



ATTENTION

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

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

Thank you for your patience.

Atty Johnson, Summer A. (for Bruce Bickel – Special Administrator/Petitioner)

(1) Special Administrator's Petition for Approval of First Account and Report; (2) for Preliminary Distribution; (3) for Approval of Payment of Statutory and Extraordinary Fees to Special Administrator; and (4) for Approval of Payment of Statutory and Extraordinary Attorney's Fees and Reimbursement of Costs Advanced [Prob. C. 1060 et seq., 10800, 10801, 11620; C.R.C. 7.204, 7.702, 7.703]

DOD: 05/03/10	BRUCE BICKEL , Special Administrator with General Powers and Full IAEA authority, is Petitioner.	NEEDS/PROBLEMS/ COMMENTS:
	Account period: 05/01/11 – 09/30/12	
Cont. from	Accounting - \$3,843,094.24	
Aff.Sub.Wit.	Beginning POH - \$3,726,115.68	
<input checked="" type="checkbox"/> Verified	Ending POH - \$3,075,525.29	
<input checked="" type="checkbox"/> Inventory	Administrator - \$42,601.10 (90% of statutory fee)	1. Petitioner proposes to distribute \$2,600,000.00 from the estate in addition to payment of all fees, costs, creditor's claims, etc. This exceeds 50% of the estate. Probate Code § 11623(a)2 states that the aggregate of all property distributed preliminarily shall not exceed 50% of the estate. Need authority for distribution as proposed.
<input checked="" type="checkbox"/> PTC	Administrator x/o - \$19,968.00 (per itemization for the valuation and sale of real property in Aptos, CA and Fresno, CA, appraisal and sale of 2 vintage Ford Thunderbirds, sale of 2005 Mercedes AMG, sale of 1971 Ford Ranchero)	2. Need Order.
<input checked="" type="checkbox"/> Not.Cred.	Attorney - \$42,601.10 (90% of statutory fee)	
<input checked="" type="checkbox"/> Notice of Hrg w/	Attorney x/o - \$21,736.25 (per itemization for organization of the estate, tax matters, matters relating to decedent's business, Mazman, Inc., sale of real property, petition for authority under IAEA)	
<input checked="" type="checkbox"/> Aff.Mail	Costs - \$908.38 (for filing fees, certified letters, Nevada court records search)	
Aff.Pub.	Creditor's Claims - \$16,439.98 (to Katherine Donovan, Esq. - \$6,607.75; Stanley H. Brown, Esq. - \$7,764.16; and Northern Nevada Guardianship Services - \$2,068.07)	
Sp.Ntc.	Petitioners proposes to make Preliminary Distributions, pursuant to settlement agreement, to:	
Pers.Serv.	Dorothy Mazman - \$1,300,000.00, plus gold wedding band, gold square cuff links, and white gold tie tack	
Conf. Screen	Marvelle Starre Evans - \$650,000.00, plus miscellaneous jewelry to be divided as they agree among Marvell Starre Evans & Melonie Mazman Hayden	
Letters 11/23/11	Melonie Mazman Hayden - \$650,000.00, plus miscellaneous jewelry to be divided as they agree among Marvell Starre Evans & Melonie Mazman Hayden	
Duties/Supp	Petitioner states: The final estate administration matters remaining to be completed include the valuation and liquidation of the Premier Apartments investment, and the probate and/or liquidation of some fractional shares of mineral interest located in St. Mary's Parish, Louisiana.	
Objections	Continued on Page 2	
Video Receipt		
CI Report		
<input checked="" type="checkbox"/> 9202		
Order x		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
<input checked="" type="checkbox"/> FTB Notice		
		Reviewed by: JF
		Reviewed on: 11/19/12
		Updates: 11/20/12
		Recommendation:
		File 2 – Mazman

Objection to Petition for Preliminary Distribution to Dorothy M. Mazman filed 11/20/12 by Marvelle Starre Evans states:

1. As set forth in Petitioners petition, claims and disputes between the decedent's spouse, Dorothy Mazman, and decedent's two children from a prior marriage were mediated and resolved pursuant to the terms of a Settlement Agreement.
2. Specifically referenced in the Settlement Agreement was an "Asset List" which lists assets to be included in the settlement and to be turned over to and liquidated by the Special Administrator. The "Asset List" was created by Dorothy Mazman and her attorney. Included on the Asset List are: a) Wachovia/Wells Fargo Account of the Mazman Trust shown as having a balance of \$113,471.35 as of 10/31/10; and b) Accumulated rental income from the Fowler Avenue Mazman Trust real property held by Dorothy Mazman in an account with a stated balance of \$31,157.05 as of 09/30/10.
3. The accounting shows that Dorothy Mazman turned over to the Special Administrator only \$43,134.94 from the Wachovia/Wells Fargo account and that none of the \$31,157.05 of accumulated rental income from the Fowler Avenue real property was turned over to or received by the Special Administrator. The accounting thus reflects that a total of \$101,493.46 referenced in the Asset List of the Settlement Agreement has not been turned over to the Special Administrator by Dorothy Mazman.
4. Objector alleges that Dorothy Mazman spent and/or used for personal uses the referenced money referenced that was to be turned over to the Special Administrator. Objector states that Dorothy Mazman should either be required to pay the \$101,493.46 to the Special Administrator before receiving a distribution, or the proposed preliminary distribution of \$1,300,000.00 to Dorothy Mazman should be reduced by this sum and only \$1,198,506.54 be distributed to her.

Objector prays for an Order:

1. Directing that any disputes concerning the terms of the settlement be arbitrated and determined by the mediator pursuant to the terms of the Settlement Agreement;
2. The arbitrator or Court sustain these objections and determine that Dorothy Mazman failed to turn over the sum of \$101,493.46 to the Special Administrator as required by the Settlement Agreement, charging Dorothy Mazman as having previously received this sum in determining amounts to be distributed and adjusting distributions to Dorothy Mazman accordingly; and
3. For Objector's costs and attorney's fees.

DOD: 08/21/2012	ROSELIND V. CANTU , daughter, is Petitioner	NEEDS/PROBLEMS/COMMENTS:
	40 days since DOD	
Cont. from		
<input type="checkbox"/> Aff.Sub.Wit.		
<input checked="" type="checkbox"/> Verified	No other proceedings	
<input checked="" type="checkbox"/> Inventory		
PTC	I&A - \$95,100.00	
Not.Cred.		
<input checked="" type="checkbox"/> Notice of Hrg	Will dated: 03/19/2012 devises all real and personal property to Roselind V. Cantu.	
<input checked="" type="checkbox"/> Aff.Mail	w/	
Aff.Pub.		
Sp.Ntc.	Petitioner requests Court determination that decedent's 100% interest in real property located at 305 West Ave. Sanger, Ca. and household furnishings and personal effects pass to Roselind V. Cantu pursuant to decedent's will.	
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
<input checked="" type="checkbox"/> Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: KT/ LV
		Reviewed on: 11/16/2012
		Updates:
		Recommendation: Submitted
		File 5 - Valles

Petition to Determine Succession to Real Property

DOD: 08/05/2009		MILDRED M. FIELDS-NICKEL , spouse, & Glenda Kay Higdon , daughter, are Petitioners.	NEEDS/PROBLEMS/COMMENTS:
Cont. from		40 days since DOD	
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified	No other proceedings	
<input checked="" type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		
<input type="checkbox"/>	Not.Cred.	I&A - \$150,000.00	
<input checked="" type="checkbox"/>	Notice of Hrg	Will dated: 09/16/1994 and Codicil dated 05/03/1999 devises a life estate to Mildred M. Fields-Nickel with the remainder interest to Glenda Kay Higdon.	
<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	Petitioner requests Court determination that a life estate in decedent's 75% interest in real property located at 3207 West Dovewood, Fresno, Ca. be granted to Mildred M. Fields-Nickel with the remainder interest to Glenda Kay Higdon pursuant to decedent's will.	
<input type="checkbox"/>	Letters		
<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
			Reviewed by: KT / LV
			Reviewed on: 11/16/2012
			Updates:
			Recommendation: Submitted
			File 6 - Nickel

Age: 19	<p>KENNETH ROBERTS, grandfather, was appointed Conservator of the Estate without bond on 08/06/12 and Letters were issued on 08/17/12.</p> <p>Minute Order from hearing on 08/06/12 set this matter for status regarding filing of the Inventory & Appraisal.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>CONTINUED FROM 10/02/12</u> Minute Order from 10/02/12 states: Counsel advises the Court that they are not in a position to file the appraisal as they are having some difficulty with the government. He further advises that he believes there is still money owing.</p> <p style="margin-left: 40px;">1. Need Inventory & Appraisal.</p>
Cont. from 100212		
Aff.Sub.Wit.		
Verified		
Inventory		x
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		<p>Reviewed by: JF</p> <p>Reviewed on: 11/19/12</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 7 – Roberts</p>

Atty Kesterson, Kenneth Kern (pro per – maternal great-grandfather/Guardian)

Atty Kesterson, Carolyn Ann (pro per – maternal great-grandmother/Guardian)

Atty Lirette, Nathan (pro per – father)

Further Status Conference

<p>Lily, 6</p> <p>Stone, 2</p> <hr/> <hr/> <p>Cont. from 112911, 013112, 070912</p> <p>Aff.Sub.Wit.</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>9202</p> <p>Order</p> <hr/> <p>Aff. Posting</p> <p>Status Rpt</p> <p>UCCJEA</p> <p>Citation</p> <p>FTB Notice</p>	<p>KENNETH KESTERSON and CAROLYN KESTERSON, maternal great-grandparents, were appointed guardians on 7/12/10.</p> <p>Mother: MIKAELA MENNUCCI Father: NATHAN LIRETTE</p> <p>Paternal grandfather: UNKNOWN Paternal grandmother: ELEANOR LIRETTE Maternal grandfather: LAWRENCE MENNUCCI Maternal grandmother: NATALIE KJAR</p> <p>Father, Nathan Lirette, filed a Petition for Visitation on 10/10/10.</p> <p>Minute order from hearing on 12/06/10 granted visitation to the father, to be agreed upon between the parties and continued the matter to 01/03/11.</p> <p>Minute order from hearing in 01/03/11 ordered supervised visitation to father, Nathan Lirette, and set the matter for a status hearing on 04/06/11.</p> <p>Minute Order from 04/06/11 hearing extended the father's Visitation and indicates that the court will address the father's request for overnight visitation at the next hearing. Status hearing set for 06/28/11.</p> <p>Minute order from 06/28/11 hearing discussed Lily's ongoing therapy with Dr. Griffith and Lily's night terrors. The Court ordered Lily to have a full evaluation and to obtain a doctor's opinion regarding any potential detriment with regards to overnight visits. Visitation to remain as previously ordered and the matter was continued to 08/23/11.</p> <p>Confidential report of Lois K. Griffith, therapist filed 08/17/11 recommends ongoing family and individual counseling.</p> <p>Minute Order from Hearing on 08/23/11 states: Also present in the courtroom are: Natalie Kjar and Eleanor Lirette. The Court modifies the visitation order to reflect that father, Nathan Lirette, will have weekend visitation every other weekend from Friday at 2:30 pm to Saturday at 7:30 pm. Father will pick up Lily after school and pick up Stone. The Court further orders that on the weekends the father does not have visitation, he will have a Tuesday visit from 2:30pm to 7:30pm. The Court orders that all parties enroll in and participate in therapy as suggested by Dr. Griffith as set forth in her report. Father and mother are to participate in 12 bi-weekly sessions. The minute ordered also set this status hearing on 11/29/11.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>CONTINUED FROM 01/31/12, 10/15/12.</p> <p>Minute Order 1/31/12: Mikaela Mennucci, mother, is working during today's hearing. With all due respect, the Court states this case is guided by the Court's timeline, not the therapist's timeline; this Court has jurisdiction and will establish the guidelines. It is ordered that there is to be AT LEAST one more meeting/session between the parties. Visits are to remain in full force and effect as stated previously. The Court asks Mr. Lirette to allow Ms. Griffith to release information to the Court (i.e. until the Court has information from Ms. Griffith, the Court is not inclined to change any orders). No party is to speak ill of any other party or make reference to this proceeding. The Court suggests the guardians seek Medi-Cal or Fresno County mental healthcare options as available for the services of Ms. Griffith. Ms. Griffith states for the record she does not have any conflict with providing services. Lily can remain in counseling as dictated by Ms. Griffith. The Court commends Mr. Lirette for the steps he has taken toward progress, e.g. completing the domestic violence course and working toward substance abuse course completion.</p> <p>Minute Order 10/15/12: The Court does not find a sufficient basis to change the visitation. The prior visitation order remains in full force and effect. Guardians are ordered not to deny father his visitation however, if father does not call or appear for his visit within 30 minutes of the scheduled time, the visit may be terminated. The Court orders father not to use marijuana for medicinal or other purposes while he has the children. All other orders remain in full force and effect.</p> <p>Reviewed by: JF / skc</p> <p>Reviewed on: 11-16-12</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 8 - Uhrich</p>
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Continued on Page 2

Declaration of Kenneth & Carolyn Kesterson filed 01/24/12 states that they would like the current visitation schedule with the children's father, Nathan Lirette, to continue as currently ordered through the school year. The Kestersons state that they will be amenable to daytime visitation during the summer, but request that the overnight visits remain at 1 night as they feel Nathan is too young for two overnights away from home. The Kestersons further report at the children's mother, Mikaela Mennucci has started working and is paying child support, they report that Nathan Lirette is also working, but he has not paid child support. With regard to the Court ordered therapy, the Kestersons state that the two sessions they had with Dr. Griffin did not go well and they believed the father, Nathan Lirette, wanted no further meetings. They state they were shocked to learn that Mr. Lirette had continued seeing Dr. Griffin and recently Dr. Griffin asked them about a combined session with Mr. Lirette and Lily. They state that they have not heard back about this combined session. The Kestersons report that the children are doing well and that Lily was placed in the 1st grade; Stone seems to be adjusting to the visitation with his father, but it has been a slow process.

Court Investigator Dina Calvillo filed a Supplemental Report on 1-27-12.

Court Investigator Dina Calvillo filed a Supplemental Report on 06/21/12.

For Reference, the Minute order from 11/29/11 hearing states: Also present in the courtroom is Mikaela Mennucci, Eleanor Lirette, and Natalie Kjar. Carolyn Kesterson informs the Court that they have all stopped going to therapy. The Court orders that all parties enroll and participate in therapy. The Court further orders that Court staff contact Dr. Griffith regarding a follow-up report that addresses the suitability for further visits of the children. The Court on its own motion sets the matter for further status on 01/31/12. All prior orders remain in full force and effect.

Declaration filed 7/3/12 states: The Kestersons attended one counseling session with Dr. Griffith with the father. They are concerned regarding his marijuana use for post traumatic syndrome. Another date was set, but the father did not show. He often asks why the children can't spend more time with him, but the children appear content the way things are. He was supposed to have an overnight visit on 6/29-30/12 (Fri-Sat) but he did not show up. He then asked if he could see the children on Sunday, which conflicted with the maternal grandmother's visit. She had given him her time previously, but this time, they had a family photo scheduled and a party to attend. The Kestersons state they should not have to change their plans for the father, and do not feel that he is ready to spend more time with his children.

Nothing further has been filed since the last hearing 10-15-12.

9 Destiny Cedano, Alexis Cedano, Victor Cedano, Gabriel Cedano, Noah Cedano, Jayden Cedano, Victoria Cedano, Reyna Cedano and Jonah Cedano (GUARD/P)

Case No. 11CEPR00795

Atty Vasquez, Nicholas (pro per Petitioner/Guardian)

Atty Vasquez, Melissa (pro per Petitioner/Guardian)

Petition for Termination of Guardianship

Age: 15 years	NICHOLAS VASQUEZ and MELISSA VASQUEZ , guardians, are Petitioners.	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>This petition is as to DESTINY CEDANO only.</p> <ol style="list-style-type: none"> 1. Need Notice of Hearing. 2. Need proof of service of the Notice of Hearing on: <ol style="list-style-type: none"> a. Jesus Cedano (paternal grandfather) b. Judy Coronado (maternal grandmother)
	Father: VICTOR CEDANO - <i>deceased</i>	
Cont. from	Mother: JENNIFER CEDANO – <i>consents and waives notice.</i>	
<input type="checkbox"/> Aff.Sub.Wit.		
<input checked="" type="checkbox"/> Verified		
<input type="checkbox"/> Inventory	Paternal grandfather: Jesus Cedano	
<input type="checkbox"/> PTC	Paternal grandmother: Jenny Hernandez – <i>deceased.</i>	
<input type="checkbox"/> Not.Cred.	Maternal grandfather: Pete Gutierrez – <i>deceased.</i>	
<input type="checkbox"/> Notice of Hrg	<input checked="" type="checkbox"/>	
<input type="checkbox"/> Aff.Mail	<input checked="" type="checkbox"/>	
<input type="checkbox"/> Aff.Pub.	Maternal grandmother: Judy Coronado	
<input type="checkbox"/> Sp.Ntc.		
<input type="checkbox"/> Pers.Serv.	Petitioners state Destiny is running away and does not want to live with petitioners anymore. They do not want to force her to stay.	
<input type="checkbox"/> Conf. Screen		
<input type="checkbox"/> Letters		
<input type="checkbox"/> Duties/Supp	Court Investigator Julie Negrete's Report filed on 11/15/12.	
<input type="checkbox"/> Objections		
<input type="checkbox"/> Video Receipt		
<input type="checkbox"/> CI Report		
<input type="checkbox"/> 9202		
<input checked="" type="checkbox"/> Order		
<input type="checkbox"/> Aff. Posting		
<input type="checkbox"/> Status Rpt		
<input type="checkbox"/> UCCJEA		
<input type="checkbox"/> Citation		
<input type="checkbox"/> FTB Notice		
		Reviewed by: KT
		Reviewed on: 11/16/12
		Updates:
		Recommendation:
		File 9 - Cedano

Age: 12 years	LUCILA RENDON , maternal grandmother/guardian, is petitioner.	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Court Investigator, JoAnn Morris to Provide:</p> <ol style="list-style-type: none"> 1. Court Investigation Report 2. Clearances
	Petitioner was appointed guardian on 8/6/2001.	
Cont. from	Father: MARTIN GUERRERO	
<input type="checkbox"/> Aff.Sub.Wit.	Mother: ALEJANDRA RENDON – served by mail on 10/15/12	
<input checked="" type="checkbox"/> Verified	Paternal grandfather: Unknown Paternal grandmother: Unknown Maternal grandfather: Salustio Rendon	
Inventory		
PTC		
Not.Cred.		
<input checked="" type="checkbox"/> Notice of Hrg		
<input checked="" type="checkbox"/> Aff.Mail	W/	
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report	X	
9202		
<input checked="" type="checkbox"/> Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: KT
		Reviewed on: 11/16/12
		Updates:
		Recommendation:
		File 14 - Rendon

Atty Motsenbocker, Gary L., sole practitioner (for Petitioner Public Guardian, Conservator)
 Atty Knudson, David, sole practitioner (for Respondent Virginia Greggains, daughter)
 Atty J. Stanley, Teixeira, sole practitioner (Court-appointed for Conservatee)
 Atty Thornton, Douglas V., of Perkins Mann & Everett (for Objector Julie Banks)

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

Age: 90 years	<p>PUBLIC GUARDIAN, Conservator of the Person and Estate appointed 11/5/2008, is Petitioner.</p> <p>Petitioner states:</p> <ul style="list-style-type: none"> The Conservatee was at all relevant times a dependent adult under the care, custody and control of Respondent, VIRGINIA "GINGER" GREGGAINS, daughter; The Conservatee was not competent or capable of handling her personal finances or financial affairs and was entirely dependent upon Respondent to do so for her; Respondent had a confidential relationship with the Conservatee and her husband, ELMER FLY (DOD 11/8/2008), as their child; Petitioner alleges Respondent was responsible in some manner for the occurrences alleged herein and the damages proximately caused thereby; Elmer and the Conservatee executed a DECLARATION OF TRUST, ELMER V. AND JULIA B. FLY, naming Respondent as Successor Trustee; the Trust was amended several times, the latest being the <i>Third Amendment</i> dated 3/24/2008 (copy of <i>Restated Trust</i> and two subsequent amendments attached as Exhibits A, A-1 and A-2); Petitioner has no knowledge if there was an intervening amendment between the <i>Restatement of Trust</i> dated 9/25/2000 and the <i>Second Amendment</i> dated 2/7/2008; <p align="center">~Please see additional page~</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p align="center">This matter will be heard at 10:30 a.m.</p> <p><u>Continued from 10/16/2012.</u></p>
Cont. from 021612, 041712, 050912, 071112, 081512, 092612, 101612		
Aff.Sub.Wit.		
<input checked="" type="checkbox"/> Verified		
Inventory		
PTC		
Not.Cred.		
<input checked="" type="checkbox"/> Notice of Hrg		
<input checked="" type="checkbox"/> Aff.Mail W/		
<input checked="" type="checkbox"/> Summons		
<input checked="" type="checkbox"/> Sp.Ntc. W/		
<input checked="" type="checkbox"/> Pers.Serv. W/		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order X		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
Reviewed by: LEG		
Reviewed on: 11/19/12		
Updates:		
Recommendation:		
File 1B - Fly		

Petitioner states, continued:

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

~Please see additional page~

Petitioner states, continued:Causes of Action:

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

~Please see additional page~

Causes of Action, continued:

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

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

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

Petitioner prays the Court Order:

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

~Please see additional page~

Petitioner prays the Court Order, continued:

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

Atty Motsenbocker, Gary L., sole practitioner (for Petitioner Public Guardian, Conservator)
 Atty Knudson, David, sole practitioner (for Respondent Virginia Greggains, daughter)
 Atty J. Stanley, Teixeira, sole practitioner (Court-appointed for Conservatee)
 Atty Thornton, Douglas V., of Perkins Mann & Everett (for Objector Julie Banks)

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

Age: 90 years	PUBLIC GUARDIAN , Conservator of the Person and Estate appointed 11/5/2008, is Petitioner.	NEEDS/PROBLEMS/COMMENTS: This matter will be heard at 10:30 a.m. <u>Continued from 10/16/2012.</u>
	Account period: 1/20/2010 – 1/19/2012	
Cont. from 032712, 041712, 050912, 071112, 081512, 92612, 101612	Accounting - \$313,100.83 Beginning POH - \$287,627.99 Ending POH - \$140,331.40 (\$128,831.40 is cash)	
Aff.Sub.Wit.		
<input checked="" type="checkbox"/> Verified	Conservator - \$3,660.40 (26.95 Deputy hours @ \$96/hr and 14.20 Staff hours @ \$76/hr)	
Inventory		
PTC		
Not.Cred.		
<input checked="" type="checkbox"/> Notice of Hrg	Attorney (County Counsel)- \$690.00 (4.6 hours @ \$150/her)	
<input checked="" type="checkbox"/> Aff.Mail W/	Attorney (Motsenbocker) - \$6,863.83 (25.50 hours @ \$250/hr plus filing fee of \$395.00 and Fed Ex copies of \$93.83)	
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen	Bond fee - \$1,510.50 (o.k.)	
Letters	Petitioner prays for an Order:	
Duties/Supp	1. Approving, allowing and settling the Second Account and Report of Conservator;	
Objections	2. Authorizing conservator's compensation;	
Video Receipt	3. Authorizing payment of attorney fees;	
<input checked="" type="checkbox"/> CI Report	4. Authorizing payment of the bond fee.	
9202		
<input checked="" type="checkbox"/> Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: KT / LEG
		Reviewed on: 11/19/12
		Updates:
		Recommendation:
		File 1C - Fly

Respondent states, continued:

- Per the Restated Trust as amended by the Third Amendment, all assets are held in trust for the benefit of Elmer and Julia during their lifetimes and during the lifetime of the survivor; following Julia's death, the assets are to be distributed $\frac{1}{2}$ to **Ginger** and $\frac{1}{2}$ to the **Settlor's three grandchildren, ERIC (RICK) GREGGAINS, JULIE BANKS and TINA COX in equal shares;**
- Trust provides that on failure of the initial Trustees Elmer and Julia to act as Trustees, Ginger was to act as Successor Trustee, and the original Trust named **JULIE BANKS**, granddaughter, as an alternate, while the Third Amendment named Ginger's spouse, **STEPHEN ROY GREGGAINS** (Roy) as alternate successor trustee to Ginger;
- On 3/21/2008, Julia also executed a General Durable Power of Attorney (POA) (*copy attached as Exhibit B*), which designated Ginger as attorney-in-fact and Stephen as alternate agent;
- In December 2007, Elmer suffered a massive stroke and heart attack, and was moved several times to different care facilities due to his becoming violent and disruptive, and after a second heart attack, he was moved on 3/5/3008 to Alzheimer's Living Center at Elim ("Elim");
- In June 2008, after Julia's condition declined and was taken by ambulance several times to the hospital, she was required to live at Elim, as she could no longer live with Ginger and her husband in their home in the room they had prepared in August 2007 with safety rails and monitors for Julia and Elmer in the event they were no longer able to live independently;
- From the time of Elmer's hospitalization in December 2008, the family was constantly harangued by Ginger's daughter, **JULIE BANKS** and her husband **JOHN BANKS**, and they also had disrupted the living facilities, and had to be asked to leave or restricted from visiting Elmer and Julia at Elim;
- Elmer had asked John Banks after Elmer's hospitalization to remove guns from under Elmer's bed and put them in the gun safe at his residence; after the gun safe was checked at a later time, it was discovered the guns and **\$5,000.00** cash in the safe was missing; this and the Banks' disruptive conduct caused Julia mental suffering and anguish;
- Ginger and her husband have at all times followed the advice of physicians, hospitals and care providers for the care of Elmer and Julia; Ginger's intent was always to keep them well cared for;
- As it became evident Elmer and Julia would not return to their own residence, Ginger and family members with concurrence of Julia began cleaning out the residence to prepare it for sale with proceeds to be used for their care if needed; 50 years of belongings were sorted through;
- Following Julia's hospitalization, Ginger paid Elmer and Julia's bills, as she was a joint account holder with Elmer and Julia that was previously established, and their monthly **\$4,700.00** in social security and pensions was deposited into the account which was used to pay their bills;
- Ginger's action was taken first as daughter to provide care for her parents, and as attorney-in-fact under the POA; she did not specifically take actions as Trustee though she was designated successor trustee;
- **Medi-Cal planning to preserve assets:** Ginger sought advice regarding Elmer qualifying for Medi-Cal and the Elim staff referred her to **SOUTAS & ASSOCIATES**; Ginger followed their recommendations to qualify Elmer & Julia to receive Medi-Cal for their continuing care; Ginger was advised in order to qualify Elmer & Julia to move a substantial portion of their liquid assets, make certain pre-need arrangements, and that other funds could be transferred by gift in ways that would not cause ineligibility for Medi-Cal;

~Please see additional page~

Respondent states, continued:

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

~Please see additional page~

Respondent states, continued:

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

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

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

Respondent requests:

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

Atty Motsenbocker, Gary L., sole practitioner (for Petitioner Public Guardian, Conservator)
 Atty Knudson, David, sole practitioner (for Respondent Virginia Greggains, daughter)
 Atty J. Stanley, Teixeira, sole practitioner (Court-appointed for Conservatee)
 Atty Thornton, Douglas V., of Perkins Mann & Everett (for Objector Julie Banks)

Petition Requesting Approval of Settlement Agreement in the Matter of: Petition Requesting Relief for Breach of Fiduciary Duty, and for an Accounting, and for Conversion of Personal Property, and for Elder Abuse, and for Damages

Age: 90 years	<p>PUBLIC GUARDIAN, Conservator of the Person and Estate appointed 11/5/2008, is Petitioner.</p> <p>Petitioner requests the Court approve the settlement agreement reached in this matter, based upon the following:</p> <ul style="list-style-type: none"> This matter involved the management, disposition and handling of the real and personal property of ELMER G. FLY (DOD 11/8/2008), and JULIA B. FLY (Conservatee), by their daughter, VIRGINIA "GINGER" GREGGAINS, Respondent; On 8/21/1997, Elmer and the Conservatee executed a DECLARATION OF TRUST, ELMER V. AND JULIA B. FLY, naming Respondent as Successor Trustee; the Trust was amended several times, the latest being the <i>Third Amendment</i> dated 3/24/2008; Pursuant to the Trust, all assets were to be held for the benefit of Elmer and Julia during their lifetimes and the lifetime of the survivor; following the death of the survivor, the assets are distributed ½ to Settlor's daughter Virginia, and ½ to Settlor's three grandchildren, ERIC ("RICK") GREGGAINS, JULIE BANKS, and TINA COX, in equal shares; On 3/21/2008, Julia executed a General Durable Power of Attorney designating Ginger Greggains to act as attorney-in-fact; STEPHEN ROY GREGGAINS, Ginger's husband, was designated as alternate attorney-in-fact; <p align="center">~Please see additional page~</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>This matter will be heard at 10:30 a.m.</p> <p><u>Continued from 10/16/2012.</u></p>
Cont. from 092612, 101612		
Aff.Sub.Wit.		
✓ Verified		
Inventory		
PTC		
Not.Cred.		
✓ Notice of Hrg		
✓ Aff.Mail W/		
Summons		
✓ Sp.Ntc. W/		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
✓ Objections		
Video Receipt		
CI Report		
9202		
✓ Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		

Petitioner states, continued:

- Interested parties, including granddaughter Julie Banks, questioned Greggains' motives for her handling of Elmer and Julia's finances, her placement of Elmer and Julia in a care facility, the proposed sale of the Flys' residence, and the purchase of an annuity; at the request of Julie, proceedings initiated by the **PUBLIC GUARDIAN** as Conservator of the person and estate of Julia against Greggains for financial mismanagement, alleging breach of fiduciary duty and contending the disposition of the couple's assets were ill-advised and in contravention of the Flys' estate plan and existing Trust; Julie Banks insisted a formal accounting was necessary;
- Greggains response detailed the actions taken with the Flys' resources, with respect to Medi-Cal planning, and the purchase of the annuity; she provided an accounting of funds in her possession that were transferred or used for the benefit of Elmer and Julia, and an accounting of funds turned over to the Public Guardian; she objected to the Public Guardian's actions in changing the Annuity making Julia ineligible for Medi-Cal and to the Public Guardian's accounting and fees requested;
- Following several meetings between counsel and clients, the parties concluded it was in the best interest of the Conservatee and her estate that this matter be settled; it became apparent after lengthy discussions that Greggains had little or no liquid assets, the her real property was encumbered in excess of its fair market value, and her only source of income was Social Security benefits, such that she was in effect "judgment proof," and it became apparent that trial costs and expenses would be substantial and could be borne by the estate of the Conservatee, thus unnecessarily depleting her assets.

Petitioner states the parties entered into an agreement to settle and compromise in full the dispute by and between the Public Guardian and Greggains in order to avoid further expense, acrimony and controversy in regard to all issues raised and alleged; (*copy of the fully executed Mutual General Release and Settlement Agreement is attached as Exhibit A*); a brief summary follows:

- (a) Any funds remaining in the Conservatorship estate upon Julia Fly's death, including any proceeds payable on the annuity contract, after payment of fees, costs and expenses, shall be paid to the named Trustee of the Trust to be distributed as part of the Trust;
- (b) The Public Guardian as Conservator of the Person and Estate of Julia withdraws and dismisses with prejudice its *Petition Requesting Relief for Breach of Fiduciary Duty, etc.*, and the Public Guardian waives any further accounting by Respondent Greggains as Trustee of the Trust or as Attorney in Fact for Julia;
- (c) Respondent withdraws and dismisses with prejudice her Objections to the Conservator's Second Account and for payment of attorney fees, Conservator fees and costs, and any and all objections which may be deemed in nature of a cross-complaint raised in her response;
- (d) Public Guardian agrees that it will initiate no further actions or complaints, nor initiate any other proceedings in this matter as to Respondent, including any civil and/or criminal actions.

Petitioner prays for an Order that:

1. The settlement of this matter is approved as prayed;
2. Any funds remaining in the Conservatorship estate upon the death of the Conservatee shall be paid to the Trustee of the **Elmer V. and Julia B. Fly Trust**, and that Respondent is to [agree] that any funds received by her, no matter the source, shall be paid to and held by the Trustee of the Trust;
3. The petition filed by the Public Guardian is dismissed with prejudice and any further accounting by Respondent is waived;

~Please see additional page~

Petitioner prays for an Order, continued:

4. The objections of the Respondent are withdrawn and dismissed with prejudice as to the Conservator's second account and for payment of attorney's fees and costs, as well as all objections raised by the Respondent in her response to the Public Guardian's petition and any and all objections raised by her which might be deemed in the nature of a cross-complaint; and
5. The Public Guardian shall initiate no further actions or complaints or other proceedings in that matter as to the Respondent as to the rights or damages allegedly sustained by the Conservatee.

Objection to Petition Requesting Approval of Settlement Agreement in the Matter of Petition for Relief for Breach of Fiduciary Duty; for an Accounting; for Conversion of Personal Property; for Elder Abuse; and for Damages filed on 9/21/2012 by JULIE BANKS, granddaughter of Conservatee, states:

- She objects to the settlement agreement [statements of factual background omitted];
 - In the spring of 2008, following Elmer's stroke and heart attack and move into the Alzheimer's center at Elim, Greggains purportedly determined that Elmer and Julia would not be able to return to their residence and began a systematic theft of all of their property; as part of that scheme, on 3/21/2008, Greggains caused Julia to execute a General Durable Power of Attorney, designating Greggains as attorney-in-fact, and **STEPHEN ROY GREGGAINS**, (Ginger) Greggains' husband, was named as alternate attorney-in-fact;
1. **Theft of Cash through purchase of Annuity:** After obtaining the Power of Attorney, Greggains contacted **SOUTAS & ASSOC. (S&A)** for the purported reason to qualify Elmer and Julia for Medi-Cal for the cost of their care; in reality it was to further her scheme to take assets out of the Trust, to countermand the inheritance directions of Julia and Elmer, and ultimately put money in her own pocket; the Annuity application submitted by Greggains on 3/29/2008 reveals that Greggains purchased a **\$159,983.79** Annuity and she and her husband (Stephen) listed themselves as the primary and contingent beneficiaries to the Conservatee, and did not list Settlor's grandchildren as instructed, nor was the beneficiary listed as the Trust as Greggains stated to the Court in a lie on 8/25/2008 (*copy of Reporter's Transcript attached as Exhibit D to the Declaration of Julie Banks in Support of Objection to Petition Requesting Approval of Settlement Agreement filed 9/21/2012*); Greggains elected the Annuity to pay out **~\$10.00** per month with the balance to be paid in 5 years, in order to maximize the benefit to her and her husband; Greggains' plan was obvious: take the money out of the Trust and hope that Julia and Elmer pass away before the Annuity matured; an Annuity that paid out **\$10.00** per month was not appropriate for a couple with substantial needs in their twilight years.
 2. **Theft of Conservatee's vehicles:** In 2008, Conservatee and Elmer owned and possessed a Nissan Pathfinder (~2004 model), and Objector believes that Greggains transferred the Pathfinder to her son, **ERIC GREGGAINS**, without value;
 3. **Theft of Conservatee's furnishings and personal belongings:** Greggains and her close family took and either sold or kept for themselves the furnishings and personal belongings of Conservatee; Objector believes the Inventory filed by the Public Guardian does not include furnishings and personal property of **~\$75,000.00** (*Declarations previously filed with Court on 10/10/2008 and 10/15/2008 listing the property are attached as Exhibits B and C to Banks' Declaration*);
 4. **Theft of Nevada property:** Conservatee and her husband own 40 acres of land in Nevada, per the parcel number indicated on the property profile of the Annuity application dated 4/24/2009; even though the County of Fresno and Greggains is aware of the Nevada property, it is mysteriously absent from the Inventory without explanation;

~Please see additional page~

Objection to Petition filed on 9/21/2012 by JULIE BANKS, continued:

5. **Greggains' Embezzlement and Misuse of the Conservatee's Estate:** Based upon the either missing from the Inventory or simply stolen, there is considerable concern that Greggains has absconded with additional money and personal property, and she cannot be trusted and should not receive a release or dismissal with prejudice of the petition; examples include the Inventory showing cash of **\$10,660.20** as of 9/12/2008, but the Annuity application showing cash and securities of **\$283,000.00** on 5/29/2008; even with the **\$159,983.79** Annuity purchase, there is still an evaporation of funds of **\$112,356.01** that is missing and unexplained; Greggains also stated to the Court on 8/25/2008 that Conservatee had **\$60,000.00** in a checking account, two weeks prior to the 9/12/2008 application; additionally, Greggains again lied to the Court on 8/25/2008 in stating the Flys' residence sale had not closed in responding that just an offer was made that was not accepted, while the *Purchase Agreement (attached as Exhibit F to Banks Decl.)* shows the purchase was signed on 8/21/2008, a mere four days before the hearing, so Greggains knew the purchase was signed on Monday and the hearing was on Thursday (see copy of 8/25/2008 Reporter's Transcript attached as Exhibit D to Banks' Declaration);
6. **Theft in the form of Financial Gifts and Monies used for Greggains' own purpose:** Greggains gifted at least **\$77,000.00** to herself and other chosen family members during May and June 2008 (see copies checks written by Greggains for gifts to relatives attached as Exhibits G and H); and Greggains used estate money to pay off her travel trailer (**\$15,288.71**), a down payment for Jeep Liberty for herself and her husband (**\$4,000.00**), room remodel reimbursement done long before Flys' illness (**\$6,248.20**), and a carport built in Greggains' backyard for their cash business "Bear Critters" (**\$7,000.00**).

Objector's Argument:

(A) The Settlement Agreement Exonerates Elder Abuse: Since October 2008, Fresno County has possessed substantial evidence showing Greggains and Stephen committed both civil and criminal crimes of Elder Abuse; Public Guardian retained Attorney Motsenbocker to investigate the allegations and collectability of an action against them; Motsenbocker filed the *Petition Requesting Relief for Breach, etc.* after reviewing the evidence and financial resources of the proposed defendants; after further depleting the estate, Motsenbocker is seeking to settle the case with both a civil and criminal exoneration for Greggains and Stephen; the settlement agreement is apparently based on the lack of financial wherewithal of Greggains and Stephen, even though there is substantial evidence of Elder Abuse.

The motion to approve the settlement should be denied for the following reasons:

1. There is no basis to provide the dismissal with prejudice; should Greggains and Stephen obtain significant financial resources, the Public Guardian should retain the right to collect the money and property that has been stolen; it would be more appropriate to dismiss the case without prejudice and sign a tolling agreement so that the claims do not lapse;
2. The settlement agreement provides that Greggains and Stephen will avoid criminal prosecution for their illegal acts because of lack of funds; it would be analogous to a government agency that refuses to file criminal charges against a bank robber because he has spent all of his ill-gotten gains and is again impoverished; Greggains and Stephen are the poster child of individuals that are callous enough to steal from their own parents; if the civil claims are dropped, this matter should be referred to criminal prosecution since it would not be a further drain on the Estate, nor is it dependent on the finances of the defendants; criminal exoneration will only condone the actions of Greggains and Stephen.

~Please see additional page~

Objector's Argument, continued:

(B) The County Failed to do any Due Diligence of the Defendants Financial Wherewithal: Prior to filing the petition, Motsenbocker represented to Deputy Youa Her that the defendants had the financial wherewithal to satisfy the proposed claims; without explanation, the settlement agreement and motion accept as a fact that Greggains and Stephen have no source of income other than social security and their house is under water; however, there is no evidence that the County performed any due diligence concerning the defendants earning ability or assets; as set forth in [Exhibit I] to the *Declaration of Julie Banks* [filed 9/21/2012] , the defendants have a cash business selling carved wooden bears and other critters to the public, and in fact they used a portion of the stolen Estate money to make improvements to their garage from which to run the business; the motion and settlement agreement accept as a fact a statement from the defendants that they have no assets or income, and this type of blind devotion is not prudent when the statement is coming from the very parties accused of committing Elder Abuse crimes; additionally, there is no accounting of the items that were stolen; who owns the property in Nevada? Why hasn't there been a request that the individual family members of the defendants that received the stolen money and property return the same to the estate? The County knows the check numbers, amounts and recipients, but has the County taken the depositions of defendants or hired an asset investigation company to review the matter? A settlement without adequate investigation is foolhardy at best.

(C)The Settlement is not in the Best Interest of the Estate: It appears that the settlement is partially motivated to protect the interests of the County from liability; is the County really concerned that the "impoverished defendants" have the means to prosecute the County for damages? Does the County have liability for actions that it took, or more importantly, did not take? If that is so, should the County give a free pass to the defendants in order to escape liability when there is substantial evidence of their wrong-doing? Should the County and its agents be paid for depleting the Estate's resources without anything accomplished for the Estate? It is obvious that the answer to these questions is a resounding "No."

Objector concludes: Elmer and Julia Fly had plenty of assets and no debts; they should have been able to live comfortably through these difficult times and now, according to the Inventory and Appraisal, in just 9 months of Elmer's illness, all that they saved and accumulated for 68 years is almost gone; it makes no sense; this settlement agreement is fundamentally flawed and should not be approved.