1 Bettie Lee Jensen (Estate) **Case No. 12CEPR00593**

Atty Magness, Marcus D. (for William V. Jensen – Trustee – Petitioner)

Petition for Instructions to Interpret and Divide Trust and to Approve Sale (PC 17200)

DOD: 1-15-01		
	Aff.Sub.Wit.	
✔	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✔	Notice of Hrg	
✔	Aff.Mail	w
	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	

WILLIAM V. JENSEN, Trustee of the BETTIE L. JENSEN TESTAMENTARY TRUST ("Bettie's Trust"), is Petitioner.

Petitioner states Bettie's Trust owns 233 1/3 shares of the voting common stock of Robert V. Jensen, Inc., a California corporation, and a 1/3 (33.333%) general partnership interest in Jensen & Sons Enterprises, a California general partnership (the "Family Businesses").

Bettie was survived by two children: William (Petitioner) and Michael. Michael has recently retired and William and Michael entered into a Purchase Agreement dated 5-1-12 which provides for William to buy out Michael's interest in the Family Businesses in two phases. In the first phase, which has been completed, William purchased the interests, among other assets, owned directly by Michael.

In the second phase, William would purchase the ½ of the interests in the Family Businesses that are held for the benefit of Michael. Under the terms of the trust instrument, the proceeds of such sale would then be distributed to Michael and Michael's and his issue's interest in Bettie's Trust would terminate.

To accomplish this, Bettie's Trust is to be divided into two trusts: one fbo William, and one fbo Michael. Each would become the trustee of his own trust. Bettie's Trust would distribute ½ of the interests it holds in the Family Businesses to each trust, and the interests received by Michael's Trust would be subject to an obligation to sell such interests to William.

The Purchase Agreement requires William to file this petition for court approval of the division of Bettie's Trust and approval of the sale of the interests that will then be held by Michael's Trust upon the terms and conditions in the Purchase Agreement.

However, Petitioner is in doubt concerning the construction of Paragraph C.2. of the Judgment and hereby requests that this Court determine its meaning pursuant to Probate Code §17200 and *Truang v. Baxter* (1962) 207 Cal.App.2d 818.

SEE PAGE 2

NEEDS/PROBLEMS/COMMENTS:

Note: The Court has assigned this petition and all further filings regarding this trust matter a separate case number from the Estate pursuant to Local Rule 7.1.2.

Estate: 01CEPR00119
Trust: 12CEPR00593

1. **The Purchase Agreement referenced is not attached.**
2. **The proposed order does not appear to include interpretation of Paragraph C.2. of the Judgment as requested. It only addresses compliance with the Purchase Agreement, but does not appear to include the detail requested in the prayer with regard to that matter. Need clarification.**
3. **Need new Order pursuant to Local Rule 7.6.1. The Order must be complete in itself – the terms of the newly created trusts should be set forth in the order; the Purchase Agreement should be attached if referenced; and the Order should include all matters addressed by the Court in the prayer.**

Reviewed by: skc

Reviewed on: 7-5-12

Updates:

Recommendation:

File 1 - Jensen

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

Petitioner states Paragraph C.2. of the Judgment (page 5, lines 11-20) governs distributions from Bettie's Trust. The first sentence provides that the Family Business interests held by Bettie's Trust are to be held fbo William and Michael. The last sentence provides that upon William's death, ½ of the trust estate is to be distributed to William's issue and the other ½ to Michael, or his issue. Thus, it appears that Bettie's intent was to allow William to manage the Family Business during his lifetime, with both receiving all the benefits; but on William's death, Michael would receive his share outright. Only after William died would his issue receive a benefit. Michael's issue would receive a benefit only if Michael predeceased William.

However, the sentences between the first and last sentences in this paragraph create an ambiguity. These sentences state that half of the income received by the Trustee from the Family Businesses is to be "Distributed to Michael R. Jensen <u>or his issue</u>." If an interest in the Family Businesses is sold by the Trustee, then half of the proceeds is to be distributed "to William V. Jensen <u>or his issue</u>" and the other half "to Michael R. Jensen <u>or his issue</u>."

Read literally, the Trustee would have discretion to make distributions of income and principal to persons other than William and Michael during their lifetimes. But such an interpretation is contrary to the express statement that the trust estate is to be held fbo William and Michael <u>only</u>.

Probate Code §21120 requires that words of an instrument are to receive an interpretation that will give every expression some effect; rather than one that will render any of the expressions inoperable. In order to carry out Bettie's testamentary intent, Petitioner believes that his issue would receive distributions only after his death. Similarly, Michael's issue would receive distributions only after Michael's death, and then only if Michael predeceased William. Otherwise the language in Paragraph C.2. would be meaningless.

Petitioner requests that this Court interpret Paragraph C.2. of the Judgment accordingly, and also requests that this Court issue an order dividing Bettie's Trust into two trusts as described above. Petitioner states that except for revisions regarding the above ambiguity, the Judgment would apply equally to both trusts.

Petitioner states the Purchase Agreement was thoroughly negotiated and entered into willingly by both parties, who were represented by counsel during negotiations, and the proposed transaction is in the best interests of the trust's beneficiaries. William wants to be able to continue operating the Family Businesses and Michael wishes to sell his interests and retire. Upon completion of the second phase of the transaction, the newly created trust fbo Michael will terminate and proceeds be distributed to Michael.

Petitioner requests and Order:

1. Interpreting Paragraph C.2. of the Judgment as described above;
2. Dividing Bettie's Trust into two trusts as described above;
3. Instructing William to distributed the interests in the Family Businesses held by Bettie's Trust equally to the Trustee of William's Trust and, subject to the obligation to sell such interests under the Purchase Agreement, to the Trustee of Michael's Trust;
4. Approving the Purchase Agreement and authorizing and directing the Trustee of Michael's Trust to fulfill its obligations thereunder.; and
5. For such other and further orders as the Court determines just and necessary.

2 Maria DeJesus Vaughn (Estate) Case No. 0547150

Atty **Kruthers, Heather H., of County Counsel's Office (for Public Administrator)**
Atty **Walker, Keith S. (of Claremont, *formerly for* Nitza Peña, Administrator)**

Probate Status Hearing Re: Filing of Inventory and Appraisal and Filing of First Account or Petition for Final Distribution

DOD: 6/12/1995		
Cont. from:		
	Aff.Sub.W	
	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	
	Aff.Mail	
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv	
	Conf. Screen	
	Letters	051612
	Duties/S	
	Objection	
	Video Receipt	
	CI Report	
	9202	
	Order	
	Aff. Post	
	Stat Rpt	
	UCCJEA	
	Citation	
	FTB Notc	

PUBLIC GUARDIAN was Court-appointed as Administrator of the Estate on 5/9/2012, following removal of the former Administrator, **NITZA PEÑA**, (niece). *Letters* with Full IAEA Authority issued to the Public Administrator on 5/16/2012.

Case Background:

NITZA PEÑA was appointed Administrator with **Limited IAEA** on 12/6/1995 with bond fixed at **$20,000.00**.

***Proof of Bond* posted in the amount of $20,000.00** was filed on 12/15/1995, and *Letters* issued on that date.

The *Inventory and Appraisal* was due on 3/15/1996. The first account or petition for final distribution was due on 12/15/1996.

Following a long history of Court notices to Attorney Keith Walker for status hearings regarding failure to file the inventory and appraisal and failure to file a first account and petition for final distribution, and after the most recent hearings on the status of the estate and on Attorney Keith Walker's *Petition for Family Allowance* filed by him on 3/20/2011, the **Court determined as follows per *Minute Order* dated 5/9/2012 from the last hearing, which states:**

- Mr. Walker is appearing via conference call. The Court removes Keith Walker as counsel.
- Additionally, the Court removes Nitza Pena as the administrator and appoints the Public Guardian.
- Mr. Walker is directed to provide the necessary information to the Public Guardian.
- *Petition for Family Allowance* is denied.

~Please see additional page~

NEEDS/PROBLEMS/COMMENTS

Notes:

- Initial *Petition for Probate* filed on 10/31/1995 lists 7 children of Decedent who appear to have been sent no further notice of any proceedings in this matter since the *Notice of Petition to Administer Estate* filed on 11/8/1995.
- *Minute Order* dated 3/21/2012 directed counsel (Attorney Keith Walker) to put the bonding company on notice. Attorney Walker filed on 5/4/2012 proof of notice to a **different bonding company** than the one that issued the **$20,000.00** bond on 12/15/1995.
- An *Amended Creditor's Claim* was filed in this case on 6/21/1996 by Valley Medical Center [now Community Medical Center] for **$198,043.68**.

Reviewed by: LEG
Reviewed on: 7/5/12
Updates:
Recommendation:
File 2 - Vaughn

Case chronology – Notes from the previous status hearings:

- ***Proof of Service by Mail – Failure to File Inventory and Appraisal* was filed on 5/20/1996** indicating the notice of failure to file an inventory and appraisal, a first account or petition for final distribution was mailed to Attorney Keith Walker on 5/20/1996.
    - Court file contains no record of any response by Attorney Walker to this notice (no hearing date was set by the Court; notice was a courtesy to Attorney.)
- ***Notice of Status Hearing* filed on 7/28/2010 set a status hearing on 9/9/2010** for failure to file the inventory and appraisal, and failure to file a first account or petition for final distribution. *Clerk's Certificate of Mailing* shows the *Notice* was mailed to Keith S. Walker on 7/28/2010.
- ***Minute Order* dated 9/9/2010 [Judge Gallagher]** states Attorney Walker represents to the Court that he lost contact with his client for a period of time but has now obtained a current address and should be able to close the estate quickly as the property has been lost. If the accounting is filed, no appearance is necessary on 12/6/2010.
- ***Minute Order* dated 12/06/10 [Judge Hamlin]** states Attorney Walker states his intention to file a Petition to Set Aside in this matter and requests a continuance. If said petition is filed, then no appearance is necessary on 1/27/2011.
- ***Minute Order* dated 1/27/2011 [Judge Oliver]** states Counsel is directed to file the inventory with the petition. If filed by 4/6/2011 and reviewed by an examiner no appearance will be necessary.
- ***Minute Order* dated 4/6/2011 [Judge Oliver]** states Mr. Walker is appearing via conference call. Counsel advises the Court that he has managed to re-establish contact with his client and has made contact with an attorney in San Diego. Counsel further advises that he will be filing a Petition for Family Allowance.
- ***Minute Order* dated 6/7/2011 [Judge Oliver]** states Mr. Walker is appearing via conference call. Counsel requests a continuance. Matter continued to 9/6/2011.
- ***Minute Order* dated 9/6/2011 [Judge Oliver]** states Keith Walker states that he has had a medical procedure keeping him away from court. Mr. Walker requests a continuance, stating, for example, a pending creditor's claim. The Court notes the creditor's claim and understands the matter will be finished at the next court hearing of 11/8/2011.
- ***Minute Order* dated 11/8/2011 [Judge Oliver]** states Mr. Walker is appearing via conference call. Mr. Walker informs the Court that he has the Petition for Family Allowance largely prepared, but needs a continuance due to medical issues. Matter continued to 12/13/2011.
- ***Minute Order* dated 12/13/2011 [Judge Oliver]** states Mr. Walker appears by CourtCall. Mr. Walker advises the Court that he should have the petition filed by the end of this year.
- ***Minute Order* dated 2/8/2012 [Judge Oliver]** states Keith Walker appears via Courtcall. Court orders Mr. Walker and Ms. Pena to personally appear if the Inventory and Appraisal is not filed by the next hearing on 3/21/2012.
- ***Minute Order* dated 3/21/2012 [Judge Oliver]** states Mr. Walker is appearing via conference call. The Court directs counsel to put the bonding company on notice. The matter is continued to 5/9/2012. The Court orders that the hearing currently set for 5/3/2012 be vacated and rescheduled for 5/9/2012.

~Please see additional page~

The following issues were previously raised to be addressed by Attorney Keith Walker:

1. *Proof of Service by Mail* of the *Notice of Hearing* filed on 5/4/2012 shows notice was mailed on 4/24/2012 to American Contractors Indemnity Company in Los Angeles. *Proof of Bond* filed 12/15/1995 indicates **Highlands Insurance Company** is the bond company that issued the **$20,000.00** bond to Petitioner. Further, Highlands Insurance Company filed on 10/5/2001 a *Notice of Change of Address* indicating an address in Van Nuys. Need explanation as to the reason American Contractors Indemnity Company was sent notice, and/or proof that American Contractors Indemnity Company issued and currently holds the **$20,000.00** bond to the Petitioner, or proof of service by mail of notice to Highlands Insurance Company, Southern California Bonding Service, Inc., **per Court records indicating that Highlands Insurance Company issued the $20,000.00 bond to Petitioner**.
2. *Final Inventory and Appraisal* filed on 3/20/2012 does not comply with Probate Code § 8802 which provides the inventory and appraisal shall separately list each item and shall state the fair market value of the item at the time of the Decedent's death. *Final Inventory and Appraisal* filed on 3/20/2012 shows an estate value of **$9,080.37** cash. However, this value appears not to reflect a correct estate value as of the date of Decedent's death of 6/12/1995, based upon the following:
   a. Initial *Petition for Probate* filed 10/31/1995 indicated an estimated value of the estate of **$62,000.00, consisting of real property ($42,000.00) and personal property ($20,000.00);**
   b. *Order for Probate* filed 12/6/1995 fixed bond at **$20,000.00**; proof of bond was filed 12/15/1995, and *Letters* issued on that same date;
   c. Administrator Nitza Pena was authorized for **Limited IAEA Authority only**.
3. Need petition for final distribution pursuant to Local Rule 7.5(B) and (C).

3 Arbie Neal (CONS/PE) **Case No. 08CEPR00244**

Atty Kruthers, Heather H. (for Public Guardian – Conservator – Petitioner)

(1) Second Account Current and Report of Conservator and (2) Petition for Allowance of Compensation to Conservator and Attorney and (3) for Continued Dispensation of Further Accounts

Age: 97		
DOB: 7-15-15		
	Aff.Sub.Wit.	
✓	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	w
	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	

PUBLIC GUARDIAN, Conservator, is Petitioner.

Account period: 4-15-09 through 4-14-12

Accounting: $ 75,086.72
Beginning POH: $ 3,866.75
Ending POH: $ 3,813.19

Conservator: $2,157.20 (14.95 Deputy hours @ $96/hr and 9.50 Staff hours @ $76/hr, itemized)

Attorney: $3,000.00 (per local rule)

Bond fee: $75.00 (ok)

Petitioner requests that due to the insufficiency of the estate to pay the fees and commissions that a lien be imposed against the estate for any unpaid balances of the authorized fees and commissions.

Petitioner state the estate continues to meet the conditions for dispensation of further accounts pursuant to Probate Code §2628 and requests continued dispensation of further accounts.

Petitioner prays for an order:

1. Approving, allowing and settling the account;
2. Authorizing the conservator and attorney fees and commissions;
3. Payment of the bond fee;
4. Imposing a lien against the estate for any authorized compensation to Petitioner and attorney which remains unpaid due to the insufficiency of the estate; and
5. Continued dispensation of further accounts.

NEEDS/PROBLEMS/COMMENTS:

<u>Note</u>: Petitioner state that although accounts were dispensed with as part of the Order Settling the First Account filed on August 12, 2009, the Conservatee's funds have built up such that she will lose Medi-Cal if current fees are not paid or she is spent down unnecessarily.

Reviewed by: skc

Reviewed on: 7-5-12

Updates:

Recommendation:

File 3 - Neal

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

4 Minnie Pearl Percy (Estate) Case No. 08CEPR00685

Atty **Kruthers, Heather H., of County Counsel's Office (for Petitioner Public Administrator)**

Petition for Court Authorization to Sell Real Property of the Estate (Prob. C. 10589)

DOD: 5/21/2008		
Cont. from 052312		
	Aff.Sub.Wit.	
✓	**Verified**	
✓	**Reappraisal**	
	PTC	
	Not.Cred.	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	W/
	Aff.Pub.	
✓	**Sp.Ntc.**	W/
	Pers.Serv.	
	Conf. Screen	
	Letters	013009
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
✓	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

PUBLIC ADMINISTRATOR, Successor Administrator appointed with full IAEA on 1/30/2009, is Petitioner.

Petitioner states:

- Petitioner proposes to sell the only estate asset consisting of Decedent's **100% interest** in real property located on 231 F Street, Fresno;
- The three-bedroom one bath home located on the property is in poor condition and sits across from a freeway; the walls have holes and mold, and the house exterior has a crack; the basement is flooded and smells of mold and mildew; repair estimates are **$5000 to $10,000** for foundation repair, **$1800** for interior and exterior painting, and **$2,500** for roof repair;
- Petitioner has no money with which to repair this sole estate asset to prepare it for sale;
- The *Reappraisal for Sale* requested by Petitioner resulted in a valuation of **$27,000.00** by the Probate Referee (filed on 3/24/2010);
- The highest offer for the property when listed was received from **GWENDOLYN MAYFIELD**, Decedent's daughter and current occupant of the residence, in the amount of **$22,500.00**, which was accepted on 3/1/2012;

~Please see additional page~

NEEDS/PROBLEMS/COMMENTS:

Continued from 5/23/2012. *Minute Order* states Ms. Smith is appearing specially for Heather Kruthers who is requesting a three week continuance. Matter continued to 7/11/2012.

Note: Two *Creditor's Claims* were filed by the Dept. of Health Care Services on 4/26/2010 in the amount of **$43,745.13**, and on 4/23/2010 in the amount of **$2,899.48**.

Reviewed by: LEG

Reviewed on: 7/5/12

Updates:

Recommendation:

File 4 - Percy

Petitioner states, continued:

- A *Notice of Proposed Action* was mailed, and before the 3/20/2012 date for the proposed action, an objection was received by County Counsel in a phone call from **WILLIAM CHARLES WORTHAM**, one of Decedent's sons; his objection was not to the price, but rather that it was being sold to his sister;
- Because of the objection that was made, the sale cannot be completed without a hearing and order of the Court pursuant to Probate Code § 10589;
- The CA Dept. of Health Services has a lien on the estate, and all residual proceeds of the estate will go to pay the Decedent's medical expenses that had been paid by the estate;
- There will be nothing left to distribute to any of the heirs [Decedent's 8 children];
- Petitioner therefore requests to proceed with the sale as follows:
    - Gwen Mayfield to take title as her sole and separate property;
    - **6%** commission in the amount of **$1,350** to be split between buyer's and seller's agents;
    - Property sold on "AS IS" basis except as to title and is to be a cash sale.

Petitioner prays for an order that the Court authorize Petitioner as Successor Administrator of the estate to sell the real property to Gwen Mayfield for $22,500.00.

5A Julia B. Fly (CONS/PE) Case No. 08CEPR00917

Atty Motsenbocker, Gary L., sole practitioner (for Petitioner Public Guardian, Conservator)
Atty Knudson, David, sole practitioner (for Respondent Virginia Greggains, daughter)
Atty J. Stanley, Teixeira, sole practitioner (Court-appointed for Conservatee)

Status Re: (1) Petition Requesting Relief for Breach of Fiduciary Duty; and (2) for an Accounting and (3) for Conversion of Personal Property and (4) for Elder Abuse and (5) for Damages

Age: 89 years
DOB: 8/11/1922

Cont. from 021612, 041712, 050912

	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	W/
✓	Summons	
✓	Sp.Ntc.	W/
✓	Pers.Serv.	W/
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

PUBLIC GUARDIAN, Conservator of the Person and Estate, is Petitioner.

Petitioner states:

- The Conservatee was at all relevant times a dependent adult under the care, custody and control of Respondent, **VIRGINIA "GINGER" GREGGAINS**, daughter;
- The Conservatee was not competent or capable of handling her personal finances or financial affairs and was entirely dependent upon Respondent to do so for her;
- Respondent had a confidential relationship with the Conservatee and her husband, **ELMER FLY** (DOD 11/8/2008), as their child;
- Petitioner alleges Respondent was responsible in some manner for the occurrences alleged herein and the damages proximately caused thereby;
- Elmer and the Conservatee executed a **DECLARATION OF TRUST, ELMER V. AND JULIA B. FLY**, naming Respondent as Successor Trustee; the Trust was amended several times, the latest being the *Third Amendment* dated 3/24/2008 *(copy of Restated Trust and two subsequent amendments attached as Exhibits A, A-1 and A-2)*; Petitioner has no knowledge if there was an intervening amendment between the *Restatement of Trust* dated 9/25/2000 and the *Second Amendment* dated 2/7/2008;

~Please see additional page~

NEEDS/PROBLEMS/COMMENTS:

Page 5B is *Second Account Current and Report of Conservator, etc.* filed 2/14/2012 by Public Guardian.

Page 5C is *Petition for Confirmation of Actions of Attorney-in-Fact, Response to Petition Requesting Relief for Breach of Fiduciary Duty, for an Accounting, etc., and Objection to Second Account of Conservator* filed 3/26/2012 by Virginia Greggains.

Continued from 5/9/2012. *Minute Order* states Mr. Knudson informs the Court that he believes they have a settlement. Mr. Knudson requests a continuance. Matter continued to 7/11/2012.

Reviewed by: LEG
Reviewed on: 7/5/12
Updates:
Recommendation:
File 5A - Fly

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

Petitioner states, continued:

- Respondent has been the sole Successor Trustee of the Trust since December of 2007 or early 2008, and she acted in several matters on behalf of the Conservatee and Elmer using General Durable Powers of Attorney *(copy attached as Exhibit B);*
- Petitioner possesses certain transactional documents and forms which Respondent signed in her capacity as "power of attorney in fact" in which she indicated she held the power for both Conservatee and Elmer, and these transactional documents conclusively establish that Respondent was acting in a fiduciary capacity for Conservatee;
- Petitioner possesses copies of a number of checks written on an account in the names of Conservatee, Elmer, and Virginia "Ginger" Greggains (Respondent); the transactions in this account are the prime source of a number of questionable expenditures made by Respondent from Consevatee's funds; the address on the checks is the personal residence of Respondent; a number of checks were written, signed and made payable to Respondent as well as to Respondent's husband, **STEPHEN ROY GREGGAINS**, each in the amount of **$5,000.00**;
- In early 2008, Respondent contacted **SOUTAS & ASSOCIATES**, a firm engaged in Medi-Cal planning services, and in connection with the consultation, Respondent agreed to purchase an annuity on behalf of Conservatee and signed an application for an annuity with OM Financail Life Insurance on 5/29/2009 of **$159,983.79**;
- On the annuity application, Respondent stated Conservatee held cash and investment accounts valued at **$357,000.00**; the application contains handwritten entries detailing **$82,000** in "Investment Experience and Holdings," **$200,000** in "Money Market" accounts, and **$75,000** in "Other Mutual Funds" accounts;
- As of 9/12/2008, the date of **PUBLIC GUARDIAN'S** appointment as temporary conservator, Respondent surrendered **~$231,000.00** in accounts, and it appears that **$120,000.00** in cash and investments accounts asserted to have existed by Respondent in May 2008 is missing;
- **Respondent should be ordered to account for all of the cash and investment accounts held by Conservatee from 12/1/2007 to the date Respondent surrendered the assets in her possession to the Public Guardian;**
- Respondent arranged for the removal and disposition of jewelry, motor vehicles, household furniture and furnishings, and several personal property items belonging to the Conservatee contained in her personal residence, in anticipation of the sale of the residence by Respondent; Petitioner alleges Respondent personally took and/or made gifts to family members of a number of the items from the residence, she sold some of the personal property at several yard sales, and she did not account to the principals for any of the proceeds or disposition of the items;
- Petitioner alleges that Respondent made gifts of motor vehicles that belonged to the Conservatee to family members without consideration; she removed and disposed of a number of plants growing on the residential property of Conservatee which are believed at the time to be worth thousands of dollars; she used funds belonging to the Conservatee to purchase and make improvements on her own residence, to make the down payment on a personal vehicle for herself, and to pay off a personal loan that she and her husband owned on a travel trailer;
- The Conservatee's financial status at present is tenuous at best; her annuity payments and monthly income are sufficient to fund her care for ~2 years; Petitioner has been unable to modify the annuity payments from the original terms to allow monthly payments, which combined with her income would sustain payments of **$5,625.00 per month** to her residential facility; it is anticipated that additional funds will be necessary to sustain the Conservatee in her present environs.

~Please see additional page~

Petitioner states, continued:

Causes of Action:

1. **Breach of Fiduciary Duty:** Respondent as Successor Trustee owed a fiduciary duty to the Petitioner and Respondent had a duty to exercise the utmost care, integrity, honesty and loyalty in her dealings with Conservatee's property in her capacity as attorney in fact for Conservatee or in her capacity as trustee of Conservatee's Trust; in breach of her fiduciary duty, Respondent deposited Trust funds into her own personal account; she took Conservatee's funds and used them for her own benefit, she took possession of Conservatee's personal property and the proceeds from sale of such property and converted those funds to her own use; the actions of Respondent accrued to the detriment of the Conservatee; Respondent know or should have known that her acts would accrue to the detriment of the Conservatee and that she did all of these acts in patent "bad faith" with the intent of depriving the Conservatee of her property without good and sufficient consideration and in violation of her duty to the Conservatee;
   - Respondent has not rendered an account of her administration of the personal property and funds of Conservatee as required by law, and has not accounted to Conservatee or her legal representative for her actions as to the Conservatee's assets and their disposition; she has provided inaccurate and incomplete information regarding the assets taken for her benefit; **Petitioner requests the Court order Respondent to render a verified detailed account of her handling of the financial and personal affairs of the Conservatee from 12/1/2007 to the present and to serve that account to Petitioner within 90 days of the hearing.**
   - Respondent owed the Conservatee a duty to act in scrupulous good faith and absolute candor; Respondent breached her fiduciary duty to the Conservatee by failing to preserve the Conservatee's property, failing to deal impartially with the Conservatee's assets, failing to administer the affairs in Conservatee's best interest, failing to keep the Conservatee and her representatives reasonably informed, failing to keep Conservatee's property separate from her own property, converting Conservatee's property to her own use and enjoyment, and failing to maintain cash held on behalf of Conservatee in interest bearing accounts; Respondent should be ordered to respond in damages for each and every breach of fiduciary duty, wrongful act and/or both as provided for in the law;
   - Respondent's acts in this mater constitute breach of fiduciary duty, as she engaged in self-dealing, she breached her duties of loyalty and impartiality, and all acts of Respondent alleged herein were patently unfair and prejudicial to the interest of the Conservatee and her estate; Respondent failed to observe the directions and intent of the Settlors as expressed in their Trust, and all acts of Respondent in regards to the Trust were done "in bad faith" with intent to deprive Conservatee of property to which she is rightfully entitled and constitute breach of trust; **Petitioner alleges Conservatee is entitled to damages with interest as provided in the Code, or in the alternative that Respondent be ordered to pay damages in an amount equal to double the value of all property taken, concealed and/or disposed of by Respondent in bad faith according to proof.**
   - Petitioner alleges Respondent did all of the acts alleged with the intent to deprive the Conservatee of her property while she held a fiduciary relationship with Conservatee, and that any and all actions of Respondent were in violation of her fiduciary duty and **should be adjudged voided and set aside, and the assets or the value of the assets should be ordered returned and any loss incurred should be surcharged against Respondent.**

~Please see additional page~

Causes of Action, continued:

2. **Conversion:** The acts of Respondent as set forth constitute conversion of the Conservatee's property; Respondent without legal claim, privilege or right seized and disposed of the tangible personal property of the Conservatee, the Conservatee and/or her estate sustained damages thereby equal to the value of the property at the time it was converted by Respondent; **Respondent should be ordered to respond in damages proximately caused by her actions.**

3. **Abuse of an Elderly Person:** For a time period to be proven at trial, but no later than December 2007, the Conservatee was elderly, suffering from diminished mental capacity and was easily subjected to be taken advantage of by designing persons such as Respondents; with knowledge of this, each Respondent schemed to take advantage of the Conservatee and intended to cheat her out of her interest in the property; in furtherance of said scheme, which each Respondent concealed from the Conservatee, each Respondent exercised complete dominion and control over the Conservatee's assets and gained knowledge of her assets and property; the conduct of each Respondent resulted in the deprivation of Conservatee's assets which are necessary for her care and ongoing maintenance;
   - The conduct of each Respondent constitutes financial abuse under Welfare & Inst. Code § 15657 as defined in § 15610.30; each Respondent is guilty of recklessness, oppression, and fraud, and acted with malice against the Conservatee in the commission of the abuse; the conduct of each Respondent was in no way for the benefit of Conservatee and was willful and wanton, and was intended to cause injury to her; **the Conservatee is entitled to an award of exemplary or punitive damages;**
   - **Under Welfare & Inst. Code § 15657(a), each Respondent is liable to the Conservatee for reasonable attorney fees and costs, including reasonable fees for the services of the Public Guardian, as Conservator of her Estate, and their attorney for his services provided to litigate this claim necessitated by conduct of each Respondent**.

4. **Constructive Trust:** Respondent Greggains and the unnamed Respondents each have wrongfully taken, transferred, concealed and otherwise deprived the Conservatee of funds and/or personal property which rightfully belongs to her, and they therefore have become the involuntary trustees of said property for the benefit of the Conservatee; **Respondents should be ordered to surrender and deliver said property to the Conservatee and/or the Petitioner, her legal representative.**

Petitioner prays the Court Order:

1. Respondent must render a detailed and correct account for all property held and administered by her, either as Trustee and/or as agent under her power of attorney within 90 days of the date of the initial hearing, for the period from 12/1/2007 to the date she surrendered the Conservatee's funds and property to the Public Guardian;
2. Respondent must respond in damages for all property taken and/or wrongfully appropriated by her, or for funds and/or property that is missing or unaccounted for, together with interest at the legal rate per annum, from the date of the breach of trust and/or fiduciary obligation;
3. Respondent must respond in damages together with interest at the legal rate per annum from the date of breach of trust and/or fiduciary obligation;
4. Respondent and the unnamed Respondents must respond in exemplary damages for their outrageous, reckless ness, oppressive, fraudulent and malicious conduct in this matter;

~Please see additional page~

Petitioner prays the Court Order, continued:

5. In the alternative, Respondents must respond in damages in an amount equal to twice the value of property taken, concealed and/or disposed of by her "in bad faith;"
6. Respondent and the unnamed Respondents must respond in actual damages caused to the Conservatee by their conversion of her tangible personal property;
7. Respondent and the unnamed Respondents are found guilty of elder abuse and are assessed all the damages afforded the Conservatee under the law, including actual damages, exemplary damages, and attorney fees and costs;
8. A Constructive Trust is imposed on all assets taken by the Respondent and the unnamed Respondents for any property and sums the Court determines are rightfully due the Conservatee for their wrongful conduct; and
9. Attorney's fees and costs of suit are awarded as provided for in the law.

5B Julia B. Fly (CONS/PE) Case No. 08CEPR00917

Atty **Motsenbocker, Gary L., sole practitioner (for Petitioner Public Guardian, Conservator)**
Atty **Knudson, David, sole practitioner (for Respondent Virginia Greggains, daughter)**
Atty **J. Stanley, Teixeira, sole practitioner (Court-appointed for Conservatee)**

(1) Second Account Current and Report of Conservator and (2) Petition for Allowance of Compensation to Conservator and Attorneys (Prob. C. 2620, 2623, 2640, 2942)

Age: 89 years
DOB: 8/11/1922

Cont. from 032712, 041712, 050912

	Aff.Sub.Wit.	
✓	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	W/
	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	

PUBLIC GUARDIAN, conservator, is petitioner.

Account period: 1/20/2010 – 1/19/2012

Accounting - **$313,100.83**
Beginning POH - **$287,627.99**
Ending POH - **$140,331.40**

Conservator - **$3,660.40**
(26.95 Deputy hours @ $96/hr and 14.20 Staff hours @ $76/hr)

Attorney (County Counsel)- **$690.00**
(4.6 hours @ $150/her)

Attorney (Motsenbocker) **- $6,863.83**
(25.50 hours @ $250/hr plus filing fee of $395.00 and Fed Ex copies of $93.83)

Bond fee - **$1,510.50**
(o.k.)

Petitioner prays for an Order:

1. Approving, allowing and settling the Second Account and Report of Conservator;
2. Authorizing conservator's compensation;
3. Authorizing payment of attorney fees;
4. Authorizing payment of the bond fee.

Court Investigator Jennifer Young's Report filed on 1/24/12 recommends the conservatorship continue as is.

NEEDS/PROBLEMS/COMMENTS:

Continued from 5/9/2012. *Minute Order* states Mr. Knudson informs the Court that he believes they have a settlement. Mr. Knudson requests a continuance. Matter continued to 7/11/2012.

Reviewed by: KT / LEG
Reviewed on: 7/5/12
Updates:
Recommendation:
File 5B - Fly

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

5C Julia B. Fly (CONS/PE) Case No. 08CEPR00917

Atty Motsenbocker, Gary L., sole practitioner (for Petitioner Public Guardian, Conservator)
Atty Knudson, David, sole practitioner (for Respondent Virginia Greggains, daughter)
Atty J. Stanley, Teixeira, sole practitioner (Court-appointed for Conservatee)

Petition for Confirmation of Actions of Attorney-in-Fact, Response to Petition Requesting Relief for Breach of Fiduciary Duty, for an Accounting, Etc., and Objection to Second Account of Conservator [Prob. C. 4541 et seq.; 1720 et seq; 850 et seq.; 16440(b) et seq; W & I Code 15657.5]

Age: 89 years
DOB: 8/11/1922

Cont. from 050912

	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	W/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

VIRGINIA GREGGAINS (aka "GINGER"), daughter, is Respondent.

Respondent states:

- She is the only child of Elmer and Julia Fly; prior to Elmer's death on 11/8/2008, he was under a conservatorship with the **PUBLIC GUARDIAN** as Conservator (Case 08CEPR00829), and those proceedings were concluded in 2010;
- Julia continues under conservatorship with the Public Guardian as Conservator of her person and estate;
- Elmer and Julia entered into a trust designated as the **ELMER V. AND JULIA B. FLY TRUST**, in which they declared they held various assets as Trustees;
- On 9/25/2000, Elmer and Julia executed an **AMENDED AND RESTATED DECLARATION** of the Trust *(copy attached as Exhibit A)*;
- On 2/7/2008, Julia as Trustor and Trustee signed a purported "Second Amendment" to the Trust *(copy attached as Exhibit A-1)*;
- On 3/24/2008, Attorney **MELISSA WEBB** with [Dowling Aaron], which firm drafted the Flys' restated Trust, met with Julia and at or following that meeting Julia individually and as attorney-in-fact for Elmer executed a "Third" Amendment to the Trust *(copy attached as Exhibit A-2)*;
- The Third Amendment reversed the dispositive provisions of the Second Amendment and remains the most recent amendment to the Trust;

~Please see additional page~

NEEDS/PROBLEMS/COMMENTS:

Continued from 5/9/2012. *Minute Order* states Mr. Knudson informs the Court that he believes they have a settlement. Mr. Knudson requests a continuance. Matter continued to 7/11/2012.

Reviewed by: LEG
Reviewed on: 7/5/12
Updates:
Recommendation:
File 5C – Fly

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

Respondent states, continued:

- Per the Restated Trust as amended by the Third Amendment, all assets are held in trust for the benefit of Elmer and Julia during their lifetimes and during the lifetime of the survivor; following Julia's death, the assets are to be distributed **½ to Ginger and ½ to the Settlor's three grandchildren, ERIC (RICK) GREGGAINS, JULIE BANKS and TINA COX in equal shares**;
- Trust provides that on failure of the initial Trustees Elmer and Julia to act as Trustees, Ginger was to act as Successor Trustee, and the original Trust named **JULIE BANKS**, granddaughter, as an alternate, while the Third Amendment named Ginger's spouse, **STEPHEN ROY GREGGAINS** (Roy) as alternate successor trustee to Ginger;
- On 3/21/2008, Julia also executed a General Durable Power of Attorney (POA) *(copy attached as Exhibit B)*, which designated Ginger as attorney-in-fact and Stephen as alternate agent;
- In December 2007, Elmer suffered a massive stroke and heart attack, and was moved several times to different care facilities due to his becoming violent and disruptive, and after a second heart attack, he was moved on 3/5/3008 to Alzheimer's Living Center at Elim ("Elim");
- In June 2008, after Julia's condition declined and was taken by ambulance several times to the hospital, she was required to live at Elim, as she could no longer live with Ginger and her husband in their home in the room they had prepared in August 2007 with safety rails and monitors for Julia and Elmer in the event they were no longer able to live independently;
- From the time of Elmer's hospitalization in December 2008, the family was constantly harangued by Ginger's daughter, **JULIE BANKS** and her husband **JOHN BANKS**, and they also had disrupted the living facilities, and had to be asked to leave or restricted from visiting Elmer and Julia at Elim;
- Elmer had asked John Banks after Elmer's hospitalization to remove guns from under Elmer's bed and put them in the gun safe at his residence; after the gun safe was checked at a later time, it was discovered the guns and **$5,000.00** cash in the safe was missing; this and the Banks' disruptive conduct caused Julia mental suffering and anguish;
- Ginger and her husband have at all times followed the advice of physicians, hospitals and care providers for the care of Elmer and Julia; Ginger's intent was always to keep them well cared for;
- As it became evident Elmer and Julia would not return to their own residence, Ginger and family members with concurrence of Julia began cleaning out the residence to prepare it for sale with proceeds to be used for their care if needed; 50 years of belongings were sorted through;
- Following Julia's hospitalization, Ginger paid Elmer and Julia's bills, as she was a joint account holder with Elmer and Julia that was previously established, and their monthly **$4,700.00** in social security and pensions was deposited into the account which was used to pay their bills;
- Ginger's action was taken first as daughter to provide care for her parents, and as attorney-in-fact under the POA; she did not specifically take actions as Trustee though she was designated successor trustee;
- **Medi-Cal planning to preserve assets**: Ginger sought advice regarding Elmer qualifying for Medi-Cal and the Elim staff referred her to **SOUTAS & ASSOCIATES**; Ginger followed their recommendations to qualify Elmer & Julia to receive Medi-Cal for their continuing care; Ginger was advised in order to qualify Elmer & Julia to move a substantial portion of their liquid assets, make certain pre-need arrangements, and that other funds could be transferred by gift in ways that would not cause ineligibility for Medi-Cal;

~Please see additional page~

Respondent states, continued:

- Julia agreed to the proposed plan and actions taken with her authorization included: prepayment of funeral expenses; payoff of loans, reimburse Ginger and her husband for remodeling expenses done for Elmer and Julia; purchase of annuity (**$159,983.79**); payment of expenses and transfer of funds; and gifting totaling **$87,000.00** in amounts not exceeding **$5,000.00** to family members *(during May, June and July 2008; please refer to summary of dates of gifts and donees attached as Exhibit C*);
- Gifts were made to Ginger her husband Roy (**$69,000**), Ginger's son Eric and his wife Trina (**$6,000**), Ginger's daughter, Tina and her husband Curtis (**$12,000**); because Julie Banks had removed herself from the family and adopted an adversarial position, Julie was not the recipient of any gifts;
- The funds gifted to Ginger and her husband were deposited into the account set aside for her parent's benefit at Washington Mutual and were used to pay certain expenses and costs; (*please refer to summary of transactions in the Washington Mutual account containing the $69,000 gifted funds to Ginger for the benefit of Elmer and Julia, attached as Exhibit E)*;
- Following appointment of Public Guardian as Conservator, the funds in the Washington Mutual account were transferred on 1/13/2009 to Deputy **YOUA HER** along with other accounts in Elmer and Julia's names; unfortunately, by transferring the funds back to Julia's name, the Flys no longer qualified for Medi-Cal;
- **Allegations regarding personal property:** In spring 2008, Ginger and family cleaned up the residence for sale, and held a yard sale where **$1,400** was received and paid to Eric and Tina and their spouses for the work in readying the property for sale; the payment of **$1,116** was for hauling away the remaining junk; this information is detailed in an email to Deputy Youa Her on 10/19/2008 *(copy attached as Exhibit G)*; Ginger was acting within her POA authority in taking these actions;
- The vehicles were a 1994 truck which was given by Elmer and Julia gave to their grandson Rick and Rick's wife Trina insisted on paying **$800.00**, and a check was given to Julia when she was managing her own finances; the 2004 Nissan Pathfinder was transferred to Trina in June 3008, as Julia signed it over to Ginger, but Ginger did not need it; the travel trailer acquired in 2006 for taking Julia and Elmer to Idaho had a loan balance due (purchase was made by turning in Ginger and Roy's own trailer as down payment) and per the Souta's recommendation the loan was paid off and trailer sold;
- Respondent (Ginger) is concerned that the Public Guardian's unwinding the annuity has been draining Julia's funds rather than having Julia's expenses paid in part by Medi-Cal, and that the funds will be dissipated more quickly than anticipated; Respondent has been advised that Elmer's pension could be received by Julia and provided this information to the Public Guardian, but they have failed to take action to secure these benefits;
- **Respondent's defense to the accusations of breach of fiduciary duty:** In all of Respondent's dealings she undertook whether under power of attorney or as trustee of her trust, she was in direct communication with her parents concerning the transactions; Julia was fully advised of the transactions and agreed to the gifts, to the Medi-Cal qualification and ratified the gifts and transactions taken on her behalf; Julia (the Conservatee) suffered no detriment as a result of the transactions and in fact Conservatee was benefited by enabling Medi-Cal qualification; at no time did Ginger act recklessly, wantonly or in bad faith, nor did she ever intend to deprive Julia of her property for any purpose; in all actions Ginger took on behalf of her mother and father, she acted with utmost good faith and fairness, with intent to enhance the quality of their living situation and to preserve their assets for their use; any actions taken were authorized under the POA, and all acts and transactions were reported to the Public Guardian Deputy Youa Her and information was fully and completely provided again and again;

~Please see additional page~

Respondent states, continued:

- If the Court determines that in some manner Respondent breached her fiduciary duty by an act not authorized by the trust, the POA or by express consent of Elmer or Julia, Respondent requests that any such breach be excused per Probate Code § 16440(b) such that the financial benefit accruing to Elmer and Julia exceeded any possible loss that might have arisen as a result of Respondent's actions which were taken reasonably and in good faith;
- **Conversion. Elder Financial Abuse. Constructive Trust**: Respondent denies that any of her acts as set forth in the petition with respect to Julia's property constitute conversion as claimed and denies any liability therefor; Respondent denies any financial elder abuse, as Julia did not suffer diminished mental capacity and remained aware of her financial affairs; Respondent has made it known to the Public Guardian that Julia was distraught over actions of harassment and physical and financial abuse by the Banks, but they have taken no actions to explore the charges; Respondent denies that she has wrongfully taken, transferred, concealed or otherwise deprived Julia of funds or personal property and denies she is the voluntary trustee of said property;
- **Respondent believes that Petitioner in bringing these allegations is bringing this petition in bad faith, despite having been in possession of the information set forth in this response, and the Public Guardian should be required to pay damages and attorney's fees to Respondent.**

Respondent's Objection to Petition and to Conservator's Second Account:

- Respondent renews her objection to the Conservator's Second Account that the Conservator has failed to obtain survivor's benefits due to the Conservatee from the Veteran's Administration;
- Respondent further objects to the bringing of the petition in that at all times since Petitioner's appointment as Conservator, Petitioner has been in possession of much of the information which is once again requested in the petition;
- Respondent further objects to the Public Guardian's petition to the extent that the account requests attorney's fees (which will further dissipate the estate) for the research and bringing of such a petition which will not benefit the Conservatee and will further reduce the assets available for her care, now that the Public Guardian has decimated the Medi-Cal planning that would have preserved assets for the Conservatee's benefit.

Respondent requests:

1. That the information set forth herein be accepted by the Public Guardian, and that upon its review the Public Guardian determine that Respondent has adequately and fully accounted for actions taken on behalf of Elmer and Julia Fly;
2. That the request of the Public Guardian for damages of any sort whatsoever be denied;
3. That the Court ratify, confirm and approve all acts taken by Respondent whether as attorney-in-fact under the POA or as trustee of the Elmer V. Fly and Julia Fly Trust as set forth herein; and
4. That the attorney's fees necessarily incurred by Respondent in responding to the allegations of the petition be paid by Petitioner.

6 Sylvia Dauer (CONS/PE) Case No. 08CEPR01182

Atty O'Neill, Patricia B. (for Renee Dauer and Marjorie Dauer-Piper – Co-Conservators – Petitioners)

First Amended Second Account and Report of Co-Conservators, Petition to Settle Account and for Allowance of Attorney's Fees

Age: 87		
DOB: 6-30-25		
	Aff.Sub.Wit.	
✓	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	w/o
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
✓	**CI Report**	
✓	**2620(c)**	
✓	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

RENEE DAUER, and **MARJORIE DAUER-PIPER**, are Petitioners. Petitioners are both granddaughters of the Conservatee and are Co-Conservator of the Person. Ms. Dauer-Piper is the sole Conservator of the Estate.

Account period: 3-1-10 through 2-29-12

Accounting: $ 112,487.11
Beginning POH: $ 81,461.11
Ending POH: $ 81,918.85 ($1,168.85 is cash, plus real property and misc. furnishings)

Conservators: Not requested at this time

Attorney: $1,195.00 ($800.00 plus $395 in costs, per itemization)

Petitioners state they are making progress cleaning out the Conservatee's former residence; however, this has taken more time than anticipated because the Conservatee was a "pack rat" to the point of being a hoarder. Petitioners expect to have the residence ready for sale within the next year; however, at this time it is not habitable. Neighbors keep an eye on the property for security.

Petitioners, along with their mother, each contribute $100/month to an account, from which certain expenses are paid that are not covered by the Conservatee's income. Petitioners will request reimbursement upon the sale of the residence.

Petitioners pray for an Order:

1. Approving, allowing and settling the account and all acts of the Co-Conservators;
2. Allowing Petitioners to change the beneficiary designation on certain life insurance policies to the Conservatee's estate;
3. Authorizing reimbursement to Petitioners and Mary Dauer for payments made from personal funds upon the sale of the residence and presentation of an accounting; and
4. Authorizing attorney fees and costs

NEEDS/PROBLEMS/ COMMENTS:

Note: Petitioners request to change the beneficiary designation on certain insurance policies from the Conservatee's deceased spouse to her estate was previously authorized by the Court pursuant to Minute Order 5-14-12.

Note: Petitioners indicate that they will request reimbursement for personal funds used upon the sale of the residence. Examiner notes that court authorization for sale must first be obtained pursuant to Probate Code §2540.

Reviewed by: skc

Reviewed on: 7-5-12

Updates:

Recommendation:

File 6 - Dauer

7 Jack Gerald Paxton (Trust) Case No. 08CEPR01218

Atty **Esraelian, Robyn L., of Richardson Jones & Esraelian (for Mary Ann Paxton, Trustee)**

Petition of Appointment of Successor Trustee to Fill Vacancy [PC 15660(d)]

DOD: 5/22/1985		
Cont. from		
	Aff.Sub.Wit	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	W/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/S	
	Objection	
	Video Receipt	
	CI Report	
	9202	
✓	Order	
	Aff. Post	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

MARY ANN PAXTON, surviving spouse and lifetime Beneficiary of the Testamentary Trust created under the Will of Decedent **JACK GERALD PAXTON** and established by *Judgment of Final Distribution on Waiver of Accounting* filed on 10/24/1988, is Petitioner.

Petitioner requests the Court appoint a Successor Trustee pursuant to Probate Code § 15660(d), based upon the following:

- The previous Successor Trustee, **TONI PAXTON**, daughter, who was appointed on 2/5/2009, died on 3/22/2012 (*please refer to copy of death certificate attached as Exhibit A*);
- As a result of the death of the Successor Trustee, there will be a vacancy in the position of Trustee;
- Petitioner nominates **JACK FORREST PAXTON**, son, as Successor Trustee (*please refer to nomination attached as Exhibit B*); Petitioner, as the current income Beneficiary of the Trust, consents to the appointment of Jack Forrest Paxton as Successor Trustee (*please refer to nomination attached as Exhibit C; refer also to Consent to Act as Successor Trustee signed by Jack Forrest Paxton attached as Exhibit D*);
- The remainder beneficiaries, having been provided with sufficient information to apprise them of the assets and expenses of the Trust continually throughout the term of the Trust, waive any rights they may have to an accounting of the Trust and waive their right to a statement of assets on hand by the former Successor Trustee; the beneficiaries consent to the appointment of Jack Forrest Paxton as Successor Trustee and waive any requirement of bond by him (*please refer to Waiver of Accounting and Waiver of Statement of Assets on Hand by Trustee; Waiver of Bond for Successor Trustee and Consent to Appointment of Successor Trustee attached as Exhibits E-1 through E-6);*
- Jack Forrest Paxton waives any right to compensation for his services as Trustee (*please refer to his signed waiver attached as Exhibit F; the consent and waivers signed by all Trust beneficiaries and attached as Exhibits E-1 through E-6 includes a statement that Jack Forrest Paxton as Successor Trustee is to serve without compensation for such services.)*

Petitioner requests:

1. The Court acknowledge the death of Toni Paxton;
2. That any accounting by Toni Paxton as Successor Trustee as required by law be waived;
3. That the Court appoint Jack Forrest Paxton as Successor Trustee to serve without compensation for such services, and that bond be waived as to him as Successor Trustee of the Trust.

NEEDS/PROBLEMS/ COMMENTS:

Note: *Petition* does not provide information regarding Trust beneficiary **SHARON ROBERTS**, sister, who was the initial Trustee and the Petitioner in the *Petition* filed 12/23/2008 to appoint Toni Paxton as Successor Trustee. Court may require confirmation from Petitioner that notice of these proceedings to Sharon Roberts is not necessary.

Reviewed by: LEG

Reviewed on: 7/5/12

Updates:

Recommendation:

File 7 - Paxton

8 Guillermo Mora Special Needs Trust Case No. 09CEPR00286

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

Atty Kruthers, Heather H., of County Counsel's Office (for Petitioner Public Guardian, Trustee)

Second Account Current and Report of Trustee; Petition for Allowance of Compensation to Trustee and Attorney

Age: 32 years		
DOB: 6/6/1980		
Cont. from		
	Aff.Sub.Wit	
✓	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	W/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/S	
	Objectio	
	Video Receipt	
	CI Report	
	9202	
✓	**Order**	
	Aff. Post	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

Public Guardian, Trustee appointed 11/2/2009, is Petitioner.

Account period: 12/24/2010 – 4/30/2012

Accounting - **$217,286.24**
Beginning POH - **$216,854.46**
Ending POH - **$194,967.04**
(all cash)

Trustee - **$761.60**
(6.35 Deputy hours @ $96/hr and 2.00 Staff hours @ $76/hr)

Attorney - **$1,000.00**
(less than per Local Rule 7.16 of $1,250.00 for timely filed subsequent account, cited by analogy to conservatorship fees)

Bond fee - **Waived**
(SNT beneficiary receives SSI benefits)

Petitioner prays for an Order:

1. Approving, allowing and settling the Second Account; and
2. Authorizing the trustee and attorney fees and commissions for services rendered during this account period.

NEEDS/PROBLEMS/COMMENTS:

1. *Schedule E(1) – Property on Hand* does not list the following personal property assets which *Disbursements Schedule C(8)* and *Schedule C(11)* indicate have been purchased by the Special Needs Trust (SNT), with title to be held in the SNT per Court order dated 4/21/2011:
   - Custom wheelchair purchased for **$8,113.00** on 5/6/2011;
   - Custom queen bed for **$1,250.00** purchased on 2/10/2011.

Note: Court may require current status report regarding the purchase of the 2010 Ford E150 van from Nor-Cal Mobility for **$44,858.82** as authorized by the Court per order signed 4/21/2011, with title to be held in the SNT; *Disbursements* schedule of this accounting does not list purchase of the van.

~Please see additional page~

Reviewed by: LEG
Reviewed on: 7/5/12
Updates:
Recommendation:
File 8 - Mora

Additional Page 8, Guillermo Mora Special Needs Trust, Case No. 09CEPR00286

Note: *Disbursements Schedule C(2)* indicates the SNT paid a **$10,000.00** down payment on a real property residence for the SNT Beneficiary and his mother, **ELISA MORA**, with the property title to be held in his mother's name, per the Court's orders signed 4/21/2011 and 2/14/2011.

Note: Charges section of the *Summary of Account* contains recording errors as to property on hand and receipts; however, examiner has re-calculated and reviewed the accounting taking into consideration the needed corrections.

Note: Court will set a status hearing for the next account in the following alternatives:

- **Friday, September 13, 2013 at 9:00 a.m. in Dept. 303** if a one-year accounting is required;
  OR
- **Friday, September 12, 2014 at 9:00 a.m. in Dept. 303** if a two-year accounting is required.

Pursuant Local Rule 7.5, if the next account is filed 10 days prior to the Court's selected date as noted above, the hearing will be taken off calendar and no appearance will be required.

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

9 **Charles E. Moore, Sr. (Estate)** **Case No. 10CEPR00435**

Atty **Goldman, Charles S. (of Bowles & Verna LLP, Walnut Creek, CA, for Petitioner Cindy Marie Moore Harvey)**

(1) First and Final Account and Report of Status of Administration; Petition for Settlement of Estate, (2) for Allowance of Statutory Attorneys' and Executor's Compensation, for Reimbursement of Costs Advanced, and (3) for Final Distribution (Prob. C. 10800, 10810, 10811, 12201)

DOD: 12-8-08		
	Aff.Sub.Wit.	
✓	Verified	
✓	Inventory	
✓	PTC	
✓	Not.Cred.	
	Notice of Hrg	X
✓	Aff.Mail	w
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
✓	Letters	11-10-10
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
✓	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
✓	FTB Notice	

CINDY MARIE MOORE HARVEY, Executor with Full IAEA without bond, is Petitioner.

Account period: Not specified

Accounting: $326,147.52
Beginning POH: $275,760.00
Ending POH: $122,376.45 (cash)

Executor (Statutory): $6,641.92

Attorney (Statutory): $6,641.92

Costs: $2,796.86 (filing, publication, telephonic appearances, probate referee, court copies, etc.)

Petitioner states the only asset of this ancillary probate was real property that has been sold and liquidated into cash. Decedent's will devises this property to Petitioner, Stanley Everett Moore and Paul E. Moore.

However, as this is an ancillary probate to the Primary Probate, Petitioner requests to distribute this estate to Petitioner, as personal representative of the Estate of the Decedent in the *Matter of Chalres Eugene Moore, Sr.,* in the Probate Court of the County of Lexington, State of South Carolina, Case No. 2009ES3200439.

NEEDS/PROBLEMS/COMMENTS:

1. **Petitioner filed a "Proof of Service on Notice of Hearing" but did not file the actual Notice of Hearing (mandatory Judicial Council Form DE-120) indicating whether the appropriate parties were advised of this hearing date.**

2. **Examiner has interlineated the order to reflect that $106,295.76 is being distributed to the South Carolina estate pursuant to Local Rule 7.6.1.A. (monetary distributions must be stated in dollars)**

3. **Examiner has interlineated the order to reflect that Petitioner will be discharged upon filing of the appropriate receipt and Ex Parte Petition for Final Discharge and Order (mandatory Judicial Council Form DE-295).**

Reviewed by: skc
Reviewed on: 7-5-12
Updates:
Recommendation:
File 9 - Moore

10 Roy V. Johnson (Estate) Case No. 11CEPR00158

Atty **Willoughby, Hugh W., sole practitioner (for Petitioner Bradley A. Johnson)**

(1) Petition for Final Distribution on Waiver of Account and for (2) Allowance of Compensation for Ordinary & Extraordinary Services (Independent Administration) [P.C. 10400, et seq, 10954 and 11600, et seq]

DOD: 1/19/2011		
Cont. from		
	Aff.Sub.Wit.	
✓	**Verified**	
✓	**Inventory**	
✓	**PTC**	
✓	**Not.Cred.**	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	W/O
	Aff.Pub.	
✓	**Sp.Ntc.**	W/O
	Pers.Serv.	
	Conf. Screen	
	Letters	041311
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
✓	**9202**	
✓	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
✓	**FTB Notice**	

BRADLEY A. JOHNSON, son and Administrator, is Petitioner.

Accounting is waived.

I & A	-	**$382,870.18**
POH	-	**$363,131.50** *($89,121.29 is cash)*
Administrator	-	**waives**
Attorney *(statutory)*	-	**$10,357.40**
Attorney X/O *(per Declaration attached as Exhibit D, for over 5.50 hours @ $225.00/hour)*	-	**$1,248.75**
Closing	-	**$250.00**

Distribution pursuant to intestate succession and the *Disclaimer of Intestate Share in Estate* filed 3/8/2011 is to:

- **BRADLEY A. JOHNSON** – 1/3 undivided interest in real property, 1/3 undivided interest in promissory note, 50 shares of stock, and **$25,755.04 cash**;
- **TROY M. JOHNSON** – 1/3 undivided interest in real property, 1/3 undivided interest in promissory note, 50 shares of stock, and **$25,755.04 cash**;
- **DEBORAH J. FLEAGLE** – 1/3 undivided interest in real property, 1/3 undivided interest in promissory note, 50 shares of stock, and **$25,755.04 cash**.

NEEDS/PROBLEMS/COMMENTS:

Reviewed by: LEG

Reviewed on: 7/5/12

Updates:

Recommendation:

File 10 - Johnson

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

11A Cuauhtemoc Guerrero (Det Succ) **Case No. 11CEPR00937**

Atty Mello, Elizabeth A. (for Petitioner Julieta Guerrero)

Petition for Waiver of Appraisal by Probate Referee and Statement of Cause

Age: 5/9/2011		
Cont. from 060612		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	X
	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	

GABRIELA GUERRERO, as Guardian of the estate of **JULIETA GUERRERO**, is petitioner.

Petitioner states there is good cause to justify the court waiving appraisal by the probate referee.

Wherefore, Petitioner prays for an Order:

1. Waiving the appraisal by the probate referee in these proceedings for the administration of the decedent's estate.

NEEDS/PROBLEMS/COMMENTS:

Continued from 6/6/12. As of 7/5/12 the following issues remain:

1. Petitioner states she is the acting personal representative of the estate. Need Letters of Probate showing Petitioners appointment as personal representative.
2. Petition states there is good cause to justify the court waiving appraisal by a probate referee in these proceedings on the grounds set forth in the Statement of Good Cause. There is no statement of good cause included in the petition.
3. Need Notice of Hearing.
4. Need proof of service of the Notice of Hearing on Julieta Guerrero, beneficiary.
5. Court may require notice to be served on the Probate Referee pursuant to Probate Code §8903.

Reviewed by: KT

Reviewed on: 7/5/12

Updates:

Recommendation:

File 11A - Guerrero

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

11B Cuauhtemoc Guerrero (Det Succ) **Case No. 11CEPR00937**

Atty Mello, Elizabeth A. (for Petitioner Julieta Guerrero)

Amended Petition to Determine Succession to Real Property

DOD: 5/9/2011		
Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	X
	PTC	
	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	W/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

GABRIELA GUERRERO (age 4), by and through her Guardian ad litem, **JULIETA GUERRERO**, is petitioner.

40 days since DOD.

No other proceedings.

Decedent died intestate.

I & A – $137,900.00 (see note #3)

Petitioner requests Court determination that decedent's interest in real and personal property pass to Gabriela Guerrero pursuant to intestate succession.

NEEDS/PROBLEMS/COMMENTS:

1. Fee waiver was denied on 2/15/12. Filing fee of $395.00 and has not been paid for this petition. (Note: Filing fees are considered costs of administration and must be paid prior to property being distributed to beneficiaries.)
2. Petitioner has not been appointed as guardian ad litem for the minor in this matter. (Note: Petitioner has been appointed as guardian of the minor's estate.)
3. Inventory and Appraisal was not signed by the Probate Referee as required. (This will not be an issue if the court grants petitioner's petition to waive the appraisal by the probate referee on page 11A.)
4. Inventory and appraisal lists a 1990 Chevrolet Truck (not in working order) but does not include the Vehicle Identification Number or any other identifying information. Court may require information to specifically identify the vehicle before it can be passed to the beneficiary.
5. Inventory and Appraisal includes a "vehicle – make unknown (very old, not in working condition)" but does not include any information to identify the vehicle. Court may require information to specifically identify the vehicle before it can be passed to the beneficiary.
6. Need order

Reviewed by: KT

Reviewed on: 7/5/12

Updates:

Recommendation:

File 11B - Guerrero

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

12 Palmina Fratis (CONS/PE) **Case No. 11CEPR01092**

Atty Motsenbocker, Gary L (for Diane Mosolf – Conservator)

Probate Status Hearing Re: Inventory and Appraisal

Age: 94			NEEDS/PROBLEMS/COMMENTS:
DOB: 10-26-17			**OFF CALENDAR**
			A Final Inventory and Appraisal was filed 5-16-12.
	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		Reviewed by: skc
	Status Rpt		Reviewed on: 7-5-12
	UCCJEA		Updates:
	Citation		Recommendation:
	FTB Notice		File 12 - Fratis

13 Chima Childrens Trust **Case No. 12CEPR00261**

Atty Blut, Elliot S. (for Petitioners Bobby Chima and Robby Chima)
Atty Franck, Herman (of Sacramento, for Respondents Rebecca Singh, Ralie Singh, and Stella Singh)

Verified Petition to Appoint Successor Trustee of the Chima Childrens Trust (Prob. C. 15660)

Cont. from 051512, 062012

	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	X
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

BOBBY CHIMA and ROBBY CHIMA, beneficiaries of the trust, are petitioners.

Petitioners state on 2/21/1995 Geneal Chima created and executed the Chima Family Trust.

Pursuant to the Trust, Julie L. Fracas was the initial Trustee.

On 9/10/1998, Julie L. Fracas resigned as Trustee.

On 9/10/1998, the designated successor Trustee, Jill A. Leal declined to act and appointed Rebecca Lynn Singh as Successor Trustee.

By letter dated 3/11/2009, Counsel for Rebecca Lynn Singh represented she never accepted the position of Successor Trustee, and advised that Ms. Singh never claimed to be the Successor Trustee.

At all times since March 11, 2009, Lisa Mukai acted and continued to act as the Successor Trustee of the Chima Childrens Trust with the consent of the Petitioners, the sole beneficiaries.

Petitioners state an action is pending in the Superior Court, Sutter County, brought by Robby Chima, Bobby Chima and Lisa Mukai, Trustee of the Chima Childrens Trust against Rebecca Lynn Singh and others alleging causes of action for Breach of Fiduciary Duty, Shareholder's Derivative Action, Accounting, Quiet Title, Cancellation of Instrument, Constructive Trust, Resulting Trust and Fraudulent Transfer claiming title to certain property as an asset of the Chima Childrens Trust. Trial in this action is scheduled for May 1, 2012 requiring appointment of a Successor Trustee to prosecute the action.

Petitioners pray for an Order:

1. Appointing Lisa Mukai as Successor Trustee of the Chima Childrens Trust.

Verified Response of Rebecca Singh, Ralie Singh, Stella Singh/Opposition to Petition was filed 6-1-12.

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS:

Minute Order 5-15-12: Matter continued to 6-20-12 at the request of Counsel.

Minute Order 6-20-12: Mr. Franck gives verbal objection on the jurisdiction issue. Matter continued to 7/11/12, parties to submit briefs regarding issue of jurisdiction 5 days before hearing.

As of 7-5-12, nothing further has been filed. The following issues remain:

1. **Need briefs re jurisdiction from both parties pursuant to Minute Order 6-20-12.**

2. **Probate Code §15602(a)(3) requires that a person appointed by the court as Trustee, who is not named in the trust instrument, be required to post a bond. The court may not excuse the requirement of a bond except under compelling circumstances. The Court will need to know the value of the trust assets in order to determine the amount of bond required.**

   Declaration filed 6-11-12 states the trust does not currently have any assets on hand. The only asset is a civil action claiming title to certain real property as an asset of the Chima Children's Trust brought by Bobby Chima, Robby CHima and Lisa Mukai against Rebecca Lynn Singh and others, currently pending in Sutter County Superior Court.

3. **Need order.**

Reviewed by: KT / skc
Reviewed on: 7-5-12
Updates:
Recommendation:
File 13 - Chima

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

13 Chima Childrens Trust Case No. 12CEPR00261

Verified Response of Rebecca Singh, Ralie Singh, Stella Singh/Opposition to Petition was filed 6-1-12.

Respondents state Rebecca Singh was the former wife of trustor Geneal Chima [Divorce action presently pending in Placer County Superior Court]. Respondents request that the Court deny the Petition and not grant any relief as requested.

Respondents request declaratory relief pursuant to CCP 1060 and Probate Code 17200, 15642, the Court's authority under CCP 128(a) and the Court's equitable and/or inherent authority declaring that Lisa Mukai has not been duly appointed as trustee to the Chima Children's Trust in that there has been no court order as required under section 5.03 of the trust, and declaring that Lisa Mukai is unfit and improper for appointment because of the following facts and factors: Ms. Mukai has engaged in the following types of conduct to be proven in an evidentiary hearing: Dishonesty and moral turpitude; Incompetence; Has a financial interest/self-interest and thus conflict of interest; Subject to undue influence of Geneal Chima; Defects in the Trust Instrument; Equitable reasons to deny the petition due to scam of fraudulent conveyance. Respondents cite Probate Code 15600 and 15642 regarding appointment and removal of a trustee.

- Ms. Mukai has already engaged in dishonest acts of moral turpitude and fraudulent behavior concerning the Chima Children's Trust. During 9-28-09, she filed a complaint in which she fraudulently, deceptively, and dishonestly, knowingly lied by stating she was a duly appointed trustee. In her 2-21-12 deposition in that case, she lied under oath by falsely testifying she was a duly appointed trustee.

- When she alleged she was a trustee, she knew she was lying, she knew she was committing fraudulent act, she was acting in deceptive manner contrary to oath she took before deposition, and knew she was not a trustee, and yet alleged she was. Her perjury, dishonesty, fraudulent conduct, and moral turpitude show that she is unfit to serve as trustee.

- Her incompetence in handling the administrative aspects of the trust are proven by her present petition. She has now apparently woken up to the fact that she was never duly appointed trustee; there is no court order under section 5.03 of the trust, and that her allegations and testimony under oath are false, incorrect, and just plain wrong.

- Either Ms. Mukai commited perjury or a huge act of incompetence. The fact that she committed this perjury/incompetence with the help of present counsel in the underlying civil complaint constitutes abundant evidence that there is a striking level of dishonesty and/or incompetence going on here.

- Respondents further state Ms. Mukai is subject to undue influence from the trustor because she is in a romantic relationship with him. (See 2-21-12 deposition.) Evidence of a sordid and apparently abusive/violent romance has been attained by Respondents in the form of the attached Facebook pages from Ms. Mukai's daughter, Carley Kioko Mukai.

- Respondent Rebecca Singh was formerly married to Geneal Chima and during the course of their marriage suffered extreme and repeated domestic violence. Respondents are not surprised that Lisa Mukai has also experienced some form of domestic abuse. It is pointed out here that in all likelihoods Lisa Mukai will be doing the bidding of Geneal Chima as she is subject to his undue and improper influence and should not be a trustee.

SEE ADDITIONAL PAGES

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

Respondents state Ms. Mukai has already shown a financial conflict of interest with the trust in the following conduct: During 2006 she was part owner of RTL RLM LLC. The LLC owned among other things approx. 2 acres in Visalia, CA. During 2006 a separate company Golden State Development LLC, which according to Geneal Chima and Lisa Mukai is 49% owned by the trust (which Respondents DENY), paid Ms. Mukai $10,000 for half of her interest in RTL RLM LLC. Respondents state she was paid, but failed to transfer her half interest in the LLC.

This default creates a conflict of interest in the handling of trust affairs in that she would be duty bound and in effect sue herself for the turnover of the RTL RLM LLC if appointed as trustee. This event also shows that her judgment is impaired. She does not have the trust's interest at stake. She essentially has stolen property belonging to the trust (the $10,000 that she got from the trust for free) and cannot be trusted with the affairs of the trust.

Golden State Development LLC was a California LLC formed approx. 3-17-03, owned 51% by Rebecca Singh, 49% by Chima Children's Trust, subject to claims by Rebecca Singh that the trust failed to ever pay in capital and that she only granted the interest because of undue influence and duress by Geneal Chima against Rebecca Singh as part and parcel to a campaign of domestic violence and emotional abuse. All tax returns re Golden State Development LLC, reflected Rebecca Singh as 100% owner. Geneal Singh wrote a check from Golden State development LLC for $10,000 to Lisa Mukai without the knowledge or consent of Rebecca Singh.

Lisa Mukai signed a document whereby she agreed in return for the $10,000 she would grant Golden State Development LLC a half interest in her LLC, which she never did. See 4-12-06 agreement attached.

Respondents state the court should further deny equitable relief because the entire trust itself is a scam and a fraudulent conveyance [CCP 3439.04] set up by Geneal Chima as a means to evade a $12 million judgment obtained by Noble D. Plant Jr., and Eleanor Plant, et al. See 6-22-93 judgment in Sacramento Superior Court Action No. 520043 (Exhibit D). The probate department is a court of equity and should not assist any part in committing a fraudulent conveyance. Geneal Chima is attempting to obtain a judgment which cannot come to him personally because of the pending $12 million judgment, and has instead created the trust to evade the judgment creditor.

If the Court denied the current petition Geneal Chima's scam will be foiled for lack of a trustee. See *Powers v. Ashton,* (1975) 45 Cal.App. 3d 787-788 which provides:

> "The person possessing the right sued upon by reason of the substantive law is the real party in interest. (3 Witkin, Cal. Procedure (2d ed.) Pleading, §93.) Thus where a cause of action is prosecuted on behalf of an express trust, the trustee is the real party in interest because he is the one whom title to the cause is vested. … Thus, absent special circumstances, an action prosecuted for the benefit of a trust estate by a person other than the trstuee is not brought in the name of a real party in interest."

A further basis to deny the petition is that the trust itself is ineffectual trust instrument because it fails to identify any trust property. See *Eaton v. Los Angeles* (1962) 201 Cal. App. 2d 326, 332. A trust without property is not a trust. Thus there is no effective trust for Ms. Mukai to be appointed trustee to. Ms. Mukai also testified that the trust had no assets, not money and no activity.

Respondents pray for the following relief:

1. **A full evidentiary hearing**
2. **That the petition be DENIED**
3. **Declaratory relief pursuant to CCP 1060, under Probate Code 17200, 15642 and/or other applicable Probate Code, and/or the court's authority under CCP 128(a), and/or the court's equitable powers and inherent authority, as to each of the above stated grounds for denial of the petition, in the form of a decree stating that all or some of those stated grounds provide appropriate basis to DENY the petition.**

SEE ADDITIONAL PAGES

Petitioners filed a Reply to Response on 6-15-12. Petitioners state that Respondents have no standing to bring the Objection. The Objection must be disregarded and stricken, and the Petition granted as prayed.

Petitioners state Objectors do not have standing because they are not about to suffer any harm as a result of the Court's ruling in this case. Given that Objectors are not named in the Chima Childrens Trust as trustees or beneficiaries, the mere fact that the Court will appoint a successor trustee is not an injury.

Cites include:

- *California Water & Tel. Co. v. Los Angeles* (1967) 253 Cal.App.2d 16, 22-23
- *Estate of Powers* (1979) 91 Cal.App.3d 715, 719
- *Lickter v. Lickter* (2010 (189 Cal.App.4th 712, 728
- *Estate of Davis* (1990) 219 Cal.App.3d. 663, 669
- *Estate of Maniscalco* (1992) 9 Cal.App.4th 520, 524
- *Estate of Prindle* (2009) 173 Cal.App.4th 119, 125-127
- *Meyer v. Superior Court in and for City and County of San Francisco* (1927) 200 Cal. 776, 791-792
- *Probate Code 48*
- *Probate Code 11605*
- *Estate of Loring* (1946) 29 Cal.2d.423
- *Estate of Land* (1913) 166 Cal. 538, 543

Petitioners state Objectors have no existing property right, claim or interest against the Chima Childrens Trust. In fact, the opposite is true. The Chima Childrens Trust has a property right, claim and interest against Objectors arising from the brazen theft by Rebecca Chima of valuable farmland located in Yuba City, California, which was held in trust for the benefit of Petitioners, who were minors at the time.

Petitioners state in March 2001, Rebecca Singh transferred the Lincoln Road Property to Winning Hit, LLC. At the time of transfer, the Chima Childrens Trust owned a 49% membership interested and Singh owned a 51% membership interest in Winning Hit, LLC. In September 2006, she decided to divorce her husband, Geneal Chima, and transferred the Lincoln Road property to herself in violation of her fiduciary duties as the managing member of the LLC. In other words, she stole trust assets.

The Chima Childrens Trust initiated a civil action against Objectors alleging causes of action for breach of fiduciary duty, etc., seeking return of the Lincoln Road Property to the LLC and to acknowledge the trust as a 49% owner of the LLC.

It was subsequently discovered that the property was later transferred to her parents as trustees of another trust.

By their objection, Objectors seek to prevent the appointment of a trustee of the Chima Childrens Trust so as to cause dismissal of the civil action. The Court should see the Objection for what it really is. Objectors cannot rely on Probate Code §48 to grant them interested party status without a property interest. "Objectors, or their attorney's mere sense of impropriety or injustice does not make Objectors and interested person." *Estate of Land* (1913) 166 Cal. 538, 543.

Wherefore, Petitioners request that the Court appoint Lisa Mukai as the Successor Trustee of the Chima Childrens Trust without bond, or in the alternative, for nominal bond.

Respondents filed a Hearing Brief in support of Opposition on 6-15-12 (prior to the hearing on 6-20-12) containing introductory information, request for declaratory relief, summary of facts, further facts and evidence in support of opposition, argument, authority, a conclusion. See Table of Authorities.

14 **Roberto Pena Gaitan, Sr. (Spousal)** **Case No. 12CEPR00384**

Atty **Cobb, Lee S.W. (for Petitioner Martha O. Diaz Gaitan)**

Spousal Property Petition (Prob. C. 13650)

DOD: 8/26/2011			**MARTHA O. DIAZ GAITAN,** Surviving spouse, is petitioner.	**NEEDS/PROBLEMS/COMMENTS:**
			40 days since DOD.	1. Need proof of service of the Notice of Hearing or Declaration of Due Diligence on: a. Nelda Gaitan, daughter b. Ramirio Gaitan, son
Cont. from 060712			No other proceedings.	
	Aff.Sub.Wit.		Will dated: 5/10/2011 devises entire estate to Martha O. Diaz, surviving spouse.	
✓	**Verified**			
	Inventory			
	PTC			
	Not.Cred.			
✓	**Notice of Hrg**		**Petitioner requests** court confirmation that the real property located at 7314 S. Cherry Avenue and the 1965 Chevy Impala passes to her pursuant to Decedent's Will.	
✓	**Aff.Mail**	W/		
	Aff.Pub.			
	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
	Letters			
	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202			
✓	**Order**			
	Aff. Posting			**Reviewed by: KT**
	Status Rpt			**Reviewed on: 7/5/12**
	UCCJEA			**Updates:**
	Citation			**Recommendation:**
	FTB Notice			**File 14 - Gaitan**

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

15 Albert William Hayes (Estate) **Case No. 12CEPR00482**

Atty Shepard, Jefferson S. (for Steven Michael Hayhurst, II – Petitioner – Grandson)

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

DOD: 05/11/2012			**STEVEN MICHAEL HAYHURST, II,** grandson / named executor without bond, is petitioner	**NEEDS/PROBLEMS/COMMENTS:**
				1. #3f(1) of the petition was not answered regarding appointment of personal representative.
Cont. from			Full IAEA- o.k.	
	Aff.Sub.Wit.	s/p		
✓	**Verified**		Will dated: 05/05/2012	
	Inventory			
	PTC			
	Not.Cred.		Residence: Fresno Publication: The Business Journal	
✓	**Notice of Hrg**	w		**<u>Note:</u> If the petition is granted status hearings will be set as follows:**
✓	**Aff.Mail**		**<u>Estimated value of the estate:</u>** Personal property - $450,000.00 <u>Annual gross income - $150,000.00</u> **Total: - $600,000.00**	• **Friday, 12/14/2012 at 9:00a.m. in Dept. 303** for the filing of the inventory and appraisal **<u>and</u>**
	Aff.Pub.			
	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen		Probate Referee: Steven Diebert	• **Friday, 09/13/2013 at 9:00a.m. in Dept. 303** for the filing of the first account and final distribution.
✓	**Letters**			
✓	**Duties/Supp**			
	Objections			Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior to the hearings on the matter the status hearing will come off calendar and no appearance will be required.
	Video Receipt			
	CI Report			
	9202			
✓	**Order**			
	Aff. Posting			**Reviewed by:** LV / KT
	Status Rpt			**Reviewed on:** 07/05/2012
	UCCJEA			**Updates:**
	Citation			**Recommendation:**
	FTB Notice			**File 15 - Hayes**

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

16 Jean Carolyn Bakkedahl (Estate) Case No. 12CEPR00487

Atty Janisse, Ryan Michael (for Cynthia Oliver – Petitioner – Daughter)

Petition for Probate of Will and for Letters Testamentary (Prob. C. 8002, 10450)

DOD: 03/24/2012			**CYNTHIA OLIVER,** daughter / named executor without bond, is petitioner	**NEEDS/PROBLEMS/COMMENTS:**
Cont. from			Full IAEA – o.k.	
	Aff.Sub.Wit.	s/p		
✓	**Verified**		Will dated: 02/18/1998	
	Inventory			
	PTC			
	Not.Cred.			
✓	**Notice of Hrg**	w	Residence: Clovis Publication: The Business Journal	**<u>Note:</u> If the petition is granted status hearings will be set as follows:**
✓	**Aff.Mail**			• **Friday, 12/14/2012 at 9:00a.m. in Dept. 303** for the filing of the inventory and appraisal **<u>and</u>**
✓	**Aff.Pub.**		**<u>Estimated value of the estate:</u>**	
	Sp.Ntc.		Personal property - $2,000	
	Pers.Serv.		Real property - $150,000.00	
	Conf. Screen		<u>Less encumbrances - $39,000.00</u> **Total: - $113,000.00**	• **Friday, 09/13/2013 at 9:00a.m. in Dept. 303** for the filing of the first account and final distribution.
✓	**Letters**		Probate referee: Rick Smith	
✓	**Duties/Supp**			
	Objections			Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior to the hearings on the matter the status hearing will come off calendar and no appearance will be required.
	Video Receipt			
	CI Report			
	9202			
✓	**Order**			
	Aff. Posting			**Reviewed by:** LV / KT
	Status Rpt			**Reviewed on:** 07/05/2012
	UCCJEA			**Updates:**
	Citation			**Recommendation:** Submitted
	FTB Notice			**File 16 - Bakkedahl**

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

17 **Edmund Frances Kal (Estate)** **Case No. 12CEPR00489**

Atty **Kruthers, Heather H (Fresno County Public Administrator)**

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

DOD: 05/09/2012			**FRESNO COUNTY PUBLIC ADMINISTRATOR**, is petitioner and requests appointment as Administrator without bond.
Cont. from			Full IAEA-o.k.
	Aff.Sub.Wit.		
✓	**Verified**		Decedent died intestate
	Inventory		
	PTC		
	Not.Cred.		
✓	**Notice of Hrg**	w	Residence: Fresno Publication: The Business Journal
✓	**Aff.Mail**		
✓	**Aff.Pub.**		**Estimated value of the estate:** Personal property -$428,752.66 Real property -$150,000.00 **Total: -$578,752.66**
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
✓	**Letters**		Probate Referee: Rick Smith
	Duties/Supp	x	
	Objections		
	Video Receipt		
	CI Report		
	9202		
✓	**Order**		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		

NEEDS/PROBLEMS/COMMENTS:

1. Need name and date of death of decedent's parents per Local Rule 7.1.1D.

Note: If the petition is granted status hearings will be set as follows:

- **Friday, 12/21/2012 at 9:00a.m. in Dept. 303** for the filing of the inventory and appraisal **and**
- **Friday, 09/20/2013 at 9:00a.m. in Dept. 303** for the filing of the first account and final distribution.

Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior to the hearings on the matter the status hearing will come off calendar and no appearance will be required.

Reviewed by: LV / KT

Reviewed on: 07/05/2012

Updates:

Recommendation:

File 17 - Kal

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

18 Richard Green (CONS/E) **Case No. 05CEPR00833**

Atty Kruthers, Heather H. (for Public Guardian – Conservator)

Probate Status Hearing Re: Accounting

Age: 71	**PUBLIC GUARDIAN** is Conservator.	**NEEDS/PROBLEMS/COMMENTS:**
DOB: 10-13-40	Conservator's Second Account was settled on 7-13-11 and the Court set this status hearing for the filing of the next account.	**1. Need Third Account or current status report.**
	Since that time, the Court granted independent powers to the Public Guardian under Probate Code §2591(c)(2) in order to facilitate the sale of certain real property without Court confirmation, and a Notice of Proposed Action filed 2-27-12 provides details of the intended sale.	
	Also, a Notice of Opening Account filed 4-20-12 indicates that an account was opened with $130,000.00 as of 4-13-12.	

	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	X
	UCCJEA	
	Citation	
	FTB Notice	

Reviewed by: skc

Reviewed on: 7-5-12

Updates:

Recommendation:

File 18 – Green

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

19 Wayne Allen Robbins, Jr (CONS/PE) Case No. 11CEPR00750

Atty Bowman, Mark C (of Lodi, CA for Conservator Myrna M. Bowman)

Probate Status Hearing Re: Filing of Inventory and Appraisal

Cont. from 030712, 042512, 060612	**MYRNA M. BOWMAN** was appointed as conservator of the person and estate without bond on 9/28/11. Letters issued on 10/7/11. Inventory and appraisal filed on 4/11/12.	**NEEDS/PROBLEMS/COMMENTS:** **Continued from 6/6/2012. Minute order states Counsel advises the Court that the inventory and appraisal has been received, signed, and the appropriate assets have been appraised. As of 7/5/12 the corrected inventory and appraisal has not been filed and the following issues remain:** **1. Inventory and Appraisal filed on 4/11/12 is defective as follows:** **a. Is not signed by the attorney.** **b. Assets (including money market account, real property, personal belongings and a sailboat) need to be appraised by the probate referee.** **Need corrected Inventory and Appraisal.**
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		**Reviewed by: KT**
Status Rpt		**Reviewed on: 7/5/12**
UCCJEA		**Updates:**
Citation		**Recommendation:**
FTB Notice		**File 19 - Robbins**

20 Julianna Reed, Julian Reed and William Reed (GUARD/P)

Case No. 12CEPR00286

Atty Vasquez, Valerie (pro per Petitioner/maternal aunt)

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

Julianna age: 7 yrs DOB: 2/19/2005			**Temporary Expires 7/11/12**
Julian age: 6 years DOB: 3/10/2006			**VALERIE VASQUEZ,** maternal aunt, is petitioner.
William age: 4 yrs DOB: 12/25/2007			Father: **JULIAN REED**
Cont. from 053012			Mother: **STEPHANIE REED –** personally served on 5/7/12
	Aff.Sub.Wit.		
✓	**Verified**		Paternal grandfather: unknown Paternal grandmother: Grace Reed - served on 6/6/12 Maternal grandfather: Joe Vasquez – served on 6/6/12 Maternal grandmother: Lucy Furch
	Inventory		
	PTC		
	Not.Cred.		
✓	**Notice of Hrg**		
✓	**Aff.Mail**	W	**Petitioner states** the children's parents are both incarcerated. The children need someone to be responsible for their educational and medical needs.
	Aff.Pub.		
	Sp.Ntc.		
✓	**Pers.Serv.**	W/	
✓	**Conf. Screen**		
✓	**Letters**		**Court Investigator Julie Negrete's report filed on 5/23/12**.
✓	**Duties/Supp**		
	Objections		**DSS Social Worker Anita Ruiz's report filed on 5/23/12**.
	Video Receipt		
✓	**CI Report**		
	9202		
✓	**Order**		
	Aff. Posting		
	Status Rpt		
✓	**UCCJEA**		
	Citation		
	FTB Notice		

NEEDS/PROBLEMS/COMMENTS:

1. Need proof of personal service of the *Notice of Hearing* along with a copy of the *Petition* or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on :
   a. Julian Reed (father)
2. Need proof of service of the *Notice of Hearing* along with a copy of the *Petition* or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on :
   a. Paternal grandfather
   b. Lucy Furch (maternal grandmother)
3. Need UCCJEA

Reviewed by: KT

Reviewed on: 7/6/12

Updates:

Recommendation:

File 20 - Reed

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012

21 **Barnett Seymour Salzman (CONS/PE)** **Case No. 12CEPR00588**

Atty **Kruthers, Heather H. (for Public Guardian – Petitioner)**

Petition for Appointment of Temporary Conservator of the Person and Estate

Age: 73		
DOB: 2-15-39		
	Aff.Sub.Wit.	
✔	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	X
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	X
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	X
	9202	
	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

TEMPORARY GRANTED EX PARTE EXPIRES 7-11-12

PUBLIC GUARDIAN is Petitioner and requests appointment as Temporary Conservator of the Person and Estate with medical consent powers during the temporary conservatorship.

A Capacity Declaration was filed 7-3-12.

Estimated Value of Estate:
Personal property: $180,000.00
Annual income: Unknown
(SSA and pension)

Petitioner states the proposed Conservatee suffered a stroke (or series of strokes) and requires 24-hour care. He cannot return to his residence and the hospital has requested that he be discharged. The proposed Conservatee is a retired psychiatrist. He was previously referred to the Public Guardian's office in September 2011; however, the investigation was closed because his mental illness symptoms were more appropriate for an LPS conservatorship, and he was able to provide for his food, clothing and shelter with the assistance of his wife. However, on 6-20-12, the Public Guardian's office received a call from a Stanford Medical Hospital physician stating that that Dr. Salzman was admitted after suffering a stroke and was transported from his Fresno residence. It was concluded to refer him to the Fresno County Public Guardian because he requires skilled nursing; however, on 6-21-12, his wife removed him from the hospital against medical advice. Palo Alto Police Dept. and APS were notified.

Upon investigation, the Public Guardian found the residence dirty and in disarray, including fecal matter on the floor. He was placed on a 5150 hold and transported to his current placement.

There are no family or friends capable, appropriate or willing to assist in his care; therefore, the Public Guardian is in a position to manage his care and finances and make arrangements for his continued care.

NEEDS/PROBLEMS/COMMENTS:

Court Investigator to advise rights, file report.

1. **Need Notice of Hearing.**
2. **Need proof of personal service of Notice of Hearing with a copy of the Temporary Petition at least five Court days prior to the hearing per Probate Code §2250(e) on the proposed Conservatee.**
3. **Need proof of service of Notice of Hearing with a copy of the Temporary Petition at least five Court days prior to the hearing per Probate Code §2250(e) on:**
   - **Stacy Salzman (spouse)**
   - **Star Salzman (son)**
   - **Stanley Salzman (brother)**
   - **Maxine Salzman (sister)**

Reviewed by: skc

Reviewed on: 7-6-12

Updates:

Recommendation:

File 21 - Salzman

Dept. 303, 9:00 a.m. Wednesday, July 11, 2012