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\*LICENSED IN TEXAS AND COLORADO

April 3, 2013

**Sent via Certified Mail**  
**Return Receipt Requested**

Candace L. Kunz-Freed  
Vacek & Freed, PLLC  
c/o Zandra Foley  
Thompson Coe Cousins & Irons, LLP  
One Riverway, Suite 1600  
Houston, Texas 77056

Re: Cause No. 2013-05455; *Carl H. Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC, f/k/a The Vacek Law Firm, PLLC*; In the 164<sup>th</sup> Judicial District Court of Harris County, Texas

Dear Ms. Freed:

As you know, our firm has been retained to represent Carl Brunsting as Independent Executor of the estates of his mother and his father. My client asserted a cause of action in that capacity against you and your firm in an action which has already been filed. Included in the petition filed on January 29, 2013, in Cause No. 2013-05455 was a count relating to violations of the Deceptive Trade Practices Act ("DTPA"). The petition alleged that the exception to the requirement of a demand 60 days before suit under the DTPA which is contained in Tex. Bus. Comm. Code §17.505(a) applied because of our prior tolling agreement. Your counsel filed a Motion to Abate that case claiming the need for the demand was not eliminated. We still believe §17.505(a) applies, but rather than arguing about the issue of whether the notice was required, my client elected to simply provide the notice so that the 60-day period of abatement can elapse and the lawsuit can then move forward.

It is my client's contention that Defendants' conduct in connection with the services provided to their clients, Elmer and Nelva Brunsting, included false, misleading, and deceptive acts in violation of §17.46 of the Texas Deceptive Trade Practices Consumer Protection Act. Moreover, an express misrepresentation constitutes an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion, and thus violates Section 17.49(c)(3) of the DTPA. Defendants violated the DTPA by the actions, among others, described in the petition. Those acts were a producing cause of Plaintiff's damages.

**P12770**

Defendants accepted representation of and payment from Elmer and Nelva, but thereafter facilitated the change of control of their clients' assets to Anita, Amy, and Carole Brunsting. The improper actions of those persons which were possible because of Defendants' actions resulted in losses to Plaintiff. Among other things, Defendants assisted in implementing a scheme to change the terms of the Family Trust, to ultimately remove Nelva from her position as trustee of the Family Trust, and to improperly remove assets from Elmer and Nelva's estates and from the Family Trust. Because of the Defendants' actions, Anita and Amy were able to alter Elmer and Nelva's wishes, resulting in the improper transfer of assets to Anita, Amy, and Carole, all to Plaintiff's detriment.

Despite the Defendants' representations to Elmer and Nelva that the Family Trust would preserve their plans for their estate, Defendants took direction from Anita and Amy, even while still representing Nelva, with the result being just the opposite. It is believed that Defendants not only failed to inform Nelva that they had established a relationship with Anita and Amy which put them in a conflict of interest with regard to their representation of Nelva's interests, but that Defendants actually ignored that conflict of interest and their obligations to Nelva and assisted Anita and Amy in changing the terms of the Family Trust in ways which it is believed that Nelva did not have capacity to change and/or did not understand or want. Defendants also took steps to undermine and even remove Nelva's control of her own assets, of the assets of Elmer's estate, and of the Family Trust assets, thereby placing those assets at risk of loss to Anita, Amy, and Carole and resulting in the loss which actually occurred.

It is also believed that Defendants assisted Anita and Amy in various ways intended to prevent Nelva from even understanding that documents were being prepared by Defendants at Anita and Amy's request, why those documents were being prepared, and what the impact of the documents would be.

Defendants' knowledge of the language of the Family Trusts, Elmer and Nelva's wishes, and Nelva's lack of understanding or consent to the changes sought by Anita and Amy, shows that Defendants' conduct was committed knowingly and intentionally as those terms are defined by the DTPA. Accordingly, Defendants are liable to Plaintiff for additional damages as provided by the DTPA, including enhanced damages and reasonable attorney's fees necessary to bring this cause of action, all of which are being sought by Plaintiff.

Defendants' knowledge of Nelva's lack of consent to the actions taken by Defendants is evident from, among other things, the existence of documents which it is believed were not signed in your presence but were made to appear as if they were, Nelva's refusal to sign documents prepared at the request of Anita and Amy, Defendants' refusal to make changes it is believed Nelva sought but which Anita and Amy opposed, and Defendants' involvement in arranging and participating in discussions behind Nelva's back.

With Defendants' assistance, Nelva's power of attorney was changed, the terms of the Family Trust were changed, Nelva was ultimately removed as trustee of the Family Trust, and Anita, Amy, and Carole improperly obtained control of assets belonging to Nelva, Elmer's estate, and the Family Trust of which Nelva was still a beneficiary. Thereafter, Anita, Amy, and Carole were in a position

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to take those assets for their own benefit, and they did so, either in the form of alleged but improper expenses, improper trustee fees, other improper payments for their benefit, and unexplained and improper transfers. Once Nelva was removed as trustee of the Family Trust, the Defendants apparently claimed to be representing Nelva, as well as Anita and Amy, during which multiple representation Defendants failed to insure that the Family Trust was properly administered and that the assets of the Family Trust were properly preserved for the benefit of the beneficiaries, including Nelva.

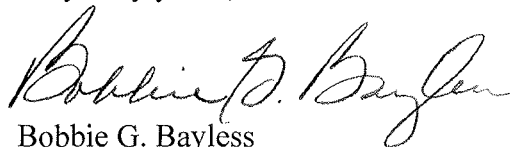
Plaintiff has had to go to some lengths to obtain information about what has occurred and, indeed, it is still unclear from the information which have been provided thus far what the total loss has been. Based on the information now available to us and for purposes of this notice letter, my client's damages are estimated to be no less than \$1,000,000.00.

Moreover, it appears my client will have to continue to pursue legal action against Anita, Amy, and Carole to attempt to recover what was lost to them because of Defendants' actions. As a result, Plaintiff's damages will continue to mount. My client reserves the right to include those additional amounts and to adjust all of these amounts to conform to the information and additional evidence which may become available to us prior to the time of trial.

My client has also incurred reasonable and necessary attorney's fees in the pursuit of the claims addressed by this letter and contained in the pleadings in Cause No. 2013-05455; *Carl H. Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC, f/k/a The Vacek Law Firm, PLLC*; In the 164<sup>th</sup> Judicial District Court of Harris County, Texas. The amount of fees incurred as of the date of this letter is \$50,000.00.

Unless a settlement has been reached within 60 days after the date of this letter, the abatement will lift pursuant to Tex. Bus. & Comm. Code §17.505(e) and the pending lawsuit will be pursued. In that lawsuit, rather than seeking only the amount of damages included in this letter, we will also be seeking to recover the full measure of damages to which my client is legally entitled under the DTPA, as well as my client's expenses and attorney's fees as allowed by law.

Very truly yours,



Bobbie G. Bayless

BGB/st

cc: Mr. Carl H. Brunsting (via email)

P12772