

July 15, 2024
Dept. 9
Probate Tentative Rulings

1.	24PR0135	ESTATE OF GILMORE
Letters Testamentary		

Decedent died testate on April 2, 2024, survived by ex-spouse, two adult children, and a brother. Petitioner is decedent's ex-wife. The Petition requests full authority under the Independent Administration of Estates Act.

The Will was lodged with the court on May 15, 2024, and is admitted to probate. Decedent's daughter was named as Executor, but she declines to act. There is a declination on file. Petitioner was named as successor Executor in the Will. The Will waives bond.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on May 15, 2024.

Proof of service of notice of the hearing on the Petition was filed on May 16, 2024. Decedent's daughter waives notice; however, she is also listed to receive notice on behalf of her two minor children, who are decedent's grandchildren.

Proof of Publication was filed June 6, 2024.

There is one creditor claim filed by M&T Bank in the amount of \$97,030.39.

TENTATIVE RULING #1:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043)

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JULY 14, 2025, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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2.	24PR0132	ESTATE OF CONINE
Letters Testamentary		

Decedent died testate on February 27, 2024, survived by two adult siblings. He was never married and has no children. Petitioner is decedent's sister. The Petition requests full authority under the Independent Administration of Estates Act.

The Will was lodged with the court on May 13, 2024, and is admitted to probate. Petitioner was named as Executors in the Will. The Will waives bond.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on May 13, 2024.

Proof of service of notice of the hearing on the Petition was filed on May 24, 2024.

There is no proof of publication on file with the court, as required by Probate Code §§ 8120, 8121.

TENTATIVE RULING #2:

MATTER IS CONTINUED TO MONDAY, AUGUST 19, 2024 AT 8:30 A.M. IN DEPARTMENT NINE. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JULY 14, 2025, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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3.	22PR0204	ESTATE OF CROWE
Final Distribution		

Letters of Administration were issued on February 6, 2023, granting Petitioner full authority under the Independent Administration of Estates Act. A Final Inventory and Appraisal was filed on May 11, 2023.

Proof of Service of Notice of the hearing on the Petition was filed on May 20, 2024. No one has filed a request for special notice in this proceeding.

Petition complies with Local Rule 10.07.12 by stating no federal or California estate taxes were due.

The Petition does not indicate whether the change in ownership statement required by Revenue and Taxation Code §480(b) was filed with the El Dorado County Assessor upon the sale of the real property.

The Petition requests:

1. Petitioner's first and final account be settled, allowed and approved;
2. The Administration of this estate be closed;
3. All reported acts, transactions, sales, and investments of the personal representative be ratified, approved, and confirmed;
4. The property in the estate be distributed in equal shares to decedent's two adult children;
5. Distribution of the estate in Petitioner's hands and any other property of the estate not now known or later discovered be distributed to the beneficiaries as set forth in the Petition;
6. The Administrator be authorized to pay statutory attorney fees in the amount of \$10,792.82 plus \$1,505.90 for costs advanced to the estate;
7. The Administrator be authorized to pay himself \$8,302.73 in statutory compensation and \$1,088.08 for costs advanced; and,
8. The Administrator be authorized to retain \$2,000.00 in closing expenses and to pay liabilities, and to deliver the unused part to the beneficiaries of the estate without further court order after closing expenses have been paid.

TENTATIVE RULING #3:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED, CONTINGENT UPON COURT RECEIPT OF THE CHANGE OF OWNERSHIP STATEMENT. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

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A REVIEW HEARING WAS PREVIOUSLY SET FOR 8:30 A.M. ON MONDAY, FEBRUARY 3, 2025, IN DEPARTMENT NINE. THIS HEARING WILL REMAIN ON CALENDAR AND NO FURTHER STATUS HEARING IS SET AT THIS TIME.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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4.	24PR0140	ESTATE OF LIONBERGER
Letters Testamentary		

Decedent died testate on March 20, 2024, survived by four adult children. Petitioner is decedent's daughter.

The Petition requests full authority under the Independent Administration of Estates Act.

The Will was lodged with the court on June 3, 2024, and is admitted to probate. The Will waives bond. Petitioner was named as Executor in the Will.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on May 30, 2024.

Proof of service of notice of the hearing on the Petition was filed on June 7, 2024.

Proof of Publication was filed on July 3, 2024.

TENTATIVE RULING #4:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JULY 14, 2025, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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5.	22PR0066	ESTATE OF BEAUPRE
Status of Administration		

Letters issued on July 20, 2022. An amended final Inventory and Appraisal was filed on February 2, 2023. No Petition for Final Distribution has been filed.

At the status hearing on July 17, 2023, counsel for Petitioner updated the court regarding the home loan and requested a continuance.

TENTATIVE RULING #5:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 15, 2024, IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JULY 14, 2025, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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6.	24PR0032	ESTATE OF ALESSE
Status of Administration		

Matter was continued from June 24, 2024. Parties have been discussing resolution through mediation.

TENTATIVE RULING #6:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 15, 2024, IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JULY 14, 2025, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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7.	PP20180214	ESTATE OF WALLACE
Final Distribution Hearing		

On April 13, 2022, the Court approved the Final Account and Report, which indicated that there were no assets to distribute to the sole beneficiary of decedent's Will. No ex parte Petition for Final Discharge has been filed.

At the hearing on June 17, 2024, counsel requested a continuance.

TENTATIVE RULING #7:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 15, 2024, IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JULY 14, 2025, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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8.	23PR0013	ESTATE OF PETERSON
Status of Administration		

There was a hearing on May 13, 2024, where the Court directed Petitioner to file a Petition for Final Distribution. A status of administration hearing was set for Monday, May 12, 2025.

TENTATIVE RULING #8:

THIS HEARING IS DROPPED FROM CALENDAR.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, MAY 12, 2025, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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9.	22PR0189	ESTATE OF MARSHALL
Final Distribution		

Letters of Administration were issued on November 16, 2022, granting Petitioner full authority under the Independent Administration of Estates Act.

A Final Inventory and Appraisal was filed on January 3, 2023. A corrected and a supplemental Inventory and Appraisal were filed on May 2, 2024.

Proof of Service of Notice of the hearing on the Petition was filed on May 6, 2024. John W. Marshall has filed a request for special notice in this proceeding.

Petition complies with Local Rule 10.07.12.

The change in ownership statement required by Revenue and Taxation Code §480(b) was sent to the El Dorado County Assessor.

The Petition requests:

1. The administration of the estate be brought to a close with the approval of the first and final account and report;
2. All acts and proceedings of the Administrator be confirmed and approved;
3. The Petitioner be authorized to pay herself \$15,228 in statutory compensation and \$29,703 for costs advanced to the estate;
4. The Petitioner be authorized to pay EDWARD J. ENOS \$4,767.10 for costs advanced to the estate;
5. The Administrator be authorized to pay statutory attorney fees in the amount of \$15,228;
6. The Petitioner be authorized to retain \$1,500 in closing expenses and to pay liabilities, and to deliver the unused part to the beneficiaries of the estate without further court order after closing expenses have been paid;
7. Approval of distribution of the estate to the persons entitled to it pursuant to the Petition for Final Distribution, consisting of equal distribution amongst decedent's three adult children;
8. Distribution of the estate in Petitioner's hands and any other property of the estate not now known or later discovered be distributed to the beneficiaries as set forth in the Petition.

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TENTATIVE RULING #9:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, FEBRUARY 3, 2025, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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10.	24PR0055	ESTATE OF HALL
Succession to Personal Property		

The personal property at issue is a mobile home located in Folsom with a value less than \$184,500. The decedent died intestate on April 20, 2023, and is survived by three adult children. The Petition is brought by one of the decedent's children.

Probate Code § 6402(a) provides that any share not passing to a spouse would be divided equally among decedent's children. The Petition appears to request that only one of decedent's children should inherit the property. There is no assignment of interest by the other two children of decedent on file with the court.

An Inventory and Appraisal was filed on June 10, 2024.

Probate Code § 13152(e) requires that Form DE300 also be attached to the Petition, see Petition paragraph 8(b). However, that form is not included with the Petition.

At the hearing of June 10, 2024, the hearing was continued in order to allow the parties to meet and confer regarding the mobile home, and to file with the court any additional documents necessary.

TENTATIVE RULING #10:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 15, 2024, IN DEPARTMENT NINE.

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11.	24PR0137	MATTER OF HIGHTOWER LIVING TRUST
Petition		

Petitioner claims to be the Trustee of the Hightower 2017 Living Trust and petitions the Court for Instructions and an Order to Administer Trust and Determination of Validity of Trust pursuant to Probate Code §17200.

The settlor created the Trust on August 30, 2017, and amended it on three occasions – February 1, 2018, October 27, 2022, and October 17, 2023. Petitioner is named successor trustee of the Trust and is the primary beneficiary of the trust, under the Third Amendment.

The settlor executed a new Will three days prior to her death, along with a Certification of Trust. Petitioner questions the validity of these documents, and it is argued that the settlor did not have capacity to make these changes. These two documents were signed April 17, 2024, and the settlor died on April 20, 2024. No copy of the new Certification of Trust has been obtained.

The 2017 Trust notes that the settlor was not married and had no children at the time the Trust was executed. The successor trustees were: (1) Mark T. Wolny AND Robin M. Patterson; (2) Lyndell J. Deatherage. The distribution provided for equal distribution, by right of representation, to Mark T. Wolny and Robin M. Patterson. The Trust was notarized by attorney David R. Morris. Schedule A specifically noted two pieces of real property, two bank accounts, several vehicles, and a sole proprietorship.

In the First Amendment, the successor trustees are amended to: (1) Lyndell J. Deatherage; (2) Darria L. Deatherage. It specifically noted that Mark T. Wolny and Robin M. Patterson were no longer nominated. The distribution was changed to provide for equal representation, by right of representation, to Lyndell J. Deatherage and Darria L. Deatherage. The First Amendment was notarized by attorney David R. Morris.

In the Second Amendment, the successor trustees are amended to: (1) Garrett S. Miller. It specifically noted that Lyndell J. Deatherage and Darria L. Deatherage were no longer nominated. The distribution was amended to provide for full distribution, by right of representation, to Garrett S. Miller. The Second Amendment was notarized by attorney David R. Morris.

In the Third Amendment, the successor trustees are amended to: (1) Donna Lois Bacigalupi AND/OR Jenna Lynn Bacigalupi Cosco. It specifically noted that Garrett S. Miller was no longer nominated. The distribution was changed to provide for equal representation, by right of representation, to Donna Lois Bacigalupi and Jenna Lynn Bacigalupi Cosco. The Third Amendment was notarized by attorney David R. Morris.

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Decedent's Last Will was lodged with the Court on April 23, 2024. It revokes all prior Wills. The entire estate is left to Mary Jane Rayfield, who is nominated as Executor to serve without bond. The Will does not make mention to the Hightower 2017 Family Trust and is not a pour over will. It is witnessed by two disinterested parties, who provided their names and addresses. It was signed and witnessed on April 17, 2024.

The April 17, 2024, Certification of Trust indicates that the settlor created The Christine Hightower Revocable Living Trust. The successor Trustee is Mary Jane Rayfield. The Certification of Trust is notarized.

Probate Code § 17200 provides, in pertinent part:

(a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

* * *

(3) Determining the validity of a trust provision.

No documentation is provided to controvert the validity of the April 17, 2024, Will or Certification of Trust. No medical reports or declarations are filed to support Petitioner's contention that the settlor lacked capacity. No death certificate is included, indicating Petitioner's cause of death. The Petition is merely an assertion by Petitioner disputing that she was removed as trustee and beneficiary. Even if the Third Amendment is the controlling document, there is no representation by Darria L. Deatherage indicating whether they accept nomination as successor Trustee. Absent evidence supporting Petitioner's stance, the Court plans to deny the Petition.

TENTATIVE RULING #11:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 15, 2024, IN DEPARTMENT NINE.

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12.	24PR0162	MATTER OF HUNTON
§850 Petition		

Petitioner is decedent's daughter and a beneficiary of her Trust. Decedent established the 1994 Cecilia M. Hill Trust on December 13, 1994, accompanied by a pour-over Will. The Trust was amended and restated on April 26, 2017. The Schedule A attached to the restated Trust included the real property located at 3051 Meridian Court, Placerville, CA.

In 1995, decedent executed a Grant Deed, transferring her 50% interest in 3051 Meridian Court from herself as an individual to herself as trustee of her Trust. On May 22, 1998, El Dorado Superior Court ordered Donald Edwin Morton's 50% interest in 3051 Meridian Court be transferred to decedent. Therefore, decedent had 100% ownership in 3051 Meridian Court.

Pursuant to the terms of the Trust, Petitioner received her inheritance in the real property. The Trustee believed the entire property was in the Trust and that it was fully transferred to Petitioner. Petitioner later entered into a sale contract on the property, when she learned that the 1998 deed transferring Morton's 50% interest to decedent was never recorded.

Probate Code § 850 permits a trustee who has a claim to property, the title to or possession of which is held by another, to file a petition requesting that the court make an order pursuant to Probate Code § 856 authorizing and directing the person having title to or possession of real property to execute a conveyance or transfer to a person entitled thereto, or granting other appropriate relief. Probate Code § 851 requires the Petitioner to serve notice of the hearing and a copy of the Petition at least 30 days prior to the hearing to each person claiming an interest in or having title to or possession of the property. When the matter concerns a decedent estate, notice shall also be given to any heir or devisee whose interest may be affected by the Petition in accordance with Probate Code § 1200.

Probate Code § 857 provides that in the event that the court issues such an Order:

- (a) The order is prima facie evidence of the correctness of the proceedings and of the authority of the personal representative or other fiduciary or other person to make the conveyance or transfer.
- (b) After entry of an order that the personal representative, other fiduciary, or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order.

A written trust agreement, a document identifying property owned by a trust settlor, and evidence of the settlor's intent to have such property be placed into that trust is sufficient

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evidence to satisfy the trustee's claim over the property as trust property. See *Kucker v. Kucker*, 192 Cal.App.4th 90, 94; *Estate of Heggstad* (1993) 16 Cal.App.4th 943. Here, the decedent included the property on her Schedule A and executed a pour-over will, intending that the Trust receive all assets.

Proof of service of notice of the hearing on the Petition was filed on June 14, 2024. Decedent's interest in the real property located at 3051 Meridian Court is an asset of the 1994 Cecilia M. Hill Trust.

TENTATIVE RULING #12:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

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13.	24PR0141	MATTER OF SHULTENBURG FAMILY TRUST
§850 Petition		

Decedent executed the Shultenburg Family Trust on March 29, 2022 in Nevada. She died on August 4, 2023, as a resident of Nevada. The decedent had 100% ownership of the real property located at 2558 Chesapeake Bay Circle, Cameron Park, CA. At the time of decedent's death, title was held in the names of Kenneth G. Shultenburg and Karen A. Shultenburg (decedent). Decedent's husband died on August 19, 2013, and his interest automatically transferred to decedent. Decedent never granted the property to herself as trustee, but she did have a pour-over Will and the property was listed on the Schedule A of the Trust. It was decedent's intent to place all real and personal property into the Trust.

Probate Code § 850 permits a trustee who has a claim to property, the title to or possession of which is held by another, to file a petition requesting that the court make an order pursuant to Probate Code § 856 authorizing and directing the person having title to or possession of real property to execute a conveyance or transfer to a person entitled thereto, or granting other appropriate relief. Probate Code § 851 requires the Petitioner to serve notice of the hearing and a copy of the Petition at least 30 days prior to the hearing to each person claiming an interest in or having title to or possession of the property. When the matter concerns a decedent estate, notice shall also be given to any heir or devisee whose interest may be affected by the Petition in accordance with Probate Code § 1200.

Probate Code § 857 provides that in the event that the court issues such an Order:

(a) The order is prima facie evidence of the correctness of the proceedings and of the authority of the personal representative or other fiduciary or other person to make the conveyance or transfer.

(b) After entry of an order that the personal representative, other fiduciary, or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order.

A written trust agreement, a document identifying property owned by a trust settlor, and evidence of the settlor's intent to have such property be placed into that trust is sufficient evidence to satisfy the trustee's claim over the property as trust property. See *Kucker v. Kucker*, 192 Cal.App.4th 90, 94; *Estate of Heggstad* (1993) 16 Cal.App.4th 943.

Petitioner has standing pursuant to Probate Code section 850, subd. (a)(3)(B) to bring this Petition as Successor Co-Trustee of the Trust. This Petition concerns the internal affairs of

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the Trust, giving this Court subject matter jurisdiction pursuant to Probate Code section 17000, et seq. The principal place of administration of the Trust is El Dorado County, California, as Petitioner is a resident of El Dorado County and the day-to-day activities of the Trust are carried on by Petitioner in her capacity as Co-Trustee in El Dorado County. Since the principal place of administration of the Trust is in El Dorado County, and the Real Property is located in El Dorado County, venue is also proper in El Dorado County pursuant to Probate Code section 17003, subd. (a).

Petitioner's brother, as the other beneficiary of the Trust, executed a Consent agreeing with this Petition. Proof of service of notice of the hearing on the Petition was filed on June 3, 2024. Decedent's interest in the real property located at 2558 Chesapeake Bay Circle is an asset of the Shultenburg Family Trust.

TENTATIVE RULING #13:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.