



## ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

**Petition to Fill Vacancy in the Office of Trustee [Prob. C. 15660 & 17200(b)(10)]**

<b>DOD: 12/25/79</b>	<p><b>JOSEPH ALLEN COELHO</b>, sole beneficiary, is Petitioner.</p> <p><b>Petitioner states:</b></p> <ol style="list-style-type: none"> <li>The Trust under the Will of Alfred Joseph Coelho was created by Decree of Distribution by this Court dated August 25, 1983 and was not subject to continuing Court supervision.</li> <li>This Court has jurisdiction of the Trust pursuant to Probate Code § 17000(a) and 17000(b)(3).</li> <li>Venue in Fresno County is proper because the principal place of administration of the Trust is Fresno County and the property of the Trust is located in Fresno County.</li> <li>Richard V. Gunner acted as the initial trustee of the Trust until his resignation. By Court Order dated 04/29/96, Alfred J. Coelho, Jr. was appointed as the successor trustee of the Trust. The 1996 Order also approved the Account of the former trustee through February 1996. Since that time, no accounting has been filed or presented by the successor trustee.</li> <li>The successor trustee died on 11/11/11. No trustee was named in the Decree of Distribution to succeed Alfred J. Coelho, Jr. and the office of trustee is now vacant.</li> <li>Petitioner is the sole beneficiary of the Trust and was entitled to outright distribution of the Trust in 2008, when he attained the age of 35.</li> <li>The vacancy must be filled to permit the administration of the Trust to continue, which will consist of the sole act of distributing the trust corpus to the Petitioner.</li> <li>The Petitioner is the logical person to be appointed as successor trustee since no other person has an interest in the Trust and he is a competent adult.</li> <li>The Petitioner waives an accounting from the former trustee.</li> <li>No bond should be required of Petitioner since he is the sole beneficiary of the Trust.</li> <li>The property held in the Trust consists of real property only located in Fresno County.</li> <li>Since Petitioner is the only person interested in the Trust, notice of hearing is not required to be given.</li> </ol> <p><b>Petitioner prays for an Order:</b></p> <ol style="list-style-type: none"> <li>Appointing Petitioner as the sole successor trustee without bond to effect final distribution of the Trust to himself as the sole beneficiary thereof, by way of appropriate deed or deeds executed and recorded in Fresno County, California.</li> </ol>	<b>NEEDS/PROBLEMS/COMMENTS:</b>
<b>Cont. from</b>		
<input type="checkbox"/> <b>Aff.Sub.Wit.</b>		
<input checked="" type="checkbox"/> <b>Verified</b>		
<input type="checkbox"/> <b>Inventory</b>		
<input type="checkbox"/> <b>PTC</b>		
<input type="checkbox"/> <b>Not.Cred.</b>		
<input type="checkbox"/> <b>Notice of Hrg</b>	n/a	
<input type="checkbox"/> <b>Aff.Mail</b>	n/a	
<input type="checkbox"/> <b>Aff.Pub.</b>		
<input type="checkbox"/> <b>Sp.Ntc.</b>		
<input type="checkbox"/> <b>Pers.Serv.</b>		
<input type="checkbox"/> <b>Conf. Screen</b>		
<input type="checkbox"/> <b>Letters</b>		
<input type="checkbox"/> <b>Duties/Supp</b>		
<input type="checkbox"/> <b>Objections</b>		
<input type="checkbox"/> <b>Video Receipt</b>		
<input type="checkbox"/> <b>CI Report</b>		
<input type="checkbox"/> <b>9202</b>		
<input checked="" type="checkbox"/> <b>Order</b>		
<input type="checkbox"/> <b>Aff. Posting</b>		
<input type="checkbox"/> <b>Status Rpt</b>		
<input type="checkbox"/> <b>UCCJEA</b>		
<input type="checkbox"/> <b>Citation</b>		
<input type="checkbox"/> <b>FTB Notice</b>		
		<b>Reviewed by:</b> JF
		<b>Reviewed on:</b> 05/03/12
		<b>Updates:</b>
		<b>Recommendation:</b>
		<b>File 1 - Coelho</b>

**Fourth and Final Account and Report of Conservator and Petition for its Settlement (2) for Attorney Fees (3) for Commissions; (4) for Final Distribution; (5) for Termination of Conservatorship; and (6) for Discharge of Conservator and Surety on Bond [Prob. C. 1060-1064, 1860, 1861, 2620, 2640; Cal. Rules of Ct. 7.750-7.751 Local Rule 7.16]**

<b>DOD: 08/27/11</b>	<b>ALAN YAMAMOTO</b> , Conservator, is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>
	Account period: <b>03/09/10 – 01/30/12</b>	<p><b>1. The Petition states that the conservatee died on 08/27/11. Pursuant to PrC § 2620(b) - The final court accounting of the guardian or conservator following the death of the ward or conservatee shall include a court accounting for the period that ended on the date of death and a separate accounting for the period subsequent to the date of death. Petitioner's account does not meet this requirement. Need accounting from 03/09/10 – 08/27/11 and subsequent account for the period after the conservatee's death.</b></p>
	Accounting - <b>\$134,665.51</b>	
	Beginning POH - <b>\$85,951.06</b>	
	Ending POH - <b>\$32,427.64</b>	
<b>Cont. from</b>	Conservator - <b>\$1,320</b> (\$60.00/month x 22 months)	
<b>Aff.Sub.Wit.</b>	Attorney - <b>\$3,087.50</b> (Per itemization for preparation of the 4 <sup>th</sup> and final account, assisting conservator with bank, health care, funeral, death of conservatee, etc.)	
<input checked="" type="checkbox"/> <b>Verified</b>	Petitioner states that upon the conservatee's death, conservatee's Finance and Thrift CD was blocked by Finance and Thrift and will need to be unblocked in order to distribute the funds to the conservatee's only heir, Keni Noda.	
<b>Inventory</b>	Petitioner requests that, upon filing a Probate Code § 13100 declaration by conservatee's son and only legal heir, Keni Noda, that the remaining funds be distributed to him.	
<b>PTC</b>	<b>Petitioner prays for an Order:</b>	
<b>Not.Cred.</b>	<ol style="list-style-type: none"> <li>1. Approving, settling and allowing the Fourth and Final Account;</li> <li>2. Directing Finance and Thrift to release the CD account to Alan Yamamoto as Conservator;</li> <li>3. Authorizing the conservator and attorney fees and commissions;</li> <li>4. Directing Petitioner to distribute the remaining estate funds after payment of the authorized attorney and conservator fees and commissions to Keni Noda, as conservatee's legal heir, upon presentation of a Probate Code § 13100 Declaration;</li> <li>5. Discharging Petitioner as Conservator of the Person and Estate; and</li> <li>6. Authorizing Petitioner's bond be discharged upon filing of Ex Parte Order for Final Discharge.</li> </ol>	
<input checked="" type="checkbox"/> <b>Notice of Hrg</b>		
<input checked="" type="checkbox"/> <b>Aff.Mail</b> w/		
<b>Aff.Pub.</b>		
<b>Sp.Ntc.</b>		
<b>Pers.Serv.</b>		
<b>Conf. Screen</b>		
<b>Letters</b>		
<b>Duties/Supp</b>		
<b>Objections</b>		
<b>Video Receipt</b>		
<b>CI Report</b>		
<input checked="" type="checkbox"/> <b>2620(c)</b>		
<input checked="" type="checkbox"/> <b>Order</b>		
<b>Aff. Posting</b>		
<b>Status Rpt</b>		
<b>UCCJEA</b>		
<b>Citation</b>		
<b>FTB Notice</b>		
		<b>Reviewed by:</b> JF <b>Reviewed on:</b> 05/03/12 <b>Updates:</b> 05/07/12 <b>Recommendation:</b> <b>File 2 - Nada</b>

**First Amended First Account and Report of Conservator; Petition for Attorney's Fees and Costs Reimbursement; and for Discharge as Conservator**

<b>Age: 94</b>	<p><b>ELAIN J. MOSESIAN</b>, granddaughter and former conservator of the estate, is Petitioner. Letters issued on 12-18-07 and Resignation was accepted on 3-9-11. Bond is \$40,000.00.</p> <p>Account period: <b>12-18-07 through 5-9-11</b></p> <p>Accounting - <b>\$105,200.03</b>                  Beginning POH - <b>\$8,083.20</b>                  Ending POH - <b>\$988.02</b></p> <p>Conservator - <b>To be requested in a separate petition</b></p> <p>Attorney - <b>\$14,275.00</b> (per itemization for Accountant fees, establishment of the conservatorship, preparation of accounting of conservator, less \$3,402.00 for fees that were previously paid by the conservatorship estate)</p> <p>Costs - <b>\$1,755.00</b> (Filing fees, certified copies, accountant fees)</p> <p><b>Petitioner prays for an Order:</b></p> <ol style="list-style-type: none"> <li>1. Approving, allowing and settling the First Amended account;</li> <li>2. Authorizing the attorney fees and commissions;</li> <li>3. Discharging petitioner as Conservator and providing the exoneration of her bond upon filing of a request for Final Discharge and Order.</li> </ol>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p><u>Note:</u>                  The Amended Account states that \$3,402.00 was paid to attorney Bagdasarian for work he performed in connection with the conservatee's pre-existing trust. The work was not related to the conservatorship and should have been paid from funds of the trust; however, the conservator wrongly paid the fees from the conservatorship estate. Attorney Bagdasarian has reduced his fee request by \$3,402.00 to reimburse the conservatorship for the fees that were wrongly paid from the conservatorship.</p>
<b>DOB: 7-13-17</b>		
<b>Aff.Sub.Wit.</b>		
<input checked="" type="checkbox"/> <b>Verified</b>		
<b>Inventory</b>		
<b>PTC</b>		
<b>Not.Cred.</b>		
<input checked="" type="checkbox"/> <b>Notice of Hrg</b>		
<input checked="" type="checkbox"/> <b>Aff.Mail</b> w/		
<b>Aff.Pub.</b>		
<b>Sp.Ntc.</b>		
<b>Pers.Serv.</b>		
<b>Conf. Screen</b>		
<b>Letters</b>		
<b>Duties/Supp</b>		
<b>Objections</b>		
<b>Video Receipt</b>		
<input checked="" type="checkbox"/> <b>CI Report</b>		
<input checked="" type="checkbox"/> <b>2620</b>		
<input checked="" type="checkbox"/> <b>Order</b>		
<b>Aff. Posting</b>		
<b>Status Rpt</b>		
<b>UCCJEA</b>		
<b>Citation</b>		
<b>FTB Notice</b>		
		<p><b>Reviewed by:</b> JF</p> <p><b>Reviewed on:</b> 05/08/12</p> <p><b>Updates:</b></p> <p><b>Recommendation:</b></p> <p><b>File 3B - Mosesian</b></p>

**4 In the Matter of the Verni Family Trust (Trust) Case No. 10CEPR00639**

**Atty** Marchini, Joseph; Fashing, Peter; of Baker Manock & Jensen (for Applicant Carmela DeSantis, daughter and Trust Beneficiary)  
**Atty** Baldwin, Kenneth A., of McCormick Barstow (for Nicola Verni, son, and Antonietta R. Verni, daughter, Co-Trustees)  
**Atty** Bohn, Jeffrey D. (for Erlinda M. Verni, surviving spouse)

**Application for Determination that Proposed Petitions and Filings to (1) Remove Trustees; (2) Construe a Trust Provision; (3) Recover Property Pursuant to Probate Code Section 850; (4) Amend Objections to First Account Current; and (5) Object to Second Account Current Do Not Violate the Terms of No-Contest Provisions in Related Wills, Trust and Trust Amendment Documents (Former Prob. C. 21320-21322)**

Leonarda DOD: 7/31/2000	<p><b>CARMELA DeSANTIS</b>, daughter and Trust Beneficiary, is Applicant.</p> <p><b>Applicant states:</b></p> <ul style="list-style-type: none"> <li>The <b>VERNI FAMILY TRUST of 1999</b> was created by <b>SAVERIO VERNI</b> and <b>LEONARDA VERNI</b> on 6/10/1999, and was amended once on 6/11/1999, the day following creation of the Trust;</li> <li>The Will of Leonarda was executed the same date the Trust was created, 6/10/1999 (<i>copy attached as Exhibit A</i>); following Leonarda's death on 7/31/2000, her estate was devised to the Trust, and the Trust, pursuant to Trust terms, was divided into three separate Sub-trusts: the <b>VERNI MARITAL TRUST</b>, the <b>VERNI FAMILY TRUST</b>, (which was amended once during both Trustors' lifetimes), and the <b>VERNI SURVIVOR'S TRUST</b>, which was amended by Saverio on seven occasions (<i>copies of Trust containing Sub-Trusts and all amendments to them are attached as Exhibit B</i>);</li> <li>Upon Leonarda's death on <b>7/31/2000</b>, the Will of Leonarda, the Marital Sub-Trust and the Family Sub-Trust all became <b>irrevocable</b>; the Survivor's Sub-Trust remained revocable by Saverio during his lifetime;</li> <li>The Eighth Amendment to the Trust executed by Saverio dated 5/12/2009 (the final amendment) amended the Survivor's Sub-Trust in its entirety;</li> </ul> <p style="text-align: center;">~Please see additional page~</p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p><b>Continued from 4/5/2012.</b>  <i>Minute Order</i> states Counsel stipulates that any applicable statutes be tolled from time of filing of safe harbor until Court rules.</p> <p><b>Note:</b> Court Trial is currently set in the related case of the <i>Estate of Saverio Verni</i> (Case #10CEPR00419) for <u>6/1/2012</u> at 9:00 am in Dept. 303.</p>
Saverio DOD: 5/25/2009		
Cont. from 040512		
Aff.Sub.Wit.		
✓ Verified		
Inventory		
PTC		
Not.Cred.		
✓ Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
✓ Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
✓ Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
Reviewed by: LEG		
Reviewed on: 5/3/12		
Updates:		
Recommendation:		
File 4 - Verni		

**Applicant states, continued:**

- The Will of Saverio dated 5/12/2009 revoked all prior wills and codicils and devised his estate to the Survivor's Sub-Trust (*copy attached as Exhibit C*);
- Saverio served as Trustee of the three Sub-Trusts until his death on **5/25/2009**, and following his death Saverio's Will and the Survivor's Sub-Trust became **irrevocable**;
- Upon Saverio's death, the balance of the Marital Sub-Trust was added to the Family Sub-Trust and the Marital Sub-Trust terminated; the merged Marital and Family Sub-Trusts are referred to as the "Merged Family Trust;"
- Pursuant to the Trust terms, **ANTONIETTA ROSA VERNI**, daughter, is first appointed and currently serves as Successor Trustee of the Merged Family Sub-Trust;
- Pursuant to the Eighth Amendment to Trust, **NICOLA VERNI**, son, is first appointed and currently serves as Successor Trustee of the Survivor's Sub-Trust;
- Applicant proposes to file the following petitions and documents in connection with the Merged Family Sub-Trust and the Survivor's Sub-Trust:
  - A. **Petition to (1) Remove Trustees; (2) Appoint Receiver; (3) Surcharge Trustees; (4) Deny Trustees Compensation; (5) Impose Constructive Trust on Assets; and (6) Cause Proceedings to Trace and Recover Assets** (*copy of proposed petition attached as Exhibit D*). Grounds for the proposed Petition to Remove Trustees include the Trustee's wrongful commingling of Sub-Trust assets, commingling of accountings, diversion, use and misappropriation of Sub-Trust assets and profits, dereliction of duties of trustee, failure to account for Sub-Trust assets and profits, and failure to pursue actions to reclaim and recoup Sub-Trust assets and profits that have been wrongfully diverted.
  - B. **Petition to Construe Trust Provision** (*copy of proposed petition attached as Exhibit E*) seeks judicial determination as to the proper construction of an equalization provision contained in the Eighth Amendment to Trust Agreement (*copy attached as Exhibit B*).
  - C. **Petition to Establish Claim of Ownership in favor of Trust, to Property, and for Order Directing its Transfer to the Trustees to Hold in Trust** (*Section 850 Petition; copy of proposed petition attached as Exhibit F*) seeks judicial determination of title as to (1) crops raised on Sub-Trust lands and proceeds thereof, and (2) moneys paid for the purchase of Sub-Trusts lands; petition also seeks to recoup any such crops, proceeds and purchase moneys for the benefit of the Sub-Trusts.
  - D. **Amended Objections to First Account Current and Report of Trustees** (*copy of proposed petition attached as Exhibit G*.) Applicant does not believe there is a viable argument that the proposed Amended Objections constitute a contest under any of the no-contest provisions; out of an abundance of caution, Applicant seeks safe harbor with regard to the proposed amended objections, which restate and supplement objections to the Trustees' first accounting.
  - E. **Objections to Second Account Current** (*copy of proposed petition attached as Exhibit H*.) As with proposed amended objections to first account, the proposed objections to second account of the Trustees covering the period 1/1/2010 to 12/31/2010 (*not yet filed*) are made out of abundance of caution.

~Please see additional page~

**Applicant states, continued:**

- The proposed filings affect all three Sub-Trusts, except that the Petition to Construe affects only the Survivor's Trust;
- There are four no-contest clauses at issue, one of which is found in the related pour over Will of Leonarda; another is found in the related pour over Will of Saverio; the remaining two are contained in the relevant Trust documents [please refer to Application pages 4 through 6 for cited no-contest clauses];
- Applicant contends that the Survivor's Sub-Trust should be governed by the new statutory scheme related to no-contest provisions rather than former Probate Code §§ 21320 – 21322 because the Survivor's Sub-Trust became irrevocable after 1/1/2001; Applicant contends the Merged Family Sub-Trust should be governed by former Probate Code §§ 21320 – 21322 because it became irrevocable before 1/1/2001. However, because of the ambiguity (noted by *Cal. Trust and Probate Litigation* author), it is uncertain whether (a) the Merged Family Sub-Trust will be considered to have become irrevocable before 1/1/2001, and that the Survivor's Sub-Trust will be considered to have become irrevocable after 1/1/2001; or (b) whether all Sub-Trusts will be considered to have become irrevocable before 1/1/2001, because the Survivor's Sub-Trust became irrevocable after said date;
- Because of this uncertainty, Applicant seeks declaratory relief as to each of the attached proposed petitions and filings, and as to their effect under Merged Family Sub-Trust and under the Will of Leonarda;
- In the event the Court finds that the Survivor's Sub-Trust and/or the Will of Saverio are appropriate subjects of an application pursuant to former Probate Code §§ 21320 – 21322, Applicant also seeks declaratory relief as to each of the attached proposed petitions and filings as to their effect under the Survivor's Sub-Trust and Will of Saverio;
- Applicant also desires to make demand of the Trustees to undertake the prosecution of claims described in the proposed 850 Petition and seeks declaratory relief per former Probate Code §§ 21320 – 21322 that such demand will not violate the no-contest provisions outlined herein;
- This Application is limited to the procedure and purpose described in former Probate Code §§ 21320(a) and does not request nor require any determination of the merits of the contemplated petitions and filings or any other actions that may be taken.

**Memorandum of Points and Authorities in Support of Carmela DeSantis' Application for Determination that Proposed Petitions and Filings to (1) Remove Trustees; (2) Construe a Trust Provision; (3) Recover Property Pursuant to Probate Code Section 850; (4) Amend Objections to First Account Current; and (5) Object to Second Account Current Do Not Violate the Terms of No-Contest Provisions in Related Wills, Trust and Trust Amendment Documents was filed 3/21/2012.**

**~Please see additional page~**

**Memorandum of Points and Authorities in Opposition to Petitioner's Application for Determination that Proposed Petitions and Filings to (1) Remove Trustees; (2) Construe a Trust Provision; (3) Recover Property Pursuant to Probate Code Section 850; (4) Amend Objections to First Account Current; and (5) Object to Second Account Current Do Not Violate the Terms of No-Contest Provisions in Related Wills, Trust and Trust Amendment Documents filed by Nicola Verni and Antonietta Verni on 4/2/2012. Opposition states:**

- Pursuant to former Probate Code §21320, a beneficiary was permitted to apply for a determination of whether a particular motion, petition, or other act by a beneficiary would constitute a contest under the terms of an applicable no-contest clause. On January 1, 2010, the legislature repealed Probate Code sections 21320-21322, and enacted the current statutory scheme regarding no-contest clauses. The current statutory scheme only applies to instruments that became irrevocable *on or after* January 1, 2001. Any instrument that became irrevocable *prior* to January 1, 2001 is still governed by Probate Code sections 21300-21322. This is a rare case in which both the former and current Probate Code applies in the same case.
- Leonarda Verni passed away on July 30, 2000, causing Leonarda's will and the original trust to become irrevocable *prior* to January 1, 2001. As such Leonarda's will and the original trust are subject to the former Probate Code. As such the Trustees do not take issue with Petitioner's safe harbor petition as it relates to those specific instruments.
- However, Saverio Verni passed away on May 25, 2009, causing Saverio's will and the Survivor's Trust to become irrevocable *after* January 1, 2001. Accordingly, the current Probate Code applies to Saverio's will and the Survivor's Trust. Therefore, Petitioner should not be granted any protection under the safe harbor procedure relating to the no-contest clauses in Saverio's will or the Survivor's Trust.

(1) First and Final Account and Report of Administrator and (2) Petition for its Settlement, for (3) Final Distribution, for (4) Allowance of Compensation to Administrator and Attorney for Ordinary Services, and (5) Approval of Reimbursed Costs Advanced to the Estate by Administrator (Prob. C. 10900, 10951, 1060 et seq, 10800, 10810, 11004, 11600)

<b>DOD: 07/17/10</b>	<b>KARSON KOVAKOVICH</b> , Administrator, is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>  1. Notice to Kristina Knobloch was sent in care of Terri Johnson. Pursuant to California Rule of Crt 7.51(a)(2) – A notice mailed to a person in care of another person is insufficient unless the person entitled to notice is an adult and has directed the party giving notice in writing to send the notice in care of the second person. Petitioner does not state that Kristina has instructed him to give notice to her in care of another person. Court may require more information.
	Account period: 01/03/11 – 01/10/12	
<b>Cont. from</b>	Accounting - \$96,198.10	
<input type="checkbox"/> <b>Aff.Sub.Wit.</b>	Beginning POH - \$85,000.00	
<input checked="" type="checkbox"/> <b>Verified</b>	Ending POH - \$71,715.90	
<input checked="" type="checkbox"/> <b>Inventory</b>	Administrator (statutory) - \$3,446.39	
<input checked="" type="checkbox"/> <b>PTC</b>	Attorney (statutory) - \$3,446.39	
<input checked="" type="checkbox"/> <b>Not.Cred.</b>	Closing - \$100.00	
<input checked="" type="checkbox"/> <b>Notice of Hrg</b>	<b>Distribution, pursuant to intestate succession, is to:</b>	
<input checked="" type="checkbox"/> <b>Aff.Mail</b> w/	Kristina Knobloch - \$21,574.37	
<b>Aff.Pub.</b>	David Kovakovich - \$21,574.37	
<b>Sp.Ntc.</b>	Karson Kovakovich - \$21,574.38	
<b>Pers.Serv.</b>		
<b>Conf. Screen</b>		
<b>Letters</b> 01/03/11		
<b>Duties/Supp</b>		
<b>Objections</b>		
<b>Video Receipt</b>		
<b>CI Report</b>		
<input checked="" type="checkbox"/> <b>9202</b>		
<input checked="" type="checkbox"/> <b>Order</b>		
<b>Aff. Posting</b>		
<b>Status Rpt</b>		
<b>UCCJEA</b>		
<b>Citation</b>		
<input checked="" type="checkbox"/> <b>FTB Notice</b>		
		<b>Reviewed by:</b> JF
		<b>Reviewed on:</b> 05/03/12
		<b>Updates:</b>
		<b>Recommendation:</b>
		<b>File 5 - Kovakovich</b>

Atty Judd, Darin T. (of Corte Madera, for Petitioner Daniel J. McCann)

Atty Foreman, Stewart H. (of San Francisco, for Respondents Colleen E. Dempsey and John P. McCann)

First Amended Petition Seeking: 1) Recovery for Respondents' Intentional Interference with Petitioner's Right to Inherit; 2) Recovery for Respondents' Negligent Interference with Petitioner's Right to Inherit; and 3) an Interpretation of Trust Instruments [Prob. C. 17200(b)(1) & (3)]

Elizabeth A. McCann ("Mrs. McCann") DOD: 8-7-10	<b>DANIEL J. MCCANN</b> , Trust beneficiary, co-trustee, and adult son of Trustors, is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>  <i>This first hearing on the First Amended Petition filed 3-7-12 was originally set for 4-23-12 and was continued from that date per Stipulation filed 4-23-12.</i>  <b>Note:</b> It is this Examiner's understanding pursuant to email communication with the attorneys that this first hearing on the First Amended Petition on 5-10-12 should be treated as a <u>status conference only</u> due to ongoing discovery in progress.  Therefore, a summary review of the First Amended Petition filed 4-13-12 is <u>not</u> provided here. These Examiner Notes summarize the points of the Stipulation with reference to the First Amended Petition.  Pursuant to the Stipulation filed 4-16-12, Respondents were to have 20 days to respond to the Amended Petition, which 20 <sup>th</sup> day appears to fall on 5-6-12. (As of 5-4-12, no response has been filed.)  In addition, the Stipulation provides a 60-day time frame for certain exchange of information, which 60 <sup>th</sup> day appears to fall on 6-15-12.  <u>The Court may wish to continue the matter or set trial accordingly.</u>
John P. McCann ("Dr. McCann") DOD: 10-12-06	<b>COLLEEN E. DEMPSEY</b> and <b>JOHN P. MCCANN</b> , Trust beneficiaries, co-trustees, and adult children of Trustors, are Respondents.	
	<b>This First Amended Petition filed 3-7-12</b> alleges three (3) causes of action.	
Cont. from 042312	<b>Pursuant to Stipulation filed 4-13-12</b> , the First and Second Causes of Action in this amended petition are stayed subject to 45 days' written notice requiring response.	
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg	The Stipulation also states that, absent the stipulation, Respondents would file a Motion to Strike the allegations of certain facts relating to whether the law firm representing Respondents should have or failed to verify the competency of Trustor Mrs. McCann prior to executing the Second and Third Amendments to the Trust. However, in the Stipulation, Petitioner agrees that he will not seek to disqualify the firm based on the allegations.	
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt	The Stipulation provides that Respondents will file an answer to the allegations of the Third Cause of Action within 20 days of the filing of the Stipulation.	
CI Report		
9202		
Order	<i>(Examiner notes that no answer has been filed as of 5-4-12.)</i>  The Stipulation further agreement regarding possible future petitions for removal of Respondents as successor trustees, or for accounting, and states that a Petition for accounting will be provided within 60 days of the Stipulation, and Petitioner will not file a petition for removal of Respondents as successor trustees, or for accounting, within 60 days of the Stipulation.	
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice	In addition, the Stipulation provides that Petitioner will provide certain documents to Respondent within 60 days of the Stipulation.	
		Reviewed by: skc
		Reviewed on: 5-4-12
		Updates:
		Recommendation:
		File 6 - McCann

Atty Lau, Nancy Quemada (Pro Per – Daughter – Petitioner)  
 Atty Lind, Ruth P. (Court-appointed for Proposed Conservatee)  
 Atty Quemada, Jess P. (Pro Per – Son – Objector)

Petition for Appointment of Probate Conservator of the Person and Estate (Prob. C.  
 1820, 1821, 2680-2682)

Age: 86	TEMPORARY EXPIRES 3-29-12, extended to 5-10-12	NEEDS/PROBLEMS/COMMENTS:
DOB: 9-17-25	NANCY QUEMADA LAU, Daughter, is Petitioner and requests appointment as Conservator of the Person with medical consent powers <b>and dementia medication and placement powers</b> , and as Conservator of the Estate without bond.	<u>Court Investigator advised rights on 1-24-12.</u>
Cont. from 021612, 032912	Voting rights affected	<u>Voting rights affected - Need Minute Order</u>
✓ Aff.Sub.Wit.	Estimated Value of Estate: Personal property: \$7,650.00 Annual income: \$21,984.00	<u>Minute Order 2-16-12:</u> Jess Quemada informs the Court that he intends to hire counsel. The Court on its own motion grants temporary conservatorship of the person and estate in favor of Nancy Quemada Lau. The Court grants medical powers. Dementia powers are not granted. The temporary expires on 3/29/12. Ms. Lind is directed to prepare the order. Parties are ordered not to speak ill of one another around the conservatee Sally Quemada. Continued to: 3/29/12.
✓ Verified	A Capacity Declaration was filed 1-5-12. The Declaration of Richard Graham, MD, dated 7-7-11 <u>provides a diagnosis of Alzheimer's Dementia</u> and supports the request for medical consent powers <u>but does not contain the Dementia Attachment (GC-335A) and does not address dementia medication or placement treatment</u> . The declaration does state that he considers the Proposed Conservatee to have been competent in her September 2009 document declarations. (A Power of Attorney was signed 9-2-09.)	<u>Minute Order 3-29-12:</u> Five persons/siblings of Sally Quemada are also present. Examiner notes are handed to Petitioner. The case is recalled to allow for dementia powers as said powers are requested in the Petition.
Inventory	Petitioner states her mother is diagnosed with Alzheimer's and dementia and suffers from heart problems and anxiety. She was living in her home in Los Angeles County with one of her 15 children, <b>Mr. Jess Quemada</b> ; however, in November 2008, Petitioner brought her to live with her in Clovis because Mr. Quemada was not properly caring for her. In addition, Petitioner states he was keeping her money and had influenced her to obtain a \$40,000.00 loan on one of her homes. An incident (described in the Petition) where an ambulance was called and the driver threatened to contact Adult Protective Services led to the decision to bring her here in 2008. The proposed conservatee has lived with Petitioner in Clovis since 2008 and it is in her best interest to remain so.	<u>Note: As of 5-3-12, nothing further has been filed by either party. It is not known if Objector Jess Quemada has obtained counsel.</u>
PTC	<b>Jess Quemada recently filed for conservatorship in Los Angeles and failed to disclose in his petition that the proposed conservatee has not lived in that county since 2008.</b>	<u>Please see Page 2 for additional NEEDS/PROBLEMS/COMMENTS re this petition.</u>
Not.Cred.	Petitioner states her mother is not able to manage her finances and Petitioner has been handling her money since she came to live with her. She receives Social Security and rental income from one of two homes that she owns. One home is occupied by Jess Quemada, who does not pay rent and claims the house is his.	<u>SEE PAGE 2</u>
✓ Notice of Hrg	The proposed conservatee had a personal attorney in Pasadena, Patrick Hanrahan, who prepared her estate-planning paperwork. Petitioner and another sibling, <b>Yolanda Quemada</b> , currently have power of attorney (attached POA is dated 9-2-09).	Reviewed by: skc
✓ Aff.Mail	Petitioner states her mother told her that if she could not care for herself, she wanted Petitioner to care for her. Petitioner states that other than the two homes, the estate is minimal.	Reviewed on: 3-22-12
✓ Aff.Pub.		Updates:
Sp.Ntc.		Recommendation:
✓ Pers.Serv.		File 7 - Quemada
✓ Conf. Screen		
✓ Letters		
✓ Duties/Supp		
✓ Objections		
✓ Video Receipt		
✓ CI Report		
9202		
✓ Order		
✓ Aff. Posting		
Status Rpt		
UCCJEA		
✓ Citation		
FTB Notice		
	<u>SEE PAGE 2</u>	

**Objection filed 2-14-12 by Jess P. Quemada, son**, states the main reason for his objection is to return his mother to her home in Los Angeles. Mr. Quemada alleges Nancy Lau has made false statements against Mr. Quemada for her own financial gain. Nancy Lau and another sister Yolanda Quemada forged and made statements to remove him from the family living trust. Mr. Quemada states he has cared for his mother for 10 years and has never had any problems. He states his mother wants to come home. Objector attaches the following items:

1. "Revocation of Executor and or Power of Attorney of Sally Villagran Quemada that Objector states contains a forged signature dated 9-3-09;
2. Page 5 of what appears to be a will document reflecting Objector as personal representative
3. Page 15-2 of what appear to be a trust document reflecting Objector as first successor trustee
4. Page 2 of a letter (handwritten title: "Lawyer meeting with Sally letter!") indicating that Sally Villagran Quemada had indicated to the lawyer that she wanted to live in her housed and have her children to take turns living with her so as not to demonstrate any favoritism.

**Court Investigator Julie Negrete filed a report on 2-8-12. The report states that the Petition in Los Angeles County was denied without prejudice on 1-19-12 as Fresno County is the appropriate venue.**

The report notes that Petitioner reported that in April 2011 she was contacted by Patrick Hanrahan, an attorney in Los Angeles County that her father previously had prepare his will. He advised her to seek conservatorship and mentioned a living trust, but he will only release it to a conservator.

The Court Investigator states most family members are in agreement, and reported concerns about the brother in Los Angeles. It is recommended that the Petition be GRANTED.

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**NEEDS/PROBLEMS/COMMENTS (Cont'd):**

1. **The Capacity Declaration indicates a diagnosis of Alzheimer's Dementia, but does not provide the Dementia Attachment (GC-335A) that addresses whether dementia medication and placement would be beneficial to the Conservatee.**

Examiner notes that this item was previously noted in summary but not specifically as a deficiency. However, in its minute order from the hearing on 3-29-12, the Court did note dementia powers as a deficiency to be addressed.

In granting dementia medication and placement powers, the Court must make certain findings by clear and convincing evidence. Probate Code §2356.5(f)(3) states the petition shall be supported by a declaration regarding the findings.

Without the Dementia Attachment, Court may not be able to make the required findings to grant dementia medication and placement powers.

2. **If appointed, need bond of \$32,597.40.** Pursuant to Cal. Rule of Court 7.207, except as otherwise provided by statute, every conservator of the estate must furnish bond including a reasonable amount for the cost of recovery to collect the bond under Probate Code 2320(c)(4).

3. **Petitioner requests the Court waive the Inventory and Appraisal and also waive accountings as long as the estate meets the requirements of Probate Code §2628; however:**

- Inventory and Appraisal is required by Probate Code §2610

- A first accounting (*at least*) is required by Probate Code §2620(a)

- Probate Code §2628(c) requires accounting to show that income was spent for the benefit of the Conservatee.

- Examiner notes that the proposed conservatee owns two houses (not just her own residence) and receives rental and pension income. Based on this information, it does not appear that the estate would qualify for waiver under Probate Code §2628, as the value of the estate may exceed the statutory limit for waiver.

If appointed, the Court will set status hearings as follows:

7-2-12 for filing of bond or blocked account, if applicable

9-10-12 for filing of the Inventory and Appraisal

9-16-13 for filing of the First Account

Petition for Probate of Will and for Letters of Administration with Will Annexed;  
 Authorization to Administer Under IAEA (Prob. C. 8002, 10450)

<b>DOD: 02/07/12</b>		<p><b>DENNIS P. AVEDISIAN</b>, son, is Petitioner, and requests appointment as Administrator with Will Annexed without bond.</p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <ol style="list-style-type: none"> <li>1. Will is not self-proving, need Affidavit of Subscribing witness.</li> <li>2. Petitioner requests appointment without bond because the Will waives bond; however, the Will only waives bond for the nominated Executors. Since Petitioner is not a named Executor, need waivers of bond by all beneficiaries or bond in the amount of \$1,891,320.00.</li> </ol>	
Cont. from				
<input type="checkbox"/>	Aff.Sub.Wit.			x
<input checked="" type="checkbox"/>	Verified			
<input type="checkbox"/>	Inventory			
<input type="checkbox"/>	PTC			
<input type="checkbox"/>	Not.Cred.			
<input checked="" type="checkbox"/>	Notice of Hrg			
<input checked="" type="checkbox"/>	Aff.Mail			w/
<input checked="" type="checkbox"/>	Aff.Pub.			
<input type="checkbox"/>	Sp.Ntc.			
<input type="checkbox"/>	Pers.Serv.			
<input type="checkbox"/>	Conf. Screen			
<input checked="" type="checkbox"/>	Letters			
<input checked="" type="checkbox"/>	Duties/Supp			
<input type="checkbox"/>	Objections			
<input type="checkbox"/>	Video Receipt			
<input type="checkbox"/>	CI Report			
<input type="checkbox"/>	9202			
<input checked="" type="checkbox"/>	Order			
<input type="checkbox"/>	Aff. Posting			
<input type="checkbox"/>	Status Rpt			
<input type="checkbox"/>	UCCJEA			
<input type="checkbox"/>	Citation			
<input type="checkbox"/>	FTB Notice			
		<p>Full IAEA – OK</p> <p>Will dated 01/23/90</p> <p>Residence: Fresno</p> <p>Publication: The Business Journal</p> <p><b>Estimated Value of the Estate:</b>                      Personal property - \$1,766,000.00</p> <p>Probate Referee: <b>STEVEN DIEBERT</b></p>	<p><b>Reviewed by:</b> JF</p> <p><b>Reviewed on:</b> 05/03/12</p> <p><b>Updates:</b></p> <p><b>Recommendation:</b></p> <p><b>File 8 - Avedisian</b></p>	

Petition for Letters of Administration; Authorization to Administer Under IAEA  
 (Prob. C. 8002, 10450)

<b>DOD: 02/07/12</b>		<p><b>SHARON FISHER</b>, daughter, is Petitioner and requests appointment as Administrator without bond.</p> <p>Full IAEA – OK</p> <p>All heirs waive bond</p> <p>Decedent died intestate</p> <p>Residence: Fresno          Publication: The Business Journal</p> <p><b>Estimated Value of the Estate:</b>          Personal property - \$125,000.00          Annual income - 25,000.00          Real property - 575,000.00  <b>Total - \$725,000.00</b></p> <p>Probate Referee: <b>STEVEN DIEBERT</b></p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p><u>Note:</u>  <b>Status hearings will be set for this matter as follows:</b></p> <ul style="list-style-type: none"> <li>• <b>09/10/12 – For Filing of the Inventory &amp; Appraisal</b></li> <li>• <b>09/10/13 – For Filing of the First Account and Petition for Distribution</b></li> </ul>	
Cont. from				
<input type="checkbox"/>	Aff.Sub.Wit.			
<input checked="" type="checkbox"/>	Verified			
<input type="checkbox"/>	Inventory			
<input type="checkbox"/>	PTC			
<input type="checkbox"/>	Not.Cred.			
<input checked="" type="checkbox"/>	Notice of Hrg			
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<input checked="" type="checkbox"/>	Letters			
<input checked="" type="checkbox"/>	Duties/Supp			
<input type="checkbox"/>	Objections			
<input type="checkbox"/>	Video Receipt			
<input type="checkbox"/>	CI Report			
<input type="checkbox"/>	9202			
<input checked="" type="checkbox"/>	Order			
<input type="checkbox"/>	Aff. Posting			
<input type="checkbox"/>	Status Rpt			
<input type="checkbox"/>	UCCJEA			
<input type="checkbox"/>	Citation			
<input type="checkbox"/>	FTB Notice			

<b>Reviewed by:</b> JF
<b>Reviewed on:</b> 05/03/12
<b>Updates:</b>
<b>Recommendation:</b> SUBMITTED
<b>File 9 - Mason</b>

**Probate Status Hearing Re: Filing of Receipt for Blocked Accounts**

Age: 13 DOB: 11/28/98	<p><b>RANDALL S. BERG</b>, Petitioner, filed an Ex Parte Petition for Order Directing Deposit of Funds on 03/29/12.</p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p><b>1. Need Receipt and Acknowledgement of Order for the Deposit of Money into Blocked Account.</b></p>
	<p><b>Order to Deposit Money into Blocked Account</b> was signed and filed on 04/02/12.</p>	
Cont. from	<p><b>Notice of Status Hearing filed 04/18/12</b> set this matter for status re filing of receipt for blocked acct. <b>Clerk's Certificate of mailing</b> states that the Notice of Status Hearing was mailed to attorney Michael P. Dowling on 04/18/12.</p>	
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: JF
		Reviewed on: 05/03/12
		Updates:
		Recommendation:
		File 10 - Berg



**13A Shirley Ann McCray (Estate)**

**Case No. 10CEPR00305**

**Atty Johnson, Kevin (pro per Petitioner/Administrator)**

**First and Final Account and Report of Administrator and Petition for Settlement of Estate, (2) for Allowance of Attorney's Fees for Ordinary Services, (3) and for Final Distribution [Prob. C. § 10501]**

<b>DOD: 6/25/2009</b>		<b>KEVIN JOHNSON,</b> Administrator, is petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b> <b>NEED AMENDED PETITION, based on, but not limited to, the following:</b>
		Accounting - ???	<ol style="list-style-type: none"> <li>Petition was filed using a fee waiver. Filing fees are considered by the court to be costs of administration therefore a filing fee of \$395.00 must be paid prior to any order allowing distribution of assets.</li> <li>Accounting does not comply with Probate Code §1060.</li> <li>Petition states there was a creditor's claim filed by Bank of America on 5/3/2010 in the amount of \$8,921.16. The amount of the Creditor's Claim actually filed on 5/3/2010 is \$11,760.00.</li> <li>Petition states personal property valued at \$600.00 was distributed to Phyllis Williams. There was no personal property listed on the inventory and appraisal. The court cannot order distribution of property that was not inventoried.</li> <li>Paragraph 17 of the Petition states the statutory fee payable to Joanne Sanoian is \$3,150.00. However the prayer requests payment of \$1,500 to Joanne Sanoian as statutory fees.</li> <li>Statutory fees are calculated incorrectly. Fee base includes statutory commissions of \$75.00 and costs of \$20.00. Commissions and costs are not part of the fee base. Total statutory fees would be \$1,800.00. Ms. Sanoian's portion of the statutory fees should be based on the percentage of work done on the estate.</li> <li>Petition states there are outstanding personal property taxes due in the amount of \$1,913.89. All expenses should be paid prior to the court ordering distribution.</li> <li>Need property on hand schedule.</li> <li>Proposed distribution does not include distribution of the real property.</li> </ol>
<b>Cont. from 030812</b>		Beginning POH- \$45,000.00	
<input type="checkbox"/>	<b>Aff.Sub.Wit.</b>	Ending POH - ???	
<input checked="" type="checkbox"/>	<b>Verified</b>	Attorney - \$3,150.00	
<input checked="" type="checkbox"/>	<b>Inventory</b>	(Joanne Sanoian former attorney for the estate)	
<input checked="" type="checkbox"/>	<b>PTC</b>		
<input type="checkbox"/>	<b>Not.Cred.</b>		
<input checked="" type="checkbox"/>	<b>Notice of Hrg</b>		
<input checked="" type="checkbox"/>	<b>Aff.Mail</b>	Administrator - waives	
<input type="checkbox"/>	<b>Aff.Pub.</b>		
<input type="checkbox"/>	<b>Sp.Ntc.</b>	Closing - \$10,000.00	
<input type="checkbox"/>	<b>Pers.Serv.</b>		
<input type="checkbox"/>	<b>Conf. Screen</b>	Petitioner requests distribution as follows:	
<input checked="" type="checkbox"/>	<b>Letters</b>	5/20/10	
<input type="checkbox"/>	<b>Duties/Supp</b>	Phyllis Williams – decedent's household furniture, furnishings and personal effects.	
<input type="checkbox"/>	<b>Objections</b>		
<input type="checkbox"/>	<b>Video Receipt</b>		
<input type="checkbox"/>	<b>CI Report</b>		
<input checked="" type="checkbox"/>	<b>9202</b>	Kevin Johnson – ½ of after discovered property and unused tax reserve.	
<input checked="" type="checkbox"/>	<b>Order</b>		
<input type="checkbox"/>	<b>Aff. Posting</b>		
<input type="checkbox"/>	<b>Status Rpt</b>		
<input type="checkbox"/>	<b>UCCJEA</b>		
<input type="checkbox"/>	<b>Citation</b>		
<input checked="" type="checkbox"/>	<b>FTB Notice</b>		
			<b>Reviewed by: KT</b>
			<b>Reviewed on: 5/3/12</b>
			<b>Updates:</b>
			<b>Recommendation:</b>
			<b>File 13A - McCray</b>

Atty Johnson, Kevin (pro per Petitioner/Administrator)

Petition for Court Order to Sell Estate Real Property [Prob. C. § 10000, et seq.]

DOD: 6/25/2009		<p><b>KEVIN JOHNSON,</b> Administrator, is petitioner.</p> <p>Petitioner states he is seeking authority to sell the real property of the estate.</p> <p>The sale of the real property is necessary in order to pay the expenses of administration, taxes, attorney fees and the family allowance.</p> <p><b>Petitioner prays</b> for an Order authorizing the Administrator to sell the property described about on such terms and conditions and under such terms and conditions as are required by law or as directed by this court.</p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p>Continued from 3/8/12. Minute order states the Petitioner informs the Court that Phyllis Williams is seeking to buy him out.</p> <p><b>Note:</b> Phyllis Williams is the other intestate heir of this estate.</p>
Cont. from 030812			
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified		
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		
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<input type="checkbox"/>	Notice of Hrg		
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<input type="checkbox"/>	Sp.Ntc.		
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<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
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		Reviewed by: KT	
		Reviewed on: 5/3/12	
		Updates:	
		Recommendation:	
		File 13B - McCray	

**Petition to Determine Succession to Real Property (Prob. C. 13151)**

DOD: 12/20/05	<p><b>STEVE GARCIA</b>, son, is petitioner.</p> <p>40 days since DOD.</p> <p>No other proceedings.</p> <p>Decedent died intestate.</p> <p>I &amp; A - <b>NEED</b></p> <p><b>Petitioner requests</b> Decedent's 50% interest in real property pass to decedent's four children, Richard Garcia, Steve Garcia, Virginia Lazalde and Victoria Garcia in equal shares pursuant to intestate succession.</p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p>See related case on page 15 of this calendar.</p> <p>Continued from 3/15/12. As of 5/3/12 the following issues remain:</p> <p><b>NEED AMENDED PETITION BASED ON THE FOLLOWING:</b></p> <ol style="list-style-type: none"> <li>Petition requests court determination that decedent's interest in real property passes to his four children. Probate Code §13151 requires that all successors in interest to the property join in the petition. Therefore need amended petition including all those who succeed to the property.</li> <li>Need inventory and appraisal.</li> <li>Need name and date of death of decedent's spouse. Local Rule 7.1.1D.</li> <li>#9a(3) of the petition was not answered re: issue of predeceased child.</li> <li>Petition was filed using a fee waiver. When the amended petition is filed all who join in the petition must qualify individually for a fee waiver.</li> </ol>
Cont. from 102711, 120811, 031512		
Aff.Sub.Wit.		
✓ Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
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Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
✓ Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
	<p><b>Reviewed by: KT</b></p> <p><b>Reviewed on: 5/3/12</b></p> <p><b>Updates:</b></p> <p><b>Recommendation:</b></p> <p><b>File 14 - Garcia</b></p>	

Petition to Determine Succession to Real Property (Prob. C. 13151)

DOD: 5/4/05	<p><b>STEVE GARCIA</b>, son, is petitioner.</p> <p>40 days since DOD.</p> <p>No other proceedings.</p> <p>Decedent died intestate.</p> <p>I &amp; A - <b>NEED</b></p> <p><b>Petitioner requests</b>          Decedent's 50% interest in real property pass to decedent's four children, Richard Garcia, Steve Garcia, Virginia Lazalde and Victoria Garcia in equal shares pursuant to intestate succession.</p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p><b>Please see related case on page 14.</b>  <b>Continued from 3/15/12.</b> As of 5/3/12 the following issues remain:</p> <p><b>NEED AMENDED PETITION BASED ON THE FOLLOWING:</b></p> <p>6. Petition requests court determination that decedent's interest in real property passes to his four children. Probate Code §13151 requires that all successors in interest to the property join in the petition. Therefore need amended petition including all those who succeed to the property.</p> <p>7. Need inventory and appraisal.</p> <p>8. Need name and date of death of decedent's spouse. Local Rule 7.1.1D. (It appears from the death certificate attached to the petition that decedent was survived by his spouse Jessie Garcia, decedent on page 18 of this calendar. If that is true then Jessie's estate would be entitled to all or a portion of this estate.)</p> <p>9. #9a(3) of the petition was not answered re: issue of predeceased child.</p> <p>10. Petition was filed using a fee waiver. When the amended petition is filed all who join in the petition must qualify individually for a fee waiver.</p>
Cont. from 102711, 120811, 031512		
Aff.Sub.Wit.		
✓ Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
✓ Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
	<p><b>Reviewed by: KT</b></p> <p><b>Reviewed on: 5/3/12</b></p> <p><b>Updates:</b></p> <p><b>Recommendation:</b></p> <p><b>File 15 – Garcia</b></p>	

Petition for Letters of Special Administration with General Powers (Prob. C. 8002, 10450)

DOD: 02/06/09	<b>ROBERT PETERSON,</b>	<b>NEEDS/PROBLEMS/COMMENTS:</b>  <u>CONTINUED FROM 03/22/12</u> Minute Order from 03/22/12 hearing states: No appearance taken. The Court believes a general administration should be granted. A copy of the Examiner notes, along with the minute order, is to be mailed to Mr. Robert Peterson.  Clerk's Certificate of Mailing filed 03/23/12, indicates that a copy of the Examiner notes and 03/22/12 Minute Order were mailed to Petitioner on 03/23/12.  As of 05/02/12, no additional documents have been filed and the following remains outstanding: <ol style="list-style-type: none"> <li>1. Need Affidavit of Publication.</li> <li>2. Need Notice of Petition to Administer Estate.</li> <li>3. Need proof of service by mail at least 15 days before the hearing of <i>Notice of Petition to Administer Estate</i> for:              - Mario Manganiello (son)</li> <li>4. Need Letters.</li> <li>5. Need Order.</li> </ol>
	brother/named Executor is Petitioner and requests appointment as Special Administrator with general powers without bond.	
Cont. from 032212		
Aff.Sub.Wit.		
✓ Verified	Full IAEA – <b>NEED</b>	
Inventory		
PTC	Will dated 08/10/07	
Not.Cred.		
Notice of Hrg	x Residence: Clovis	
Aff.Mail	x Publication: <b>NEED</b>	
Aff.Pub.	x <b>Estimated Value of the Estate:</b>	
Sp.Ntc.	\$0.00	
Pers.Serv.		
Conf. Screen	Petitioner states that it is necessary	
Letters	x that he be appointed as Special Administrator with General Powers in order to continue with a law suit, case no. CIV 501098 in San Mateo County against the decedent's former employer for insurance monies owed to the decedent's estate.	
✓ Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order	x	
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: JF
		Reviewed on: 05/02/12
		Updates:
		Recommendation:
		File 16 - Peterson

Petition for Appointment of Probate Conservator of the Person (Prob. C. 1820, 182 2680-2682)

Age:		NEEDS/PROBLEMS/COMMENTS:  <p style="text-align: center;"><b><u>CONTINUED TO 5-30-12</u></b> Per Petitioner's request.</p>
DOB:		
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
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Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: skc
		Reviewed on: 5-3-12
		Updates:
		Recommendation:
		File 17 - Morales

**Petition for Appointment of Temporary Guardianship of the Person (Prob. C. 2250)**

Michael, 13 DOB: 05/25/99	<p align="center"><b><u>TEMPORARY GRANTED EX PARTE;</u></b>  <b><u>EXPIRES 05/10/12</u></b></p> <p><b>LAURA MORONES</b>, maternal aunt, is Petitioner.</p> <p>Father: <b>MICHAEL GONZALES</b></p> <p>Mother: <b>YESENIA MARQUEZ</b></p> <p>Paternal grandfather: UNKNOWN          Paternal grandmother: UNKNOWN</p> <p>Maternal grandfather: JESUS MARQUEZ          Maternal grandmother: TERESA MARQUEZ</p> <p>Siblings: ALEXIS GARCIA (3), JACOB (age unknown)</p> <p>Petitioner states that Michael has lived with her for the past 5 years and Dominique came to live with her recently when his mother moved to Los Angeles. Mother has two younger children and feels overwhelmed caring for three children. Mother has signed a letter giving Petitioner authority to make decisions regarding the boys. The father's whereabouts are unknown. Petitioner states that temporary guardianship is necessary so that she can enroll Dominique in school near her home</p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <ol style="list-style-type: none"> <li><b>1. Need Notice of Hearing.</b></li> <li><b>2. Need proof of personal service of Notice of Hearing at least 5 court days before the hearing of Notice of Hearing with a copy of the Petition for Appointment of Temporary Guardian <u>or</u> Consent and Waiver of Notice <u>or</u> Declaration of Due Diligence for:</b> <ul style="list-style-type: none"> <li>- Michael Gonzales (father)</li> <li>- Yesenia Marquez (mother)</li> <li>- Michael Gonzales (minor)</li> </ul> </li> </ol>	
Dominique, 10 DOB: 02/17/2000			
Cont. from			
Aff.Sub.Wit.			
✓ Verified			
Inventory			
PTC			
Not.Cred.			
Notice of Hrg			x
Aff.Mail			
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Pers.Serv.			x
✓ Conf. Screen			
Letters			x
✓ Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order			x
Aff. Posting			
Status Rpt			
✓ UCCJEA			
Citation			
FTB Notice			
		Reviewed by: JF	
		Reviewed on: 05/03/12	
		Updates:	
		Recommendation:	
		File 18 - Marquez	

Atty Conway, James (pro per – maternal great-uncle/Petitioner)

Atty Conway, Kim (pro per – maternal great-aunt/Petitioner)

Petition for Appointment of Temporary Guardian of the Person (Prob. C. 1510)

		<u>GENERAL HEARING 06/27/12</u>	NEEDS/PROBLEMS/COMMENTS:
Keanu, 14 DOB: 10/26/10		<p><b>JAMES CONWAY</b> and <b>KIM CONWAY</b>, maternal great uncle and aunt, are Petitioners.</p> <p>Father (Keanu): <b>ABRAHAM CHAVEZ</b> – <i>Consent &amp; Waiver of Notice filed 05/03/12</i>                      Father (Kobe): <b>IRIC</b> – <i>Declaration of Due Diligence filed 05/03/12</i>                      Father (Isabella): <b>SAMUEL BLANCO</b> – <i>personally served 05/03/12</i></p> <p>Mother: <b>MELISSA CASAREZ</b> – <i>personally served 05/03/12</i></p> <p>Paternal grandparents (all): UNKNOWN</p> <p>Maternal grandfather: MICHAEL CASAREZ                      Maternal grandmother: ZARITA CONWAY – <i>deceased</i></p> <p>Petitioners state that there is near constant domestic violence between the children's mother and Samuel Blanco (Isabella's father). All three children have witnessed Samuel physically abuse their mother. Mother never follows through with a restraining order and always lets Samuel return to the home. He is violent and has a history of drug use. Police and CPS have been called to the home numerous times. Petitioners state that they love the children and can provide a safe and stable home free of drugs and violence.</p> <p><b>Declaration of mother, Melissa Casarez filed 05/07/12</b> states that she has taken the necessary measures to remove the domestic violence from her home. She has followed through with a TRO against Samuel, is seeking counseling and is attending a domestic violence support group. To the best of her knowledge, Samuel is now in jail. She further states that she believes that the Petitioners care about her children, but states that some of the information in their petition was false and others were taken out of context or exaggerated. She states that it is not true that domestic violence occurred in front of the children. She states that the children did hear yelling or arguing on occasion, but that they were always behind closed doors, except on one occasion where Keanu saw Samuel push her into the bedroom. She states that the children never witnessed Samuel hitting her.</p>	<p><b>1. Declaration of Due Diligence regarding Kobe's father (Iric) was filed 05/03/11. The Declaration does not provide any information other than his last known employer and residence are unknown. If diligence is not found, need proof of personal service at least 5 court days before the hearing of Notice of Hearing with a copy of the Petition for Appointment of Guardian of the Person or Consent and Waiver of Notice for:</b></p> <p>- Iric (Kobe's father)</p>
Kobe, 6 DOB: 06/21/05			
Isabella, 19 months DOB: 10/26/10			
Cont. from			
<input type="checkbox"/> Aff.Sub.Wit.			
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<input checked="" type="checkbox"/> Order			
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<input type="checkbox"/> Status Rpt			
<input checked="" type="checkbox"/> UCCJEA			
<input type="checkbox"/> Citation			
<input type="checkbox"/> FTB Notice			
			<p><b>Reviewed by:</b> JF</p> <p><b>Reviewed on:</b> 05/03/12</p> <p><b>Updates:</b> 05/08/12</p> <p><b>Recommendation:</b></p> <p><b>File 19 – Casarez &amp; Blanco</b></p>



**Petitioner states:**

- It was agreed among the parties, attorneys and the Court that the Public Administrator would file his final account and hold the remaining funds, after payment of commissions and fees, until the matter of who is entitled to receive distribution is resolved; thus, the estate is not in a condition to be closed as the heirs, devisees and/or legatees of the Decedent entitled to final distribution of the estate have not been determined;
- The two issues that have prevented closure of the estate administration are: the persons entitled to distribution of the estate, and the sufficiency of the amount of estate assets; a brief summary of the status of these issues is as follows:
  - Decedent's 1997 California Will admitted to probate for administration on 3/27/2006 identified Decedent's parents **ALFREDO BANDA ARRIAGA and REMEDIOS NIETO RODRIGUEZ** (now represented by Attorney Javier A. Alabart) as the only beneficiaries of Decedent's estate;
  - A woman named **MARIA LUISA SANCHEZ** (represented by Attorney Edward L. Fanucchi) is asserting that she is the rightful heir of the Decedent entitled to distribution of the entire estate of Decedent; this issue has not yet been resolved;
  - The source of the Decedent's estate assets is the Decedent's Workers' Compensation benefits, which were received as part of a settlement in the 1997 Workers' Compensation Appeals Board (WCAB) case FRE 01150566 that included settlement of a third-party case by way of a *Third-Party Compromise and Release* approved by Workers' Compensation Judge George J. Perlingieri; specifically, the assets of the Decedent's estate belonging to the Decedent at the time of Decedent's death consist of the amount remaining from that settlement after distributions made to the Decedent or for his benefit;
  - At the time of Decedent's death, the remaining settlement funds were held in trust by Attorney Robert F. Perez and the law firm of Perez, Makasian, Williams & Medina ("The Perez Law Firm") at the direction of Judge George J. Perlingieri;
  - A dispute arose as to whether the amount delivered to the Public Administrator after the Decedent's death by Attorney Robert F. Perez and The Perez Law Firm was the accurate amount remaining from the WCAB case settlement;
  - Ms. Sanchez and Attorney Fanucchi contended that there should have been substantially more settlement proceeds remaining; the Public Administrator's attorney conducted an extensive review of the initial WCAB settlement amount and the distributions made therefrom in an effort to resolve this issue; after receipt of numerous documents and discussion with The Perez Law Firm, the attorney was able to confirm that all proceeds were accounted for;
  - Because Attorney Fanucchi was still questioning the amount, the Court ordered attorneys Kruthers, Perez and Fanucchi to meet; at that meeting, after reviewing the forensic accounting results and supporting documentation, attorney Fanucchi indicated that although he needed to report back to his client [Ms. Sanchez], he was satisfied that all of the settlement funds had been accurately accounted for; subsequently, Attorney Fanucchi noted in Court that his client agreed that all funds had been properly accounted for;
  - Neither Attorney Alabart nor his clients have ever objected, contested or disputed that the amount turned over by Attorney Robert Perez and The Perez Law Firm was the accurate amount remaining from the WCAB case settlement proceeds.

**~Please see additional page~**

**Petitioner states, continued:**

- A preliminary distribution of the estate in the amount of **\$103,000.00** was made to Attorney Fanucchi on behalf of his client, Maria Luisa Sanchez, pursuant to Court order dated 11/5/2007; the *Receipt of Distribution* signed by Attorney Fanucchi was filed with the Court on 12/12/2007;
- After payment of commissions, fees and costs in the amount of **\$19,643.43**, there will be **\$89,703.10** to distribute upon further Court order.

**Petitioner prays for an Order:**

1. Settling, allowing and approving the First and Final Account and confirming and approving all acts and proceedings of the Petitioner as Administrator;
2. That pursuant to the specific agreement and acceptance by Attorney Fanucchi and his client, Maria Luisa Sanchez, and there being no objection by Attorney Alabart and his clients, Alfredo Banda Arriaga and Remedios Nieto Rodriguez, the amount of the funds delivered to the Public Administrator by The Perez Law Firm is accepted as the correctly accounted for amount remaining from the Decedent's 1997 Workers' Compensation Case FRE 01150566 and third-party settlement proceeds subject to probate administration with no further action to be pursued regarding this issue;
3. Authorizing Petitioner to pay the statutory compensation to Petitioner, and statutory fees and extraordinary legal fees to Petitioner's attorney; and
4. Authorizing Petitioner to pay from the estate the bond fee and the costs advanced.

Atty Alabart, Javier A. (for Petitioners Alfredo Banda Arriaga and Remedios Nieto Rodriguez, parents)  
 Atty Ruiz, Eddie (co-counsel by association for Petitioners Alfredo Banda Arriaga and Remedios Nieto Rodriguez, parents)  
 Atty Fanucchi, Edward L. (for Maria Luisa Sanchez, Respondent, purported spouse)  
 Atty Kruthers, Heather H. (for Public Administrator, Administrator of the Estate)  
 Atty Williams, Robert; Perez, Holley, of Perez, Williams & Medina (Request for Special Notice)

**Notice of Motion and Motion to Have Admissions Deemed Admitted and for Monetary Sanctions**

DOD: 5/14/2004	<p><b>ALFREDO BANDA ARRIAGA and REMEDIOS NIETO RODRIGUEZ</b>, parents and Petitioners, filed a <i>Motion to Have Admissions Deemed Admitted and for Monetary Sanctions</i> on 1/20/2012.</p> <p><b>Declaration of Javier A. Alabart in Support of Motion to Have Admissions Deemed Admitted and for Attorney's Fees and Costs</b> was filed on 1/20/2012.</p> <p><b>Memorandum of Points and Authorities in Support of Motion to Have Admissions Deemed Admitted and for Monetary Sanctions</b> was filed on 1/20/2012.</p> <p><b>Maria Luisa Sanchez' Opposition to Alfredo Banda Arriaga's Motion to Have Admissions Deemed Admitted and Request for Sanctions</b> was filed on 2/21/2012.</p> <p><b>Declaration of Edward L. Fanucchi in Support of Maria Luisa Sanchez' Opposition to Alfredo Banda Arriaga's Motion to Have Admissions Deemed Admitted, etc.</b>, was filed on 2/21/2012.</p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p><b>This matter will be heard at 1:30 p.m. in Dept. 303</b></p> <p><b>Note:</b> Case files are with Research Attorney.</p> <p><b>Note for background:</b> Minute Order dated 2/15/2012 from the hearing on the <i>Motion to Compel Further Responses to Form Interrogatories, Set One, and for Sanctions</i> states the Court deems the date of the verification to be consistent with the date of the DHL delivery receipt. The Court advises both counsel that it is not imposing sanctions at this time. The Court stays the motion pending how further motions are responded to.</p>
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Objections		
Video Receipt		
CI Report		
9202		
✓ Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: LEG
		Reviewed on: 5/3/12
		Updates:
		Recommendation:
		File 20B – Banda-Nieto



**Supporting Memorandum of Points & Authorities states [sans citations]:**

- **No post-order evidentiary documents may be considered in determining whether the two orders being collaterally attacked are void:** The Petition filed in this proceeding is a collateral attack on the challenged orders entered on 10/12/2007 (order on motion for reconsideration) and 4/4/2008 (order for partial distribution) because the Petitioners did not challenge the orders by appeal or timely pre-appeal motion, and Petitioners seek to vacate the challenged orders on grounds that the challenged orders are void on their face;
- Because the orders are being collaterally attacked, the only evidence that may be considered in determining whether the orders are void is evidence existing in the record of the proceeding in which the orders were entered;
- The orders being attacked by Petitioners in this proceeding were entered on 10/12/2007 (order on motion for reconsideration) and 4/4/2008 (order for partial distribution); therefore, the only evidence that may be considered on the Petition consists of those evidentiary documents which were part of the Court's file on those dates, and no evidentiary document (such as declarations and exhibits to declarations and requests for judicial notice) filed after those dates is relevant to the determination of the instant petition;
- As such, all after-the-fact evidence is inadmissible and should be excluded from the Court's consideration in this proceeding;
- **Even if the instant petition were not considered to be a collateral attack on the challenged orders, the post-order evidentiary documents must be excluded from consideration as irrelevant to the extent that they evidence events or conduct that took place after entry of the challenged orders:** the argument underlying the petition is that the challenged orders are void because they were entered without the Court's knowledge or consideration of events and proceedings that occurred in the Mexican probate court;
- Petitioners have submitted evidence purportedly demonstrating such events and proceedings, and argue that this evidence shows that the challenged orders were improperly entered and that Ms. Maria Luisa Sanchez (Movant) either concealed or misrepresented the facts shown by the evidence submitted by the Petitioners; however, the vast majority of evidence submitted and relied upon by Petitioners is inadmissible for the simple reason that it did not exist at the time the challenged orders were entered;
- An event that occurs after a person makes a representation cannot provide the basis for suggesting that the representation was false at the time it was made; thus it is legally impossible to conclude Ms. Sanchez concealed or misrepresented any of the evidence now being submitted and relied upon by the Petitioners when that evidence did not even come into existence until after the challenged orders had been entered in this proceeding;
- None of the documents filed by Petitioners in this proceeding or the Mexican probate proceedings are admissible because they were not created or filed in the Mexican probate proceedings until almost a year after the 4/4/2008 order for partial distribution was entered in this proceeding; *[motion provides non-exhaustive list of evidence submitted by Petitioners in this proceeding that movant argues is inadmissible];*
- **Conclusion:** The vast majority of evidence submitted by Petitioners is inadmissible because it is irrelevant to the Court's determination of the validity of the challenged orders.

**Movant Maria Luisa Sanchez requests the Court grant the instant motion, exclude the irrelevant evidence from the hearing on the Petitioner's petition in this proceeding, and not consider any of the irrelevant evidence when evaluating and ruling upon the Petition.**

**Cover Sheet for Declaration of Maria Luisa Sanchez Dated 2/8/ 2012 in Support of Her Deceased Husband, for Trespass, for Slander of Title, and for Conversion; and English Translation Thereof** was filed on 4/27/2012 *[document is with legal research.]*