of an attorney's duty is not limited by privity of contract; attorney owed a duty to the spouse of the client]; *Burger v. Pond* (1990) 224 Cal.App.3d 597; accord, *Saadeh v. Connors* (Fla. Dist. Ct. App. 2015) 166 So.3d 959 [The attorney owed a duty to the ward, even though he was hired by the GAL. Ward could sue the attorney for professional negligence.]; *Gibson v. Theut* (Ariz. Ct. App. 2010) 438 P.2d 666 [GAL immunity does not extend to work as an attorney; ward stated cause of action]; *Braham v. Stewart* (Ky. 2010) 307 S.W.3d 94, 95 ["An attorney pursuing a claim on behalf of a minor does have an attorney-client relationship with the minor."]; *Credit General Insurance Company v. Midwest Indem. Corp.* (N.D. Ill. 1995) 872 F.Supp. 523; *Traveler's Ins. Co. v. Breese* (1983) 128 Ariz. 508; *Estate of Leonard Swift* (Iowa 2003) 656 N.W.2d 132 [attorney

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Forer has continued to act – without authorization – and has run up hundreds of thousands of dollars in fees, which he now expects the ward to give him.

for conservator owes duty to the ward].) Accordingly, Mr. Forer's representation of Chen must be measured in light of his duty to Jacqueline Chui.

Additionally, Chen has acted as GAL and attorney for both Jacqueline and her brother, Michael. They have conflicting interests in the litigation and the settlement agreement. (*In re Zamer G.* (2007) 153 Cal.App.4th 1253.) In rejecting Chen's first petition to approve his GAL agreement, the Court noted that Chen had failed to adequately recognize that Jacqueline and Michael had conflicting interests and stood to receive different inheritance amounts depending on Chen's actions. (Req. for Jud. Notice, Ex. J.) Despite the actual conflict of interest between Michael and Jacqueline, neither Chen nor Mr. Forer have discussed, much less obtained, any waiver of that conflict of interest. (See also Cal. Rules of Court, rule 7.1009(a) ["The guardian must avoid actual conflicts of interest and, consistent with his or her fiduciary duty to the ward, the appearance of conflicts of interest."].)

VII. IT IS A MATTER OF EXUSABLE ERROR OR NEGLECT AS TO JACQUELINE, BECAUSE MR. FORER'S LAW FIRM HAD A CONFLICT OF INTEREST WHICH NEITHER HE NOR CHEN DISCLOSED TO THE COURT

One reason Jacqueline has been unable to properly participate in the litigation has been the retention of Mr. Forer,[9] who seems adamantly set against

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[9] Mr. Forer was appointed by the court upon *ex parte* application of Chen to retain his services for a very limited purpose: "Applicant believes that it is in the best interests of GAL and the Minors that

Jacqueline—even though he owes her a professional duty. Worse, neither Chen nor Mr. Forer ever informed the court of Mr. Forer's prior work in this matter on behalf of an adverse party.

In July 2012, Esther Chao, the aunt and adversary of Jacqueline Chui, sought to have a guardian *ad litem* appointed for her then-living father, the grandfather of Jacqueline, King Wah Chui. In her petition, Esther nominated Mr. Forer's long-time partner, Lynard Hinojosa, Esq., the guardian for King. (Req. for Jud. Notice, Ex. N, p. 2, ll. 17–21 ["The petitioner will request that the court appoint Lynard Hinojosa as guardian ad litem."].) **Having entered into a professional relationship with Esther, the Hinojosa & Forer firm could not later represent another party without an express written waiver.**

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the Court authorize GAL to retain counsel to represent him in defending against the claims made in the Motion to Remove." (Req. for Jud. Notice, Ex. K, p. 2, l. 27 – p. 3, l. 2.) The application does not reference any additional basis or legal actions upon which it was necessary to retain outside counsel. Moreover, the petition was only made in the actions in which Chen was then GAL, which actions were, BP137413, BP154245, BP155345. No application was made to retain Mr. Forer in proceedings, BP154245, BP145642, BP162717, 16STPB04524, and BC544149. Despite lacking leave of court to utilize the services of Mr. Forer beyond the scope of his original, limited appointment, Chen now utilizes Mr. Forer to attack Jacqueline while expecting her to pay for his attacks by demanding fees of over $300,000! If Chen wishes to pay an additional legal fee from his own pocket, that is his prerogative. But Mr. Forer cannot be entitled to any payment for the services done in excess of his appointment. Moreover, in light of his undisclosed conflict of interest, it is wholly improper for him to continue to participate in this litigation.

Such a waiver was never obtained. Accordingly, Mr. Forer's representation has been made in violation of the State Bar's Rules of Professional Conduct, Rule 1.7. Mr. Forer should be disqualified from continuing his representation.

VIII. JACQUELINE'S DUE PROCESS RIGHTS HAVE BEEN VIOLATED BY THE FAILURE OF ALL PARTIES TO PROVIDE HER NOTICE AS REQUIRED BY PROBATE CODE SECTION 1460(b), PREVENTING HER FROM PARTICIPATING IN THIS MATTER UNTIL SHE OBTAINED INDEPENDENT COUNSEL

"It is a fundamental concept of due process that a judgment against a defendant cannot be entered unless he was given proper notice and an opportunity to defend. (U.S. Const., art. XIV; *Mullane v. Central Hanover Bank* (1950) 339 U.S. 306, 313-315 [94 L.Ed. 865, 872-874, 70 S.Ct. 652].)" (*In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166; *Grinbaum v. Superior Court* (1923) 192 Cal. 528, 554.) The notice required to be given to a ward in any proceeding involving the ward is personal service upon the ward. (*Prob. Code* § 1460(b)(2).) Moreover, notice of each successive appointment of Mr. Chen was required under *Probate Code* section 1511. No notice of any proceeding in this action has ever been given to Jacqueline Chui. Accordingly, all proceedings undertaken without notice are void as to her.

On March 3, 2020, Mr. Chen was appointed as Jacqueline's GAL in actions BP154245, BP145642, BP155345, BP162717, 16STPB04524, and BC544149. *Probate Code* section 1511 requires that **prior to** the

appointment of a GAL in an action, personal notice must be given to the ward. Such notice was never given to Jacqueline Chui. (Req. for Jud. Notice, Ex. C.) Accordingly, the appointment was defective at the time it was made. It is not her fault that she could not meaningfully participate when none of the parties or their counsel gave her notice of the hearing that would affect her rights.

This is an additional basis upon which Chen should be removed as GAL, as he in particular owed statutory duties to keep his ward informed and to ascertain her advice, consent, and input on these matters—at least as to those matters in which he was improperly appointed in derogation of petitioner's constitutional right to notice.[10]

Since Ms. Chui did not cause this to occur, her failure to participate or to take other action constitutes excusable error or neglect as to her.

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[10] In addition to denying Jacqueline Chui constitutionally and statutorily required notice, Mr. Chen also denied Jacqueline Chui the right to be heard in proceedings affecting her interests. (See, e.g., *California Guardianship Practice* (2019) § 5.74 ["The role of counsel for the minor generally requires a difficult balancing of interests….Certainly, the minor's wishes must be considered, along with the minor's level of maturity."]; see also *Fam. Code* § 3042 [allowing minor above the age of 14 to address the court in the analogous circumstance of custody or visitation proceedings].) Because there was a contested proceeding (Mr. Chen's second petition to approve the settlement), Jacqueline Chui should have had the opportunity to be heard at an evidentiary hearing. (Prob. Code § 1000; Estate of Bennett (2008) 163 Cal.App.4th 1303.)

IX. CONCLUSION

In conclusion, moving party respectfully request that this court vacated the prior order confirming the settlement allegedly made on her behalf on the grounds of excusable error or neglect caused by the failures of her attorneys and her guardian ad litem.

DATED: August 27, 2020

Respectfully submitted,

LAW OFFICES OF
MICHAEL S. OVERING, APC

s/_____
Michael S. Overing, Esq.
Edward C. Wilde, Esq.
Thomas J. Placido, Esq.
Attorneys for Jacqueline Chui

VERIFICATION

I, Jacqueline Chui, declare as follows:

That I am the Petitioner in the above-entitled action; I have read the foregoing JACQUELINE CHUI'S NOTICE OF MOTION AND MOTION TO SET ASIDE SETTLEMENT AGREEMENT and know the contents thereof; that the same is true of my own knowledge, except as to the matters which are therein stated on my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 27th day of August, 2020, at Palos Verdes Estates , California.

s/_____
Jacqueline Chui

APPENDIX E

ANGELA HAWEKOTTE,
A PROFESSIONAL LAW CORPORATION
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Attorneys for Michael Chui

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

Case No. BP154245

[Related Cases: BP137413, BP143884, BP145642, BP145759, BP155345, BP162717, BC44149, and 16STPB04524]

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

[Filed August 28, 2020]

In the Matter of the ESTATE OF)
KING WAH CHUI, Deceased.)
)

NOTICE OF JOINDER OF MICHAEL CHUI TO

JACQUELINE CHUI'S NOTICE OF MOTION AND MOTION TO SET ASIDE THE COURT'S MARCH 3, 2020 ORDERS (1) CONFIRMING SETTLEMENT WITH MINORS, AND (2) APPOINTING JACKSON CHEN AS GUARDIAN AD LITEM IN SIX ACTIONS

[Code Civ. Proc. § 473]

[FILED WITH REQUEST FOR JUDICIAL NOTICE]

Judge: Hon. Gus T. May
Department: 2D

Hearing Date: December 16, 2020
[Reserved with Department]

Time: 3:00 P.M.

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD, PLEASE TAKE NOTICE THAT on December 16, 2020 at 3:00 p.m. or as soon thereafter as the matter maybe heard in Department 2D of the above-referenced court located at 111 N. Hill Street, Los Angeles, CA, 90012, Michael Chui will move and hereby does move for two orders of the court.

Michael Chui seeks an order of this Court to Set Aside the Court's March 3, 2020, Orders (1) Confirming Settlement with Minors, and (2) Appointing Jackson Chen as Gaurdian Ad Litem in Six Actions.

In all pertinent respects, Michael Chui being a fellow ward of guardian ad litem Jackson Chen with Jacqueline Chui has been prevented from properly participating in the litigation and protecting his

interests due to the malfeasance and the nonfeasance of Jackson Chen, guardian ad litem, and attorney Jeffrey Forer. Therefore, Michael Chui hereby joins in the motion made by Jacqueline Chui seeking the same relief, and adopts the evidentiary support and legal arguments presented by Jacqueline Chui.

First, he seeks an order setting aside the March 3, 2020 order of the court appointing Jackson Chen as guardian *ad litem* in cases BP154245, BP145642, BP155345, BP162717, 16STPB04524, and BC544149. Moving party was precluded from participating in that March 3, 2020 hearing because he was not given notice of it as required by law. In particular, Chen was appointed in violation of *Probate Code* section 1511, in that the ward—who was over the age of 12 at the time of the appointment—was not given 15-days' notice of any petition to appoint Chen. Further, no notice of the petition was given as required by *Probate Code* section 1460, subdivision (b)(2). Thereafter, the Court failed to take evidence from the ward and the proposed GAL, who had never before communicated with the ward. Chen's failure to provide moving party with notice as required by statute violated moving party's due process rights. Accordingly, the trial court was without authority to make such an appointment. Since he did not receive notice as required by law, it was mistake, inadvertence, surprise, or excusable neglect to not appear in the action and object to the appointment of Chen. Therefore, he respectfully requests that this court set aside such order. Michael Chui was denied his due process rights to participate in litigation.

Second, moving party seeks an order of the court setting aside the approval of the settlement agreement made on March 3, 2020, and the order denying reconsideration of the settlement agreement made on June 24, 2020, based on his mistake, inadvertence, surprise, or excusable neglect. The moving party was precluded from participating in those hearings due to the malfeasance and misfeasance of his prior attorneys and guardian *ad litem*. Moving party did not receive any notice of the petition to confirm the settlement as required by *Probate Code* section 1460(b)(2). When he attempted to repudiate the action, Chen, Mr. Forer, and the Court dismissed the repudiation as being in the improper form and a ruse by moving party's mother, Christine Chui. Such casual dismissal of the repudiation of Mr. Michael Chui as a "ruse" by Ms. Christine Chui was made without personal knowledge of any party – including Chen, who has never communicated with Mr. Michael Chui. Since moving party was unable to participate in the hearings because of the misrepresentations of Chen and his counsel, his failure to participate in the hearings was due to his mistake, inadvertence, surprise, or excusable neglect.

This motion to set aside is made pursuant to *Code of Civil Procedure* section 473 on the additional grounds that Chen was not properly appointed as Mr. Michael Chui's guardian *ad litem*, and that his former attorneys and court-appointed guardian *ad litem* (GAL) have failed to communicate with him, give him required legal notice, and have breached various fiduciary, ethical, and legal obligations to him.

This motion is based upon this notice of motion and motion, his instant joinder in the motion of Jacqueline Chui seeking the same relief, including the evidence and arguments presented by Jacqueline Chui, which evidence and arguments Michael Chui adopts as his and upon such oral and documentary evidence as may be presented by moving party at or before the hearing on this motion.

DATED: August 28, 2020

ANGELA HAWEKOTTE,
A PROFESSIONAL LAW CORPORATION

s/_____
Angela Hawekotte, Esq.
Attorney for Michael Chui

VERIFICATION

I, Michael Chui, declare as follows:

That I am the Petition in the above-entitled action; I have read the foregoing JOINDER TO JACQUELINE CHUI'S NOTICE OF MOTION AND MOTION TO SET ASIDE SETTLEMENT AGREEMENT, as well as the underlying petition entitled JACQUELINE CHUI'S NOTICE OF MOTION AND MOTION TO SET ASIDE SETTLMENET AGREEMENT and know the contents thereof; that the same is true of my own knowledge, except as to the matters which are therein stated on my information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 28 day of August, 2020, at Palos Verdes Estates California.

s/_____
MICHAEL CHUI

(***Proof of Service omitted in this appendix***)