

**CAUSE NO. 2013-05455**

CARL HENRY BRUNSTING,  
INDEPENDENT EXECUTOR OF THE  
ESTATES OF ELMER H. BRUNSTING  
AND NELVA E. BRUNSTING,

Plaintiffs,

V.

CANDACE L. KUNZ-FREED AND VACEK  
& FREED, PLLC F/K/A THE VACEK LAW  
FIRM, PLLC,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

164TH JUDICIAL DISTRICT

**DEFENDANTS' COMBINED RESPONSES TO PLAINTIFF'S  
REQUEST FOR DISCLOSURE**

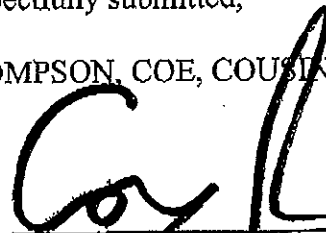
TO: **CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATE OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING**, Plaintiffs, by and through their attorney of record, Bobbie G. Bayless, Bayless & Stokes, 2931 Ferndale, Houston, Texas 77098.

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants **CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC**, serve this their Responses to Plaintiff's Requests for Disclosures.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By:



Zandra E. Foley  
State Bar No. 24032085  
Cory S. Reed  
State Bar No. 24076640  
One Riverway, Suite 1600  
Houston, Texas 77056  
Telephone: (713) 403-8200  
Telecopy: (713) 403-8299

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to the Texas Rules of Civil Procedure, on this the 3<sup>rd</sup> day of July, 2013, a true and correct copy of this document has been forwarded by certified mail, facsimile and/or e-filing to counsel:

Bobbie G. Bayless  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098

A handwritten signature in black ink, appearing to read 'Cory S. Reed', is written over a horizontal line. The signature is stylized and cursive.

Cory S. Reed

**RESPONSES TO REQUEST FOR DISCLOSURE**

**REQUEST 194.2(a):** the correct names of the parties to the lawsuit;

**RESPONSE:** Defendants believe all parties are correctly named in this lawsuit.

**REQUEST 194.2(b):** the name, address and telephone numbers of any potential parties;

**RESPONSE:** Amy Ruth Brunsting  
c/o Maureen McCutchen  
George William Vie, III  
Mills Shirley L.L.P.  
400 Washington Building  
2228 Mechanic Street  
Galveston, Texas 77550

Anita Kay Brunsting  
c/o Maureen McCutchen  
George William Vie, III  
Mills Shirley L.L.P.  
400 Washington Building  
2228 Mechanic Street  
Galveston, Texas 77550

**REQUEST 194.2(c):** the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);

**RESPONSE:** Defendants deny every allegation contained in Plaintiff's Petition. Defendants further deny that Defendant Candace L. Kunz-Freed can be sued in her individual capacity because at all times relevant to Plaintiff's claims, Defendant Candace L. Kunz-Freed was acting as an employee of Vacek & Freed, PLLC. Defendants will further show that Plaintiff's alleged damages were not proximately caused by any act or omission of Defendants. Defendants will further show that Plaintiff's damages, if any, are unrelated to any act, error or omission of Defendants and Defendants' actions are not the proximate and/or producing cause of any alleged damages. Defendants will further show that Defendants are not responsible for any expenses or damages allegedly incurred by Plaintiff due to Plaintiff's own acts, conduct, negligence and/or failure to exercise reasonable care in mitigating his damages. Defendants will further show that they are not responsible for any loss caused by Plaintiff's own negligence, intentional misconduct, or other act or omission. Defendants will further show that Plaintiff's injuries and damages, if any, were proximately caused, in whole or in part, by a third-party over whom Defendants had no control and for whom Defendants had no responsibility. Defendants will further show that Plaintiff's claims may be barred by a failure to comply with conditions precedent to the right to recover. Defendants will further show that Plaintiff's claims are barred in whole or in part by the statute of limitations. Defendants will further show that Plaintiff's claims for violations of the Texas Deceptive Trade Practices are barred in whole or in part by Texas Business and Commerce Code section 17.49(c).

**REQUEST 194.2(d):** the amount and any method of calculating economic damages;

**RESPONSE:** Plaintiff is not entitled to recover damages from Defendants. Defendants dispute that Plaintiff is entitled to damages and disputes the amount of damages and method of calculation of damages claimed by Plaintiff. Defendants intend to challenge and fully cross-examine any witness offered by Plaintiff to testify as to the calculation of damages or the amount of damages allegedly incurred by Plaintiff. Defendants will further show that in the unlikely event Plaintiff is adjudged to be entitled to any damages in this matter, which is denied, Plaintiff is not entitled to recover prejudgment interest on any future damages. Defendants would show that, as a matter of law, interest on damages yet to accrue is not compensatory and is, consequently, a penalty which would not be imposed even absent a finding of gross negligence, or rather, for a lesser level or degree of culpability for which a penalty is not authorized by law. Without waiving any defenses listed above, Defendants would further show that they are entitled to all caps and limitations on damages pursuant to the TEXAS CIVIL PRACTICES & REMEDIES CODE. With regard to Plaintiffs' claim for exemplary damages, Defendants assert that an award of such damages in this case would be inconsistent with, and would violate its rights under the United States and the Texas Constitutions as follows:

- A. An award of exemplary damages would violate Defendants right to due process and equal protection as guaranteed by the 14th Amendment to the United States Constitution and Article 1, § 19 of the Texas Constitution in that:
1. No provision of Texas law provides any adequate or meaningful standard or guide for fixing, determining, or viewing the amount of an award of exemplary damages. Defendants have no notice of nor means of ascertaining the amount of the penalty that it would or might be subject to for the conduct upon which the award is ostensibly to be based;
  2. Under the laws of the State of Texas, the determination of whether to award exemplary damages is left to the arbitrary discretion of the trier of fact. There is no adequate or meaningful standard or guide for exercising said discretion;
  3. No provision of Texas law provides any adequate or meaningful standard or guide for determining the nature of the conduct upon which an award of exemplary damages may be based. Defendants have no notice of nor means of ascertaining the nature of the conduct for which it might be held subject to an exemplary damages award;
  4. No provision of Texas law provides adequate procedural safeguards for the imposition of an award of exemplary damages;
  5. Due process requires, at a minimum, that exemplary damages be awarded only upon clear and convincing evidence, and the laws of the State of Texas applicable in this instance provide no such standards; and
  6. The very concept of exemplary damages, whereby an award is made to a private plaintiff not by way of compensation, but by way of a windfall incident to punishing a defendant, represents the taking of property without due process.

- B. An exemplary damages award would violate the prohibition against excessive fines contained in the 8th Amendment to the United States Constitution, as embodied in the due process clause of the 14th Amendment to said Constitution, and in Article 1, § 19 of the Texas Constitution.

**REQUEST 194.2(e)**: the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

**RESPONSE:**

Carl Henry Brunsting  
C/o Bobbie G. Bayless  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098

Plaintiff.

Candace L. Kunz-Freed  
C/o Zandra E. Foley  
Cory S. Reed  
Thompson, Coe, Cousins & Irons, L.L.P.  
One Riverway, Suite 1600  
Houston, Texas 77056

Defendant.

Vacek & Freed, PLLC  
C/o Zandra E. Foley  
Cory S. Reed  
Thompson, Coe, Cousins & Irons, L.L.P.  
One Riverway, Suite 1600  
Houston, Texas 77056

Defendant.

Carole Ann Brunsting  
5822 Jason Street  
Houston, Texas 77074

Daughter of Elmer and Nelva Brunsting who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Candace Louis Curtis  
1215 Ulfian Way  
Martinez, California 94553  
(925) 759-9020

Daughter of Elmer and Nelva Brunsting who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Dr. Robert White  
His Employees, Agents and Custodian of Records  
4843 McDermed Drive  
Houston, Texas 77025

Elmer and Nelva Brunsting medical provider who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Rosewood Family Physicians I, PLLC  
Its Employees, Agents and Custodian of Records  
3318 Mercer Road  
Houston, Texas 77069

Elmer and Nelva Brunsting medical provider who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Dr. Ajay Jain  
Medical Chest Associates, PA  
Its Employees, Agents and Custodian of Records  
902 Frostwood Drive, Suite 188  
Houston, Texas 77024

Elmer and Nelva Brunsting medical provider who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Tino Vasquez  
Will supplement

Former care giver for Nelva Brunsting who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Robert Cantu  
Will supplement

Former care giver for Nelva Brunsting who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

The Northern Trust Company  
Its Employees, Agents and Custodian of Records  
Will supplement

May have relevant knowledge of the facts surrounding Plaintiff's allegations.

The Frost National Bank, NA  
Its Employees, Agents and Custodian of Records  
100 West Houston Street  
San Antonio, Texas 78205

May have relevant knowledge of the facts surrounding Plaintiff's allegations.

Bank of America, NA  
Its Employees, Agents and Custodian of Records  
Will supplement

May have relevant knowledge of the facts surrounding Plaintiff's allegations.

Defendants incorporate by reference all discovery responses or disclosures filed or served by Plaintiff and other Defendants identifying persons with knowledge of relevant facts.

Discovery and investigation has not been completed. Defendants reserve the right to supplement or amend its responses at a later date.

**REQUEST 194.2(f):** for any testifying expert:

- 1) the expert's name, address and telephone number;
- 2) the subject matter on which the expert will testify;
- 3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- 4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
  - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
  - (B) the expert's current resume and bibliography;

**RESPONSE:**

Defendants have not yet retained testifying experts, and as such, has none to disclose at this time. Defendants will provide the information required by the Texas Rules to opposing counsel as required by this Court's Order and/or the Texas Rules. As such, in anticipation of such a filing,

Defendants incorporate herein its Expert Witness Designation and/or any amendments thereto, to be filed with the Court and exchanged with the parties.

**REQUEST 194.2(g):** any discoverable indemnity and insuring agreements;

**RESPONSE:** Copies of the responsive insurance policies have been requested and will be supplemented.

**REQUEST 194.2(h):** any discoverable settlement agreements;

**RESPONSE:** No responsive documents have been discovered to date, but Defendants search for responsive documents is ongoing. Defendants will supplement to the extent that discoverable settlement agreements are located.

**REQUEST 194.2(i):** any discoverable witness statements;

**RESPONSE:** At this time, Defendants have not located any responsive documents; Defendants search for responsive documents is ongoing. Defendants will supplement to the extent that discoverable witness statements are located.

**REQUEST 194.2 (j):** in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;

**RESPONSE:** Not applicable.

**REQUEST 194.2 (k):** in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party;

**RESPONSE:** Not applicable.

**REQUEST 194.2(l):** the name, address, and telephone number of any person who may be designated a responsible third party.

**RESPONSE:** Amy Ruth Brunsting  
c/o Maureen McCutchen  
George William Vie, III  
Mills Shirley L.L.P.  
400 Washington Building  
2228 Mechanic Street  
Galveston, Texas 77550



Anita Kay Brunsting  
c/o Maureen McCutchen  
George William Vie, III  
Mills Shirley L.L.P.  
400 Washington Building  
2228 Mechanic Street  
Galveston, Texas 77550

# THOMPSON COE

Thompson, Coe, Cousins & Irons, L.L.P.  
Attorneys and Counselors

To: Bobbie G. Bayless Fax: (713) 522-2218  
Phone: \_\_\_\_\_

From: Cory S. Reed Phone: (713) 403-8213

Date: July 3, 2013 Time: \_\_\_\_\_

File No: 00520.415 User ID: REEDC

Re: No. 2013-05455; Carl Henry Brunsting, et al v. Candace L. Kunz-Freed, et al; In the 164<sup>th</sup> Judicial District Court of Harris County, Texas.

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Rosie Gonzalez at (713) 403-8296

Urgent       For Review       Please Comment       Please Reply

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*~ Original will NOT follow ~*

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