

**Petition of Beneficiary to Remove Trustee, for Accounting by Trustee, to Appoint Successor Trustee, and for Allowance of Attorneys' Fees (Prob. C. 15642, 17200)**

		<b>ELAINE J. WOLF</b> , beneficiary, is petitioner.	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p>Please see related case on page 6 of this calendar.</p> <ol style="list-style-type: none"> <li><b>This petition was filed into the Estate of William Young Jr. The estate was closed in 1983. This Petition regarding the testamentary trust and therefore should have been brought in a new trust proceeding.</b></li> <li><b>Petition requests that bond not be required. Probate Code §15602 (a)(3) states an individual who is appointed as trustee and who was not named in the trust instrument is required to post bond, except under compelling circumstances. If bond is required the court will need to know the value of the trust assets.</b></li> <li><b>Need Order</b></li> </ol>
		<b>Petitioner states MOLLIE LUNG</b> was appointed Trustee under the Will of William Lung, Jr. by Decree of Court dated 2/28/1983, and ever since has been and now is said Trustee.	
<b>Cont. from</b>		Elaine Wolf is a beneficiary of the Trust.	
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**Petitioner requests** the Court remove the Trustee pursuant to its authority under Probate Code §15642 because the Trustee is substantially unable to resist undue influence.

A report of the UCSF Alzheimer's and Memory Center dated 5/2/2011, stated, "There is a question regarding Ms. Lung's capacity to make decisions regarding her care. Clearly at this time, Ms. Lung is not capable of understanding complex legal issues. She does say in this office that her granddaughter should be making decisions for her, but when asked who should be a secondary person, she states that the new caregiver (6 weeks), Mary, could do this. It seems most likely that Ms. Lung, although she could state her preferences in general, would be highly susceptible to undue influence at this stage of her dementia."

Petitioner states a Lease Agreement was allegedly entered into between Mollie Lung, as Trustee of the Testamentary Trust of William Young, Jr. and as Trustee of the Mollie Lung Trust dated 9/22/1992; this agreement was entered into between Mollie Lung in those two capacities and Cheryl Graham, who is petitioner for appointment as Conservator of the person and estate of Mollie Lung which is presently under consideration.

*Please see additional page*

The Lease is not protective of the property rights of Mollie Lung in and is distractive of the property rights of the beneficiaries of the Testamentary Trust of William Lung, Jr. The Lease was prepared and allegedly executed under the undue influence of Cheryl Graham. The Lease is totally beneficial to Cheryl Graham, not the least of which is Paragraph 28 which gives Cheryl Graham the right to purchase the land of the Testamentary Trust for \$7,000 per acre within one year of the death of Mollie Lung who is now age 93. Current values for the vineyards in that area are at least \$15,000 per acre and have been far in excess of \$7,000 per acre all of 2010.

Petitioner states the Testamentary Trust does not appoint a second successor Trustee, and the first Successor Trustee is deceased. Petitioner requests the court appoint her as the Successor Trustee. Petitioner consents to serve. Petitioner further requests that the Court appoint her without bond. Petitioner states she served as a bookkeeper for her mother until January 2004, when the attitude and conduct of Cheryl Graham was purposely meant to destroy a mother-daughter relationship and attempt to thwart the intentions of William Lung, Jr. through his Testamentary Trust.

Petitioner believes that her appointment as Successor Trustee is in the best interest of the Trust and of those persons interested in the Trust for the following reasons:

- a. The Petitioner has at all times acted with honesty to protect the interests of her mother, Mollie Lung, and of her niece, Carrie Webb, who is one of the two daughters of Elaine Wolf's predeceased sister. The other daughter is Cheryl Graham. The granting of this petition would enable to successor Trustee to manage one-half of the property for the best interests of her mother and for the beneficiaries.

Petitioner requests the court order Mollie Lung to file an accounting detailing her acts as Trustee, and direct that the accounting be filed no later than four weeks after the Court makes its order.

Petitioner requests compensation that is in a reasonable amount for her attorneys' fees for this Petition and that this amount should be charged as an expense of the Trust and paid directly to the attorneys. Petitioner believes that this amount should be charged 100% to income.

**Petitioner prays that:**

1. The Court remove Mollie Lung as Trustee of the Testamentary Trust under the Will of William Lung, Jr.
2. The Court order Mollie Lung to file an accounting with the Court detailing her acts as Trustee, no later than four weeks after the Court makes its order.
3. The Court Order a reasonable amount for Petitioner's attorneys' fees to be paid to such attorney directly from the Trust to be charged 100% to income and paid within 10 days after Court order.

**Petition for Allowance of Compensation for Ordinary and Extraordinary Services  
(Prob. C. 10801, 10811, 10830(a)(1) [Proceeding Commenced on or After July 1,  
1991])**

<b>DOD: 12/20/08</b>	<b>Attorney Richard A. Belardinelli is Petitioner.</b> Mr. Belardinelli is the attorney for Kim Pasteniaks, former Executor.	<b>NEEDS/PROBLEMS/COMMENTS:</b>
<b>Cont. from 081511</b>	<b>Petitioner states:</b>	<b>Continued from 8/15/11. Minute Order states: Ms. Smith advises the Court that County Counsel has not been noticed, and they have objections to the petition. The Court continues the matter to 10/3/11. Ms. Smith advises the Court that she will have the accounting done by the next hearing and requests that the accounting be heard at that time. The Court grants her request.</b>
Aff.Sub.Wit.	1. On 4/3/09, Petitioner filed a <i>Petition for Probate</i> seeking appointment of Ms. Pasteniaks as Executor of Decedent’s estate;	<b>SEE ATTACHED PAGE</b>
✓ Verified	2. On 5/7/09, Chizuko Williams (Decedent’s mother) filed an Objection to the <i>Petition for Probate</i> and on 5/27/09 a Will Contest and Ground for Objection;	<b>Reviewed by: NRN</b>
Inventory	3. Ms. Williams additionally brought a Petition to Appoint Attorney Stanley Teixeira as Special Administrator – which was granted 6/18/09, with letters to expire 7/13/09;	<b>Reviewed on: 9/26/11</b>
PTC	4. Ms. Pasteniaks filed her answers to the Will Contest/Grounds for Objections on 6/26/09;	<b>Updates: 9/30/11</b>
Not.Cred.	5. A Court trial on the Will Contest was set for 11/6/09; and at trial the Court found no basis for any allegations cited in the Will Contest; Ms. Pastaniaks was then appointed Executor of Decedent’s will with bond set \$50,000.00, and the letters of Special Administration were vacated;	<b>Recommendation:</b>
✓ Notice of Hrg	6. The Public Administrator was later appointed as Executor as Ms. Pastaniaks ultimately was unable to obtain a bond;	<b>File 2A - Williams</b>
✓ Aff.Mail w	7. As a result of the Public Administrator’s appointment, Attorney Belardinelli filed a creditor’s claims for \$5,416,42, which reflected total attorneys’ fees (ordinary and extraordinary) and costs of \$13,416.42, less an \$8,000.00 courtesy discount, and received payment on 1/26/10;	
Aff.Pub.	8. However, on 6/30/11, Petitioner refunded the sum in compliance with the request of County Counsel and its indication that said amount to Petitioner was never approved by the Court;	
Sp.Ntc.	9. Petitioner brings the instant Petition for approval of ordinary and extraordinary fees and costs related to the preparation for Ms. Pasteniaks’ <i>Petition for Probate</i> , pre-hearing preparation for the Will Contest and opposition to same, which involved interviewing witnesses, propounding and filing pleadings, legal research and a one-day presentation at a contested trial;	
Pers.Serv.	10. Total statutory fees are \$1,940.00 (4% of \$48,500.00), extraordinary fees incurred are \$11,940.00, costs total \$1,476.42, and a \$395.00 filing fee for the instant Petition;	
Conf. Screen	11. <b>Petitioner therefore requests a Court order:</b>	
Letters	<ul style="list-style-type: none"> <li>• <b>Authorizing Petitioner’s stated fees and costs, less a courtesy discount of \$9940.00, for a resulting total of \$5416.42 (the same amount previously paid, received, and returned). <i>Note: attached to Petition is Petitioner’s creditor’s claim and billing records showing itemization of legal work.</i></b></li> </ul>	
Duties/Supp		
✓ Objections		
Video Receipt		
CI Report		
9202		
✓ Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
<b>SEE ATTACHED PAGE</b>		

Cont'd:

*Objections by Public Administrator to Petition, filed 9/29/11, states:*

- Petitioner Belardinelli's original creditor's claim of \$5,416.42 was originally paid by the Public Administrator in error; Deputy Kruthers discovered the error and requested via letter return of the payment (*letter attached to Petitioner's Petition as Exh. 2*);
- Petitioner thereafter did remit the \$5,416.42 payment, and then filed his petition for fees in 07/11;
- Petitioner's request for ordinary fees in the amount of \$5,811.42 would be the entire statutory legal fee, and that amount would have to be split with the attorney for the Public Administrator and possibly Attorney Stanley Teixeira, who was involved in litigation with Petitioner;
- Objector Public Administrator does not dispute that Petitioner provided the services as set forth in his Petition, and additionally, Objector notes Petitioner incurred a much higher amount of extraordinary fees than he is requesting;
- Perhaps Petitioner could consider foregoing a request for any ordinary fee and instead request more in extraordinary fees to make up the difference.
- Petitioner therefore requests that the Court deny Petitioner's *Petition for Allowance of Compensation for Ordinary and Extraordinary Services* as filed.

**Status Hearing Re: First Accounting**

<b>DOD: 12/20/08</b>	<b>PUBLIC ADMINISTRATOR</b> is Executor, and was appointed 7/29/10.	<b>NEEDS/PROBLEMS/COMMENTS:</b>  <i>Page 2A is the former Executor's Petition for Allowance of Compensation for Ordinary and Extraordinary Services</i>  <b>1. Need 1<sup>st</sup> Account.</b> <i>(Note: See status Report Regarding 1<sup>st</sup> Account filed 9/29/11)</i>
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	<p><b>KIM PASTENIEKS</b> is the former Executor. She filed her <i>Petition for Allowance of Compensation for Ordinary and Extraordinary Services 7/7/11, and hearing was set on 8/15/11:</i></p> <p><b>8/15/11 Minute Order on said hearing states:</b> Ms. Smith advises the Court that County Counsel has not been noticed, and they have objections to the petition. The Court continues the matter to 10/3/11. Ms. Smith advises the Court that she will have the accounting done by the next hearing and requests that the accounting be heard at that time. The Court grants her request.</p> <p><i>Status Report Regarding First Account, filed 9/29/11 by Attorneys for the Public Administrator, County Counsel, states:</i></p> <ul style="list-style-type: none"> <li>At the last hearing on 8/15/11, County Counsel represented that the Public Administrator's accounting would be filed by 10/3/11;</li> <li>Attorney Belardinelli's fee petition is currently scheduled for 10/3/11 (<i>note: see Page 2A</i>) and County Counsel has filed objections to said petition based upon Attorney Belardinelli's requested for the total amount of the ordinary statutory fees;</li> <li>County Counsel has proposed in its objections that Attorney Belardinelli request more of the extraordinary fees he incurred to counter the ordinary fees that he may be denied;</li> <li>The Public Administrator cannot file his final account and request for distribution until the fee matter is settled, as the Court's decision about the fees will change amount of property the Public Administrator has on hand;</li> <li>The Public Administrator requests the status hearing on the <u>1<sup>st</sup> Account</u> be set out for 45 days from the date of the Court's order regarding Attorney Belardinelli's fee request.</li> </ul>	
		<b>Reviewed by:</b> NRN <b>Reviewed on:</b> 9/26/11 <b>Updates:</b> 9/30/11 <b>Recommendation:</b> File 2B - Williams

Atty Matsumoto, Russell D., of Frame & Matsumoto (for Petitioners Sandra F. Edmiston and Sheridan Mae Rodkey, Co-Trustees)

Atty Smoot, John E., sole practitioner of Willits, CA (for Contestant Peggy Walton)

Petition of Trustees for Instructions and Confirmation of Report of Trust Administration, First and Final Accounting, and Proposed Final Distribution of Trust Estate (Prob. C. 17200, et seq)

<b>DOD:</b> 5/22/2009	<p><b>SANDRA F. EDMISTON</b>, niece, and <b>SHERIDAN MAE RODKEY</b>, niece, are Co-Trustees of the <b>BETTY LaHARGOUE LIVING TRUST</b> dated 7/22/2003 and Petitioners.</p> <p><b>Account period: 1/1/2009 – 12/31/2010</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Accounting</td> <td style="width: 10%; text-align: center;">-</td> <td style="width: 60%; text-align: right;">\$352,581.57</td> </tr> <tr> <td>Beginning POH</td> <td style="text-align: center;">-</td> <td style="text-align: right;">\$197,500.00</td> </tr> <tr> <td>Ending POH</td> <td style="text-align: center;">-</td> <td style="text-align: right;">\$141,605.64 (\$46,605.64 is cash)</td> </tr> </table> <p>Co-Trustees - <i>Not addressed</i></p> <p>Attorney - <i>Not specified</i></p> <p>Reserve - <b>\$30,000.00</b> (for potential repairs of \$20,923.00 to one parcel of real property for pest control (please see attached inspection report); payment of insurance for both parcels of real property; and final costs of disbursement and distribution, including any recording fees and taxes, and attorney and accountant fees;)</p> <p><b>Petitioners state:</b></p> <ul style="list-style-type: none"> <li>• On 7/22/2003, Decedent established the <b>BETTY LaHARGOUE LIVING TRUST</b>, which as amended by an <i>Amendment</i> dated 2/20/2006, designated the Petitioners as Successor Trustees following the death of the Decedent as original Trustee, at which time Petitioners commenced acting as Trustees of the Trust;</li> <li>• On [3]/10/2010, an <i>Order for Property to be Included in Trust Estate</i> was signed and entered in this matter, confirming that assets of the Trust estate consist of real property in Coalinga, an annuity, and specific automobiles;</li> <li>• The Trustees have made preliminary distributions during the account period to Trust beneficiaries consisting of automobiles and cash of <b>\$75,000.00</b> each to <b>PEGGY WALTON aka MARGUERITE P. WALTON</b> (niece) and <b>SHERIDAN MAE RODKEY</b>, for a total value of <b>\$152,500.00</b>;</li> <li>• By the terms of the Trust, the two parcels of real property should be distributed to <b>PEGGY WALTON aka MARGUERITE P. WALTON</b> and <b>SHERIDAN MAE RODKEY</b> in undivided ½ interests as tenants in common; and the balance of cash after closing reserve should be distributed to them in equal shares.</li> </ul> <p><b>Petitioners pray for an Order:</b></p> <ol style="list-style-type: none"> <li>1. Settling, allowing and approving the <i>First and Final Account</i> of the Petitioners as Trustees;</li> <li>2. Confirming and approving all acts and proceedings of the Petitioners as Trustees;</li> <li>3. Allowing and crediting the Petitioners with the closing reserve; and</li> <li>4. Distributing the balance of the Trust estate in the Petitioners' hands as noted above to <b>PEGGY WALTON aka MARGUERITE P. WALTON</b> and <b>SHERIDAN MAE RODKEY</b> in equal shares.</li> </ol> <p style="text-align: center;"><i>~Please see additional page for Objections~</i></p>	Accounting	-	\$352,581.57	Beginning POH	-	\$197,500.00	Ending POH	-	\$141,605.64 (\$46,605.64 is cash)	<p><b>NEEDS/PROBLEMS/ COMMENTS:</b></p> <p>Note: <i>Petition</i> does not specifically request any instructions from the Court as stated in the pleading caption; <i>Petition</i> requests approval of the account and final distribution.</p> <p>Note: <i>Petition</i> states the reserve is requested for closing expenses, including an unspecified amount for attorney fees (<i>Schedule B, Disbursements</i> shows attorney fees of \$14,286.12 were previously paid to <b>Frame &amp; Matsumoto</b>. Additionally, <i>Petition</i> does not address whether the Co-Trustees request or have been paid any Trustee's fees.</p> <p>Reviewed by: LEG</p> <p>Reviewed on: 9/26/11</p> <p>Updates: 9/28/11</p> <p>Recommendation:</p> <p>File 3 - LaHargoue</p>
Accounting	-	\$352,581.57									
Beginning POH	-	\$197,500.00									
Ending POH	-	\$141,605.64 (\$46,605.64 is cash)									
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***Objection to Fiduciaries' Account and Request for Surcharge of Fiduciary and Other Remedies filed on 9/28/2011 by Contestant PEGGY WALTON, niece and Beneficiary, states:***

- Contestant has standing to file these objections as a Trust beneficiary entitled to receive ½ of the Trust estate;
  - Contestant objects to the final accounting and final distribution filed by the Co-Trustees on the following grounds:
- A. Objection to proposed final distribution:** *Petition* alleges that “by the terms of the Trust” the two Coalinga real properties should be distributed to Contestant and Co-Trustee Sheridan in undivided ½ interests as tenants in common, and the allegation that the proposed transfers into tenancy in common would be “by the terms of the Trust” is false and is 100% contrary to the specific terms of the Trust which provide in two separate places, in relevant part: “houses to be sold and money goes into my living trust, to be divided equally between Sheridan and Peggy.” (*Please refer to attached Exhibit A at pages 20 and 26*);
- Contestant is aware of nothing that would cause the Co-Trustees to believe that they should distribute the two real properties into two tenancies in common instead of sell them; *Declaration of Peggy Walton* attached at *Exhibit B* shows that the sale of the houses is not only specified in the Trust documents, but is completely consistent with what Contestant had heard about the Trust from the Decedent prior to her death; the request in the *Petition* concerning the creation of tenancies in common has been a complete surprise to Contestant, and it appears that the Co-Trustees have decided not to follow the terms of the Trust without communication or providing any justification for such failure;
  - **For these reasons, Contestant contends that the Co-Trustees should be removed.**
- B. Objection to proposed final accounting:** Contestant finds several matters in the accounting objectionable and requiring clarification by the Co-Trustees:
- 1. Below market rent paid by Co-Trustee:** Co-Trustee Sheridan resided in one of the Trust real properties (Jackson Street) in Coalinga for 22 months after Decedent’s death and paid **\$150.00** per month during this time period, based upon *Schedule A – Receipts* attached to the *Petition*; there also appears to be **5 months** during which rent may not have been collected since Decedent’s death occurred 27 months ago; Contestant is aware that Sheridan paid only **\$150.00** during Decedent’s lifetime; however, Contestant alleges that a fair market rental of at least **\$500.00** per month should have been paid after Decedent’s death, leaving a “rent” deficit of **~\$6,700.00** and possibly more (*please refer to Declaration of Peggy Walton, page 1: 16-20*); because the Trust paid for utilities, improvements, repairs, yard services (**\$140.00** per month) during this tenancy, Contestant does not object to Sheridan’s residency but believes it is not unreasonable for a fair rental to be assessed under these circumstances.
  - 2. Real property located on Durian in Coalinga should be listed for sale “as is”:** Contestant alleges that this real property is worth **~\$79,000.00** on the current market (*please refer to Declaration of Peggy Walton, page 1: 21-27*); Contestant alleges this property has never been listed for sale with a real estate agent during the over 27 months period since Decedent’s death in May 2009, and **Contestant does not want the Co-Trustees to repair the termite damage** referenced in *Attachment 3* to the *Petition*, as such repairs are unnecessary at this time and are a matter to be dealt with at the time the property sells, such as by a reduced selling price.
  - 3. Missing accounts:** The Trust document refers to a Union Bank checking account which was supposed to be used to pay all bills and expenses and the Mass Mutual account; both accounts were inventoried and each have notations: “Sherry Rodkey was beneficiary and it has been cashed out.” Contestant has requested information about these accounts but no documentation has been provided to date, and Contestant has some concern that these accounts may have been changed inappropriately and Contestant would like to see the documentation (*please refer to Declaration of Peggy Walton, page 2: 1-4*).

*~Please see additional page~*

**Objection to Fiduciaries' Account filed by Contestant Peggy Walton, continued:**

4. **Missing furniture:** Decedent's houseful of furniture including antiques and stained glass has not been inventoried (*please refer to Declaration of Peggy Walton, page 2:5-8*); in a conversation with Co-Trustee Sandra Edmiston, Contestant agreed with Sandra's suggestion that Sandra would take the items to Fresno where she could get more money for them; however, they are not mentioned in this account and should be.
5. **Attorney's Fees:** According to the account, the Co-Trustees have paid over **\$14,000.00** in legal fees through 10/23/2010; Contestant understands that the amount paid to date exceeds the statutory probate fee if the estate had been handled as a probate; however, two real properties have yet to be distributed and there are other unresolved matters in this Trust administration; Contestant contacted Attorney John Smoot to see about having the estate handled as a Trust administration instead of a probate, with the objective of speeding up the estate administration, but unfortunately this did not turn out to be the case (*please refer to Declaration of Peggy Walton, page 2: 9-18*); the *Petition* requests **\$30,000.00** be set aside as a reserve for expenses and attorney's fees, and Contestant objects to payment of any additional attorney's fees by the Co-Trustees without the prior review of the legal charges, including review of previous legal charges, by this Court.
6. **Trustees Fees:** Contestant notes that neither of the Co-Trustees has requested payment for the services they have rendered as Co-Trustees, and Contestant believes the Co-Trustees have not performed their duties in a timely manner and have not followed the terms of the Trust as to the real properties, and should not be allowed to pay themselves any compensation without prior Court approval.

**Contestant requests:**

- **The Court remove the Co-Trustees pursuant to Probate Code § 15642, which provides that the Court, on its own motion, may order removal of the trustee where the trustee has committed a breach of trust and where the trustee fails or declines to act; Contestant alleges the Co-Trustees' failure to act in regards to the real properties is good cause for their removal;**
- **If the Court removes the Co-Trustees, Contestant would nominate as successor trustee her brother, JOHN BERTSCHE, who has stated his willingness to act as trustee;**
- **The Co-Trustees be ordered not to make any additional payment of attorney's fees or payment of trustee's fees to themselves without first obtaining prior Court approval; and**
- **The Co-Trustees be ordered not to make any additional expenditures for improvements to the two Trust real properties or to complete the repairs for pest damage without first obtaining prior Court approval.**

**Declaration of Peggy Walton attached to her Objection states:**

- She was formerly a resident of Coalinga and had a close relationship with Decedent (Aunt Betty) who was very close with her mother;
- Several years ago she moved her mother to Willits for health reasons and Decedent would visit for a week or so at a time on a regular basis; Decedent talked with her (Contestant/Peggy) about Decedent's trust on a number of occasions, telling her that half would go to her and half to Sherry [Co-Trustee Sheridan], and also that her real properties were in pretty bad condition and would be sold; Decedent asked her if she would be trustee of her Trust, but she declined since she felt she was too far away from Coalinga to deal with the two real properties;
- She spoke to a number of her friends in Coalinga about fair rental value for the house on Jackson Street and did some online research about rentals in Coalinga; based on her discussions and research, the fair rental value of the house would be the **\$500.00 to \$700.00** range;

*~Please see additional page~*

***Declaration of Peggy Walton, continued:***

- She has been very concerned about the failure to sell the house on Durian in Coalinga, and the apparent lack of any effort by the Co-Trustees to sell it; she has contacted a Coalinga real estate agent familiar with real property, who advises that the property should sell in the **\$79,000.00** range and was willing to accept the listing; she believes the Co-Trustees were aware of this fact, but did not take any action with this or any other agent; she believes the appraised value in the *Petition* is below market value, and that the house on Durian is better than the house on Jackson (in 2003, Durian valued at **\$175,000** compared to **\$47,000** for Jackson; *please refer to Exhibit A, page 9 listing value of assets on Decedent's Estate Planning Worksheet*);
- The Trust documents refer to a "Union Bank account" and a MassMutual account in which Sherry [Co-Trustee Sheridan] was supposedly the beneficiary; she knows that Decedent was very ill toward the end of her life and she would like to find out when each of the two accounts were changed naming Sherry as beneficiary, since such changes seem inconsistent with Decedent's estate plan; the Co-Trustees have not responded to her inquiries on this subject;
- Decedent had a house full of furniture, including antiques, jewelry and stained glass; she was not interested in any of it and agreed with Co-Trustee Sandra Edmiston who wanted to take it to Fresno where she could get a better price; there is no mention of this furniture in the *Petition*;
- A few months after Decedent's death, she received a Petition for Probate of Decedent's estate, when what she expected was notice of a trust administration, and she consulted an attorney; a Trust administration was eventually initiated but has not been proceeding in a positive direction with very little action being taken by the Co-Trustees; after several months of waiting, she requested a preliminary distribution out of the monies that had been collected and after waiting several more months she finally received one;
- She tried to get the Co-Trustees to list the Durian property for sale, but without success; she is happy to sell her ½ interest in the Jackson Street property to the person living in it, Sheridan Mae Rodkey [Co-Trustee], but was never asked to do so;
- While she was waiting for a proposal of some action on these properties, she received the *Petition*; she is extremely frustrated with the current situation and believes that a change in trustees is necessary at this time.

**(1) First Account Current and Report of Conservator and (2) Petition for Allowance of Compensation to Conservator and Attorney**

Age: 65 DOB: 10/14/45	<b>PUBLIC GUARDIAN</b> , Conservator of the Estate, is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>
	Account period: <b>06/29/10 – 07/26/11</b>	
	Accounting - <b>\$76,970.46</b>	
Cont. from	Beginning POH - <b>\$47,040.61</b>	
Aff.Sub.Wit.	Ending POH - <b>\$39,504.08</b>	
<input checked="" type="checkbox"/> Verified	Conservator - <b>\$2,207.20</b> (19.35 Deputy hours @ \$96/hr and 4.60 Staff hours @ \$76/hr.)	
Inventory	Attorney - <b>\$2,000.00</b> (per Local Rule)	
PTC	Bond Fee - <b>\$208.52 (OK)</b>	
Not.Cred.	Costs - <b>\$407.00</b> (filing fees and certified copies)	
<input checked="" type="checkbox"/> Notice of Hrg	<b>Petitioner prays for an Order:</b>	
<input checked="" type="checkbox"/> Aff.Mail w/	1) Approving, allowing and settling the first account;	
Aff.Pub.	2) Authorizing the conservator and attorney fees and commissions; and	
Sp.Ntc.	3) Payment of the bond fee and costs.	
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202 n/a		
<input checked="" type="checkbox"/> Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: JF
		Reviewed on: 09/23/11
		Updates:
		Recommendation:
		File 4 - Barron

Atty Keene, Thomas J. (for Vance Eggleston and Lori Ann Newman – Co-Executors)

(1) Report on Waiver of Account and Petition for Final Distribution, and (2) for Allowance of Compensation to Attorneys for Ordinary Services (Prob. C. 10810, 10954, 11600)

DOD: 11/23/09		<b>VANCE EGGLESTON and LORI ANN NEWMAN</b> , Co-Executors, are Petitioners.		<b>NEEDS/PROBLEMS/COMMENTS:</b>  <del>1. Petition does not make a statement regarding notice to the Director of the California Victim Compensation Board as required pursuant to Probate Code § 9202(b)</del> <del>2. Petition does not make a statement regarding notice to the Franchise Tax Board as required pursuant to Probate Code § 9202(c).</del> <del>3. Need Order.</del>	
		Accounting is waived.			
Cont. from		I & A	- \$147,040.87		
	Aff.Sub.Wit.	POH	- \$144,000.00 (\$9,000.00 is cash)		
✓	Verified	Executors	- waive		
✓	Inventory	Attorney	- \$5,411.23 (statutory)		
✓	PTC	Costs	- \$556.60 (filing fees, probate referee)		
✓	Not.Cred.	Closing	- \$2,000.00		
✓	Notice of Hrg	<b>Distribution, pursuant to decedent's Will, is to:</b>			
✓	Aff.Mail	w/	Vance Eggleston - \$516.09 plus 50% interest in real property		
	Aff.Pub.		Lori Ann Newman - \$516.08 plus 50% interest in real property		
	Sp.Ntc.				
	Pers.Serv.				
	Conf. Screen				
	Letters	10/12/10			
	Duties/Supp				
	Objections				
	Video Receipt				
	CI Report				
	9202	x			
	Order	x			
	Aff. Posting				
	Status Rpt				
	UCCJEA				
	Citation				
	FTB Notice	x			
					Reviewed by: JF
					Reviewed on: 09/23/11
				Updates: 09/29/11	
				Recommendation: SUBMITTED	
				File 5 - Eggleston	

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

Age: 95 years DOB: 10/13/16	<p><b>CHERYL GRAHAM was appointed Temporary conservator of the person and estate with bond set at \$152,500.00 TEMPORARY EXPIRES 10/3/11 – (bond has not been filed and Letters have not issued)</b></p> <p>(Note: Temporary also revoked all Powers of Attorney, Advance Health Care Directives and HIPAA Authorizations until further order of the court.)</p> <p><b>CHERYL GRAHAM, granddaughter, is petitioner and requests appointment as conservator of the person with medical consent and dementia powers to authorize the administration of dementia medications and estate with bond set at \$430,597.00.</b></p> <p><b>Declaration of Matthew Lozono, M.D., filed 3/3/11</b></p> <p><b>Declaration of Linda J. Hewett, Psy.D, filed 6/13/11</b></p> <p><b>Estimated value of the Estate:</b></p> <table> <tr> <td>Personal property</td> <td>-</td> <td>\$347,597.00</td> </tr> <tr> <td>Annual income</td> <td>-</td> <td>\$ 83,000.00</td> </tr> <tr> <td><b>Total</b></td> <td>-</td> <td><b>\$430,597.00</b></td> </tr> </table> <p><b>Petitioner states</b> she was raised by and has resided primarily with the proposed conservatee since birth. Approximately 10 years ago the proposed conservatee suffered a stroke. Since her stroke, the proposed conservatee has required an in home care provider. In 2002 Petitioner took over the operation of Conservatee’s Ranch. Proposed conservatee has been diagnosed with dementia, and has been suffering from dementia symptoms for the past 18 months or more. In early January while at work, Petitioner received a call from the proposed conservatee’s care provider informing her that there was an unknown woman at the house informing her she had been fired.</p> <p>The unknown woman turned out to be the proposed conservatee’s estranged daughter, Elaine. When Petitioner returned home, attorney Jennifer Reitz demanded Petitioner leave the residence. In order to avoid confrontation, Petitioner left. When Petitioner went to Lion Raisins to pick up crop profits for the Ranch crop proceeds, she was told someone came with a Power of Attorney and picked up the crop profits check. Petitioner states conservatee needs the immediate appointment of a temporary conservator in order to prevent any further fraud and undue influence being exerted upon the proposed conservatee. Petitioner further requests the court enter an order revoking all Durable Powers of Attorney, Advanced Health Care Directives and HIPAA Authorizations.</p> <p><i>Please see additional page</i></p>	Personal property	-	\$347,597.00	Annual income	-	\$ 83,000.00	<b>Total</b>	-	<b>\$430,597.00</b>	<p><b>NEEDS/PROBLEMS/ COMMENTS:</b></p> <p>Continued from 9/8/11.</p> <p><i>Court Investigator Advised Rights on 2/16/11.</i></p> <p><b>1. Declaration of Linda J. Hewett, Psy.D., <u>does not</u> include the dementia attachment addressing dementia powers.</b></p>
Personal property		-	\$347,597.00								
Annual income		-	\$ 83,000.00								
<b>Total</b>		-	<b>\$430,597.00</b>								
Cont. from 030311, 050511, 070711, 081811, 090811											
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 W/											
Video Receipt											
✓ CI Report											
9202											
✓ Order											
Aff. Posting											
Status Rpt											
UCCJEA											
✓ Citation											
FTB Notice											
	<p><b>Reviewed by: KT</b></p> <p><b>Reviewed on: 9/23/11</b></p> <p><b>Updates:</b></p> <p><b>Recommendation:</b></p> <p><b>File 6 - Lung</b></p>										

**Objections to Petition for Appointment of Conservator filed on 2/25/11 by Elaine Wolf states** the appointment of Cheryl Graham as conservator of the person and estate is not in the best interest of the proposed conservatee because Cheryl Graham is controlling the proposed conservatee for her own self-interests against the interests of the proposed conservatee and the other heirs of the property of the proposed conservatee. The assertion is supported by declarations filed with the objections.

**Objector prays for an Order:**

- 1. That the Petition of Cheryl Graham for appointment of Conservator of the person and estate be denied;**
- 2. The Public Guardian be appointed as conservator of the person and estate.**

**Declaration of Elaine Wolf attached to the Objections** concludes that she opposes the appointment of Cheryl Graham as conservator of the person and/or estate of her mother, Mollie Lung. Ms. Wolf believes that her mother is totally under the control of Cheryl Graham and believes it will become the most awful turn of events if Cheryl became her conservator. Ms. Wolf believes that Cheryl is taking advantage in order to deprive her of a share in the estate, as well as her sister, Carrie Webb.

**Declaration of Carrie Webb in support of Objections to Appointment of Conservator filed on 2/25/11** concludes that she believes that her grandmother does require a conservator. She is totally against the appointment of Cheryl Graham as conservator. She believes that Cheryl is a detriment to her grandmother's mental and physical state and in the management of her 40 acres and other assets. Ms. Webb believes that Cheryl will use everything to the detriment of her and her aunt, Elaine Wolf.

**Court Investigator Julie Negrete's Report filed 2/25/11.**

**Supplemental Declaration of Nick Jerkovich in Support of Objections** provides documentation as to raisin prices in 2003.

**(1) First and Final Report of Administration and (2) Petition for Allowance of Statutory Commissions and Fees to Executor and Attorney and (3) Final Distribution on Waivers of Accounting**

<b>DOD: 02/10/11</b>		<b>MYRON F. JOHNSON</b> , Executor, is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>  <del>1. Need declaration pursuant to Local Rule 7.12.5 – Distribution to Inter-Vivos Trusts – If property in the estate is to be distributed to a pre-existing trust, the current trustee must file a declaration setting forth the name of the trust, its establishment date, taxpayer identification number, verifying that the trust is in full force and effect, and that the trustee has an executed copy of the trust in possession.</del>
		Accounting is waived.	
		I & A - \$159,175.21	
		POH - \$159,210.62 (all cash)	
<b>Cont. from</b>		Executor - \$5,775.26 (statutory)	
<input type="checkbox"/>	Aff.Sub.Wit.	Attorney - \$5,775.26 (statutory)	
<input checked="" type="checkbox"/>	Verified	Closing - \$2,000.00	
<input checked="" type="checkbox"/>	Inventory	<b>Distribution, pursuant to decedent's Will, is to:</b>	
<input checked="" type="checkbox"/>	PTC	The Elnora C. Johnson Revocable Living Trust of 2005, Myron F. Johnson, Trustee - \$145,660.10	
<input checked="" type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg		
<input checked="" type="checkbox"/>	Aff.Mail		
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
	Letters		
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
<input checked="" type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
<input checked="" type="checkbox"/>	FTB Notice		
			Reviewed by: JF
			Reviewed on: 09/23/11
			Updates: 09/29/11
			Recommendation: SUBMITTED
			File 7 – Johnson

Petition for Appointment of Conservator of the Person and Estate

Age: 53	TEMPORARY PETITION DENIED 3-29-11; PUBLIC GUARDIAN APPOINTED TEMPORARY CONSERVATOR OF THE ESTATE ONLY ON 6-27-11, extended to 10-3-11.	NEEDS/PROBLEMS/COMMENTS:
DOB: 1-1-58		<u>Court Investigator advised 6-10-11.</u>
		<u>Voting rights affected – need minute order.</u>
Cont. from 042511, 062711, 082211	KATRINA LEAL and JASON HERMOSILLO, daughter and son, are Petitioners and request appointment as Co-Conservators of the Person and Estate with medical consent powers and bond of \$41,866.00.	<u>Minute Order 3-29-11 (temporary):</u> The Court orders that the joint account be terminated no later than close of business 3-30-11. Additionally, the Court orders that any further examinations of Arthur Hermosillo be at the parties' own expense, and he is to be made available. The Court orders an accounting of each and every check written. Mr. Magness is directed to provide information to the parties regarding the caregiver(s). The General Hearing remains set for 4/25/11. Petition (temporary) is denied.
Aff.Sub.Wit.	<b>Estimated Value of Estate:</b>	<b>Note:</b> Temporary petition also requested that all prior Powers of Attorney, California Advanced Healthcare Directives, and HIPAA Authorizations executed by Arthur Hermosillo be revoked; <u>however, that temporary petition was denied, and this general petition does not include the request.</u> The POA, etc., are still in effect.
✓ Verified	Personal property: \$ 17,000.00	<u>Minute Order 6-27-11: The Court appoints the Public Guardian as temporary conservator of the estate.</u> General powers are authorized until further order of the court. Parties are ordered not to discuss the issue before the Court with Arthur Hermosillo. Arthur Hermosillo is ordered not to take sides with any party. The Court advises all counsel that it will entertain an Order Shortening Time by any party. Matter continued to 8-22-11.
Inventory	Annual income: \$ 21,060.00	<u>Minute Order 8-22-11: Public Guardian to remain as temporary conservator of the estate.</u> Ms. LeVan requests trial with 3-day estimate. Parties agree to set matter for status hearing. Ms. LeVan is directed to file objections by 9-26-11. Court directs counsel to meet and confer within the next 30 days. Mr. Magness advises the Court that he will be filing a petition for interim payment.
PTC	Recovery: \$ 3,806.00	<b>SEE PAGE 8B (STATUS HEARING)</b>
Not.Cred.	Total Bond: \$ 41,866.00	
✓ Notice of Hrg	Voting rights affected.	
✓ Aff.Mail W	Capacity Declaration of Howard Glidden, Ph.D., was filed 6-23-11.	
Aff.Pub.	Capacity Declaration of Dr. David Ira Margolin was filed 6-24-11.	
Sp.Ntc.	Declaration of George C. Molina, MD, was filed.	
✓ Pers.Serv. W	Petitioners state Mr. Hermosillo currently resides with his daughter Jessica Hermosillo. After numerous strokes, he is unable to provide for his personal needs and is substantially unable to manage his finances or resist fraud or undue influence. Petitioners state Jessica is isolating him from the rest of the family and exerting undue influence over him and diverting his income for her own personal use.	
✓ Conf. Screen	The proposed conservatee filed an Objection on 3-28-11 along with a doctor's declaration in support of his objection. <u>See Page 2.</u>	
Letters X	Court Investigator Jo Ann Morris' Report was filed 6-16-11.	
Duties/Supp		
✓ Objections		
✓ Video Receipt X		
✓ CI Report		
9202		
Order X		
Aff. Posting		
Status Rpt		
UCCJEA		
✓ Citation W		
FTB Notice		
		Updates:
		Contacts: Reviewed 9-23-11
		Recommendation:
		Reviewed by: skc
		File 8A - Hermosillo

**SUMMARY (Continued – Page 2 of 3):**

**Court Investigator Jo Ann Morris' Supplemental Report was filed 6-22-11.**

**Court Investigator Jo Ann Morris' Additional Supplemental Report was filed 6-23-11.**

**Arthur Hermosillo's Objection filed 3-28-11 states** that he has been separated from his wife since 3-1-06. On 3-23-11, he filed a Petition for Dissolution of Marriage (11CEFL01757). Mr. Hermosillo states he does not want or need a Conservator, and he does not want to live with his daughter Katrina. He has recently appointed his daughter Jessica as his attorney-in-fact through a valid Durable Power of Attorney and an Advanced Health Care Directive with the assistance of legal counsel. Mr. Hermosillo states:

- He had a stroke about six years ago that has impaired his speech and some of his motor skill, and as such requires some assistance with daily activities. Home care aides come to his home daily to provide assistance, but he is able to bathe, groom, and dress himself without assistance.
- He currently lives with his daughter Jessica in her home and his monetary contribution to the household consists of his SSI benefits \$1,205.00/mo, which are used to pay his home care aides.
- He has been, and is currently capable of, handling his own finances and making his own health care decisions, and other than his speech impairment and limited impairment of motor skills, he is in good physical and mental health.
- He has not been isolated from his friends or family, and has not been subject to any undue influence from Jessica. He references recent visits with Petitioners and states he has no desire to see his wife Sandie Hermosillo.
- Jessica has not been keeping information from Petitioners, and they are welcome to visit any time. Even though his speech is impaired, he is fully capable of communicating this information to his children.
- Jessica terminated one of his home care aides in January 2011 at his request because he did not like or feel comfortable with that aide.
- Jessica has not used his funds for her own personal use. She uses her own wages from her full-time job at a law firm to pay for Mr. Hermosillo's necessities. He states his only income is SSI.
- Jessica works full-time, cooks, cleans, helps pay his bills, runs errands, and ensures that he regularly sees his doctors and takes his prescribed medications.
- The only person who has been diverting his income for her own use is his wife, Sandie Hermosillo. He states that during their marriage, they acquired 17 rental properties that bring in a significant amount of rental income, in addition to their primary residence. He states Sandie has diverted all of the rental income to her own use and has deprived him from receiving his share. He also recently discovered that she transferred title to two of the rental properties to her own name and to a trust that she controls under a power of attorney that he purportedly signed in 2006 immediately after a stroke.
- His children are aware of the properties, but the income is not mentioned in the petition – only his SSI benefits. **“Either Sandie Hermosillo has informed Petitioners that she has stolen all of these properties from Mr. Hermosillo or Petitioners have not informed their own attorney of the true facts. In any event, this is clear evidence that the Petition was filed in bad faith and is simply another effort by Sandie Hermosillo to steal Mr. Hermosillo's money and property.”**
- He believes this petition was filed to prevent him from going forward with divorce proceedings so that Sandie can continued to steal all of his money and property. **“It is clear that this is a domestic dispute between Sandie Hermosillo and Arthur Hermosillo that will be resolved by the Family Court in Mr. Hermosillo's divorce proceedings.”**
- There is no evidence that he is unable to provide for his personal or financial needs or suffers from incapacity. (Reference: Probate Code §1801 – clear and convincing evidence) Further, conservatorship is not the least restrictive alternative.

**Arthur Hermosillo requests the petition be DENIED and requests costs of suit, including reasonable attorneys' fees. On 4-20-11, Mr. Hermosillo filed a Memorandum of Points and Authorities in Opposition to the petition, along with five declarations in support by a current caregiver and two sisters and brothers-in-law.**

**SUMMARY (Continued – Page 3 of 3):**

Declaration of Public Guardian Regarding Conservatee's Finances filed 8-11-11 provides a review and descriptions of the various transactions, and states that there are several accounts and several loans at several different banks, and most transactions were not done by Mr. Hermosillo. However, the report states that based on the information provided, Jessica is managing her father's affairs within reason. The report further states that although he cannot speak, it appeared that Mr. Hermosillo was able to understand her questions about his financial affairs, confirmed his income information, and when asked if Jessica takes good care of him, "he nodded his head 'yes,' smiled, and then grabbed his stomach and pointed to his daughter, gesturing that he has gained weight." Mr. Hermosillo indicated that he did not know about any mortgages done in the last 2-3 years, but acknowledged having several loans at different banks.

**NEEDS/PROBLEMS/COMMENTS:**

As of 8-16-11, the following issues remain:

1. It appears based on information provided to the Court Investigator that the estimated value of the estate does not include the bank account in question. Need clarification. If conservatorship is granted to a private party, this affects bond.

Atty LeVan, Nancy J. (for Katrina Leal and Jason Hermosillo – Daughter and Son – Petitioners)  
 Atty Magness, Marcus (for Arthur Hermosillo – Proposed Conservatee)  
 Atty Kruthers, Heather (for Public Guardian)

Status Hearing

Age: 53	KATRINA LEAL and JASON HERMOSILLO, daughter and son, are Petitioners and request appointment as Co-Conservators of the Person and Estate with medical consent powers and bond of \$41,866.00.	NEEDS/PROBLEMS/COMMENTS:
DOB: 1-1-58		
		<p><b>Note:</b> Page 8A is the continued hearing on the petition for conservatorship and contains a summary of the pleadings.</p>
Aff.Sub.Wit.	ARTHUR HERMOSILLO, the proposed Conservatee, objects.	<p><b>Note:</b> Court records do not show a petition to compel accounting from Jessica Hermosillo, daughter, has been filed in this case by Petitioners Katrina Leal and Jason Hermosillo as they allege in their <i>Objection to Accounting Presented</i> filed on 9/26/2011. Further, the accounting to which their objection is directed is unclear, as no accounting has been filed in this matter, and the only filed document potentially resembling an accounting is the <i>Declaration of Deputy Public Guardian Renee Garcia-Widjaja Regarding Conservatee's Finances</i> filed on 8/11/2011.</p>
Verified		
Inventory	Petitioners' temporary petition was denied on 3-29-11; however, on 6-27-11, <b>PUBLIC GUARDIAN</b> was appointed Temporary Conservator of the Estate only.	<p>Reviewed by: skc / LEG</p>
PTC		
Not.Cred.	On 8-22-11, Attorney LeVan (counsel for Petitioners) requested trial with a three-day estimate. The Court directed the parties to meet and confer within the next 30 days, and the parties agreed to set this status hearing.	Reviewed on: 9-23-11
Notice of Hrg		Updates: 9/29/2011
Aff.Mail		Recommendation:
Aff.Pub.	<b>Objection to Accounting Presented filed on 9/26/2011 by Katrina Leal and Jason Hermosillo, Co-Petitioners for Conservatorship of Arthur Hermosillo, states:</b>	File 8B - Hermosillo
Sp.Ntc.	<ul style="list-style-type: none"> <li>Objectors have filed a Petition to Compel an accounting from <b>JESSICA HERMOSILLO</b>, daughter;</li> <li>Objectors were told in Court that the licensing and bonding information from Beatrice Jiminez, who received over <b>\$1,900.00</b> for the care of Arthur, would be provided to Objectors; no documentation was provided to Objectors;</li> <li>Objectors would like an explanation for several withdrawals totaling <b>\$17,600.89</b> from EECU;</li> <li>Objectors request an accounting regarding the <b>\$3,000.00</b> cash taken from Wells Fargo account; there are several withdrawals of <b>\$1,200.00</b>, the amount of Jessica's rent, and Jessica also appears to be charging Arthur <b>\$400.00</b> rent for staying in her residence;</li> </ul>	
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		

~Please see additional page~

***Objection to Accounting Presented* filed on 9/26/2011 by Katrina Leal and Jason Hermosillo, continued:**

- Jessica has used her influence over Arthur to begin divorce proceedings against Sandie, spouse, based on lies, and she has incurred significant attorneys' fees ;
- The entire accounting is inaccurate and does not add up to the amount spent out of the account nor explain the low remaining balance, and there is no accounting for Arthur's income received for the 5 months covered;
- No documentation has been provided as to Elizabeth Rouse's qualifications to act as Arthur's caregiver, and Ms. Rouse has gained substantial financial benefit from placing Jessica in charge of Arthur's financial matters; Ms. Rouse has a conflict of interest as Arthur's caregiver and as the Notary of Arthur's Durable Power of Attorney signed 1/4/2011 while Arthur was in the hospital; there is no statement from an Ombudsman to indicate that Arthur signed the documents knowingly and without coercion;
- Objections question why furniture and clothing was purchased for Arthur when he has these at his former residence and could have moved them to Jessica's house without cost.

**Objectors request a formal accounting of all of Arthur's income and a complete detailed accounting of the funds spent from the \$82,000.00 deducted from Wells Fargo Bank.**

**Petition of Public Administrator Under Section 7660(a)(1) of the California Probate Code**

<b>DOD:6-16-11</b>	<b>PUBLIC ADMINISTRATOR</b> is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>
	<b>Petitioner states</b> that Decedent died leaving a will dated 1-16-11; however, the Public Administrator does not feel it is valid because the signature does not appear to be the Decedent's.	<b>Minute Order 8-29-11:</b> The Court appoints the Public Administrator as Special Administrator. Counsel to file a declaration.
<b>Cont. from 082911</b>		<b>1. An order granting authority to administer under Probate Code §7660 has not yet been granted, a declaration per the minute order of 8-29-11 has not been filed, and Letters of Special Administration designating specific powers have not issued. However, on 9-6-11, Public Administrator filed a Notice of Proposed Action indicating full authority under IAEA and intent to sell the Decedent's personal property. Notice was sent only to the two siblings originally listed in the petition. <u>Need clarification.</u></b>
<input type="checkbox"/> Aff.Sub.Wit.		<b>2. Petitioner states Decedent is survived by two siblings, who were served notice of the 8-29-11 hearing and notice on the proposed sale of property; however, the alleged will document lists additional heirs.</b>
<input checked="" type="checkbox"/> Verified	Petitioner states relatives have declined to administer the estate, which consists of cash and personal property including personal items, a motorcycle, a GMC truck, and a Pace trailer (total value: \$39,528.00).	Although an order under Probate Code §7660 may be made ex parte, the court may require notice to the additional heirs named in the alleged will (relationships unknown) pursuant to Probate Code §8110 due to the circumstances of this case and because Petitioner requested hearing and noticed certain heirs:
<input type="checkbox"/> Inventory		- Christy Hampton
<input type="checkbox"/> PTC		- Aaron Hampton
<input type="checkbox"/> Not.Cred.		- Erica Hampton
<input checked="" type="checkbox"/> Notice of Hrg		- Linda Hampton
<input checked="" type="checkbox"/> Aff.Mail	<b>Therefore, Petitioner's requests to administer the estate in accordance with the intestate succession laws of California and Probate Code §7660.</b>	- Kim Hampton
<input type="checkbox"/> Aff.Pub.		- Becky Hampton
<input type="checkbox"/> Sp.Ntc.		- Marlene Phillips
<input type="checkbox"/> Pers.Serv.		<i>(Examiner also notes that court records appear to indicate that this Decedent had issue, which means the siblings that were noticed may not be the intestate heirs. Records indicate dissolution and a child support cases for a "Steve Adrian Hampton.")</i>
<input type="checkbox"/> Conf. Screen		<b>3. The court may require further information regarding the signature issue.</b>
<input type="checkbox"/> Letters		
<input type="checkbox"/> Duties/Supp		
<input type="checkbox"/> Objections		
<input type="checkbox"/> Video Receipt		
<input type="checkbox"/> CI Report		
<input type="checkbox"/> 9202		
<input checked="" type="checkbox"/> Order		
<input type="checkbox"/> Aff. Posting		<b>Updates:</b>
<input type="checkbox"/> Status Rpt		<b>Contacts:</b> emailed notes 8-19-11
<input type="checkbox"/> UCCJEA		<b>Recommendation:</b>
<input type="checkbox"/> Citation		<b>Reviewed by:</b> skc
<input type="checkbox"/> FTB Notice		<b>File 9 - Hampton</b>

Atty Herold, Kim M. (for Cheryl Louise Smith – Successor Trustee – Petitioner)

Petition to Confirm Series E Bonds as Assets of Living Trust [Prob. C. 850(3)(B) and 17200(a)]

Franklin E. Wynn DOD: 1-25-11	CHERYL LOUISE SMITH, Successor Trustee, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
Mary H. Wynn DOD: 2-14-11		
	Petitioner states that the Trust Schedule A lists certain Series E Bonds (45 with a \$1,000.00 denomination and 3 with \$10,000.00 denominations – a current value of approximately \$139,380.00).	1. The trust schedule states that the community property listed in the schedule is “indicated by section which assets are now being transferred into the trust. Other assets, if listed, are for reference only.”  The schedule then lists the categories:  <u>REAL PROPERTY</u> – Title Transfers to the Trust. <u>CASH ACCOUNTS</u> – Trust to become Owner <u>SERIES E BONDS</u> – Listing only
Aff.Sub.Wit.	Petitioner has discovered that the Series E Bonds were not transferred to the trust. Petitioner is informed and believes that the settlors believed these bonds were held in the name of the trust by setting them forth on the schedule, and that the intent of the settlors clearly expressed in the schedule was to transfer the Series E Bonds to the Trust. (Trust and Schedule of Community Property Assets are attached.)	Petitioner states that by setting them forth on the schedule, it was the intent of the settlors to transfer the Series E bonds to the Trust.  However, Examiner notes that the schedule appears to indicate that the Series E Bonds were specifically and intentionally <u>not</u> transferred to the trust, and were listed for “reference only” as the settlors’ community property assets.
<input checked="" type="checkbox"/> Verified	Petitioner further states that the settlors’ wills (attached) distribute their estates to the trust; therefore, if the bonds were distributed pursuant to a probate administration, disposition would be to the same beneficiaries (Petitioner and her brother).	2. Petitioner states because the settlors’ wills both distribute to the trust, money will be saved by having the bonds included in the trust. However, if the court determines (per above) that the bonds were not transferred to the trust by the settlors, then, as property of the estate, distribution is subject to administration under Probate Code §7001, and is subject to the rights of beneficiaries, creditors, and other persons as provided by law.
<input type="checkbox"/> Inventory	Petitioner states that aside from probate costs, there would be a savings of approx. \$5,181.40 in attorney’s fees by having these Series E Bonds included in the Trust.	
<input type="checkbox"/> PTC	Petitioner requests an Order declaring that the Series E Bonds are assets of the trust.	
<input type="checkbox"/> Not.Cred.		
<input checked="" type="checkbox"/> Notice of Hrg		
<input checked="" type="checkbox"/> Aff.Mail W		
<input type="checkbox"/> Aff.Pub.		
<input type="checkbox"/> Sp.Ntc.		
<input type="checkbox"/> Pers.Serv.		
<input type="checkbox"/> Conf. Screen		
<input type="checkbox"/> Letters		
<input type="checkbox"/> Duties/Supp		
<input type="checkbox"/> Objections		
<input type="checkbox"/> Video Receipt		
<input type="checkbox"/> CI Report		
<input type="checkbox"/> 9202		
<input checked="" type="checkbox"/> Order		
<input type="checkbox"/> Aff. Posting		Reviewed by: skc
<input type="checkbox"/> Status Rpt		Reviewed on: 9-23-11
<input type="checkbox"/> UCCJEA		Updates:
<input type="checkbox"/> Citation		Recommendation:
<input type="checkbox"/> FTB Notice		File 10 - Wynn

Petition for Instructions and/or for Orders Regarding Real and Personal Property  
(Prob. C. 17200, et seq)

		<p><b>JEREMY GRIFFITHS</b> and <b>JUSTICE PAJARILLO</b>, trustees of the Lillian Lorene Uribe Living Trust dated August 6, 2010 (the “Trust”) are Petitioners.</p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p>
<b>Cont. from</b>		<p>Petitioners state that the Trust is not revocable and the Settlor is deceased. The Trust names Petitioners as co-trustees in the event of the Settlor’s death and the Petitioners have agreed to act as trustees.</p>	
<input type="checkbox"/>	<b>Aff.Sub.Wit.</b>		
<input checked="" type="checkbox"/>	<b>Verified</b>	<p>Decedent had a 100% interest in real property located at 4177 E. Cornell, Fresno at the time of her death. Said property was listed on Schedule A of the Trust as a Trust asset. The first paragraph of Article Three of the Trust states in part: “I hereby transfer, assign, and convey all of my right, title and interest in and to all of my property identified in Exhibit A, and any other property that is permitted by law to be held in the Trust. Schedule A of the Trust (the last page of Exhibit A) lists 4177 E. Cornell, Fresno as a Trust asset.</p>	
<input type="checkbox"/>	<b>Inventory</b>		
<input type="checkbox"/>	<b>PTC</b>	<p>Declaration of Attorney Markeson who prepared the Trust and estate planning documents for the decedent further indicates that the decedent intended for the property to be an asset of the Trust.</p>	
<input type="checkbox"/>	<b>Not.Cred.</b>		
<input checked="" type="checkbox"/>	<b>Notice of Hrg</b>	<p>Petitioners state that pursuant to these facts, the decedent intended that the property be held as an asset of the Trust and pursuant to the principles set forth in <u>Estate of Heggstad</u> asks the Court to find that said real property was assigned to the Trust and title is held by the Trust.</p>	
<input checked="" type="checkbox"/>	<b>Aff.Mail</b>		
<input type="checkbox"/>	<b>Aff.Pub.</b>	<p>Petitioners pray for an order that Jeremy Griffiths and Justice Pajarillo as trustees of the Lillian Lorene Uribe Living Trust dated August 6, 2010, own and hold title to the real property located at 4177 E. Cornell, Fresno.</p>	
<input type="checkbox"/>	<b>Sp.Ntc.</b>		
<input type="checkbox"/>	<b>Pers.Serv.</b>	<p><b>Reviewed by:</b> JF</p> <p><b>Reviewed on:</b> 09/26/11</p> <p><b>Updates:</b></p> <p><b>Recommendation:</b></p> <p><b>File 11 - Uribe</b></p>	
<input type="checkbox"/>	<b>Conf. Screen</b>		
<input type="checkbox"/>	<b>Letters</b>		
<input type="checkbox"/>	<b>Duties/Supp</b>		
<input type="checkbox"/>	<b>Objections</b>		
<input type="checkbox"/>	<b>Video Receipt</b>		
<input type="checkbox"/>	<b>CI Report</b>		
<input type="checkbox"/>	<b>9202</b>		
<input checked="" type="checkbox"/>	<b>Order</b>		
<input type="checkbox"/>	<b>Aff. Posting</b>		
<input type="checkbox"/>	<b>Status Rpt</b>		
<input type="checkbox"/>	<b>UCCJEA</b>		
<input type="checkbox"/>	<b>Citation</b>		
<input type="checkbox"/>	<b>FTB Notice</b>		

Petition for Appointment of Temporary Conservatorship of the Person

<b>Age:</b> 79	<p><b>TEMPORARY GRANTED EX PARTE EXPIRES 10-3-11</b></p> <p><b>GENERAL HEARING 10-26-11</b></p> <p><b>KATINA SAPIEN LOZANO PAULEY</b>, Daughter, is Petitioner and requests appointment as Temporary Conservator of the Person and Estate with bond of \$100,000.00 and authority to change the proposed Conservatee’s residence.</p> <p><b>Estimated Value of Estate:</b>                  Personal property: \$ 70,000.00                  Annual income: 18,000.00                  Cost of recovery: 8,800.00  <b>Total bond: \$ 96,800.00</b></p> <p><b>Petitioner states</b> Angie has severe rheumatoid arthritis and was prescribed medication, but did not fill the prescription. She has memory problems and has to have someone pay her bills and separate her medications. She does not drive, and has either family or her friend, Sheila, take her places or run errands for her.</p> <p>Angie’s son, Richard Lozano, is incarcerated at Wasco (details included), is a hoarder, and is storing all of his stuff at Angie’s house (photos attached). Richard wrote a “disturbing letter” explaining that he will be out around 9-21-11 and not to let anyone help her with her finances or she would be put in an old folks home and lose her house and he would be homeless too. The letter also addresses allegations that Richard’s wife, Carol Lozano, was stealing from Angie. Petitioner explains that Carol was helping with Angie’s bills at one point, but was using the money for her own personal use, and Petitioner had to step in. Within the last week, Carol has been talking to Angie and telling her not to trust Petitioner. Richard also wrote a “disturbing letter” to Petitioner and Angie’s two sisters (letters attached).</p> <p>Petitioner was called by Principal Financial regarding suspicious activity with Angie’s finances –there have been frequent requests for money to be transferred to her checking account, including a recent request for \$6,400.00 to pay Richard’s rent. Richard’s friend “Skip” has been picking up Angie and taking her to the bank to withdraw money. Angie made other cash withdrawals of \$1,000.00 on 8-17-11 and \$1,280.00 on 8-19-11. A copy of the account activity is attached. <b>Petitioner states Angie does not remember making any of these withdrawals.</b></p> <p>Richard asks in his letter that Angie pick him up when he is released, and plans to live with her. Petitioner is concerned that he will take control of her finances and use her money for his personal use again. Angie’s friend Sheila no longer wishes to help because of the problems caused by Richard and Carol. Angie needs someone to help her every day with meals and sorting her medication.</p> <p><b>Court Investigator Julie Negrete’s report was filed 9-22-11.</b></p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p><u>Court Investigator advised rights on 9-20-11.</u></p> <p><b>Note:</b> Attorney John Barrus was appointed to represent the proposed Conservatee on 9-22-11.</p> <p><b>1. Petitioner requests authority to change the proposed conservatee’s residence during temporary conservatorship, but does not provide further information. Need clarification.</b></p>
<b>DOB:</b> 8-2-32		
<b>Aff.Sub.Wit.</b>		
<input checked="" type="checkbox"/> <b>Verified</b>		
<b>Inventory</b>		
<b>PTC</b>		
<b>Not.Cred.</b>		
<input checked="" type="checkbox"/> <b>Notice of Hrg</b>		
<input checked="" type="checkbox"/> <b>Aff.Mail</b> W		
<b>Aff.Pub.</b>		
<b>Sp.Ntc.</b>		
<input checked="" type="checkbox"/> <b>Pers.Serv.</b> W		
<b>Conf. Screen</b>		
<b>Letters</b>		
<b>Duties/Supp</b>		
<b>Objections</b>		
<input checked="" type="checkbox"/> <b>Video Receipt</b>		
<b>CI Report</b>		
<b>9202</b>		
<input checked="" type="checkbox"/> <b>Order</b>		
<b>Aff. Posting</b>		
<b>Status Rpt</b>		
<b>UCCJA</b>		
<b>Citation</b>		
<b>FTB Notice</b>		
<b>Reviewed by:</b> skc / LEG		
<b>Reviewed on:</b> 9-23-11		
<b>Updates:</b> 9/29/11		
<b>Recommendation:</b>		
<b>File 12 - Lozano</b>		

**Status Hearing Re: Filing of a Final Accounting**

<b>DOD: 9/10/10</b>	<p><b>CRYSTAL FOREMAN</b> was appointed Conservator of the Person and Estate on 11/18/03 with bond of \$10,000.00.</p> <p>The balance of the estate as of 1/5/10 was \$32,316.55, of which \$4,656.73 was cash.</p> <p>The conservatee died on 9/10/10.</p> <p>On 4/20/11, the court set a status hearing for termination of proceedings for deceased conservatee. Notice was mailed to Crystal Foreman on 4/20/11.</p> <p>Minute Order from the status hearing on 7/11/11 states the court sets the matter for an Order to Show Cause on 8/22/11 and orders Crystal Foreman to be present at that hearing.</p> <p><b>Minute order from the Order to Show Cause hearing on 8/22/11 set this status hearing.</b></p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p><b><u>OFF CALENDAR.</u> Third Account filed and set for hearing on 11/10/11.</b></p>	
<b>Cont. from</b>			
<b>Aff.Sub.Wit.</b>			
<b>Verified</b>			
<b>Inventory</b>			
<b>PTC</b>			
<b>Not.Cred.</b>			
<b>Notice of Hrg</b>			
<b>Aff.Mail</b>			
<b>Aff.Pub.</b>			
<b>Sp.Ntc.</b>			
<b>Pers.Serv.</b>			
<b>Conf. Screen</b>			
<b>Letters</b>			
<b>Duties/Supp</b>			
<b>Objections</b>			
<b>Video Receipt</b>			
<b>CI Report</b>			
<b>9202</b>			
<b>Order</b>			
<b>Aff. Posting</b>			
<b>Status Rpt</b>			
<b>UCCJEA</b>			
<b>Citation</b>			
<b>FTB Notice</b>			
			<p><b>Reviewed by: KT</b></p> <p><b>Reviewed on: 9/23/11</b></p> <p><b>Updates:</b></p> <p><b>Recommendation:</b></p> <p><b>File 13 - Shirey</b></p>

<p>DOD: 12/23/06</p>	<p><b>JUANITA HARLAN</b>, daughter, was appointed Administrator with full IAEA without bond on 8/28/07 and Letters issued on 11/21/07.</p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p>
<p>Cont. from 080111</p>	<p><b>Inventory and Appraisal filed 11/2/07</b> valued the property at \$225,000.00 as of 12/23/06.</p>	<p><b>Continued from 8/1/11.</b></p>
<p>Aff.Sub.Wit.</p>	<p><b>On 4/27/11</b>, the court set a status hearing for failure to file a first account or petition for final distribution.</p>	
<p>Verified</p>		
<p>Inventory</p>		
<p>PTC</p>		
<p>Not.Cred.</p>		
<p>Notice of Hrg</p>		
<p>Aff.Mail</p>		
<p>Aff.Pub.</p>		
<p>Sp.Ntc.</p>		
<p>Pers.Serv.</p>		
<p>Conf. Screen</p>		
<p>Letters</p>		
<p>Duties/Supp</p>		
<p>Objections</p>		
<p>Video Receipt</p>		
<p>CI Report</p>	<p><b>Status Report filed 7/21/11</b> states the Administrator executed a new listing agreement for sale of the sole asset of the estate, real property located in Coalinga. The listing price is \$120,000.00 and the agreement is effective from July 15, 2011, through January 31, 2012. The Administrator is not yet in a position to file a petition for final distribution. The Administrator estimates that it will take approximately six months to sell the property and close the estate.</p>	
<p>9202</p>		
<p>Order</p>	<p><b>Status Report filed on 9/29/11</b> states the original appraisal value of the property was \$225,000.00. The property has been listed for sale at \$120,000.00. An offer to purchase the property at \$50,000.00 was made on 8/29/11. This offer is \$70,000.00 below the listing price. The Administrator's cousin has expressed an interest in purchasing the property for \$70,000.00. Administrator is in discussions with her cousin for this purpose. Administrator estimates that it will take approximately an additional 6 months to sell the property and close the estate.</p>	
<p>Aff. Posting</p>		
<p>Status Rpt</p>		<p><b>Reviewed by: KT</b></p>
<p>UCCJEA</p>		<p><b>Reviewed on: 9/23/11</b></p>
<p>Citation</p>		<p><b>Updates: 9/29/11</b></p>
<p>FTB Notice</p>		<p><b>Recommendation:</b></p>
		<p><b>File 14 - Diaz</b></p>

Probate Status Hearing Re: Failure to File Annual or Biennial Account

Age: 9 years DOB: 6/22/02	<p><b>MELISSA RUSSELL</b>, paternal grandmother, was appointed as guardian of the person and estate on 8/19/2010.</p> <p>Inventory and appraisal was filed on 4/11/11 showing the value of the estate at <b>\$73,296.27</b>.</p> <p>The first account is now due.</p>	<b>NEEDS/PROBLEMS/COMMENTS:</b>  1. Need current status report or first account.
Cont. from		
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: KT
		Reviewed on: 9/23/11
		Updates:
		Recommendation:
		File 15 - Pitkin

**Status Conference Re: Petition for Instructions**

<b>DOD: 5/21/08</b>	<b>JEFF DALE</b> , Successor Trustee of the Elaine A. McLain Trust of 1996 (“Trust”), is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>
		<u>Continued from 8/1/11.</u>
<b>Cont. from 022811, 041111, 060611, 080111</b>	<b>Petitioner states:</b>	<b>NOTE: Guardian Ad Litem filed an Amended Petition for Order Compelling Trustee (see Page 16B), to be heard 10/11/11. Also scheduled for hearing on 10/11/11 is Guardian Ad Litem’s Petition to Review Reasonableness of Attorney’s Fees and Costs, for an Accounting and for Removal of Trustee.</b>
<input type="checkbox"/> <b>Aff.Sub.Wit.</b>	1. Elaine McLain (“Decedent”) created the Trust on 10/26/96 (a copy of the Trust is attached to Petition);	
<input checked="" type="checkbox"/> <b>Verified</b>	2. The Trust became irrevocable upon Decedent’s death in May 2008;	
<input type="checkbox"/> <b>Inventory</b>	3. Michele Dale and George McLain IV, named successor trustees, are both incompetent within the meaning of the Trust’s disqualification clauses (see Trust – p. 14; paragraph 9);	
<input type="checkbox"/> <b>PTC</b>	4. Petitioner succeeded both George McLain IV and Michelle Dale as sole successor trustee;	
<input type="checkbox"/> <b>Not.Cred.</b>	5. The principal place of Trust administration is Fresno County;	
<input checked="" type="checkbox"/> <b>Notice of Hrg</b>	6. During the co-trusteeship of Michele Dale and George McLain IV, Decedent directed that 2 parcels of Trust real property be sold, and both co-trustees participated in the sales;	
<input checked="" type="checkbox"/> <b>Aff.Mail</b> <input type="checkbox"/> <b>w</b>	7. A substantial portion of the proceeds of the 2 sales were consumed in the day-to-day care of Decedent;	
<input type="checkbox"/> <b>Aff.Pub.</b>	8. The remaining portion of the funds were placed in an investment account which primarily held stocks and securities traded on the New York Stock Exchange;	
<input type="checkbox"/> <b>Sp.Ntc.</b>	9. Title to the investment accounts were in the name of Elaine McLain and Michele Dale as joint tenants; no reference was made to trustee or fiduciary interests in the ownership documents;	
<input type="checkbox"/> <b>Pers.Serv.</b>	10. The Trust (p. 10, paragraph 5, sub M), allows title to remain in the Trust even though the title documents do not disclose the trusteeship or fiduciary obligation of the account holder;	
<input type="checkbox"/> <b>Conf. Screen</b>	11. In the fall of 2008, the Stock Market collapsed and the security accounts plummeted to ½ of their value and were trending even lower;	<b>Reviewed by: NRN</b>
<input type="checkbox"/> <b>Letters</b>	12. The Conservator of the Estate for Michele Dale obtained an emergency court order, allowing funds to be withdrawn from the investment account before further loss could occur, which resulted in saving approximately \$214,00.00;	<b>Reviewed on: 9/26/11</b>
<input type="checkbox"/> <b>Duties/Supp</b>	13. Due to ambiguity of the Trust’s wording at P.10, paragraph 5, sub M, on the advice of counsel, the money was split into 2 segregated accounts: one account for the benefit of Michele Dale, Conservatee, and the other for the benefit of George McLain IV;	<b>Updates:</b>
<input type="checkbox"/> <b>Objections</b>	<i>--see attached page--</i>	<b>Recommendation:</b>
<input type="checkbox"/> <b>Video Receipt</b>		<b>File 16A - Mclain</b>
<input type="checkbox"/> <b>CI Report</b>		
<input type="checkbox"/> <b>9202</b>		
<input checked="" type="checkbox"/> <b>Order</b>		
<input type="checkbox"/> <b>Aff. Posting</b>		
<input type="checkbox"/> <b>Status Rpt</b>		
<input type="checkbox"/> <b>UCCJEA</b>		
<input type="checkbox"/> <b>Citation</b>		
<input type="checkbox"/> <b>FTB Notice</b>		

**Cont'd:**

14. In September 2009, Conservator of Michele Dale petitioned this Court for instructions to distribute the segregated accounts to the Trust;
15. This Court declined to issue instructions, believing insufficient facts were before the Court to justify the instructions;
16. The Michele Dale Conservatorship's principal place of management is in Fresno County;
17. Pursuant to P.10, paragraph 5, subs. K and Q, the successor trustee is entitled to retain counsel and commence any necessary litigation on behalf of the Trust.

**Argument:**

- a. Petitioner believes the proceeds in the 2 segregated accounts are attributable and traceable to the co-trustees' sales of the 2 parcels of real property, and that the accounts are therefore property of the Trust;
- b. It is reasonable and necessary to file an action against the Conservatorship Estate of Michele Dale in order to regain control of the accounts and in order to close the Trust, pay debts and taxes, and distribute the remainder to the beneficiaries.

**Petitioner requests an Order:**

1. That good cause exists for the issuance of the instructions;
2. That successor trustee (Petitioner) be authorized to commence the litigation against the conservatorship to pay all necessary and reasonable costs involved from Trust assets;
3. That Petitioner be authorized to retain counsel as he deems appropriate and pay an initial retainer not to exceed \$10,000.00 and pay an hourly rate not to exceed \$300.00 per hour;
4. That Petitioner be authorized to enter into other such compensation agreements including making a contingency fee payment agreement not to exceed \$25,000.00 in addition to or alternative to the compensation mentioned with respect to counsel fees above.

***Supplement to Successor Trustee's Petition for Instruction***, filed 4/4/11 by Petitioner Jeff Dale, states:

- The matter was initially heard on 2/28/11 in Dept. 303, Fresno Superior Court;
- Upon agreement of the parties present and upon suggestion of the Court, Petitioner agreed to modify the Prayer of his Petition for Instructions as follows:
  - Upon application of the Successor Trustee to the Trust, Petitioner prays for a Court order as follows:
    - That good cause appears for the issuance of the Instructions.
    - That Jeff Dale, as Conservator of the Estate of Michele Dale, Conservatee, be ordered to pay the Trust the sum of \$107,000.00, now being held by the Conservatorship of Michele Dale;
    - That Jeff Dale, as Conservator of the Estate of Michele Dale, Conservatee, be ordered to execute any and all documents necessary to facilitate such transfer of funds.

**Atty Panzak, Gordon (for Jeff Dale/Successor Trustee – Petitioner)**

**Atty Pasto, James H. (of San Diego, for Debbie Duehning, Guardian Ad Litem for George McLain IV, Trust beneficiary)**

**Status Conference Re: Petition for Order Compelling Trustee to Make Distribution to Trust Beneficiary; For Imposition of a Constructive Trust; and for an Accounting [Prob. C. § 17200, et seq.]**

<b>DOD: 5/26/08</b>	<b>GEORGE MCLAIN IV, by and through his Guardian Ad Litem, DEBBIE DUEHNING, is Petitioner (“Petitioner”).</b>		<p><b>NEEDS/PROBLEMS/COMMENTS:</b> <u>Continued from 8/1/11.</u></p> <p><b>NOTE: Guardian Ad Litem filed an Amended Petition for Order Compelling Trustee, to be heard 10/11/11. Also scheduled for hearing on 10/11/11 is Guardian Ad Litem’s Petition to Review Reasonableness of Attorney’s Fees and Costs, for an Accounting and for Removal of Trustee.</b></p> <p><b>1. Need Order.</b></p> <p><b>Note:</b> per this Court’s order dated 6/6/11, the Court ordered Jeff Dale, as Conservator of the estate of Michele Dale, to transfer \$107,000.00 from the conservatorship to the Trust. No distributions are to be made without further court order.</p>
	<b>Petition states:</b>		
	<ul style="list-style-type: none"> <li>Decedent died on or about 5/26/08, a resident of San Diego County;</li> <li>The Trust at issue is The Elaine A. McLain Trust of 1996 (“Trust”); administration of said Trust is in Fresno County;</li> <li>Respondent Jeffrey Dale (“Respondent”), Conservator of the Person and Estate of Michelle Lloyd Dale; is also the sole successor Trustee of the Trust;</li> <li>Petitioner George McLain IV is a beneficiary of the Trust;</li> <li>At the time of its creation, the Trust owned 1) real property known as 528 Dawson, Morro Bay, California 2) 1095 Allesandro, Morro Bay, California and 3) money invested in the Franklin California Tax Free Income Fund, Inc., Acct. No. 1120-1121500;</li> <li>Prior to Decedent’s death, the two real properties were sold by Respondent and deposited into bank accounts held in Michele Lloyd Dale’s name, as was the Franklin California Tax Free account;</li> <li>As such, the Trust’s property is money held in an account or accounts in Michele Lloyd Dale’s name, in such sum(s) more particularly within Respondent’s knowledge;</li> <li>Petitioner believes some or all of the funds may have been transferred back to the Trust and Petitioner is unaware of the precise ownership of those funds;</li> <li>However, Petitioner further alleges that if any transfer was made from the Trust to Michele Lloyd Dale and Decedent with right of survivorship, such transfer was made when Trustor (Decedent) lacked capacity to understand the nature and effect of said transfer.</li> <li>Decedent did not intend to remove the funds from the Trust corpus, and did not intend for all of the unused portion of the Trust to go solely to Michele Lloyd Dale, to the exclusion of Decedent’s son, Petitioner George Mclain IV;</li> <li>Petitioner is a Trust beneficiary with ½ interest in the Trust;</li> <li>Michele Lloyd Dale is the only other Trust beneficiary;</li> <li>Per Trust terms, upon Decedent Trustor’s death, the Trust terminates and is to be distributed to Decedent’s children, Petitioner and Michele L. Mclain Dale, equally.</li> <li>Despite Petitioner’s repeated demands, Respondent Jeffrey Dale has refused to distribute that portion of the Trust to Petitioner;</li> <li>On 5/28/10, Petitioner’s attorney (Mr. Pasto) delivered a written request to Respondent for an account of Trust activities and status of the Trust corpus (copy of letter attached to Petition);</li> <li>Respondent Trustee has failed to provide any account whatsoever;</li> <li>Petitioner believes compensation in a reasonable sum determined by the Court should be awarded as attorney’s fees for his attorney in this matter, and that said amount should be charged to Respondent’s account or as a Trust expense and paid to Attorney Pasto.</li> </ul>		
	<b>Cont. from 060611, 080111</b>		
	<b>Aff.Sub.Wit.</b>		
✓	<b>Verified</b>		
	<b>Inventory</b>		
	<b>PTC</b>		
	<b>Not.Cred.</b>		
✓	<b>Notice of Hrg</b>		
✓	<b>Aff.Mail</b>	w	
	<b>Aff.Pub.</b>		
	<b>Sp.Ntc.</b>		
	<b>Pers.Serv.</b>		
	<b>Conf. Screen</b>		
	<b>Letters</b>		
	<b>Duties/Supp</b>		
	<b>Objections</b>		
	<b>Video Receipt</b>		
	<b>CI Report</b>		
	<b>9202</b>		
	<b>Order</b>	X	
	<b>Aff. Posting</b>		
	<b>Status Rpt</b>		
	<b>UCCJEA</b>		
	<b>Citation</b>		
	<b>FTB Notice</b>		

**SEE ATTACHED PAGE**

**Cont'd:****Request for Imposition of Constructive Trust**

- At all times a confidential relationship (Sole Trustee and Trust beneficiary) existed between Petitioner and Respondent;
- Respondent was aware or had reason to believe that Petitioner was suffering from a form of dementia and unable to understand the location and nature of his (Petitioner's) assets, and also unable to give informed consent to any of Respondent Trustee's actions in connection with Respondent's administration of the Trust;
- Respondent transferred title to the property that should have been distributed to Petitioner to account(s) in the name of Michele Doyle and without Petitioner's consent, at a loss to Petitioner in a sum as may be shown according to proof;
- Respondent has failed to distribute the funds to which Petitioner is entitled as Respondent Jeffery Dale, as Conservator of Michele Dale's estate wishes to maintain in other court and administrative proceedings the fiction that the Trust assets are property of the Trust and that Michele Dale does not have ownership or control of those funds;
- By virtue of Respondent's wrongful acts and the violation of the relationship of trust and confidence then existing between them, Respondent, as Trustee of the Trust and as Conservator of Michele Dale, holds title to Petitioner's one-half share of the Trust assets, as a constructive trustee for Petitioner's benefit.

**Request for an Accounting**

- Respondent owed Petitioner a duty to keep Petitioner reasonably informed of the Trust and its administration, and to account to Petitioner as a Trust beneficiary for Trust activities;
- Petitioner has repeatedly requested, both orally and in writing, that Respondent Jeffrey Dale, as Trustee of the Trust, provide an account of the Trust's activities and required by the California Probate Code;
- Respondent has breached his fiduciary duties owed to Petitioner.

**Petitioner requests:**

- **The court find that Michele Dale holds Petitioner's interest in the aforementioned bank accounts in her name in constructive trust for the benefit of Petitioner;**
- **The court order Respondent Jeffrey Dale, Trustee, to distribute to Petitioner his portion of the Trust;**
- **The court require Respondent Jeffrey Dale to account for all Trust assets and activities to Petitioner;**
- **The court order Petitioner's attorney's fee in a reasonable sum to be paid to Petitioner's attorney directly from the Trust Estate, to be charged to Michele Dale or to the Trust estate;**
- **Costs of this proceeding be ordered paid by the Estate in proportions determined by the Court;**
- **Such other and further relief the Court deems just and proper.**

**SEE ATTACHED PAGE**

16B

Cont'd:

*Respondent's Answer to Petitioner's Petition for Order Compelling Trustee*, filed 6/2/11, states:

- Respondent denies most allegations of Petitioner's Petition based on insufficient knowledge of facts alleged;
- Upon the creation of the Trust and thereafter, Petitioner Jeff Dale and Michele Dale were acting as co-trustees of the Trust;
- Between 3/19/6 and 7/2007, Petitioner and Michele Dale executed the duties of co-trustees; during this time period and at the direction of Decedent, Petitioner and Michele Dale, acting as co-trustees, sold the 528 Dawson and 1095 Allesandro properties; during this same time period, proceeds from the property sales were place into interest-bearing accounts at the direction of Decedent; said accounts were in Decedent and Michele Dales' names (and not in the name "Elaine A. McLain Trust of 1996;" both co-trustees agreed to and participated in all sales and transfers of the funds to those accounts;
- Between 3/19/96 and 5/26/08, most, if not all of the sales proceeds were consumed in the care of Decedent until her death; both co-trustees agreed and participated in the payments;
- Upon Decedent's death, any residual funds in the accounts went to Michele under the survivorship provision of the accounts (said accounts having been created in that manner with the participation and agreement of Decedent and co-trustees Jeff Dale and Michele);
- Upon the incapacities of Petitioner George McLain and Michele Dale in July 2007, Jeff Dale became sole successor Trustee and the principal place of administration of the Trust became 1408 H Street in Fresno;
- The status of the Franklin Fund Account was concealed from Trustee by Petitioner and his Guardian Ad Litem acting in concert with one another, and was only recently discovered;
- Trustee has contacted Franklin Funds and is in the process of bringing these funds into the Trust;
- Petitioner's Guardian Ad Litem is the former wife of George McLain IV, and has him locked in her home and is taking the proceeds from his Veterans Benefit Checks by the artifice of a very questionable Power of Attorney;
- Petitioner's Petition is in furtherance of the Guardian Ad Litem's fraudulent intent to defraud the Trust and George McLain IV.
- Respondent alleges various affirmative defenses, based upon the following assertions:
  - Petitioner as a beneficiary lacks standing with respect to assets in a revocable Trust and where the assets were removed and revoked by Trustor no later than 2003;
  - The property sales and transfer of the proceeds to the aforementioned accounts occurred no later than 2003 and were done with the knowledge and participation of Petitioner George McLain IV;
  - Petitioner's Petition is file against Jeff Dale in a personal capacity and not in the capacity of Trustee.
- **Respondent requests the Petition by denied, costs be awarded to Respondent, and for any other relief or order that the Court deems appropriate.**

Age: 5 years	<p><b>MELISSA RUSSELL</b>, paternal grandmother, was appointed as guardian of the person and estate on 8/19/2010.</p> <p>Inventory and appraisal was filed on 4/11/11 showing the value of the estate at <b>\$73,296.27</b>.</p> <p>The first account is now due.</p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p>2. Need current status report or first account.</p>
DOB: 10/17/05		
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Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
	Reviewed by: KT	
	Reviewed on: 9/23/11	
	Updates:	
	Recommendation:	
	File 17 - Pitkin	

**(1) Report of Executor on Waiver of Account; (2) Petition for Final Distribution and  
 (3) Distribution to Testamentary Trust; Waiver of Fee by Executor**

<b>DOD: 11/1/10</b>	<b>JILL C. PETERSON</b> , Daughter and Executor with Full IAEA without bond (all funds at EECU blocked), is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>
	I & A - <b>\$1,147,704.39</b>	
	POH - <b>\$1,165,043.04</b>	
<input type="checkbox"/> Aff.Sub.Wit.		
<input checked="" type="checkbox"/> Verified	X	
<input checked="" type="checkbox"/> Inventory		
<input checked="" type="checkbox"/> PTC		
<input checked="" type="checkbox"/> Not.Cred.		
<input checked="" type="checkbox"/> Notice of Hrg		
<input checked="" type="checkbox"/> Aff.Mail		
<input type="checkbox"/> Aff.Pub.		
<input type="checkbox"/> Sp.Ntc.		
<input type="checkbox"/> Pers.Serv.		
<input type="checkbox"/> Conf. Screen		
<input checked="" type="checkbox"/> Letters	12/16/10	
<input type="checkbox"/> Duties/Supp		
<input type="checkbox"/> Objections		
<input type="checkbox"/> Video Receipt		
<input type="checkbox"/> CI Report		
<input checked="" type="checkbox"/> 9202		
<input checked="" type="checkbox"/> Order		
<input type="checkbox"/> Aff. Posting		
<input type="checkbox"/> Status Rpt		
<input type="checkbox"/> UCCJEA		
<input type="checkbox"/> Citation		
<input checked="" type="checkbox"/> FTB Notice		

**JILL C. PETERSON**, Daughter and Executor with Full IAEA without bond (all funds at EECU blocked), is Petitioner.

I & A - **\$1,147,704.39**  
 POH - **\$1,165,043.04**

Executor - **waives**

Closing - **\$3,500.00**

**Distribution pursuant to decedent's Will is to:**

**Jill Carla Peterson** - \$228,864.36 and 1/2 interest in 3 parcels of real property, 1/3 interest in 4 parcels of real property and miscellaneous household items.

**Claudette Phariss** - \$264,114.36 and 1/3 interest in 4 parcels of real property and miscellaneous household items.

**Jill Carla Peterson, in Trust for Madeline B. Sides** - \$223,868.16 and 1/2 interest in 3 parcels of real property, 1/3 interest in 4 parcels of real property and miscellaneous household items.

**Reviewed by: KT**  
**Reviewed on: 9/26/11**  
**Updates:**  
**Recommendation: SUBMITTED**  
**File 18 - Peterson**

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

Age: 11 years DOB: 6/6/2000	<p style="text-align: center;"><u>Temporary 10/03/11</u></p> <p>ANGEL ACOSTA, maternal grandfather, is Petitioner.</p> <p>Father: UNKNOWN – <i>Notice dispenses with per minute order dated 8/15/11.</i></p> <p>Mother: JOANNA CASAS – <i>Notice dispensed with per minute order dated 8/15/11.</i></p> <p>Paternal grandparents: Unknown</p> <p>Maternal grandmother: Leticia Acosta</p> <p><b>Petitioner states</b> that the mother is unfit to care for the minor and that her husband is violent. Further, she is an alcoholic, drug addict and has suicidal tendencies. She has tried to overdose on several occasions. Petitioners state that the mother currently has a warrant for her arrest and they fear she may flee to avoid prosecution. Petitioner states that the mother has threatened to come and take the minor and never return her. Petitioner states that the minor has always lived with him and his wife.</p> <p><b>Court Investigator Charlotte Bien's Report filed on 9/26/11.</b></p>	<p>NEEDS/PROBLEMS/COMMENTS:</p>	
Cont. from			
<input type="checkbox"/> Aff.Sub.Wit.			
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<input type="checkbox"/> FTB Notice			
		Reviewed by: KT	
		Reviewed on: 9/26/11	
		Updates:	
		Recommendation:	
		File 19 - Acosta	

Age: 3 months	<b>NO TEMPORARY – none requested</b>		<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p>1. Petitioner states the father and paternal grandparents are unknown, but does not indicate any efforts to identify or locate.</p> <p>If notice is not excused, need proof of service pursuant to Probate Code §1511 or consent and waiver of notice or declarations of due diligence on:</p> <ul style="list-style-type: none"> <li>- Father (personal service)</li> <li>- Paternal grandfather</li> <li>- Paternal grandmother</li> </ul>
DOB: 6-13-11	<p><b>MARCELLA LUPE NAVARRO</b>, family friend, is Petitioner.</p> <p>Father: Unknown                  Mother: <b>MICHELLE ELISE LOPEZ</b>                  - <i>Nomination, Consent and Waiver of Notice filed 8-8-11</i></p> <p>Paternal grandfather: Unknown                  Paternal grandmother: Unknown</p> <p>Maternal grandfather: Gilbert Lopez                  - <i>Served by mail on 9-6-11</i></p> <p>Maternal grandmother: Linda Lopez                  - <i>Nomination, Consent and Waiver of Notice filed 8-8-11</i>                  - <i>Served by mail on 9-6-11</i></p> <p><b>Petitioner states</b> CPS brought the child to her four days after she was born to look after. Petitioner states Mother wants her to raise the child as her own, and Petitioner has consented. Mother is currently incarcerated at Fresno County Jail and has no prospect of taking care of Estrella, nor does she want to. CPS has dropped out of the matter and closed their file. They are aware that Estrella is going to be well taken care of in Petitioner’s family and advised her to file guardianship. Petition is the sole care provider for Estrella and will devote all her love and attention to raising her properly.</p> <p><b>Court Investigator Dina Calvillo to provide report, clearances.</b></p>		
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✓ Duties/Supp			
Objections			
Video Receipt			
CI Report	X		
Clearances	X		
✓ Order			
Aff. Posting			
Status Rpt			
✓ UCCJEA			
Citation			
FTB Notice			
<p><b>Reviewed by:</b> skc</p> <p><b>Reviewed on:</b> 9-23-11</p> <p><b>Updates:</b></p> <p><b>Recommendation:</b></p> <p><b>File 20 - Lopez</b></p>			

Atty Tucker, Eugene (Pro Per – Co-Executor)  
 Atty Tucker, James (Pro Per – Co-Executor)  
 Atty Amey, Dorothy (Pro Per – Co-Executor)

Probate Status Hearing Re: Failure to File a First Account of Petition for Final Distribution (Prob. C. 12200, et seq.)

<b>DOD: 12-13-04</b>	<p><b>EUGENE TUCKER, JAMES TUCKER, and DOROTHY AMEY</b> were appointed Co-Executors with Full IAEA and bond of \$150,000.00 on 9-5-06. Bond was filed and Letter issued on 9-29-06.</p> <p><b>Decedent’s will dated 1-22-02</b> devises her residence, or the proceeds from the sale of the residence, to “all of my surviving heirs.”</p> <p><b>Final Inventory and Appraisal</b> filed 8-11-08 reflects real property at 1004 E. Samson in Fresno valued at \$95,000.00 (at 12-13-04).</p> <p><b>A petition for final distribution</b> was heard on 2-9-09, 2-24-09, 3-17-09, and 4-21-09. The matter was continued due to various defects and ultimately <u>denied on 4-21-09.</u></p> <p><b>The minute order from 3-17-09 states</b> Attorney William Hess appeared and was informed that the creditor’s claims, attorney’s fee and costs must be paid before the estate will distribute.</p> <p><b>Nothing further was filed, and the petition was denied at the next hearing on 4-21-09.</b></p> <p><b>On 6-3-11</b>, the court set this status hearing for failure to file an amended petition for final distribution. Notice was mailed to the Co-Executors (individually) and to Attorney Sandra Smith.</p> <p><b>On 6-24-11</b>, Attorney Smith filed a Notification of Disqualification to Act as Attorney.</p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p><u>Minute Order 7-25-11</u>: The Court advises the parties that another petition needs to be prepared.</p> <p><u>As of 9-23-11, no petition has been filed.</u></p> <p><u>Note: Attorney Sandra Smith, who formerly represented the Co-Executors, is no longer eligible to practice law.</u> Attorneys Hess and Amy Lopez previously appeared for Sandra Smith; however, it is unclear whether the Co-Executors are currently represented.</p> <p>1. Need amended petition for final distribution or current status report per Local Rule 7.5.</p> <p>Specifically, what is the status of the house? Has it been sold? Rented? Vacant? Have the creditor’s claims been paid?</p>	
<b>Cont. from 072511</b>			
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Objections			
Video Receipt			
CI Report			
9202			
Order			
Aff. Posting			
Status Rpt			X
UCCJEA			
Citation			
FTB Notice			
	<p><b>Updates:</b></p> <p><b>Contacts:</b> Reviewed 9-23-11</p> <p><b>Recommendation:</b></p> <p><b>Reviewed by:</b> skc</p> <p><b>File 21 - Tucker</b></p>		

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

Age: 9 years DOB: 11/5/2001	<p align="center"><b><u>GENERAL HEARING 11/22/11</u></b></p> <p>LINDSEY HAYES, paternal aunt, is petitioner.</p> <p>Father: <b>ROCKY ALEN HAYES, JR.</b></p> <p>Mother: <b>JAMIE HAYES</b> – <i>declaration of due diligence filed on 9/20/11.</i></p> <p>Paternal grandfather: Rocky Hayes Sr.        Paternal grandmother: Robin Hayes – <i>deceased.</i>        Maternal grandfather: David Hunter – <i>deceased.</i>        Maternal grandmother: Martha Hunter.</p> <p><b>Petitioner states</b> the minor was left at her home and she cannot take him to the doctor without a guardianship. He needs clothes, medications and school supplies.</p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <ol style="list-style-type: none"> <li>1. Need <i>Notice of Hearing</i>.</li> <li>2. Need proof of personal service of the <i>Notice of Hearing</i> along with a copy of the <i>temporary petition</i>, 5 court days prior to the hearing, or consent and waiver of notice or declaration of due diligence on:           <ol style="list-style-type: none"> <li>a. Rocky Alen Hayes, Jr. (father)</li> <li>b. Jamie Hayes (mother) if court does not dispense with notice.</li> </ol> </li> <li>3. UCCJEA is incomplete. Need the minor's residence information from 2006 to 8/1/11.</li> </ol>	
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Citation			
FTB Notice			
Reviewed by: KT			
Reviewed on: 9/26/11			
Updates:			
Recommendation:			
File 22 - Hayes			