1 Soledad Cano (Estate) Case No. 06CEPR00849

Atty **LeVan, Nancy J. (for Petitioner/Administrator Filipe Leal)**

Amended Report and Final Account of administrator, Petition for Reimbursement to Administrator for costs advanced and Attorneys Compensation and for Final Distribution.

DOD: 8/26/2005		
Cont. from		
	Aff.Sub.Wit.	
✓	**Verified**	
✓	**Inventory**	
✓	**PTC**	
✓	**Not.Cred.**	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	W/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
✓	**Letters**	9/26/06
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
✓	**9202**	
✓	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
✓	**FTB Notice**	

FELIPE LEAL, Administrator with Will Annexed, is petitioner.

Account period: 9/19/06 – 8/31/13

Accounting - **$145,000.00**
Beginning POH- **$145,000.00**
Ending POH - **$145,000.00**

Administrator - **waives**

Administrator Costs - **$11,730.38** (homeowners insurance, recorder, publication, probate referee, bills of the decedent.)

Attorney - **waives**

Distribution, pursuant to intestate succession [sole heir to the will predeceased decedent without issue] is to:

Helen Littlefield (daughter) - 25% interest in real property.

Christina Avila (daughter) - 25% interest in real property.

Virginia Silva (daughter) - 25% interest in real property.

Rudy Magana (son) - 25% interest in real property.

NEEDS/PROBLEMS/COMMENTS:

1. The initial petition and the Petition for Final Distribution were both filed using a fee waiver. Filing fees are considered costs of administration and must be paid prior to distribution of any assts. **Therefore filing fees totaling $755.00 are now due** ($320.00 for the initial petition and $435.00 for the Petition for Final Distribution).

Reviewed by: KT
Reviewed on: 12/1/14
Updates:
Recommendation:
File 1 - Cano

Dept. 303, 9:00 a.m. Tuesday, December 9, 2014

2 Hanna S. Barsam (Estate) Case No. 13CEPR00066

Atty **Knudson, David N. (for Petitioner/Executor Edwin S. Darden, Jr.)**

(1) Second and Final Account and Report of Executor, (2) for Statutory and Extraordinary Compensation to Executor and Attorney, (3) for Final Distribution

DOD: 1/14/13		
Cont. from		
	Aff.Sub.Wit.	
✓	**Verified**	
✓	**Inventory**	
✓	**PTC**	
✓	**Not.Cred.**	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	W/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
✓	**Letters**	2/26/13
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	X
✓	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	X

EDWIN S. DARDEN, JR., Executor, is petitioner.

Account period: 8/1/13 – 10/5/14

Accounting	-	**$518,668.32**
Beginning POH	-	**$422,078.63**
Ending POH	-	**$312,963.84**
Attorney	-	**$8,165.62**

(remainder of the statutory. $6,500.00 was allowed in the first account.)

Attorney x/o	-	**$3,465.00**

(12.05 hours @ $300 per hour for the sale of real property)

Administrator	-	**$8,165.62**

(remainder of the statutory. $6,500.00 was allowed in the first account.)

Administrator x/o	-	**$2,000.00**

(per local rule for the sale of real property and for the sale of personal property.)

Costs	-	**$460.50**

(filing fee, certified copies)

Closing reserve	-	**$3,000.00**

Please see additional page

NEEDS/PROBLEMS/COMMENTS:

1. It does not appear that the estate is in a condition to close. The proposed distribution is vague and unclear. Distribution must provide specifically for distribution of the property on hand. Will states "the rest and residue of my estate, I give to such charitable organizations in Fresno County and in such amounts as are selected within six months of the date of my death by Edwin S. Darden Jr. If my estate shall otherwise be of a size to require Federal Estate taxes to be due, it shall be the responsibility of Edwin S. Darden, Jr. to select beneficiary organizations which cause the estate to be eligible for charitable donations or deductions at least sufficient to eliminate such tax. **Such gift or gifts shall be distributed in full upon the close of the probate estate** or within one year of the date of my death if there is no probate." (Emphasis added.)

Please see additional page

Reviewed by: KT
Reviewed on: 12/2/14
Updates:
Recommendation:
File

Proposed Distribution:

Petitioner plans to distribute the remaining funds of the estate as follows:

Petitioner has had continuing and fruitful discussions with Thom Halls, Chairman of the Photography Department of Fresno City College and the State Center Community College District Foundation, which receives and manages gifts on behalf of Fresno City College. He endowed the photography scholarship for $35,000.00 and provided an additional $1,500.00 to fund the initial scholarship. A third party provided a gift of $20,000.00 which Petitioner intends to match, as permitted by the order entered on 9/12/13. Petitioner is working with the photography department at Fresno City College to fund some additional needs – including mating some additional gifts.

Petitioner anticipates that the current and pending projects for Fresno City College Photography Department will entail an additional expenditure of $80,000 - $90,000, including some additional matching fund gifts.

With the departure of Linda Cano, former executive director or the Fresno Art Museum, Petitioner's discussions with that organization have been put on hold. However, he has discussed exhibits at the Fresno Art Museum to be handled in cooperation with the Fresno City College Photography Department. Petitioner believes that the best way to honor the memory of Hanna S. Barsam is to distribute the remaining funds the Fresno Regional Foundation, much as was been done with the distribution for the American Institute of Architects, San Joaquin Valley Chapter, to be held and administered by the Foundation for eventual distributions to the State Center Community College District Foundation and/or Fresno City College to be used in the Fresno City College Photography Department, and to the Fresno Art Museum for specified exhibits and displays as agreed by Petitioner, the Fresno Art Center, and other organizations such as Fresno City College which may be involved in such exhibits and displays.

Petitioner anticipates that the Fresno Regional Foundation will establish an account, similar to a donor advised fund, to hold the estate assets and permit distribution for charitable purposes to those organizations specified above, as well as other charitable organizations designated by Petitioner as permissible participants of decedent's estate.

Please see additional page

Declaration and Designation of Charitable Beneficiaries to Receive Gifts Under the Will filed by Edwin S. Darden, Jr. on 7/11/13. Declaration states the following are designated to receive the residue of the decedent's estate:

1. American Institute for Architects, San Joaquin Chapter, to be administered through the Fresno Regional Foundation, the sum of $50,000.00 for programs furthering creative design, in accordance with a program established and drafted through the AIASJ and Fresno Regional Foundation.
2. The Fresno Camera Club, all of Decedent's camera equipment together with cash in the initial amount of $2,000, contributed through another source.
3. Hinds Hospice the sum of $50,000, as a pledge towards "naming rights" of the board room in the new Hinds Hospice headquarters building which shall be named in honor of Hanna S. Barsam, and in which some of his photography may be displayed.
4. State Center Community College District and/or State Center Community College Foundation, for the photography department at Fresno City College, in the initial sum of $35,000.00 to establish an annual scholarship for a top student in photography and to establish gallery for display of photographic art, in honor of Hanna S. Barsam and other worthy photography students.
5. To the Fresno Art Center, funds to establish a significant photographic art show, featuring noted photographers, and to provide an endowment to fund a significant exhibit every other year of quality photographic art. Funds to be distributed: Up to $200,000.00.
6. Any excess funds over and above those mentioned, may be distributed
    a. To the named organizations to augment the gifts and grants previously provided and/or
    b. To St. Agnes Hospital, Fresno
    c. To California Armenian Home, Fresno.

The designator as executor reserves the right to modify the foregoing amounts if required to do so by the ultimate value of the estate, working in conjunction with the directors and officers of the named organizations.

Mr. Darden reserved the right to amend, adjust or alter the same in the event of changed circumstances of any of the named organizations or of the estate.

NEEDS/PROBLEMS/COMMENTS (cont.):

2. Preliminary Distribution Order dated 9/12/13 provided for distribution to the Fresno Art Museum, in an initial amount up to $50,000 to establish a significant photographic art show featuring noted photographers and to endow a significant exhibit every other year of quality photographic art, together with additional funds of up to $150,000.00 when funds are available from the estate. Petitioner has not made any distributions to the Fresno Art Museum. Petition states Petitioner contemplated making distribution of the sum of $50,000.00 to the Fresno Art Museum; however, due to a change in leadership within the organization, Petitioner has refrained from making such distribution at this time. Petitioner requests the authority to modify the schedule of distributions upon the terms and conditions hereinafter set forth. Should the Petitioner be allowed to modify the previous order and cancel the gift to the Fresno Art Museum?

Please see additional page

NEEDS/PROBLEMS/COMMENTS (cont.):

3. Petitioner appears to be overreaching his authority as it relates to the charitable gifts. Will required Petitioner to select the charitable organizations within 6 months of the decedent's death. However, by the declaration filed on 7/11/13 (see declaration outlined above) Petitioner essentially extends the six month deadline indefinitely by adding the caveat that he reserves the right to amend, adjust or alter the beneficiary designations.

4. Disbursement schedule includes distribution of $1,041.25 to scan, restore and print Hanna S. Barsam photographs salvaged and $9,124.32 for framing for Hanna S. Barsam Photo Exhibit. The Will does not appear to give the petitioner authority to use estate funds for restoring prints and framing of the decedent's photographs but only to choose the charitable organizations to distribute decedent's estate.

5. Disbursement schedule includes a disbursement for $2,800.00 for Hanna S. Barsam opening reception and awards banquet. Will does not appear to give the petitioner the authority to use estate funds for an awards banquet but only to choose the charitable organizations to distribute decedent's estate.

6. Petition does not contain a statement regarding Probate Code §216 and 9202(b) re: notice to the Director of Victims Compensation and Government Claims Board.

7. Petition does not contain a statement regarding notice to the Franchise Tax Board, as required by Probate Code 9202(c)(1).

8. Petition does not contain a statement regarding notice to the Department of Health Services. Probate Code 9202 (a).

Note to Attorney: In the future please have your order in no later than 10 days prior to the hearing.

3 Patrick M. Nelson (Estate) Case No. 13CEPR01095

Atty **Stroh, Herbert A; Drews, N. Ellen; of San Luis Obispo (for Petitioner Nicholas B. Drews)**

(1) Report of Executor on Waiver of Account and Petition for its Settlement; (2) Petition for First and Final Distribution and for (3) Allowance of Attorney Fees for Ordinary and Extraordinary Services

DOD: 10/21/2013		
Cont. from		
	Aff.Sub.Wit.	
✓	**Verified**	
✓	**Inventory**	
✓	**PTC**	
✓	**Not.Cred.**	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	W/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	022514
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
✓	**9202**	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
✓	**FTB Notice**	

NICHOLAS B. DREWS, former stepson and Executor, is Petitioner.

Accounting is waived.

I & A — **$606,737.98**
POH — **$620,314.54**
($172,612.84 is cash)

Executor — **waives**

Attorney — **$15,175.23**
(statutory)

Attorney X/O — **$5,572.00**
(Per Exhibit B, Declaration in Support of Extraordinary Compensation, for petition to determine entitlement ($4,824.00) and tax matters ($748.00), for total of 72.50 hours @ attorney rates from $350.00/hour to $135.00/hour and paralegal rates ~36% less than counsel;)

Costs — **$892.62**
(filing fees, certified copies, Courtcall for 2 appearances)

Closing — **$5,000.00**

Distribution pursuant to Decedent's Will and to *Order Determining Entitlement to Estate Distribution and Allowing Executor to Participate in Proceeding* filed 8/5/2014 is to:

NICHOLAS B. DREWS – entire estate consisting of **$145,972.99 cash**, securities, automobiles, motorcycles, real property, and household furnishings, furniture, and personal effects.

NEEDS/PROBLEMS/COMMENTS:

1. Need proposed order pursuant to Local Rule 7.6.1, containing a statement as to the balance of the estate on hand, specifically noting the amount of cash included in the balance, and the amount to be distributed.

Note: Consistent with the Court's recent practice, if Court determines an informal accounting of the closing reserve is warranted, Court will set a Status Hearing as follows:

- **Tuesday, June 9, 2015 at 9:00 a.m. in Dept. 303** for an informal accounting of the **$5,000.00** Closing Reserve.

Pursuant Local Rule 7.5, if the document noted above is filed 10 days prior to the date listed, the hearing will be taken off calendar and no appearance will be required. **Filing of the informal accounting of closing reserve will not generate a new hearing date.**

Reviewed by: LEG
Reviewed on: 12/1/14
Updates:
Recommendation:
File 3 - Nelson

4A The Smothers Family Living Trust 02-11-91 (Trust) Case No. 14CEPR00498

Atty **Roberts, Gregory J., of Barrus and Roberts (for Petitioner Floyd Wyatt, Jr., Successor Trustee)**
Atty **Brawley, Mason L.; of Murphy & Brawley, Merced (for Objector Dianne S. Collins, Successor Trustee)**

Petition for Order Confirming Successor Trustees and Trust Assets Belonging to the Marital Trust

Garnold DOD: 6/3/1991		
Velma DOD: 11/27/2013		
Cont. from 072314 082514, 102114		
	Aff.Sub.Wit.	
✓	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	W/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
✓	**Objections**	
	Video Receipt	
	CI Report	
	9202	
✓	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

FLOYD WYATT, JR., son and Trustee of the **MARITAL TRUST, [sub-trust of] the SMOTHERS FAMILY LIVING TRUST**, is Petitioner.

Petitioner states:

- Petitioner became Trustee of the **MARITAL TRUST** pursuant to the deaths of the Settlors and Trustees of the **SMOTHERS FAMILY LIVING TRUST** established on 2/11/1991, **GARNOLD GARTH SMOTHERS** and **VELMA L. SMOTHERS** (Surviving Spouse); *(copies of death certificates attached as Exhibit A; copy of Trust attached as Exhibit B1)*;
- On 2/11/1991, Settlors executed a Community Property Agreement relative to ownership of their assets (*copy attached as Exhibit B2);*
- Upon the death of the Deceased Spouse, the Trust was to be divided into sub-trusts: **EXEMPTION TRUST** and **MARITAL TRUST**; per Trust terms, the **MARITAL TRUST** is revocable by the Surviving Spouse *[Velma]*;
- The Surviving Spouse amended the **MARITAL TRUST** by a First Amendment executed on 7/7/1997, a Second Amendment on 4/24/2001, a Fourth Amendment on 3/5/2009, and a Final Amendment on 2/11/1991 *(copies of all amendments attached as Exhibits B3 to B6);*
- Petitioner believes the Fourth amendment was incorrectly designated as "Fourth" and that it is the Third Amendment to the **MARITAL TRUST**; (also the Final Amendment bears the notarized signature of Surviving Spouse only as Trustee and the omission of her signature as Trustor is believed to be clerical error);

~Please see additional page~

NEEDS/PROBLEMS/ COMMENTS:

Page 4B is the Status Hearing Re Settlement Agreement.

Continued from 10/21/2014.

Reviewed by: LEG
Reviewed on: 11/26/14
Updates:
Recommendation:
File 4A - Smothers

Petitioner states, continued:

- The division of the Trust into the **EXEMPTION TRUST** and **MARITAL TRUST** was done on a pro-rata basis rather than an item-by-item basis;
- The Surviving Spouse executed 3 separate Declarations of Trust Split: first on 6/25/1991, second on 9/23/1996, the last on 8/19/1998; however, although all 3 Declarations refer to Schedule A and B, there is only one Schedule A and Schedule B in existence among the Settlors' estate planning binders *(copies of the 3 Declarations and the only Schedule A and Schedule B attached as Exhibit C);*
- Schedules A and B indicate that the Settlors' residence on Childs Ave in Merced, which was designated in the Trust documents as the Deceased Spouse's separate property, was allocated **10%** to the **MARITAL TRUST** and **90%** to the **EXEMPTION TRUST**; pursuant to Trust terms, there was no physical segregation or division required except as necessary to make distribution as provided in the Trust;
- Surviving Spouse recorded Affidavits as to the residence and Deed of Trust, but never recorded a designation of either asset as belonging to the **MARITAL TRUST** or to the **EXEMPTION TRUST** (*copies of affidavits attached as Exhibit D);*
- Surviving Spouse sold the residence on Childs Ave. in Merced and purchased a new residence on San Gabriel Ave. in Fresno, and then transferred title to the new residence to herself as successor sole Trustee of the **SMOTHERS FAMILY LIVING TRUST** *(copy of transfer deed attached as Exhibit E);*
- Surviving Spouse may have used some of the proceeds from the sale of the Childs residence to purchase the new San Gabriel residence; however, Petitioner has not been able to determine what funds were used to purchase the new residence;
- Surviving Spouse lived 22 years after the death of Deceased Spouse, and was to receive principal distribution for support, education, care, health and maintenance from both the **MARITAL TRUST** and the **EXEMPTION TRUST**, and she also had the right to withdraw the greater of **$5,000.00** or **5%** of the principal of the **EXEMPTION TRUST** each calendar year;
- Petitioner believes the Surviving Spouse over the period of 22 years withdrew more than **$110,000.00** from the principal of the **EXEMPTION TRUST** such that at the time of her death, there were no longer any assets in the **EXEMPTION TRUST**;
- Upon the death of the Surviving Spouse, the last named Trustee of the **EXEMPTION TRUST** was **DIANNE S. COLLINS**, step-daughter of Velma (Surviving Spouse);
- On 1/30/2014, **DIANNE COLLINS** executed an Affidavit of Change of Trustee declaring she was the successor Trustee of the **SMOTHERS FAMILY LIVING TRUST**, and on the same day she executed a Grant Deed transferring title to the entire new residence on San Gabriel to the **EXEMPTION TRUST** *(copies attached as Exhibit F)*;
- Petitioner believes that he (**FLOYD WYATT, JR.**) is the Successor Trustee of **SMOTHERS FAMILY LIVING TRUST** and that the new residence on San Gabriel was not and is not an asset of the **EXEMPTION TRUST**, and believes that the transfer of the new residence on San Gabriel was inappropriate in that, pursuant to the Division Schedules, the **MARITAL TRUST** owned at least **10%** of the residence and that the new residence on San Gabriel was purchased in part with the proceeds of the sale of the old residence on Childs and with her own funds in Trust A to complete the purchase of the new residence on San Gabriel;
- Petitioner believes that the majority if not all of the new residence on San Gabriel and the Deed of Trust are subject to his control as Trustee of the **MARITAL TRUST**;
- **DIANNE COLLINS** claims that the new residence on San Gabriel is **100%** owned by the **EXEMPTION TRUST** and that she is the Trustee of the **EXEMPTION TRUST**;

~Please see additional page~

Second Additional Page 4A, Smothers Family Living Trust Case No. 14CEPR00498

Petitioner states, continued:

- Petitioner has attempted to resolve the differences between the **MARITAL TRUST** and the **EXEMPTION TRUST** and offered to split the proceeds for the sale of the new residence on San Gabriel **50%** to the **MARITAL TRUST** and **50%** to the **EXEMPTION TRUST**, but this offer was rejected by **DIANNE COLLINS**;
- As Petitioner and **DIANNE COLLINS** cannot agree on the division of ownership of the new residence on San Gabriel, Petitioner is asking the Court to determine whether the new residence on San Gabriel is an asset of the **MARITAL TRUST** or the **EXEMPTION TRUST** or both;

Petitioner prays for an Order of the Court that:

1. The **MARITAL TRUST** of the **SMOTHERS FAMILY LIVING TRUST** is valid, and that the **EXEMPTION TRUST** of **SMOTHERS FAMILY LIVING TRUST** had no assets at the date of death of Surviving Spouse Velma L. Smothers on 11/27/2013;
2. **FLOYD WYATT, JR.** is confirmed as the Successor Trustee of the **MARITAL TRUST** of the **SMOTHERS FAMILY LIVING TRUST**; and
3. All of the real property on San Gabriel, and the Deed of Trust, are assets subject to the management and control of **FLOYD WYATT, JR.** as successor Trustee of the **MARITAL TRUST** of the **SMOTHERS FAMILY LIVING TRUST**.

***Objection to Petition for Order Confirming Successor Trustees and Trust Assets Belonging to the Marital Trust* filed by DIANNE S. COLLINS, step-daughter of Velma Smothers, on 7/11/2014 states:**

- **GARNOLD GARTH SMOTHERS** and **VELMA L. SMOTHERS** married late in life, both having children from previous relationships;
- Although Garnold and Velma created their **SMOTHERS FAMILY LIVING TRUST** jointly, the Trust provides that upon the death of either of them, the Decedent's assets shall be allocated to the **EXEMPTION TRUST**, which is distributable to the Decedent's issue upon the death of the surviving spouse;
- This type of trust is common in second marriages where a couple wants the surviving spouse to be able to benefit from the trust assets during their remaining lifetime, but ensure that their assets ultimately pass to their children and issue;
- Garnold died ~4 months after creating the Trust, and the Trust was funded almost entirely with Garnold's separate property and all of those separate property assets, as well as all of his interest in he and Velma's community property, should have been allocated to an **EXEMPTION TRUST** – an irrevocable sub-trust which benefitted Velma for her lifetime, but which passed to Garnold's issue at Velma's death;
- Unfortunately, Velma failed to properly fund the **EXEMPTION TRUST** with Garnold's share of the Trust assets; Velma died on 11/27/2013, and Velma withdrew and spent all of the Trust assets except for a residence she purchased with **EXEMPTION TRUST** funds in 1998;
- Petitioner is now relying on Velmas' failure to fund the **EXEMPTION TRUST** to asset that Garnold's assets are assets of the **MARITAL TRUST**, and thus distributable to Petitioner and Velma's other children;
- This Court should deny Petitioner's requests and confirm that the [new residence on San Gabriel] is an asset of the **EXEMPTION TRUST**;

~Please see additional page~

***Objection to Petition for Order Confirming Successor Trustees and Trust Assets* filed by DIANNE S. COLLINS on 7/11/2014, continued:**

- The Trust provides that upon Garnold's death, his separate property and all of his interest in Velma and his community property should have been allocated to the **EXEMPTION TRUST** *(see Exhibit B1 to the Petition);*
- As the Surviving Spouse, Velma's separate property and her interest in her community property should have been allocated to the **MARITAL TRUST**;
- The **EXEMPTION TRUST** became irrevocable on Garnold's death, and the **EXEMPTION TRUST** was to be held for the benefit of Velma during her lifetime, but at Velma's death the assets in the **EXEMPTION TRUST** are distributable to Garnold's issue *(see Exhibit B1 to the Petition);*
- On the other hand, the **MARITAL TRUST** continued to be revocable during Velma's lifetime; the Trust provided initially that any assets remaining in the **MARITAL TRUST** at the death of the surviving spouse shall be distributed to Garnold's issue;
- Velma and Garnold expressly disinherited Velma's children (*see Trust at Paragraph 8.14, page 17 of Exhibit B1 to the Petition); [Note: Velma's children are **FLOYD WYATT, JR.**, **LEONARD EUGENE WYATT**, and **DARRELL RAY WYATT**];*
- However, Velma executed a series of amendments to the **MARITAL TRUST** which later included her children as beneficiaries;
- Respondent believes that following Garnold's death, Velma never provided a Notification of Trustee to Garnold's heirs, which was required pursuant to Probate Code § 16061.7;
- Upon Velma's death, Respondent became Trustee of the **EXEMPTION TRUST** *(both other named successor trustees **ROBERT G. SMOTHERS** and **RONALD G. SMOTHERS**, Garnold's sons, are deceased);*

- **The Bulk, if not all, of the Trust Assets were Garnold's Separate Property:** The primary Trust assets at the time of Garnold's death were (1) the real property on Childs Ave. in Merced, and (2) a Promissory Note dated 1/2/1985 owed to Garnold by his son and daughter-in-law; the property on Childs Ave. in Merced was Garnold's separate property and he transferred it to his Trust on 2/11/1991 by Quitclaim Deed; Petitioner failed to provide the Court with a copy of the Quitclaim Deed which clearly indicates that the real property on Childs Ave. in Merced was Garnold's separate property when he transferred it to the Trust *(copy of Quitclaim Deed attached as Exhibit A)*; the Promissory Note was also Garnold's separate property *(copy of Promissory Note and Substitution of Trustee and Full Reconveyance stating the lender was "Garnold Smothers, a married man, as his separate property" attached as Exhibits B and C);*

- **Velma Failed to Properly Allocate the Trust Assets to the Sub-Trusts upon Garnold's Death:** In accordance with the terms of the Trust, as Garnold's separate property,100% of the Merced Property and 100% of the Promissory Note should have been allocated to the Exemption Trust; the allocations schedules of sub-trusts submitted by Petitioner are inaccurate.

- **The Funds used to Purchase the Fresno [San Gabriel] Property came from Assets Owned by the EXEMPTION TRUST**: Velma sold the Merced Property for **$129,500.00**, and failed to attach a copy of the 1998 Grant Deed for the Merced Property to the *Petition*; Velma used the proceeds from the sale to purchase real property on San Gabriel Ave in Fresno for **$85,000.00**; it is unclear what Velma did with the remaining **$45,000.00** proceeds from the sale; Velma initially acquired title in her name and subsequently transferred title to the Trust.

~Please see additional page~

- **Velma did not Exercise her Right of Withdrawal from the EXEMPTION TRUST**: Velma had a right to withdraw principal (limited to **$5,000/5%** annually) from the Exemption Trust; Petitioner alleges Velma exercised her withdrawal right, but offers no factual basis or support for that allegation; Respondent alleges that Velma did not exercise the withdrawal power, and because it was not cumulative, it lapsed annually according to the terms of the Trust.

Respondent/Objector requests that the Court:

1. Deny Petitioner's request for an order that the property on San Gabriel in Fresno is an asset of the **MARITAL TRUST** under the **SMOTHERS FAMILY LIVING TRUST**;
2. Confirm that the real property on San Gabriel in Fresno is an asset of the **EXEMPTION TRUST** under the **SMOTHERS FAMILY LIVING TRUST** subject to the management and control of **DIANNE S. COLLINS**, Successor Trustee; and
3. Confirm that an property or funds traceable to the Promissory Note be confirmed as an asset of the **EXEMPTION TRUST** under the **SMOTHERS FAMILY LIVING TRUST**, subject to the management and control of **DIANNE S. COLLINS**, Successor Trustee.

4B The Smothers Family Living Trust 02-11-91 (Trust) Case No. 14CEPR00498

Atty **Roberts, Gregory J., of Barrus and Roberts (for Petitioner Floyd Wyatt, Jr., Successor Trustee)**
Atty **Brawley, Mason L.; of Murphy & Brawley, Merced (for Objector Dianne S. Collins, Successor Trustee)**

Status Hearing Re: Settlement Agreement

Garnold DOD: 6/3/1991		
Velma DOD: 11/27/2013		
Cont. from 102114		
	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	

FLOYD WYATT, JR., son and Trustee of the **MARITAL TRUST, [sub-trust of] the SMOTHERS FAMILY LIVING TRUST**, filed a *Petition for Order Confirming Successor Trustees and Trust Assets Belonging to the Marital Trust* on 6/4/2014.

DIANNE S. COLLINS, step-daughter of Velma Smothers, filed an *Objection to Petition for Order Confirming Successor Trustees and Trust Assets Belonging to the Marital Trust* on 7/11/2014.

***Minute Order* dated 7/23/2014** from the hearing on the petition and objection states the Court sets the matter for Settlement Conference on 8/25/2014. Counsel is directed to submit their settlement conference statements along with a courtesy copy for the Court one week before the hearing.

***Minute Order* dated 8/25/2014** from the Settlement Conference states the parties come to agreement. Mason Brawley will submit order. Matter set on 10/21/2014 for status hearing re: settlement agreement.

***Minute Order* dated 10/21/2014** shows appearances by Attorneys Gregory Roberts and Mason Brawley, and that the matter is continued to 12/9/2014.

NEEDS/PROBLEMS/COMMENTS:

1. Need settlement agreement.

Reviewed by: LEG
Reviewed on: 11/26/14
Updates:
Recommendation:
File 4B – Smothers

Dept. 303, 9:00 a.m. Tuesday, December 9, 2014

5A Vera Brown (CONS/PE) Case No. 14CEPR00878

Atty Kruthers, Heather H. (for Fresno County Public Guardian – Petitioner)
Atty Fanucchi, Edward L. (Court appointed for Proposed Conservatee)
Atty Kelley, Darlene (Pro Per – Niece – Competing Petitioner)(Little Rock, AR)

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

Cont from 110514		
	Aff.Sub.Wit.	
✔	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
✔	**Notice of Hrg**	
✔	**Aff.Mail**	W
	Aff.Pub.	
	Sp.Ntc.	
✔	**Pers.Serv.**	W
	Conf. Screen	
✔	**Letters**	
✔	**Duties/Supp**	
	Objections	
	Video Receipt	
✔	**CI Report**	
	9202	
✔	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
✔	**Citation**	
	FTB Notice	

TEMP EXPIRES 12-9-14

The FRESNO COUNTY PUBLIC GUARDIAN is Petitioner and requests appointment as Conservator of the Person with medical consent powers under Probate Code §2355.

Petitioner also requests authorization under Probate Code §2540 to retain a licensed real estate broker to sell the proposed Conservatee's real property and any personal property no longer needed by the Conservatee.

Voting rights affected

Estimated Value of Estate:
Personal property: $239,126.75
Annual income: $23,987.52
Real property: $102,000.00

A Capacity Declaration was filed 10-8-14.

Petitioner states the proposed Conservatee is a 79-year-old woman who appears to be suffering from dementia. She reportedly lives with different relatives at different times during the year. She has been in Fresno since June 2014. Based on a review of bank records and a discussion with bank staff, there is ample evidence to support that Ms. Brown has been and continues to be a victim of financial elder abuse by her nieces and nephews. Approximately $17,000 was withdrawn from Ms. Brown's account in July 2014. A nephew reported that he knows nothing about these disbursements, but he has a handwritten will that would give him Ms. Brown's full estate.

Petitioner's Declaration filed 11-3-14 states Deputy Public Guardian Jennifer Segura discussed Petitioner's request to sell the Conservatee's former residence with the Conservatee on 10-1-14. The declaration states Ms. Brown did not disagree or object.

Court Investigator Julie Negrete filed a report on 10-28-14.

NEEDS/PROBLEMS/ COMMENTS:

<u>Note</u>: Darlene Kelley, niece, of Little Rock, AR, filed a competing petition (Page B).

Court Investigator advised rights 10-17-14

Voting rights affected – need minute order.

1. **Petitioner did not request dementia medication or placement powers; however, the Capacity Declaration does address capacity to consent to dementia medication. The Court may require additional information or amendment and notice if dementia powers are to be requested based on the Capacity Declaration.**

<u>Note</u>: If granted, the Court will set status hearings as follows:

- **Wednesday, May 6, 2015 for filing the Inventory and Appraisal**
- **Wednesday, April 4, 2016 for filing the First Account**

If the appropriate items are on file prior to the status hearing dates pursuant to Local Rules, the status hearings may be taken off calendar.

Reviewed by: skc
Reviewed on: 12-1-14
Updates:
Recommendation:
File 5A – Brown

5B Vera Brown (CONS/PE) Case No. 14CEPR00878

Atty Kruthers, Heather H. (for Fresno County Public Guardian – Petitioner)
Atty Fanucchi, Edward L. (Court appointed for Proposed Conservatee)
Atty Kelley, Darlene (Pro Per – Niece – Competing Petitioner)(Little Rock, AR)

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

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

TEMP (PUBLIC GUARDIAN) EXPIRES 12-9-14

DARLENE KELLEY, Niece, is Petitioner and requests appointment as Conservator of the Person and Estate. (Bond is not addressed).

Voting rights affected

Estimated Value of Estate:
Personal property: $239,126.75
Annual income: $23,987.52
Real property: $102,000.00

Petitioner is blank at #5 as to the reason for conservatorship.

Court Investigator Julie Negrete filed a report on 12-2-14.

NEEDS/PROBLEMS/COMMENTS:

Court Investigator advised rights on 12-2-14
Voting rights affected – need minute order

Note: Pursuant to Minute Order 11-5-14, the Public Guardian is to transport Ms. Brown to the hearing on 12-9-14.

1. **Petitioner resides in Little Rock, Arkansas. The Court may require clarification as to whether Petitioner plans to relocate Ms. Brown to Arkansas. If so, please see Probate Code §2352(c) and (d) regarding petition to fix residence outside California and establishing a conservatorship or its equivalent in the new state.**
2. **Need Citation.**
3. **Need proof of personal service of Citation with a copy of the Petition at least 15 days prior to the hearing on Proposed Conservatee Vera Brown pursuant to Probate Code §1824.**
4. **Need Notice of Hearing.**
5. **Need proof of service of Notice of Hearing with a copy of the petition at least 15 days prior to the hearing pursuant to Probate Code §1822 on all relatives.**
6. **Need bond of at least $289,425.70 pursuant to Probate Code §2320(c)(4) and Cal. Rule of Court 7.207.**

Note: If granted, the Court will set status hearings as follows:
- **Tuesday 2-2-15 for filing of bond**
- **Tuesday 5-12-15 for filing the Inventory and Appraisal**
- **Tuesday 5-17-16 for filing the first account**

If the appropriate items are on file prior to the hearing date, the status hearings may be taken off calendar. Petitioner is encouraged to seek legal advice from a California attorney going forward.

Reviewed by: skc
Reviewed on: 12-1-14
Updates: 12-5-14
Recommendation:
File 5B - Brown

6 Virginia W. Smith Revocable Living Trust 3/14/05 Case No. 14CEPR00885

Atty **Frisella, Lisa J.; Allard, Mara C.; of Law Office of Lisa J. Frisella, San Diego (for Petitioners Steven Smith and Gillian Brock)**

Petition to Determine Validity of Trust; for Order Confirming Trust Assets; to Determine to Whom Trust Property Shall Pass; and for Appointment of Successor Trustee; for Undue Influence; for Duress and Menace; for Reimbursement of Costs and Expenses of Administration; for Payment of Attorneys' Fees and Punitive Damages

DOD: 7/29/2014

Cont. from 110314

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

STEVEN SMITH, son, and **GILLIAN BROCK**, daughter, are Petitioners.

Petitioners state:

- Petitioners are the Co-Trustees of the **VIRGINIA W. SMITH REVOCABLE LIVING TRUST dated 3/14/2005** *(copy attached as Exhibit 2)*; Petitioners do not live in the Fresno area; (Petitioner Steven Smith resides in Nevada, and Petitioner Gillian Brock resides in Georgia.)
- Petitioners bring this petition to determine the validity of the Trust, to confirm Trust assets, and determine to whom the property should pass;
- Petitioners request this Court confirm that the Trust is a valid Trust and the that property described in *Schedule A* of the Trust are assets subject to the Trust;
- Virginia Smith [*Decedent*] died after she was admitted to Clovis Community Regional Center on 7/5/2014 with bruising, malnutrition and an E Coli infection; the cause of death listed on her Certificate of Death is Alzheimer's Disease *(copy attached as Exhibit 1);*
- Hospital records indicate that Decedent was admitted on 7/5/2014 by her caregiver, **JERRY PHARRIS**, who reported he found her on the kitchen floor two days in a row;

~Please see additional page~

NEEDS/PROBLEMS/COMMENTS:

Notes:

- Paragraph 25 of the *Petition* states the Decedent's house on Farris Avenue in Fresno is not an asset of the **VIRGINIA W. SMITH REVOCABLE LIVING TRUST**, and *Schedule A* of the Trust lists the Trust assets as personal property that is contained in the Decedent's house, not the house itself.
- Part 6 Paragraph D of the Trust names both Petitioners as Successor Trustees of the Trust following the death of Decedent, and Paragraph G waives bond for named trustees. Part 10 of the Trust distributes the Trust property to Petitioners in equal shares.
- *Declaration of Co-Trustee Steve Smith in Support of Request to Withdraw Items 5, 6, 7, and 9 in the Prayer for Relief of Pending Petition* filed on 11/26/2014, and the *Declaration of Co-Trustee Gillian Brock in Support of Request to Withdraw Items 5, 6, 7, and 9 in the Prayer for Relief of Pending Petition* filed on 11/26/2014 appear to omit from their request "*Item 8*" seeking *a Status Quo* order, preventing disposal or distribution of **VIRGINIA W. SMITH REVOCABLE LIVING TRUST** assets until the issues raised in this *Petition* have been addressed. However, since the request to withdraw items does not request that *Item 8* be withdrawn, the Court should consider the Status Quo order as still encompassed within the Petitioners' request.

~Please see additional page~

Reviewed by: LEG

Reviewed on: 11/26/14

Updates:

Recommendation:

File 6 – Smith

<u>Petitioners state, continued</u>:

- Jerry Pharris reported that Virginia had not been eating for 5 years but only drank "Ensure" and she had not been taking her medication for 2 months; he reported he administered anti-diarrhea pills to her so "He didn't have to clean her often;"
- On 7/10/2014, Decedent was discharged from the hospital tolerating food and feeling better to Willow Creek Care Facility, where she reported to staff that she was sexually abused by Jerry Pharris; Willow Creek staff contacted Petitioner Steven Smith to inform him of the abuse allegations;
- Petitioner Steven Smith came to Fresno and contacted police; an abuse investigation was opened by Fresno Police on 7/19/2015;
- On 7/19/2014, the Fresno Police contacted Jerry Pharris at Decedent's home, and Pharris presented a document entitled *Last Will and Testament of Virginia W. Smith* dated 1/10/2012, stating therein that her entire estate is devised to Jerry Pharris (*copy of Will attached as Exhibit 3*);
- Operating with the representation that he had exclusive authority as executor of the estate, Pharris denied entrance to the home to Petitioner Steven Smith;
- Bank records show that on 8/5/2014, Pharris made 3 separate withdrawals of **$500.00** from Decedent's bank account;
- Bank records show that Pharris withdrew funds from social security and annuity deposits to Decedent's checking account made after her death;
- Petitioners believe Jerry Pharris made acquaintance with Decedent in 2004 through a senior center; he began mowing her lawn and doing repairs around her house; Jerry Pharris moved into the detached in-law unit behind Decedent's house in 2009, after the former tenant vacated due to her belief that Jerry Pharris broke into the unit, and after Jerry Pharris' harassment of her; Pharris then lived rent-free in the unit, which previously rented for **$550.00** per month;
- Pharris arranged to have all phone calls screened on speaker so he could participate in calls Decedent had with her children; Pharris took over financial control of Decedent's bank accounts and discouraged her from having contact with her family and intimidated her friends and neighbors;
- Personal property assets listed on *Schedule A* of the Trust are believed to be in Decedent's residence or a storage facility, and include valuable dolls and jewelry with an estimated value of **$30,000.00** to **$40,000.00**;
- Petitioners allege the Will dated 1/10/2012 attached as *Exhibit B* is not and never was Decedent's Will and was made at the time of its alleged execution as a result of undue influence; the Will is the product of fraud, menace and/or duress, and Petitioners believe Pharris deprived Decedent of nourishment and care, isolated and intimidated her and those around her for the purpose of gaining control of her assets and her residence;
- Petitioners allege pursuant to Probate Code § 21380(a)(3) that any donative transfer to Jerry Pharris is presumed to be the product of fraud or undue influence as the instrument was executed during the period Jerry Pharris provided care custodian services to Decedent;
- Petitioners allege the Will dated 1/10/2012 is the product of fraud, menace and/or duress and believe that Pharris deprived Decedent of nourishment and care, isolated and intimidated her and those around her for the purpose of gaining control of her assets and her residence;
- Pharris lived with Decedent for nearly 7 years prior to Decedent's death and occupied a position of trust and confidence; during that time, Pharris took over her financial affairs and actively discouraged her from communicating with family and friends;

~Please see additional page~

Petitioners state, continued:

- During the time of his relationship with Decedent, Pharris was able to exert control and influence over the mind and actions of Decedent to such a point that Decedent was no longer capable of exercising her own conviction or desire with regard to her actions or thoughts, but rather, because of the pressure brought on her by Pharris;
- Due to the progression of her Alzheimer's Disease, Decedent was not of sound mind and lacked capacity to make the Will on 1/10/2012, and at the time the Will was executed Decedent was aged and infirm and suffering from memory problems;
- As a result of Decedent's physical and mental infirmities, Decedent was easily influenced and controlled by Pharris;
- Petitioners and Decedent enjoyed a close relationship until Jerry Pharris entered their mother's life;
- Before Jerry Pharris came in to Decedent's life, Petitioner Steve Smith assisted his mother with her financial affairs and in fact tried to convince her to move close to his home in Nevada when she turned 90;
- Due to Pharris' influence, Decedent declined her son's urgings to move;
- Pharris insisted that Decedent not use the computer, and controlled all of her access to the telephone;
- Attempts made by Petitioner Steven Smith to contact Decedent by telephone became futile and he was left to resort to police welfare checks to check in on his mother in 2013 and 2014;
- Petitioners request distribution of Trust assets and an order allowing Petitioners entrance to their mother's home and storage facility for purposes of marshalling the Trust assets until the issues raised in this petition have been addressed.

Petitioners request an Order as follows:

1. The **VIRGINIA W. SMITH REVOCABLE LIVING TRUST** dated 3/14/2005 is valid;

2. Personal property described in Schedule A of the Trust are assets of the Trust subject to management and control of the Successor Co-Trustees;

3. Steven Smith and Gillian Brock are appointed Successor Co-Trustees of the **VIRGINIA W. SMITH REVOCABLE LIVING TRUST** and will serve without bond;

4. The beneficiaries entitled to distribution of the **VIRGINIA W. SMITH REVOCABLE LIVING TRUST** are Steven Smith and Gillian Brock;

5. For a *Status Quo* order, preventing disposal or distribution of **VIRGINIA W. SMITH REVOCABLE LIVING TRUST** assets until the issues raised in this Petition have been addressed; and

6. For all other orders the Court deems proper.

NEEDS/PROBLEMS/COMMENTS, continued:

1. Need proposed order pursuant to Local Rule 7.1 which provides a proposed order shall be submitted with all pleadings that request relief.

Dept. 303, 9:00 a.m. Tuesday, December 9, 2014

7 **Arabella Chavira, Kailani Chavira, and Christopher Chavira (Minors)** **Case No. 14CEPR00907**

Atty **Wilson, Glenn R. (for Alma Figueroa – Paternal Grandmother – Petitioner)**

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

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

TEMP DENIED 10-15-14

ALMA FIGUEROA, paternal grandmother, is Petitioner.

Father: **CHRISTOPHER CHAVIRA**
- Personally served 10-9-14

Mother: **VICTORIA BARAJAS**
- Personally served 10-9-14
- Present at hearing 10-15-14

Paternal grandfather: Michael Chavira

Maternal grandfather: Unknown
Maternal grandmother: Angelica Villerreal - *Personally served 10-9-14*

Petitioner states the children were residing with their mother until 9-22-14 when they were dropped off at Petitioner's residence by the father. Petitioner states the mother is being evicted and the father is currently homeless and both parents suffer from severe drug addictions.

Court Investigator Jennifer Young filed a report on 11-26-14.

NEEDS/PROBLEMS/COMMENTS:

If this petition goes forward, the following issues exist:

1. **Need Investigation Report pursuant to Probate Code §1513. (The Court investigation was not completed because petitioner stated she did not wish to pursue guardianship.)**
2. **Need notice pursuant to Probate Code §1511 to paternal grandfather and maternal grandfather or consent or declaration of due diligence.**
3. **Need order.**

Reviewed by: skc
Reviewed on: 12-1-14
Updates:
Recommendation:
File 7 - Chavira

Dept. 303, 9:00 a.m. Tuesday, December 9, 2014

8 **Thomas W. Brock (Det Succ)** **Case No. 14CEPR00942**

Atty **Magness, Marcus D. (for CynDee A. Jordan – Petitioner)**

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

DOD: 05/18/2014		
Cont. from 111814		
	Aff.Sub.Wit.	
✓	**Verified**	
✓	**Inventory**	
	PTC	
	Not.Cred.	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	w/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
✓	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

CYNDEE A. JORDAN, as Trustee of the Brock Living Trust, is petitioner.

40 days since DOD

No other proceedings

I&A - **$55,355.71**

Will dated 11/10/2003 devises the residue of the estate shall pass to the Trustee of the Trust designated as the Brock Living Trust.

Petitioner requests Court determination that decedent's 49.11% interest in Promissory Note dated December 22, 1997 pass to CynDee A. Jordan, as Trustee of the Brock Living Trust.

Supplemental to Petition to Determine Succession to Real Property filed 11/18/2014 states the Inventory and Appraisal lists a promissory notes (which is personal property). However, the note is secured by a certain Deed of Trust dated 12/22/1997, recorded in the Official Records of the County of Madera on 12/24/1997 as Document No. 9734162, as assigned pursuant to that certain Corporation Agreement of Deed of Trust dated 01/09/1998, recorded in the Official Records in the County of Madera on 05/21/1998, as Document No. 9814033 (the "Deed of Trust"). The Deed of Trust is listed on the Inventory and Appraisal. A deed of trust is a security interest in real property wherein in legal title in real property is transferred to a trustee, which holds it as security for a loan between a borrower and a lender. Hence, the Petition seeks on order concerning real property and personal property and it appropriate under Probate Code §13151.

NEEDS/PROBLEMS/COMMENTS:

Minute Order of 11/18/2014: Mr. Janisse filed a declaration and supplemental report this morning.

1. The Inventory and Appraisal does not list real property it lists a promissory note which is personal property. A petition requesting an order concerning personal property only is not permitted under Probate Code §13151.
   - The Supplemental to Petition to Determine Succession to Real property filed 11/18/2014 admits that the promissory note is personal property. Therefore this procedure cannot be used under Probate Code §13151. Where only personal property is involved the Affidavit procedure under Probate Code §13100 is the appropriate summary procedure.

Reviewed by: LV
Reviewed on: 12/03/2014
Updates:
Recommendation:
File 8 - Brock

9 **Vick Family Trust of 1997 (TRUST)** **Case No. 14CEPR00967**

Atty **Pacella, Louis (for Shaun Kelly – Beneficiary – Petitioner)**

Verified Petition for Order Concerning the Internal Affairs of Trust and Action for Breach of Trust [§§17200(b)(1)-(7), (8), (12), 17206; 16420(a)(1), (3), and (9)]

Stanley Vick DOD: 10/15/2007		
Coeta Vick DOD: 10/2013		
Diane Kelly DOD: Not provided		
	Aff.Sub.Wit.	
✔	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
✔	**Notice of Hrg**	
✔	**Aff.Mail**	W
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

SHAUN KELLY, Grandson and Beneficiary, is Petitioner.

Petitioner states Stanley and Coeta Vick, husband and wife, created the Vick Family Trust of 1997 (the Vick RLT) and transferred ownership of their assets, including certain property on Polk in Caruthers, to the trust. Pursuant to the terms of the trust, the couple agreed that all property transferred retained its character as either community or separate property. Upon the death of the first settlor, the trust was to be divided into three subtrusts: The Survivor's Trust, the Marital Trust, and the Family Trust. Upon the death of the surviving settlor, the subtrusts were to be combined, and with the exception of minor specific gifts, divided equally between the settlors' two children, Diane Kelly and Galene Pilcher. Should either Diane Kelly or Gaylene Pilcher predecease the surviving settlor, their share would pass to their living issue. Petitioner is the only living issue of Diane Kelly, who predeceased the surviving settlor.

Petitioner states that upon the death of the first settlor, the survivor had the ability to amend *only* the Survivor's Trust. Settlor Stanley Vick died 10-15-07; however, no sub-trusts were created upon his death, and the surviving settlor treated all community assets as if they were her separate property.

On 12-31-12, Surviving Settlor Coeta Vick created the Coeta Vick Grantor Trust, an irrevocable trust to which she transferred title to the Polk Property, *in its entirety*, from the Vick RLT. Gaylene Pilcher is the sole beneficiary of the Coeta Trust.

Coeta Vick died in October 2013. On 12-19-13, Gaylene Pilcher transferred title to the Polk Property from the Coeta Trust to herself as an individual, and on 12-27-13, transferred all interest in the Polk Property to the Gaylene Pilcher Living Trust, where it remains today.

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS:

SEE ADDITIONAL PAGES

Reviewed by: skc

Reviewed on: 12-2-14

Updates:

Recommendation:

File 9 - Vick

Petitioner states Respondent Gaylene Pilcher has ignored all requests made by Petitioner for his rightful one-half share of the Polk Property, attributable to the interest that should have been conveyed to the Family Trust sub-trust upon the death of Stanley Vick. Respondent has acknowledged Petitioner as a beneficiary of certain cash assets belonging to the Family Trust sub-trust; however, has failed to provide an adequate accounting of assets as the named successor trustee of the Vick RLT and accompanying sub-trusts.

Petitioner requests that this Court determine the validity of the Vick RLT, its various terms, provisions and sub-trusts, grant him the relief sought in the form of determining his lawful ownership interest in the Polk Property, ordering Respondent to vest such interest in his individual name, and require Respondent to provide a proper accounting for the Vick RLT.

Petitioner states the Polk Property was community property of Stanley and Coeta Vick, who held title in joint tenancy prior to creation of the trust. The community property of Stanley Vick should have been placed in the Family Trust upon his death, which was irrevocable with the surviving spouse holding no power to amend or appoint the assets contained in it to a different beneficiary or class of beneficiaries. However, rather than funding the sub-trust, Coeta Vick retained all assets in the Vick RLT until 12-31-12, when she created the Coeta Trust, which named only Respondent as its sole beneficiary and primary trustee, and funded the Coeta Trust with the Polk Property.

Petitioner states this transfer was in violation of the terms of the Vick RLT and served as an impermissible disinheritance of Petitioner's share of that property. Although Petitioner does not presently allege that Coeta Vick lacked the requisite capacity to execute the Coeta Trust on its terms, or was otherwise unduly influenced to do so, he reserves the right to amend this petition to allege such facts upon their discovery. Petitioner is informed and believes Respondent was aware of his interest in the Polk Property pursuant to the Vick RLT and her actions to date have been calculated to wrongfully deny him of his rightful share.

Petitioner states that while Respondent denies Petitioner's right to an interest in the Polk Property, she has indeed acknowledged the validity of the same provisions. On 5-9-14, on behalf of Respondent, a Mr. Gregory A. Steen sent correspondence to Gina Mosley and Bridget Mosley along with checks for $15,000, completing the specific gifts outlined in Sections 5 and 6 of the Ninth Article establishing the Family Trust sub-trust. Similarly, on 7-14-14, Petitioner received a similar correspondentce from Mr. Steen along with a check for $149,000. Mr. Steen, a non-lawyer, identifies himself as the "Administrator for Gaylene Pilcher, Successor Trustee" in his correspondence (Exhibit F).

In addition to the cash, Petitioner demands distribution of the interest in the Polk Property to which he is also entitled.

Petitioner states Respondent has not provided a sufficient accounting, despite multiple requests. He has been provided with only a single inadequate document prepared by Respondent (or on her behalf) that purportedly contains transactions from a Bank of America account. However, this document is insufficient to satisfy any accounting requirement and does not specifically identify any assets of the Vick RLT. Exhibit G.

Petitioner states in order to uphold and carry out the irrevocagble intentions of Stanley Vick, an order by this Court compelling the funding of his community property interest in the Polk Property to the Family Trust, retroactive to the date of his death is necessary.

SEE ADDITIONAL PAGES

Petitioner requests the following:

1. **An order confirming that the Vick RLT is a valid and existing trust;**
2. **An order confirming that the creation and funding of the Family Trust sub-trust pursuant to the terms of the Vick RLT was mandatory;**
3. **An order confirming that Stanley Vick's one-half community property interest became an asset of the Family Trust upon his death;**
4. **An order compelling the funding of the Family Trust with a one-half community property interest in the Polk Property, retroactive to the date of death of Stanley Vick;**
5. **An order confirming that Petitioner is a beneficiary of the Family Trust and therefore entitled to receive an equal share of Stanley Vick's one-half community property interest in the Polk Property pursuant to the terms of the Vick RLT; and**
6. **For such other and further relieve as the Court deems appropriate.**

NEEDS/PROBLEMS/COMMENTS:

1. **Petitioner does not state the names and addresses of each person entitled to notice of this petition pursuant to Probate Code §§ 17201, 17203, including 17203(b).**

2. **Need order.**

3. **Petitioner states at Page 7 of the petition that he reserves the right to amend this petition to bring causes of action regarding capacity, undue influence, etc., in the creation of the 2012 Coeta Vick Grantor Trust. Please note that any future petition regarding the Coeta Trust would need to be brought as a *separate* action under appropriate authority and not as an amendment to this petition. Also, causes of actions such as undue influence and capacity issues may be required to be heard in the Civil Court, as opposed to this Probate Court, since those causes of action are not brought under the Probate Code.**

10 Gordon W. Bergen (Estate) **Case No. 14CEPR00975**

Atty Poochigian, Mark S (for Alesha J. Jensen – Petitioner – Daughter)

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

DOD: 06/18/2014			**ALESHA J. JENSEN,** daughter, is petitioner and requests appointment as Administrator without bond.
			All heirs nominate petitioner and waive bond.
			Full IAEA – o.k.
			Decedent died intestate
			Residence: Parlier Publication: The Business Journal
			Estimated value of the Estate Personal property - $170,000.00
			Probate Referee: Rick Smith
Cont. from			
	Aff.Sub.Wit.		
✓	**Verified**		
	Inventory		
	PTC		
	Not.Cred.		
✓	**Notice of Hrg**		
✓	**Aff.Mail**	w/	
✓	**Aff.Pub.**		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
✓	**Letters**		
✓	**Duties/Supp**		
	Objections		
	Video Receipt		
	CI Report		
	9202		
✓	**Order**		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		

NEEDS/PROBLEMS/COMMENTS:

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

- **Tuesday, 04/07/2015 at 9:00a.m. in Dept. 303** for the filing of the inventory and appraisal **and**
- **Tuesday, 02/09/2016 at 9:00a.m. in Dept. 303** for the filing of the first account and final distribution.

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

Reviewed by: LV
Reviewed on: 12/03/2014
Updates:
Recommendation: Submitted
File 10 - Bergen

Dept. 303, 9:00 a.m. Tuesday, December 9, 2014

11 Billie Mae McNail (Estate) Case No. 14CEPR00979

Atty **Vallis, James H., sole practitioner of Kingsburg (for Petitioner Gary McNail)**

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

DOD: 7/5/2014			**GARY DANE MCNAIL**, son and named Executor without bond, is Petitioner.
			Full IAEA – O.K.
Cont. from			
	Aff.Sub.Wit.	S/P	
✓	**Verified**		Will Dated: 8/7/2001
	Inventory		
	PTC		Residence: Kingsburg
	Not.Cred.		
✓	**Notice of Hrg**		Publication: Kingsburg Recorder
✓	**Aff.Mail**	W/O	
✓	**Aff.Pub.**		**Estimated value of the Estate:**
	Sp.Ntc.		Real property - **$300,000.00**
	Pers.Serv.		_____ - _____
	Conf. Screen		Total - **$300,000.00**
✓	**Letters**		**Probate Referee: Rick Smith**
✓	**Duties/Supp**		
	Objections		
	Video Receipt		
	CI Report		
	9202		
✓	**Order**		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		

NEEDS/PROBLEMS/COMMENTS:

1. **Item 8 of the *Petition* does not include the date of death of the deceased spouse pursuant to Local Rule 7.1.1(D) which provides that if a beneficiary, heir, child, spouse or registered domestic partner in any action before the Probate Court is deceased, that person's date of death shall be included in the petition.**

Note: If *Petition* is granted, Court will set Status Hearings as follows:

- **Monday, May 11, 2015 at 9:00 a.m. in Dept. 303 for the filing of final inventory and appraisal; and**
- **Tuesday, February 9, 2016 at 9:00 a.m. in Dept. 303 for the filing of first account and/or petition for final distribution.**

Pursuant Local Rule 7.5, if the documents noted above are filed 10 days prior to the dates listed, the hearings will be taken off calendar

Reviewed by: LEG

Reviewed on: 12/2/14

Updates:

Recommendation:

File 11 - McNail

12 Sarah Louise Muhley (Estate) **Case No. 06CEPR00354**

Atty Havlisch, Hal B. (Executor, in pro per)

Probate Status Hearing Re: Failure to File Petition for Final Distribution

DOD: 3-7-06		
Cont'd from 31414, 111814		
	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	

HAL B. HAVLISCH was appointed Executor with Full IAEA without bond and Letters issued on 5-24-06.

Final Inventory and Appraisal filed 10-27-06 indicated a total estate value of $148,162.92, including $3,517.92 cash plus real property, personal property including a stamp collection valued at $1,500.00, and a vehicle.

On 11-30-06, a Notice of Proposed Action was filed indicating that the Executor intended to sell the real property for $100,000.00 cash.

Nothing further was filed.

On 12-20-13, the Court set this status hearing for failure to file a first account or petition for final distribution and mailed notice to Hal. Havlisch.

Status Report filed 9-16-14 states the I&A was filed 10-27-06. On 11-30-06, a Notice of Proposed Action was filed, and Mr. Havlisch states a Notice of Proposed Action was filed 11-30-06. If this notice is not for the sale of the decedent's property, he will then be filing one so that he may sale the property.

Status Hearing Report filed 11-14-14 by Mr. Havlisch states he is in the process of obtaining documents filed with the Court to complete this action. An unlawful detainer was filed 9-22-14 and the property was returned back to the estate on 10-28-14. The property was listed for sale on 9-11-14, which had to be stopped due to a hostile tenant. The sale agreement will be renewed on Monday.

NEEDS/PROBLEMS/COMMENTS:

Note: The Executor, attorney Hal B. Havlisch, was previously represented by attorney Thomas C. Peterson, now deceased.

Note: The decedent's will devises the entire estate to GOOD SHEPHERD LUTHERAN HOME OF THE WEST in Fountain Valley, CA.

Minute Order 11-18-14: An amended status report is to be filed by 12-4-14 addressing all of the issues in the Examiner Notes. Copies of the real estate documents are to be attached to the report.

Update: Status report was filed 12-4-14. See Page 2. The following remains noted for reference:

1. **Need first account or petition for final distribution or current written status report** pursuant to Local Rule 7.5 which states in all matters set for status hearing verified status reports must be filed no later than 10 days before the hearing. Status Reports must comply with the applicable code requirements. **Notice of the status hearing, together with a copy of the Status Report shall be served on all necessary parties.**

   Examiner's Note: The Executor's status report filed 9-16-14 does not provide the status of the estate. Rather, it indicates that the Executor is unaware of the status.

   This estate has been open since 2006, to the detriment of the beneficiary, a charity. What is the status of the estate's assets? Has the house been sitting vacant these past 8 years, decreasing in value? Has it been rented, earning income for the estate? It is likely that the house has lost a substantial amount of value in the intervening years, and if this estate had been properly administered, would have been closed within a year. Have the personal property assets been sold? Is there an estate account? The Court may require that further status report be served on the beneficiary.

   The Executor may wish to review the Duties and Liabilities of Personal Representative form DE-147 that he signed and filed on 4-19-06, and may wish to seek legal advice from an attorney going forward.

Reviewed by: skc

Reviewed on: 12-5-14

Updates:

Recommendation:

File 12 – Muhley

Status Report filed 12-4-14 states the house has decreased in value to $72,000 in 2008 and has now increased to $123,000 according to www.zillow.com. The home was built in 1927. Executor has made all necessary repairs out of his own funds including a new foundation, wiring, plumbing, roof, refrigeration and heating unit, kitchen, floor, interior and exterior paint, window treatments, termite damage.

The Executor states when the repairs were done the home was rented in June 2011 to a disabled woman who was receiving Section 8 subsidy. The only money received was from what Section 8 paid, as the tenant could not afford additional rent. The home is not in the best of areas and it was considered a good investment to not have the home sitting empty to avoid damage due to vandalism. The tenant paid utilities and kept up the property while the remaining repairs were done.

The house is now empty and has been listed with London Properties for $130,000.00. The 1977 Dodge Monaco Broagham was sold for the appraised value of $2,500.00, although there were expenses involved in the sale of the vehicle (smog, DMV, etc.). The furniture has been sold for the appraised value. The stamp collection is intact and can be disbursed to the beneficiaries. At the present time, there is no estate bank account, but estate funds have been placed in Executor's attorney's trust account with an approx. balance of $600.00.

Executor states the Waiver of Accounting and Petition for Final Distribution will be filed at the close of escrow.

Examiner's Note: *Mr. Havlisch states funds have been placed in his attorney's trust account; however, Mr. Havlisch is now self-represented and used a non-attorney legal document service to file this status report. Need clarification regarding the attorney trust account.*

13 Samuel Marcus Adams (Estate) Case No. 12CEPR00326

Atty **Flanigan, Philip M. (for Beverly T. Adams – Executor)**

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

DOD: 11/18/2010		
Cont. from 072613, 110813, 112414		
	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	

BEVERLY T. ADAMS, spouse, was appointed Executor with full IAEA authority without bond on 06/25/2012.

Letters issued on 06/28/2012.

Inventory and Appraisal was due 10/26/2012.

Declaration of Danielle R. Guerrero and Status Report filed 11/19/2014 states Beverly T. Adams needed to be appointed as Personal Representative of her late husband's estate in order to file a wrongful death lawsuit on his behalf stemming from the airplane crash in Florida on 11/17/2010. The lawsuit was filed in Florida Southern District Court on 05/14/2013, Case No. 2:13-cv-14206. The original trial date for that matter was 08/15/2014. The trial was continued to 11/17/2014, then again to 01/12/2015, and is now scheduled for a two week trial beginning 05/18/2015. Mediation was scheduled for 11/07/2014 but was later postponed to allow a motion to be heard prior to mediation. The next mediation date is unscheduled at this time but will be rescheduled for early 2015, as it must be completed by April 2015, prior to the trial. If the matter is not settled at mediation, then the two week trial is set to begin May 18, 2015. An Inventory and Appraisal is not needed at this time as there is currently no real or personal property to be appraised. In the event that the wrongful death matter is resolved in favor of the decedent, the Personal Representative will file an Inventory and Appraisal at that time, as the decedent had no other property subject to probate. It is respectfully requests that this probate matter be continued six months pending the anticipated resolution of the wrongful death litigation.

NEEDS/PROBLEMS/COMMENTS:

Minute Order of 11/14/2014: Ms. Guerrero makes a special appearance for Phillip Flanigan. An updated status report is to be filed by 12/05/2014.

1. Need Inventory and Appraisal and First Account or Petition for Final Distribution.

Reviewed by: LV

Reviewed on: 12/03/2014

Updates:

Recommendation:

File 13 – Adams

14 Jose A Martinez (Estate) Case No. 12CEPR00885

Atty **Hemb, Richard E., of Hemb Law Office (for Michele R. Curley, Administrator)**

Status Hearing Re: Filing of the First Account and/or Petition for Final Distribution

DOD: 9/7/2012

Cont. from 011014, 011714, 032114, 052314, 072214, 090214, 110414

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

MICHELE R. CURLEY, Daughter, was appointed Administrator with Full IAEA with bond of **$30,000.00** on 11/7/2012. *Letters* issued 1/22/2013.

***Proof of Bond* filed 1/14/2014** shows bond of **$14,000.00** was posted. Based on 1/22/2013 bond posted of **$30,000.00**, the total bond is currently **$44,000.00**.

Final Inventory and Appraisal filed 10/15/2013 shows an estate value of **$110,367.38** consisting of personal property and real property valued at **$60,000.00**.

***Status Conference Statement* filed 10/30/2014 *[for the previous status hearing on 11/4/2014]* states:**

- The real property shown on the Inventory and Appraisal filed on 10/15/2013 was taken over by vandals; real estate professionals indicated that sale proceeds will not be sufficient to cover selling costs and encumbrances; the property was foreclosed upon and is no longer in the estate;
- Bond was increased to **$44,000.00** to reflect the cash assets in the estate;
- At the status conference on 9/2/2014, the Court on its own motion removed Michele R. Curley as personal representative, directed legal counsel to advise the surety company of the Court's action, and appointed the Public Administrator as personal representative of the estate;
- Richard Hemb has by written letter sent by U.S. mail advised the surety company of the Court's decision and advised Michele Curley of same;
- Michele Curley has recently cooperated with her legal counsel and has supplied him with her costs advanced to the estate and provided copies of bank statements effective October 2014 showing that **$42,984.67** is held and titled in the name of the estate;
- Additionally, she is holding **$6,500.00** from the sale of a vehicle pending the Court's direction on how to handle these assets;
- In response to receipt of this information, a report and account has been prepared and is currently under review by Ms. Curley;
- It is hopeful that this document will be filed prior to the Court hearing on 11/4/2014.

NEEDS/PROBLEMS/ COMMENTS:

Continued from 11/4/2014. *Minute Order* states Ms. Litton *[specially appearing for Mr. Hemb]* represents to the Court that Mr. Hemb is in the process of completing the accounting. The Court confirms that the Public Administrator remains until further order of the Court.

The following issue remains:

1. Need first account and/or petition for final distribution.

Note: *Notice of Proposed Action* filed by the Public Administrator on 11/13/2014 shows the Public Administrator is in the process of selling the estate real property.

Reviewed by: LEG

Reviewed on: 12/1/14

Updates:

Recommendation:

File 14 – Martinez

15 George W. Siek (Estate) Case No. 14CEPR00260

Atty **Koligian, Robert (for Charles Robert Siek – son/Executor)**

Status Hearing Re: Filing of the Inventory and Appraisal

DOD: 04/26/13		
Cont. from 100714		
	Aff.Sub.Wit.	
	Verified	x
	Inventory	
	PTC	
	Not.Cred.	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	w/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

CHARLES ROBERT SIEK, son, was appointed as Executor with full IAEA and without bond on 05/06/14. Letters Testamentary were issued on 05/21/14.

Minute Order from 05/06/14 set this matter for status regarding filing of the Inventory & Appraisal.

Status Report by Attorney for Executor filed 11/04/14 states: Decedent estate plan consisted of a trust and a pour-over will. Charles Siek, son of decedent is both the named executor of the will and the successor trustee of the trust. He is also the sole beneficiary of the trust. The only asset that of the estate that requires transfer to the trust is a Merrill Edge Account consisting of approximately $190,554.71. Merrill Edge has advised the Executor that he would only require Letters Testamentary and since he was the sole distributee under the trust, the Merrill Edge account would be transferred directly to him and no additional action would need to be taken by any Court as far as Merrill Edge was concerned. In retrospect, a Heggstad Petition may have been more appropriate in this matter, however as this probate proceeding has already been commenced, that is no longer an option. Declarant states that he is performing work in this case on an hourly basis and will not be requesting statutory probate fees. The transfer of the Merrill Edge account to Charles Siek, which has occurred, should be confirmed.

NEEDS/PROBLEMS/COMMENTS:

CONTINUED FROM 10/07/14

1. The Status Report is not verified.
2. Petition to Terminate Proceedings.

Reviewed by: JF

Reviewed on: 12/02/14

Updates:

Recommendation:

File 15 - Siek

16A Donna K. Farris (CONS/PE) Case No. 14CEPR00529

Atty **Teixeira, J. Stanley (for Conservator Keith D'Ambrosio)**

Status Hearing Re: Determination and Proof of Bond

Cont. from 093014, 111014		
	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	

KEIGTH D'AMBROSIO, Cousin, was appointed Conservator of the **Person and Estate** with a **bond amount *to be determined*** on 7-30-14.

Letters issued on 8-1-14.

At the hearing on 7-30-14, the Court set this status hearing re determination and proof of bond.

Status Report filed 10-27-14 by Attorney Teixeira (not verified) states on 10-24-14, he received a copy of an Order Appointing Successor Trustee from Attorney Steven P. Flowers of Tulsa, OK (attached). Pursuant to the order, Keith D'Ambrosio has been appointed as Trustee of the Chester Farris Revocable Trust. Mr. Flowers also informed that all assets to which the Conservatee may be entitled from the probate of Tom Steel will be distributed to the trustee of the Chester Farris Revocable Trust.

Since all assets for the benefit of the Conservatee will be in trust, it appears that a conservatorship of the estate is not needed at this time. Thus, Petitioner Keith D'Ambrosio will withdraw his request for appointment as Conservator of the Estate and no bond will be posted.

Declaration of J. Stanley Teixeira filed 11-18-14 provides additional information. Please see NEEDS/PROBLEMS/COMMENTS and following pages.

NEEDS/PROBLEMS/COMMENTS:

The Court may require clarification and notice. See issues detailed on Page 2.

Note re History: The Conservatee, a developmentally disabled adult, had recently moved to California from Oklahoma, where she had been residing with Tom Steel. The original petition stated that Mr. Steel had been acting as her "guardian," but without court appointment. When he died, Donna was left alone in Oklahoma without family. The petition stated Donna may be entitled to assets in Tom Steel's estate and may have claims that property in the estate was misappropriated. Conservatorship is necessary in order to pursue any interest Donna may have in that estate for her. The attorney was in communication with an attorney handling that matter.

Reviewed by: skc

Reviewed on: 12-1-14

Updates: 12-5-14

Recommendation:

File 16A - Farris

Page 2 – NEEDS/PROBLEMS/COMMENTS: The following issues remain noted for reference. Please also see Declaration of J. Stanley Teixeira filed 11-18-14, summarized on following page.

1. The status report states that because Mr. D'Ambrosio has been appointed as successor trustee of the Conservatee's father's trust (the Chester Farris Revocable Trust), of which the Conservatee is the sole beneficiary, conservatorship of the estate is now not needed because distribution of the Conservatee's share of Mr. Steel's estate will simply be distributed to him as trustee of the Chester Farris Revocable Trust.

   However, rather than negate the need for conservatorship of the estate, the order attached, at #7, appears to specifically rely on the fact that Mr. D'Ambrosio has been appointed as conservator of Donna K. Farris' "person and property" in appointing him as successor trustee of the Chester Farris Revocable Trust.

   Need clarification: Why will the Conservatee's share of Mr. Steel's estate be distributed to the trustee of the Chester Farris Revocable Trust? Do Mr. Steel's estate planning documents specify the Chester Farris Revocable Trust on her behalf? If not, then how can distribution be made to the Chester Farris Revocable Trust on her behalf?

   Also, although the Conservatee is the sole beneficiary of the Chester Farris Revocable Trust, that trust itself is not a trust created for her benefit. How does the Chester Farris Revocable Trust provide for distribution to Donna Farris as the sole beneficiary? Is there a separate subtrust created for her benefit that the Chester Farris Revocable Trust will distribute to?

   Basically, it appears this Conservatee will be the beneficiary of two separate anticipated distributions –one from Mr. Steel's estate, and one from her father's trust. It is unclear why her father's trust would receive a distribution from Mr. Steel's estate on her behalf, and it is also unclear how her father's trust will ultimately distribute to her. However, it appears substituted judgment may be necessary if her distributions are not going to be distributed to her conservatorship estate.

2. Also, the petition previously indicated that property in Mr. Steel's estate may have been misappropriated, and appointment as conservator of her estate was necessary to pursue her interest therein. The status report does not provide any update on that situation. The Court may require additional information or clarification why conservatorship of the estate is not now necessary to pursue assets misappropriated from Mr. Steel's estate on her behalf.

3. Conservatorship of the estate *was already granted* on 9-30-14; therefore, the petition cannot be withdrawn at this point. The Court may require a noticed petition to terminate, or service of this declaration on interested parties, including:
   - Conservatee Donna Farris
   - Richard Farris (her brother)

SEE ADDITIONAL PAGES

Declaration of J. Stanley Teixeira filed 11-18-14 states:

- Chester Farris executed a trust on 2-28-92, which was for the benefit of Chester Farris during his life and upon his death, was to continue for the benefit of Donna Kay Farris.
- Soon after execution of the trust, Chester Farris, who was the sole trustee, required a caregiver.
- The caregiver was GeorgeAnn Steel, who, at the time, was married to Tom Steel.
- GeorgeAnn Steel convinced Chester Farris to amend his trust so that she would serve as co-trustee with him and upon his death, as sole successor trustee.
- Chester Farris died 11-20-92, leaving GeorgeAnn Steel as sole trustee.
- Sometime thereafter, GeorgeAnn Steel and Tom Steel divorced. While going through the dissolution action, GeorgeAnn Steel resigned as trustee of the trust and Tom Steel became the "acting trustee."
- Attorney Flowers reports that the Steel divorce documents do not reference the Farris trust, and he is unable to locate any court sanctioned approval for Tom Steel to serve as successor trustee.
- Nevertheless, Tom Steel then moved into the Farris residence, an asset of the trust, and cared for Donna Kay Farris.
- Thereafter, Tom Steel became ill and eventually went into a nursing home earlier this year.
- It was at that point that family in California learned of the plight of Donna Kay Farris and Keith D'Ambrosio initiated proceedings.
- Neither Donna Kay Farris nor the Chester Farris trust is a beneficiary of Tom Steel.
- Mr. Flowers believes there might be some available actions against GeorgeAnn Steel; however, she has been uncooperative in this matter and her attorney has been disbarred.
- A copy of the trust and amendments is attached to the declaration.

The trust provides that upon Chester Farris' death, the trustee shall continue to manage the trust estate for the benefit of Donna Kay Farris, and on her death, distribute to her issue, or if none, to the Church of Saint Mary in Tulsa, OK.

The first amendment adds GeorgeAnn Steel as a co-trustee, and the second amendment nominates GeorgeAnn Steel as sole successor trustee.

Status Report filed 12-3-14 states the Farris residence, an asset of the Chester Farris Revocable Trust, has not yet been sold and the asking price may have to be lowered.

<u>Examiner's Note</u>: It appears, with this updated information, that Examiner's Note #1 above should be revised as follows:

1. **Need authority to distribute funds due to the Conservatee directly to a previously established trust without substituted judgment under Probate Code §2580.**

Notes #2 and #3 remain per above.

16B Donna K. Farris (CONS/PE) **Case No. 14CEPR00529**

Atty Teixeira, J. Stanley (for Conservator Keith D'Ambrosio)

Status Hearing Re: Filing of the Inventory and Appraisal

Age: 59	**KEIGTH D'AMBROSIO**, Cousin, was appointed Conservator of the Person and Estate with a bond amount to be determined on 7-30-14. Letters issued on 8-1-14. At the hearing on 7-30-14, the Court set this status hearing for the filing of the Inventory and Appraisal.	**NEEDS/PROBLEMS/COMMENTS:** **1. Need Inventory and Appraisal pursuant to Probate Code §2610 or verified status report pursuant to local rule.**
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		**Reviewed by:** skc
Status Rpt		**Reviewed on:** 12-1-147
UCCJEA		**Updates:**
Citation		**Recommendation:**
FTB Notice		**File 16B - Farris**

17 Tamaury Lamar Miller-Woodard (GUARD/P) Case No. 14CEPR00912

Atty **McCaleb, Johninieta Marie (pro per – paternal grandmother/Petitioner)**

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

Age: 10

Cont. from

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

TEMPORARY EXPIRES 12/09/14

JOHNINIETA McCALEB, paternal grandmother, is Petitioner.

Father: **GLENN MILLER-WOODWARD** – *personally served on 10/06/14; proof of service attached to Notice of Hearing for 10/15/14 hearing indicates that a Notice of Hearing for both dates was served on the father on 10/06/14*

Mother: **TENEYA WILLIAMS** –*Consent & Waiver of Notice filed 10/06/14*

Paternal grandfather: HOWARD WOODWARD

Maternal grandfather: QUINCY WILSON
Maternal grandmother: MIRACLE GILBERT

Siblings: AALIYAH MILLER-WOODWARD, ISAIHA MILLER-WOODWARD, IMANI MILLER-WOODWARD

Petitioner alleges that the minor has lived with her for over 8 years. He is stable and doing well in school. His father has threatened to take him from Petitioner's home. The father was just released from jail and has not been involved in the minor's life for a long time. The minor does not want to go with his father and is fearful that his father will come and pick him up from school. The father has a criminal history and is in and out of jail. Petitioner states that the mother and maternal grandparents are in favor of the guardianship.

Court Investigator Dina Calvillo filed a report on 12/03/14.

NEEDS/PROBLEMS/COMMENTS:

1. Need *Notice of Hearing* for the 12/09/14 hearing.
2. Need proof of service by mail of *Notice of Hearing* with a copy of the *Petition for Appointment of Guardian of the Person* at least 15 days before the hearing <u>or</u> Consent & Waiver of Notice <u>or</u> Declaration of Due Diligence for:
   a. Howard Woodward (paternal grandfather)
   b. Quincy Wilson (maternal grandfather)
   c. Miracle Gilbert (maternal grandmother)
   d. Any sibling 12 and over

Reviewed by: JF
Reviewed on: 12/02/14
Updates: 12/04/14
Recommendation:
File 17 – Miller-Woodard

Dept. 303, 9:00 a.m. Tuesday, December 9, 2014

18 Josiah Athen Garza (GUARD/P) **Case No. 14CEPR00916**

Atty Aguilar, Ilda (pro per Petitioner/maternal grandmother)

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

Age: 1 year			**THERE IS NO TEMPORARY.** **No temporary was requested.** **ILDA AGUILAR,** maternal grandmother, is petitioner. Father: **GABRIEL GARZA** – *consents and waives notice.* Mother: **MARICRUZ GUADALUPE INIGUEZ AGUILAR** – *consents and waives notice.* Paternal grandfather: Arturo Garza - *Declaration of Due Diligence filed on 11/21/14* Paternal grandmother: Jeanette Gaytan – *personally served on 11/8/14* Paternal grandfather: Abel Iniguez – *mailed notice on 11/3/14.* **Petitioner states** the child has resided in her home along with the mother. Mother comes and goes as she pleases. Mom has issues with violence. **Court Investigator Samantha Henson's Report filed on 12/2/14.**	**NEEDS/PROBLEMS/COMMENTS:** 1. Need proof of service of the Notice of Hearing along with a copy of the Petition or Consent and Waiver of Notice on: a. Arturo Garza (paternal grandfather) – if court does not dispense with notice.
Cont. from			
	Aff.Sub.Wit.		
✓	**Verified**		
	Inventory		
	PTC		
	Not.Cred.		
✓	**Notice of Hrg**		
✓	**Aff.Mail**	W/	
	Aff.Pub.		
	Sp.Ntc.		
✓	**Pers.Serv.**	W/	
✓	**Conf. Screen**		
✓	**Letters**		
✓	**Duties/Supp**		
	Objections		
	Video Receipt		
✓	**CI Report**		
	9202		
✓	**Order**		
	Aff. Posting		**Reviewed by: KT**
	Status Rpt		**Reviewed on: 12/2/14**
✓	**UCCJEA**		**Updates:**
	Citation		**Recommendation:**
	FTB Notice		**File 18 - Garza**

Dept. 303, 9:00 a.m. Tuesday, December 9, 2014

19 Marcy Marie Reyes (CONS/P) **Case No. 14CEPR00996**

Pro Per **Reyes, Maria De Jesus (Pro Per Petitioner, mother)**

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

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

NO TEMPORARY REQUESTED

MARIA DE JESUS REYES, mother, is Petitioner and requests appointment as Conservator of the Person with medical consent powers.

Need Capacity Declaration.

Petitioner states the proposed Conservatee was born with Down syndrome and is developmentally disabled, and the Petitioner seeks to continue to provide for her care and to meet her daily needs, as Petitioner has done since the proposed Conservatee's birth.

Court Investigator Samantha Henson to provide *CI Report* and *Advisement of Rights*.

NEEDS/PROBLEMS/COMMENTS:

OFF CALENDAR

***Amended Petition for Appointment of Probate Conservator* filed 11/20/2014 is set for hearing on 1/8/2015.**

1. Need *Citation for Conservatorship* pursuant to Probate Code § 1823, and proof of personal service of the *Citation* on the proposed Conservatee with a copy of the *Petition for Appointment of Probate Conservator* **that includes the 1/8/2015 hearing date** pursuant to Probate Code § 1824.
2. *Proof of Service by Mail* of the *Notice of Hearing* filed 11/26/2014 does not indicate a copy of the *Petition* accompanied the notice as required by Probate Code § 1822(a).
3. Pursuant to Probate Code §§ 2352(c) and 1822(e), need proof of service by mail of 30 days' notice together with a copy of the *Petition* for CVRC, or waiver of such notice by CVRC to be filed with the Court.
4. *Petition* requests medical consent powers. Need *Medical Capacity Declaration* [form GC-335] in support of Petitioner's request pursuant to Probate Code § 1890(c).
5. Need *Confidential Conservator Screening* form [form GC-314].
6. Need *Confidential Supplemental Information* form [GC-312] pursuant to Probate Code § 1821.

Reviewed by: LEG

Reviewed on: 12/2/14

Updates:

Recommendation:

File 19 - Reyes

20 Jaden Ochoa, Josiah Ochoa & Robert Ramos, Jr. (GUARD/P)

Case No. 14CEPR01066

Pro Per **Medina, Eloisa Portillo (Pro Per Petitioner, maternal great-grandmother)**
Pro Per **Castaneda, Manuel (Pro Per Petitioner, cousin)**

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

Jaden Age: 3 yrs		
Josiah Age: 3 yrs		
Robert Age: 1 yr		
Cont. from		
	Aff.Sub.Wit.	
✓	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	X
✓	**Conf. Screen**	
✓	**Letters**	
✓	**Duties/Supp**	
	Objections	
	Video Receipt	
	CI Report	
	9202	
✓	**Order**	
	Aff. Posting	
	Status Rpt	
✓	**UCCJEA**	
	Citation	
	FTB Notice	

General Hearing set for 1/28/2015

ELOISA PORTILLO MEDINA, maternal great-grandmother, and **MANUEL CASTANEDA**, cousin, are Petitioners.

Father of Jaden and Josiah: **UNKNOWN**

Father of Robert: **ROBERT RANDALL RAMOS**

Mother: **CRYSTAL OCHOA**

Paternal grandfather of Robert: Unknown
Paternal grandmother of Robert: Amelia Lopez

Paternal grandparents of Jaden and Josiah: Unknown

Maternal grandfather: Robert Ochoa
Maternal grandmother: Emma Ochoa

Petitioners state they need to obtain temporary guardianship of the children for medical purposes because without either parent it will be difficult for the children to be seen by a doctor. Petitioners state the mother abandoned the children and left them with the Petitioners, and she is currently abusing drugs instead of complying with her classes and with the conditions the County placed on her so she could maintain custody of her children.

Petitioners request to be excused from giving notice to the father of Jaden and Josiah as they have never met him and would not know where to start looking for him.

NEEDS/PROBLEMS/COMMENTS:

1. Need *Notice of Hearing* and proof of five (5) court days' notice by personal service of the *Notice of Hearing* with a copy of the *Petition for Appointment of Temporary Guardian*, or *Consent to Appointment of Guardian and Waiver of Notice*, or a *Declaration of Due Diligence* for:
   - Crystal Ochoa, mother;
   - Robert Randall Ramos, father of Robert;
   - Father of Jaden and Josiah, *if Court does not excuse notice as Petitioners request*.

Reviewed by: LEG
Reviewed on: 12/2/14
Updates:
Recommendation:
File 20 – Ochoa & Ramos

Dept. 303, 9:00 a.m. Tuesday, December 9, 2014

21 Geno Andrew Nonini (Estate) **Case No. 14CEPR00970**

Atty SIMONIAN, JEFFREY D. (for Christina Pericas and Martin Nonini/Petitioners)

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

DOD: 09/05/13		
Cont. from 120214		
	Aff.Sub.Wit.	s/p
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	w/
✓	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
✓	Letters	
✓	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

CHRISTINA PERICAS and **MARTIN NONINI,** daughter and son, are Petitioners and request appointment as Co-Administrators with Will Annexed without bond.

Full IAEA – OK

All heirs waive bond

Will dated 09/23/82

Residence: Fresno
Publication: The Business Journal

Estimated Value of the Estate:
Real property - $295,000.00

Probate Referee: **STEVEN DIEBERT**

NEEDS/PROBLEMS/COMMENTS:

CONTINUED FROM 12/02/14

1. It does not appear that the original will has been deposited with the Court. Need Original Will pursuant to Probate Code § 8200.

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

- **Tuesday, 05/05/15 at 9:00a.m. in Dept. 303** for the filing of the inventory and appraisal **and**
- **Tuesday, 02/02/16 at 9:00a.m. in Dept. 303** for the filing of the first account and final distribution.

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

Reviewed by: JF
Reviewed on: 12/03/14
Updates:
Recommendation:
File 21 – Nonini

Dept. 303, 9:00 a.m. Tuesday, December 9, 2014

22 Oralia Serrato (Estate) Case No. 14CEPR00755

Atty **Criego, Franz (for Abigail Serrato – Petitioner – Daughter)**

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

DOD: 06/15/2014

Cont. from 092514 , 100914, 120314

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

ABIGAIL SERRATO, daughter/named executor without bond, is petitioner.

Full IAEA – o.k.

Will dated: 11/09/2013
Codicil: 11/09/2013

Residence: Fresno
Publication: The Fresno Bee

Estimated value of the Estate:

Personal property	-	$19,000.00
Real property	-	$60,000.00
Total	**-**	**$79,000.00**

Probate Referee: Rick Smith

NEEDS/PROBLEMS/COMMENTS:

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

- **Tuesday, 04/07/2015 at 9:00a.m. in Dept. 303** for the filing of the inventory and appraisal **and**
- **Tuesday, 02/09/2016 at 9:00a.m. in Dept. 303** for the filing of the first account and final distribution.

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

Reviewed by: LV
Reviewed on: 12/05/2014
Updates:
Recommendation: Submitted
File 22 - Serrato

Dept. 303, 9:00 a.m. Tuesday, December 9, 2014

23 The Fernando Vasquez Special Needs Trust (SNT) Case No. 14CEPR00936

Atty **Winslow, William L. (of Los Angeles, CA, for Alicia Garcia Amaro – Mother – Petitioner)**

Petition for Order Establishing Court Supervision of Special Needs Trust, Fixing Trustee's Bond and Setting Schedule for Trust Accountings [§§ 3604, 3605, 17200(a), (b)(2)

Cont from 120314

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

ALICIA GARCIA AMARO, Mother and guardian ad litem by appointment of the Workers' Compensation Appeals Board, is Petitioner.

Petitioner states The Fernando Vasquez Special Needs Trust (SNT) was established to receive the proceeds of a worker's compensation settlement by order of the Fresno County Workers' Compensation Appeals Board (WCAB) in the matter of Ignacio Vasquez Aragon (Deceased) v. Rogelio Castellanos Farm Labor Contractor and State Compensation Insurance Fund, EAMS No. ADJ377753. The Order Approving Compromise and Release approved by Judge Richard Ellis of the WCAB resolved the claim of Fernando Vasquez, son of the deceased worker, established the SNT, and appointed Bruce D. Bickel as Trustee of the SNT.

The beneficiary has significant developmental delay and is diagnosed with moderate to severe mental retardation.

The gross settlement of $303,000.00, less various fees and costs, provides for an initial funding of $235,088.79 to the SNT. Petitioner requests the Court fix the trustee's bond at $262,000.00, which includes income of approx. 1% per annum and a 10% cost of recovery.

Petitioner states the proposed SNT complies with applicable law and Cal. Rule of Court 7.903.

Petitioner prays for an order:

1. Undertaking by the court of the supervision of the Fernando Vasquez Special Needs Trust;
2. Fixing the trustee's bond in the amount of $262,000.000, which bond shall be furnished by an authorized surety company or as otherwise provided by law;
3. Ordering the trustee to file his first account no later than 8-31-15; and
4. For such other relief as is necessary and proper.

NEEDS/PROBLEMS/ COMMENTS:

<u>Minute Order 12-3-14</u>: Assets of $5,000.00 or more in a single expenditure will require Court approval Regarding Item 5 of the examiner notes, the Court will allow amounts not to exceed $500 on account. Continued to 12-9-14.

<u>SEE PAGE 2</u>

Reviewed by: skc

Reviewed on: 12-5-14

Updates:

Recommendation:

File 23 - Vasquez

NEEDS/PROBLEMS/COMMENTS: The following remain noted for reference. Please see First Supplement to Petition filed 12-3-14 at Page 3.

1. Petitioner has not been appointed as Guardian Ad Litem of the minor in this proceeding pursuant to applicable law. The Court may require appointment herein for standing to bring this petition. Please see Probate Code §§ 3602(d), 3604, and Mandatory Judicial Council Forms GC-100 and GC-101.

2. Article III, Paragraph 2 gives the trustee sole discretion over distributions. The Court may require more specific language distinguishing between discretion over basic distributions for the beneficiary's special needs from major distributions from the SNT for major purchases, and requiring Court approval for such major purchases, including how title will be held, etc. For example, purchases of vehicles, real property, or assets valued at a certain amount would require noticed petition and Court approval, and upon approval would be included thereafter as an asset of the trust for accounting purposes.

3. Article III, Paragraph 2(b) authorizes reasonable expenses for residence in a group home, board and care facility, or other living arrangement indicated by the beneficiary's disability. However, basic shelter-related expenses are not a permissible use of special needs trust funds and could result in a reduction of benefits. The Court may require this language to be stricken from the SNT.

4. Article IV, Paragraph 5 provides for accountings to be filed with the Court and sets forth who should be noticed for the accounts, including the trustee, the beneficiary, and the various agencies. The Court may require revision to include notice to interested parties pursuant to Probate Code §§ 2621 and 1460, and including Ms. Amara, mother of the beneficiary, who should also be appointed as guardian ad litem for the beneficiary in this matter, as noted in #1 above, and/or any guardian or conservator who may be appointed in the future.

5. Article VI, Paragraph 5 authorizes just and reasonable compensation to the trustee in an amount fixed and allowed by the Court, and states that subject to §2643 and Rule 7.755, the trustee may receive periodic payment of compensation on account. The Court may require clarification that the trustee may receive such periodic payment upon Court authorization.

6. Need order. The order should incorporate the terms of the SNT as modified pursuant to the above and any further order of the Court, and should include a signature line for the judge *after* the last attachment, but with some portion of the order on the page, pursuant to Local Rules 2.1.15 and 7.6.1.

Note: If granted, the Court will set status hearings as follows:

- Wednesday, January 21, 2015, for filing of bond in the amount of $262,000.00
- Monday, August 31, 2015 for the filing of the first account by the trustee (date requested in petition)

If the required items are on file prior to the status hearing dates pursuant to Local Rule 7.5, the status hearing date may be taken off calendar.

First Supplement filed 12-3-14 by Attorney Winslow states:

1. Petitioner's appointment as Guardian Ad Litem by the WCAB should give her standing to carry out the mandate to seek superior court supervision of this trust; however, if the Court requires, Petitioner will seek appointment with Judicial Council Forms GC-100 and GC-101.

2. Regarding major purchases, Petitioner proposes language requiring petition to the Court for purchase of a residence or share of residence only, but for other purchases, Petitioner states the trustee is an experienced fiduciary and can be relied upon to exercise his discretion well, and there are expenses involved in asking the Court to approve purchases such as a vehicle.

3. Petitioner does not agree that board and care expenses are impermissible. See declaration for authority.

4. Proposed language for additional notice can be added.

5. Regarding trustee's fees, Petitioner understands that the trustee does not seek to be paid trustee's fees on account and that he would need prior court approval to pay trustee's fees on account.

6. Petitioner will submit a proposed order that meets the requirements set out in the note.