



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.

Fifth Account Current and Report of Trustee and Petition for Its Settlement, and for Allowance of Trustee's Fees [Prob. C. 17200(b)(5) & (9)]

		JAMES M. BELL , Trustee, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
		Account period: 1-1-12 through 12-31-12	
		Accounting: \$1,139,260.80	
		Beginning POH: \$1,072,527.44	
		Ending POH: \$1,032,290.68 (\$149,834.37 cash)	
<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		
<input checked="" type="checkbox"/>	Aff.Mail	W	
<input type="checkbox"/>	Aff.Pub.		
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.		
<input type="checkbox"/>	Conf. Screen		
<input type="checkbox"/>	Letters		
<input 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>Trustee: \$7,950.00 (3/4 of 1% of the market value at the end of the account period, rounded)</p> <p>Petitioner prays for an order:</p> <ol style="list-style-type: none"> That the Court settle, allow and approve this account and that all acts and transactions of the Trustee relating to matters reflected in the account be ratified, confirmed and approved; and Authorizing payment of trustee compensation in the sum of \$7,950.00. 			<p>Reviewed by: skc</p> <p>Reviewed on: 5-14-13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 1 – Funch</p>

Atty Kruthers, Heather H. (for Public Administrator/Petitioner)

(1) First and Final Account and Report of Administrator and (2) Petition for Allowance of Ordinary and Extraordinary Commissions and Fees and (3) for Distribution [Prob. C. 9202; 10800; 10810; 10951; 11600; 11850(a)]

DOD: 07/23/09		PUBLIC ADMINISTRATOR , Administrator, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
		Account period: 10/16/09 – 10/10/12	<u>CONTINUED FROM 01/23/13 and 04/03/13</u>
Cont. from 012313, 040313		Accounting - \$2,662,040.72	Minute Order from 04/03/13 states: Mr. Janisse informed the Court he was having a difficult time getting transcripts from the previous hearing. The court does not need transcripts.
		Beginning POH - \$2,391,992.13	
		Ending POH - \$109,170.64	
<input type="checkbox"/>	Aff.Sub.Wit.	Administrator - \$39,489.54 (statutory)	
<input checked="" type="checkbox"/>	Verified	Administrator x/o - \$27,253.92 (per itemization for 351.24 Staff hours @ \$76/hr. and 1.80 Deputy hours @ \$96/hr. for a total of \$26,867.04 for services provided in the continued management of decedent's business and \$386.88 per Local Rule for the sale of real property)	Minute order from 01/23/13 states: Ms. Kruthers requests a continuance to respond to the objections. The Court is informed that there are communication issues. The Court directs Mr. Janisse and Mr. Magness to contact Ms. Kruthers today to begin communication.
<input checked="" type="checkbox"/>	Inventory	Attorney - \$39,489.54 (statutory)	
<input checked="" type="checkbox"/>	PTC	Attorney x/o - \$4,500.00 (per itemization for 30 hours @ \$150/hr. for services related to the continuation of decedent's business, litigation regarding decedent's spouse claims for support & wages, and participation in settlement negotiations)	
<input checked="" type="checkbox"/>	Not.Cred.	Bond Fee - \$19,965.33 (ok)	
<input checked="" type="checkbox"/>	Notice of Hrg	Costs - \$690.00 (for certified copies and filing fees)	As of 05/14/13, nothing further has been filed in this matter.
<input type="checkbox"/>	Aff.Mail		
<input type="checkbox"/>	Aff.Pub.		
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.		
<input type="checkbox"/>	Conf. Screen		
<input type="checkbox"/>	Letters	01/12/10	
<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input checked="" type="checkbox"/>	9202	Preliminary Distributions to heirs:	
<input checked="" type="checkbox"/>	Order	Jesus Esther Bise - \$1,172,877.80	
<input type="checkbox"/>	Aff. Posting	Ruth Rios - \$733,525.38	
<input type="checkbox"/>	Status Rpt	Petitioner states that the property on hand (\$109,170.64) is not sufficient to pay all of the fees and costs (\$133,388.33). Petitioner requests that the beneficiaries each pay 1/2 of the outstanding fee balance (\$22,217.69 total) \$11,108.84 each.	
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input checked="" type="checkbox"/>	FIB Notice	Petitioner prays for an Order:	
		<ol style="list-style-type: none"> 1. Settling, allowing and approving the final account and all proceedings of Petitioner as Administrator be confirmed and approved; 2. Authorizing the statutory fees to the Administrator and Attorney; 3. Authorizing the extraordinary fees to the Administrator and Attorney; 4. Authorizing payment of the bond fee and costs; and 5. Directing the two beneficiaries pay the outstanding balance of fees. 	
		Continued on Page 2	Reviewed by: JF
			Reviewed on: 05/14/13
			Updates:
			Recommendation:
			File 2 - Bise

Objection to First and Final Account and Report filed 01/18/13 by Jesus Esther (Sylvia) Bise (“Objector”) states:

1. **Objection 1:** Objector objects to the Administrator’s request for extraordinary compensation on the grounds that it fails to comply with California Rule of Court 7.7.02. Specifically, the accounting fails to show the nature and difficulty of tasks performed, the results achieved, or the benefit of the services to the Estate. In the accounting, the Administrator states it, “provided many hours of extraordinary services to continue running the decedent’s furniture business.” The Administrator only calculates the time for the “first few weeks” and provides a “conservative estimate” of the amount of time spent per week thereafter and states the reasonable fee for running the decedent’s business is \$26,867.07. Such statement fails to comply with Rule 7.702 and no extraordinary compensation can be awarded.
2. **Objection 2:** Objector objects to the Administrator’s request for extraordinary compensation on the grounds that the Administrator improperly handled Decedent’s business, Bise Furniture, and caused loss to the estate. Extraordinary compensation may be awarded to the personal representative for carrying on the decedent’s business if necessary to preserve the estate or under court order. Cal Rule of Court 7.703(b)(2); See *Estate of King* (1942) 19 C2d 354, 358. Determining the value of these services is within the power of the probate court. The burden of proof for the need for extraordinary expenses and their extent is on the attorney and the personal representative, even when no objections are filed. *Estate of Fulcher* (1965) 234 Cal.App.2d 710; *Estate of Gopcevic* (1964) 228 Cal.App.2d 280. Objector states that there is no will and no court order for the Administrator to carry on the Decedent’s business. Further, running the Decedent’s business was not necessary to preserve the Estate. The Administrator took control of the Corporation and marshaled its assets. In doing so, it treated all of the Corporation assets as if they were Decedent’s individual assets. This was improper. The only Corporation assets that should have come into the estate were Decedent’s shares in the Corporation. Dividends, if any, paid by the Corporation during the course of Estate administration would have been added to the Estate. No such dividends were paid during the course of Estate administration. The Administrator commingled the estate assets with the Corporation assets. This has resulted in loss to the Estate in that it has created excessive administrative costs in the form of compensation and accounting fees and enabled the Administrator to improperly pay for other Estate expenses out of Corporation assets. The appropriate management of a closely held corporation upon the death of a shareholder requires the corporation to call a special meeting and vote to fill the vacancy caused by decedent’s death. The personal representative would vote on behalf of decedent’s shares and could vote for themselves to fill the vacancy if they are qualified to run the business. In this situation, the business assets would not become part of the estate; rather the shares would be inventoried and any dividends would be added to the estate. When the personal representative lacks the expertise to run the corporation, the personal representative would be under a duty to vote to appoint someone qualified to fill such vacancy. In this case, no special meeting was held and rather than having a vote to appoint someone, the Administrator unilaterally stepped in, without a court order or direction in a will and attempted to run the corporation. Unfortunately for the estate, the administrator was ill equipped to do so. While the Administrator was in charge of the corporation, the business accounting was entirely mismanaged. After the corporation was distributed to objector, she hired James Braun as an accountant for the Corporation. Mr. Braun estimates that it would cost approximately \$30,000.00 in forensic accounting fees to unwind the activity that occurred while the Administrator ran the business. While it was necessary for the corporation to do business to preserve the estate assets, it was not necessary or appropriate for the Administrator to do so given the fact that it was not competent to take such action. Administrator should not be compensated for its work associated with the corporation when it was not necessary for the administrator to perform services to preserve the estate and ultimately caused harm to the estate.

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3. **Objection 3:** Objector objects to the approval of the accounting on grounds that the Administrator employed an accountant to perform services that would normally be the Administrator's responsibility as the Administrator did not seek a corresponding reduction in compensation. Ordinary services by a representative include the preparation of the fiduciary accounting. If the representative chooses to employ an agent to perform services that are attributable to carrying out the representative's ordinary duties, the fees for those services will be charged against the representative's ordinary compensation. Preparing the fiduciary accounting is considered part of the representative's ordinary duties; therefore, if the representative hires an accountant to prepare the accounting, the accountant's fees will be paid from the representative's ordinary compensation. *Estate of Billings* (1991) 228 Cal.App.3d 426 (court ordered amounts payable to accounting firm for services normally part of representative's responsibility for ordinary services to be paid by representative from her statutory executrix's fees and reduced her compensation accordingly.) Administrator paid accounting fees in the amount of \$49,396.01. \$39,883.30 of those fees were incurred in connection with the corporation during the time period in which the corporation's accounting records are incomplete and "a mess". It appears the accountant hired by the administrator (Ms. Stevens) was paid for services from February 2011 – June 24, 2011 while failing to perform any accounting services during this time frame. Administrator's compensation should be reduced by the full amount Ms. Stevens was paid in connection with the corporation. Administrator paid Ms. Stevens \$9,485.71 to prepare the estate accounting. Therefore, Administrator's compensation should be further reduced by that amount. The total fees paid to Ms. Stevens is excessive and the administrator should not be awarded compensation where he appointed an agent to perform services and such services were performed poorly at great expense and at great cost to the estate.
4. **Objection 4:** Objector objects to the approval of the Accounting on the grounds that the Administrator fails to provide sufficient information to comply with Probate Code § 1062, which provides that the summary account shall be supported by detailed schedules showing receipts, which show the nature or purpose of each item, the source of the receipt, and the date thereof. The administrator has provided woefully insufficient information. Specifically, the administrator provides for corporation sales from 10/16/09 – 03/15/12 in a single line item which accounts for \$126,955.98. This entry is little more than a "fill" number. Administrator is required to show all receipts individually. This is particularly egregious since the administrator paid an accountant almost \$40,000.00 to track this information so it could be reported on the accounting. This entry is particularly concerning because it occurs during the time period Objector asserts employee embezzlement was occurring. As such, the accounting cannot be approved without providing further information.
5. **Objection 5:** Objector objects to the approval of the accounting on grounds that the administrator fails to provide sufficient information to comply with Probate Code § 1062 in that the administrator provides receipts for various income from 10/16/09 – 03/15/12 which account for \$5,574.41. This entry is little more than a "fill" number. Administrator is required to show all receipts individually. As such, the accounting cannot be approved.
6. **Objection 6:** Objector objects to the approval of accounting on grounds that the administrator allocates disbursements for rental property as a disbursement attributable to the corporation. Objector alleges that all of the disbursements on Schedule D described as "Repairs and Maintenance" associated with the corporation are actually expenses associated with the rental properties owned by the estate and not used by the corporation. The administrator also commingled corporate and rental transaction and activities in the bank account. Therefore, they are miscategorized. Objector requests that the court require the administrator account for each and every entry and confirm what the expenses were used for. This miscategorization is of particular concern because the corporation was distributed to the objector and real properties were distributed to the other beneficiary, Ruth Rios.

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7. **Objection 7:** Objector objects to the approval of the accounting on grounds that the administrator has failed to file any fiduciary tax returns. Objector's accounting, Mr. Braun has made repeated requests to see the estates fiduciary tax return. All such requests have been ignored. Objector believes that Ms. Stevens never filed such returns because she never prepared them. Paragraph 9 of the accounting, which is verified by the administrator, states that all California and Federal taxes have been paid. Until proof that the estate has filed is 1041 for each year required, the accounting cannot be approved.
8. **Request for Surcharge for Breach of Fiduciary Duty.** The objections to an account may raise claims of breach of the personal representative's duties, and the objector may seek appropriate redress. (Probate Code § 11001.) The personal representative has a duty to use ordinary care and diligence in controlling, managing, protecting, and preserving the assets and collecting rents, issues, and profits. (Probate Code §§ 9600, 9560.) The Administrator breached its duty of care. An ordinary person does not run a business with such incompetence and significant funds can be lost to embezzlement without noticing and taking corrective actions. This did not preserve or protect the assets of the estate. Further, the records maintained by the administrator make it impossible for the corporation to determine its income and loss because it is not possible to determine the costs of goods sold or the basis in its remaining assets. The estate is entitled to the value of the loss, with interest, resulting from the administrator's breach (Probate Code § 9601). The probate court has broad authority to fashion an appropriate remedy for a breach of duty. Monetary liability arising from a fiduciary's breach of duty may be charged against the fiduciary's compensation (Probate Code § 12205). Objector requests that the fiduciary's statutory compensation be reduced to zero and the administrator be surcharged in amount to be determined at an evidentiary hearing for its breach of its fiduciary duty in the management of the corporation.
9. **Request for cost and attorney's fees under common fund doctrine.** When a benefit has been conferred on an estate by the creation or protection of a common fund, it is possible to seek reimbursement from that fund. *Estate of Stauffer* (1959) 53 Cal.2d 124,132. If objectors objections are granted, the estate will be preserved by preventing unwarranted extraordinary compensation to be paid, the Administrator's statutory compensation will be reduced by the amount paid to the administrator's accountants, and the statutory compensation will be surcharged for Administrator's breach of duty of care. This will protect the estate and create a common fund. Objector should be entitled to reimbursement from such fund.

Objector requests that:

1. The Administrator's request for extraordinary compensation be denied on grounds it did not comply with Rule of Court 7.702;
2. The Administrator's request for \$26,867.04 in extraordinary compensation for running the corporation be denied;
3. The Administrator's statutory compensation be reduced by \$49,396.00, which is the amount paid to the accountants to perform the Administrator's normal duties;
4. The Administrator's Accounting be denied for failure to provide sufficient information on Schedule A;
5. The Administrator's accounting be denied for improperly categorizing disbursements for rental properties as corporation disbursements;
6. The Administrator's account be denied for failing to file the required state and federal tax returns;
7. That the Administrator be surcharged for breaching its duty of care in an amount to be determined at trail; and
8. Objector recover costs and attorney fees (based on the common fund doctrine) from the estate.

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Declaration of James P. Braun, CPA/ABV/CFF filed 01/18/13 states:

1. He was hired by Sylvia Bise on 06/24/11 to provide accounting services for Bise Furniture (the "Corporation"). He has been working to file delinquent corporate tax returns for the Corporation. Mr. Braun states that he has been unable to complete the tax filings because he cannot determine the corporate tax basis in its inventory or the cost of goods sold which is a starting point for equity. This is the result of poor bookkeeping by the Corporation's previous accountant, Theresa Stevens, CPA and by the estate administrator, the Public Administrator, who was ultimately responsible for the Corporation.
2. It took many months and multiple requests to obtain the source documents from Ms. Stevens. To date, Mr. Braun states that he still has not received all of the documents requested including the analysis of the shareholder loan account for the Corporation which appears to have been misused.
3. Upon reviewing the source documents which were provided, Mr. Braun states that he is lacking documents in the following areas: inventory, cash, and fiduciary tax filings.
4. The inventory records received contain only a hand written list of inventory at the end of the fiscal years. In addition, no purchase journals were received.
5. In the area of cash, the payments received by the Corporation in cash appear to have been placed in the store cash drawer. Mr. Braun states that he was not provided with the majority of the petty cash logs showing the dates the cash was received and expenses paid from the till. Also, according to daily cash logs, rental income payments were recorded even though the business does not own any rental property.
6. The corporation's financial transactions were managed through the Public Administrator's account. In this account, there are a number of rental transactions commingled with the store operations transactions even though the Corporation owns no rental property.
7. Mr. Braun has not undertaken a forensic accounting to determine whether money was embezzled from the Corporation. However, he is informed that the corporate employees believe that embezzlement occurred. Based on the information he has seen and in his experience in conducting forensic accountings, he estimates such work to cost approximately \$30,000.00.
8. Ms. Stevens was paid for accounting services through the date of her termination on June 24, 2011. The books received from Ms. Stevens had not been updated since February 2011. In addition, Ms. Stevens turned over a large pile of original records that she had never dealt with prior to her termination. It appears Ms. Stevens was paid by the Administrator for services she never performed.
9. Ms. Stevens also ran the rental activity through the Corporation on tax returns. She did this through misusing the shareholder loan account. The misuse of the shareholder loan account begins immediately upon Ms. Stevens being retained by the Administrator.
10. Mr. Braun is aware of no fiduciary tax returns being filed during the course of the administration. He has repeatedly requested copies of such returns, and Ms. Stevens will not provide them. Thus he believes they were never filed.
11. IRS Form 1041 needs to be prepared and filed for the time period Ms. Stevens was the estate's accountant. Mr. Braun does not believe Ms. Stevens ever elected a tax year for the estate. Because Ms. Stevens has provided no 1041, it is believed that no such filings have ever been made by the estate.