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| IN THE SUPREME COURT OF VICTORIA AT melbourne | | |
| COMMON LAW DIVISION | | |
| TESTATORS FAMILY MAINTENANCE LIST | | |
|  | | **S ECI 20XX YYYY** |
| IN THE MATTER of Part IV of the *Administration and Probate Act* 1958 | | |
| - and - | | |
| IN THE MATTER of the Will and Estate of **X**, deceased | | |
| **BETWEEN:** | |  |
|  | | Plaintiff |
| - and - | |  |
|  | | Defendant |
| **Order APPROVING COMPROMISE OF CLAIM [OF/AFFECTING] A PERSON WITH A DISABILITY** | | |
| JUDICIAL OFFICER: | The Honourable Justice X / The Honourable Associate Justice X / Judicial Registrar X | |
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| DATE MADE: | XX | |
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| ORIGINATING PROCESS: | Originating Motion | |
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| HOW OBTAINED: | On return of the [plaintiff’s/defendant’s] summons filed [date] and in Chambers. | |
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| ATTENDANCE: | On the papers. | |
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| OTHER MATTERS: |  | |
| 1. [Name] (‘**deceased**’), died on [date] leaving a Will [date] (‘**Will**’) probate of which was obtained by the [name the legal personal representatives] on [date] (‘**Grant**’).   [*OR*]  [Name] (‘**deceased**’), died intestate on [date] with a Grant of Letters of Administration obtained by the [name the legal personal representatives] on [date] (‘**Grant**’).   1. The deceased is survived by [insert details]. 2. The net value of the estate of the deceased is $ XX. The estate is comprised of: 3. By [the Will / upon distribution of the estate of the deceased upon intestacy] [*insert brief and accurate description of the distribution*]. 4. The [plaintiff], 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****’*).   [*AND/OR*]   1. The following are [persons under a disability/ minors and/or there are unascertained/unborn beneficiaries] whose interest are be affected by settlement of this proceeding:    1. [name] born on [date];    2. [name] born on [date]; and    3. [name] born on [date]. 2. [*IF APPROPRIATE*] By Order of the Victorian Civil and Administrative Tribunal (‘**VCAT**’) under the *Guardianship and Administration Act 1986/2019* (Vic) (‘***G&A Act***’)dated [date] (‘**VCAT Order**’), [administrator’s name] was appointed as the plaintiff’s Administrator (‘**Administrator**’). That appointment is due for reassessment on or before [date]. 3. On [date], the plaintiff commenced the proceeding [by their Litigation Guardian/Administrator, [name]] claiming [further] provision [out of time] from the estate of the deceased for their proper maintenance and support pursuant to pt IV of the *Administration and Probate Act 1958* (Vic) (‘***Act***’). 4. The plaintiff, as [define eligibility], is an eligible person for the purposes of s 91 of the *Act.* 5. By [state type of settlement document] finally entered [date] (‘**Term/Deed**’) between the plaintiff, by their litigation guardian/Administrator, the defendant [and name any other party] (‘**parties**’), plaintiff’s claim was compromised, subject to the approval of the Court, by the parties agreeing, amongst other things, that [*briefly and accurately describe the compromise*] (‘**Compromise**’). 6. [*IF APPROPRIATE AND SUBSTANTIVE PROVISION ORDERS ARE REQUIRED*] The proceeding is out of time. The parties agree to an extension of time pursuant to s 99(2) of the *Act*. The Court considers an extension appropriate and warranted. 7. [*IF APPROPRIATE*] By the operation of s 179(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 [describe provision for the plaintiff] [in lieu of their/further to their] provision from the estate of the deceased and therefore s 179(3) of the *G&A Act* is applicable and the sum payable to the plaintiff pursuant to the Compromise must be paid into Court and then paid out to the Administrator.   [OR]  The Compromise in this case provides for the payment [describe provision for the plaintiff] [in lieu of their/further to their] in lieu of their 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 [their] administrator, [name].   1. The Court has read and relied on the affidavit of [name] [sworn/affirmed] on [date] and the exhibits to that affidavit including the opinion of [name] of counsel dated [date] (‘**the material in support**’). 2. The Court is informed that: 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. By Order of the Honourable XX Justice XX made XX, hearing and determination of the proceeding, including the application, was referred to a Judicial Registrar. 6. This Order is authenticated by the Judicial Registrar pursuant to r 60.02(1)(b) of the *Rules*. | | |
| **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 APPROPIATE*] Pursuant to r 15.08 of the *Rules*, the Compromise is approved by the Court. 3. [*IF APPROPRIATE*] Pursuant to r 54.02(2)(c)(i) of the *Rules*, the defendant, as [executor/administrator] of the estate of [name] is authorised to make the Compromise. 4. [*IF APPROPRIATE AND IF PROVISION ORDERS SOUGHT*] Now for then, pursuant to s 99(2) of the *Act*, the time by which this proceeding is to be filed be extended to [date the proceeding was filed]. 5. Pursuant to s 91 of the *Act*, [further] provision be made out of the estate of the deceased for the plaintiff by the defendant, as executor/administrator of the estate of the deceased, paying out of the estate of the deceased, within [X] days of this Order, the sum of [X] to the Senior Master for the plaintiff’s benefit [(*IF APPROPRIATE*) and pursuant to s 179(3) of the *G&A Act* [OR] s 51A(1)(b) then be paid out to their administrator, [name]].   [OR]  Pursuant to s 91 of the *Act*, in lieu provision for the plaintiff [in the Will of the deceased/upon distribution of the estate upon intestacy], provision be made out of the estate of the deceased for the plaintiff by the defendant, as executor/administrator of the estate of the deceased, paying out of the estate of the deceased, within [X] days of this Order, the sum of [X] to the Senior Master for the plaintiff’s benefit [(*IF APPROPRIATE*) and pursuant to s 179(3) of the *G&A Act* [OR] s 51A(1)(b) then be paid out to their administrator, [name]].   1. Subject to any further Order, the Senior Master invest the funds paid into Court for [name], [to be paid out to [name] on their attaining the age of 18 years]. 2. [*IF PROVISION ORDER SOUGHT*] An authenticated copy of this order be annexed to the Grant. 3. [*IF FUNDS ARE TO BE PAID INTO COURT*] A copy of this Order be provided to the solicitor to the Senior Master. 4. Subject to any further or other order of the Court, pursuant to rr 28.05 and 28A.06 of the *Rules*, the material in support shall remain confidential to the [plaintiff/defendant], heir legal representatives [if any funds are paid into Court: and the staff of Funds in Court for the purposes of any application in relation to the management of the funds in Court] and it shall not be otherwise be made available for inspecting or copying. 5. [*IF APPROPRIATE*] The directions hearing [or any other hearing] listed for [date] be vacated. 6. Reserve liberty to apply as to the further working out of this order. 7. The proceeding is otherwise dismissed. | | |
| **DATE AUTHENTICATED: xx** | | |