IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

COMMON LAW DIVISION

TESTATORS FAMILY MAINTENANCE LIST

S CI 20YY XXXXX

IN THE MATTER of Part IV of the *Administration and Probate Act* *1958*

- and -

IN THE MATTER of the Will and Estate of [name], deceased

**BETWEEN:**

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| [name] | Plaintiff(s) |
|  |  |
| - and – |  |
| [name] (who is sued as the [Executor/Administrator] of the estate of [name] deceased) | Defendant(s) |

**Order APPROVING COMPROMISE OF CLAIM [OF/AFFECTING] A PERSON WITH A DISABILITY**

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| JUDGE: | The Honourable Associate Justice |
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| DATE MADE: | [date] |
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| ORIGINATING PROCESS: | Originating Motion filed [date] |
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| HOW OBTAINED: | On return of the [plaintiff’s/defendant’s] summons filed [date]. |
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| ATTENDANCE: | [XX] OR [On the papers] |
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| OTHER MATTERS: |  |
| 1. [Name] (‘**deceased**’), died on [date] leaving a Will (‘**Will**’) probate of which was granted to the [defendant] on [date] (‘**Grant**’).   [OR]  [Name] (‘**deceased**’), died intestate on [date] with Letters of Administration was granted to the [defendant] on [date] (‘**Letters of Administration**’).   1. The plaintiff is [the/a child, spouse etc.] of the deceased and as such is an eligible person for the purposes of s 91 of the *Administration and Probate Act 1958* (Vic) (‘***Act****’*). 2. [Party’s name], born on [date], is a [minor/adult] person under a disability within the meaning of O 15 of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic) (‘***Rules****’*), [IF APPROPRIATE] and s 66 of *Guardianship and Administration Act 1958* (Vic) (‘***G&A Act****’*).   [AND/OR]   1. The [residuary] beneficiaries of the Estate:  [name] born on [date];[name] born on [date]; and[name] born on [date],are minors whose interests are affected by this settlement.  1. [IF APPROPRIATE] By Order of the Victorian Civil and Administrative Tribunal (‘**VCAT**’) under the *G&A Act* dated [date] (‘**VCAT Order**’), [administrator’s name] was appointed the plaintiff’s Administrator (‘**Administrator**’). 2. The plaintiff commenced the proceeding [by his/her Litigation Guardian/Administrator, [name]] on [date] claiming further provision from the estate of the deceased for [his/her] proper maintenance and support pursuant to s 91 of the Act. 3. [IF APPROPRIATE] The proceeding is out of time. The parties agree to an extension of time pursuant to s 99 of the Act. The Court considers an extension appropriate and warranted. 4. By Terms of Settlement made [date] (‘**Terms of Settlement**’) between the plaintiff, defendant [and any other party X] (**‘parties’**) the plaintiff’s claim was compromised (‘**Compromise**’), subject to the approval of the Court, by the parties agreeing, among other things that [salient details of the Compromise]. 5. [IF APPROPRIATE] By the operation of s 66(3) of the *G&A Act*, if in any civil proceedings before a Court it is adjudged or ordered that money be paid to a person with a disability (whether or not that person is a party to a cause or matter), the money is to be paid into Court and unless the Court otherwise orders is to be paid out to the administrator (if any) of the estate of that person or State Trustees.   [OR]  By the operation of s 51A(1) of the *Supreme Court Act 1986* (Vic) (‘***SC Act****’*), if in any civil proceedings before a Court it is adjudged or ordered that money be paid to a child (whether or not that child is a party to a cause or matter), the money is to be paid into Court and unless the Court otherwise orders is to be paid out to the an administrator specified by the Court.   1. [IF APPROPRIATE] The Compromise in this case provides for the payment of a fixed sum to [name] in lieu of [his/her] entitlement to [the share in the estate] out of the estate of the deceased and therefore s 66(3) of the *G&A Act* is applicable and the sum payable to [him/her] pursuant to the Compromise must be paid into Court and then paid out to [his/her] administrator [or State Trustees as appropriate].   [OR]  The Compromise in this case provides for the payment of a fixed sum to [name] in lieu of [his/her] entitlement to [the share in the estate] of the deceased estate and therefore, in the view of the Court, s 51A(1) of the *SC Act* is applicable and the sum payable to them pursuant to the Compromise must be paid into Court and then paid out to [his/her] administrator, [name].   1. [IF APPROPRIATE] The Court will approve the Compromise on terms that require the Settlement Sum being paid into Court under O 79 of the *Rules* to be investedfor the benefit of the [name]. 2. The Court read the following material:    1. affidavit of [name] [sworn/affirmed[ on [date] and the exhibits to the affidavit; and    2. the affidavit of [name] [sworn/affirmed[ on [date] and the exhibits to that affidavit including the opinion of [name] of counsel dated [date] (exhibit XX-NN). 3. The [plaintiff/defendant/and any other party that signed the terms of settlement] consents to the Compromise. 4. The Court is satisfied that the distribution of the estate of the deceased as effected by [the Will of the deceased / intestacy] is such as to not make adequate provision for the proper maintenance and support of the plaintiff. 5. This Order is authenticated by the Associate Judge pursuant to r 60.02(1)(b) of the *Rules*. | |
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**THE COURT ORDERS THAT:**

1. [IF APPROPRIATE] Any procedural orders required to regularise the proceeding including errors in the heading of the proceeding and the appointment of a litigation guardian (if required).
2. [IF APPROPRIATE] Pursuant to s 99 of the *Act*, the time by which this proceeding is to be filed be extended, nunc pro tunc, to [date the proceeding was filed].
3. [IF APPROPRIATE] Pursuant to r 15.08(2) of the *Rules*, the time within which the [plaintiff/defendant] is to issue [his/her] application for approval of compromise be extended, nunc pro tunc, to [date application for approval filed].
4. The Compromise is approved by the Court.
5. [IF APPROPRIATE] Pursuant to r 54.02(2)(c)(i) of the *Rules*, the defendant, as [Executor/Administrator] of the estate of [name] (‘**deceased estate**’) is authorised to make the Compromise.
6. [In lieu of the provision made for [name] in the Will of the deceased/upon intestacy] provision be made out of the deceased estate for [name] by the defendant paying out of the estate of the deceased, by [date], the sum of [$XX] to the Senior Master of the Supreme Court of Victoria for the benefit of [name].

[OR]

[In lieu of the provision made for the [name] in the Will of the deceased/upon intestacy] provision be made out of the deceased estate for [name] by the defendant paying out of the estate of the deceased, by [date], the sum of [$XX] to the Senior Master of the Supreme Court of Victoria for the benefit of [name] and, pursuant to s 66(3) of the *G&A Act* then be paid out to [her/his] administrator [or State Trustees as appropriate].

[OR]

[In lieu of the provision made for [name] in the Will of the deceased/upon intestacy] provision be made out of the deceased estate for [name] by the defendant paying out of the estate of the deceased, by [date], the sum of [$XX] to the Senior Master of the Supreme Court of Victoria for the benefit of [name] and, pursuant to s 51A(1)(b) of the *SC Act* then be paid out to [her/his] administrator [name].

1. Subject to any further Order, the Senior Master invest the Settlement Sum for [name], [not to be paid out save by further order of the Court / to be paid out to [name] on [his/her] attaining the age of 18 years].
2. The costs and expenses of the plaintiff of and incidental to this proceeding including any reserved costs be [fixed at $XX / agreed or taxed] and paid out of the deceased estate.
3. The costs and expenses of the defendant of and incidental to this proceeding including any reserved costs [fixed at $XX / agreed or taxed] and paid out of the deceased estate.
4. An authenticated copy of this order be annexed to the [Grant /Letters of Administration].
5. The exhibits to the affidavits filed in this proceeding be retained on the Court’s confidential file [if any funds are paid into Court: and the affidavit of [name] [sworn/affirmed] [date] in support of the approval and the exhibits to that affidavit be sent to the solicitor to the Senior Master].
6. Subject to any further or other order of the Court, pursuant to rr 28.05 and 28A.06 of the *Rules* the affidavit in support of [name] [sworn/affirmed] [date] and the exhibits to that affidavit including the opinion of [name] of Counsel [date] shall remain confidential to the [plaintiff/defendant], [his/her] legal representatives [if any funds are paid into Court: and the Senior Master’s office for the purposes of any application in relation to the management of the funds in Court] and shall not be otherwise be made available for inspecting or copying.
7. [IF APPROPRIATE] The directions hearing [or any other hearing] listed for [date] be vacated.
8. Reserve liberty to apply as to the further working out of this order.
9. The proceeding is otherwise dismissed without any adjudication on its merits.

DATE AUTHENTICATED: [date]

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|  | **THE HONOURABLE ASSOCIATE JUSTICE** |