

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Curtis et al.,	§	
Plaintiffs,	§	
	§	Civil Action NO. 4:16-CV-01969
v.	§	
	§	The Honorable Alfred Bennett
Kunz-Freed et al.,	§	
Defendants	§	

**Plaintiffs’ Answer to Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte’s Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6) and 9(b)**

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## I. INTRODUCTION

1. This is a private interest as well as a public interest lawsuit, as the subject matter relates to the legitimate administration of public justice.
2. On July 5, 2016, Plaintiffs filed a complaint into the Southern District of Texas, individually and as private attorneys general, alleging a public corruption conspiracy under the Racketeer Influenced Corrupt Organization Act (RICO) at 18 U.S.C. §§1961-1968 and the right of claims provided at 18 U.S.C. §1964(c).
3. On October 7, 2016, Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte filed a combined motion to dismiss under Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1) (Dkt 53).

## II. STANDARDS OF REVIEW

### **Federal Rule 12(b)(1)**

4. Whether or not a court has subject matter jurisdiction over a party is a question of law reviewed de novo; thus, a decision on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction is an issue of law reviewed de novo. *Hunter Douglas, Inc. v. Harmonic Design, Inc.*, 153 F.3d 1318, 1325, 47 U.S.P.Q.2d 1769, 1772 (Fed. Cir. 1998).
5. On a Rule 12(b)(1) Facial Attack the court evaluates whether the plaintiff “has sufficiently alleged a basis of subject matter jurisdiction” in the complaint and employs standards

similar to those governing Rule 12(b)(6) review. *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1335 (11th Cir. 2013).

6. In contrast to a facial attack on subject matter jurisdiction, a Rule 12(b)(1) factual attack “challenge[s] the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings such as testimony and affidavits are considered.” *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990) (internal quotation marks omitted).

7. When the attack is factual “the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *Id.* Therefore, “no presumptive truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.” *Id.*

8. We review de novo a district court’s dismissal for lack of subject-matter jurisdiction under *Rooker–Feldman* and Rule 12(b)(1), and for failure to state a claim under Rule 12(b)(6), applying the same standards as the district court. *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 381 (5th Cir. 2013). We review a dismissal under Rule 12(b)(1) for lack of subject-matter jurisdiction under the same pleading standard as a dismissal under Rule 12(b)(6). *Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008). In reviewing the complaint, “we take the well-pled factual allegations of the complaint as true and view them in the light most favorable to the plaintiff.”

9. The denial of a motion to dismiss pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction is not immediately appealable. *Data Gen. Corp. v. Cnty. of Durham*, 143 N.C. App. 97, 100, 545 S.E.2d 243, 245-46 (2001).

**Federal Rule 12(b)(6)**

10. When evaluating a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court must take the facts alleged in the complaint as true and construe them in the

light most favorable to the plaintiff. *Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1321–22 (11th Cir. 2012). To survive Rule 12(b)(6) scrutiny, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “[F]acial plausibility” exists “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

11. The standard of appellate review for a motion to dismiss pursuant to Rule 12(b)(6) is de novo, and the Court will employ the same standard as the district court. *First Am. Title Co. v. Devaugh*, 480 F.3d 438, 443 (6th Cir. 2007); *Nat’l Hockey League Players Ass’n v. Plymouth Whalers Hockey Club*, 419 F.3d 462, 468 (6th Cir. 2005).

12. *Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) (“Generally, a court ruling on a 12(b)(6) motion may rely on the complaint, its proper attachments, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.”) (internal quotation marks and citation omitted).

13. We review de novo the district court’s grant of a motion to dismiss for failure to state a claim under Rule 12(b)(6). *Sullivan v. Leor Energy, L.L.C.*, 600 F.3d 542, 546 (5th Cir. 2010) (citation omitted). This court construes facts in the light most favorable to the nonmoving party, “as a motion to dismiss under 12(b)(6) ‘is viewed with disfavor and is rarely granted.’” *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011) (citation omitted). Dismissal is appropriate only if the complaint fails to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Yet, the complaint must allege enough facts to move the claim “across the line from conceivable to plausible.” *Id.* Determining whether

the plausibility standard has been met is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (citation omitted).

### **III. ISSUES PRESENTED**

14. Defendants do not number their pleadings but at page 4 Defendants list the ground for their motions.

(1) Complaint fails to state a claim sufficient to meet the requirements of Rules 8 and 9(b);

(2) the Complaint fails to state a RICO claim or RICO conspiracy claim against the Harris County Defendants;

(3) the Complaint fails to allege standing under RICO;

(4) the Complaint fails to allege a conspiracy;

(5) the Complaint is not plausible;

(6) the Complaint fails to plausibly allege the existence of an "enterprise" or "association-in-fact," and;

(7) the Complaint is frivolous;

15. Defendants claim judicial, qualified and official immunity;

16. Defendants claim a contrary view of the Facts

### **IV. CONTEXTUAL SUMMARY**

17. Plaintiff Candace Louise Curtis (Curtis) lives in California and is a beneficiary of inter vivos trusts having a situs in Houston, Texas. Other beneficiaries of the trusts include Plaintiff Curtis’ siblings: Carl, Carole, Amy and Anita Brunsting, and also includes the remaindermen grandchildren and great grandchildren of Grantors Elmer and Nelva Brunsting et al, per stirpes.

18. Plaintiff filed suit against her siblings Anita and Amy Brunsting for breach of fiduciary and constructive fraud demanding accounting and disclosures of the assets of the various family trusts. That matter *Candace Curtis v Anita and Amy Brunsting et al.*, 4:12-cv-0592 filed in the Southern District of Texas February 27, 2012, was dismissed sua sponte under the probate exception to federal diversity jurisdiction.

19. The controversy was returned to the federal District Court after review by the Fifth Circuit, *Curtis v Brunsting* 704 F.3d 406 (Jan 9, 2013).

20. On January 29, 2013, Defendant Bayless improperly filed a suit in the Harris County District Court against Defendants Albert Vacek, Jr. and Candace Kunz-Freed, in the name of the Estate of Nelva Brunsting, raising only issues relating to the Brunsting trust known to be in the custody of a federal Court.

21. Upon remand to the United States District Court, Curtis applied for a protective order and on April 9, 2013 the Honorable Judge Kenneth Hoyt, after a fully contested judicial proceeding, found that Plaintiff Curtis had met all four federal criteria and issued an injunction with findings of fact, conclusions of law, and Order after hearing, something no one has seen since!

22. On April 9, 2013 Defendant Bayless improperly filed a second suit, this time in Harris County Probate Court No. 4, again raising only issues relating to the Brunsting trust known to be in the custody of a federal Court.

23. In September of 2013, Plaintiff Munson was hospitalized and in a coma. Subsequently Munson underwent his third open heart surgery to replace his aortic trunk and valve due to an aneurysm.

24. In the interim Plaintiff Curtis retained the services of Defendant Jason Ostrom, a Houston attorney. Mr. Ostrom thereafter presented Judge Hoyt with an uncontested motion to amend

Curtis' Petition to pollute diversity in order to effect remand to the state probate court, to consolidate Plaintiff Curtis' claims with those of Plaintiff Carl Brunsting, and the matter thus finds itself in Harris County Probate Court No. 4.

### **The RICO Complaint**

25. In response to Rule 12(b)(6) motions to dismiss, on September 15, 2016, Plaintiffs filed the Rule 11(b) and Rule 60 Motions, previously filed in Judge Hoyt's Court,<sup>1</sup> as an Addendum of Memorandum (Dkt 26), supplementing and incorporating by reference the original RICO complaint in this case.

26. The "pleadings" include the complaint, answer to the complaint, and "if the court orders one, a reply to an answer." Federal Rule of Civil Procedure 7(a).

27. An amended complaint supersedes earlier pleadings. See *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994) ("An amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading.").

28. The Complaint (Dkt 1) thus, also includes the Addendum (Dkt 26) and the exhibits attached thereto.

## **V. THE ARGUMENT**

29. Defendants allege a want of subject matter jurisdiction based upon claims of judicial immunity and lack of standing pursuant to Federal Rule of Civil Procedure 12(b)(1).

30. The crux of the standing challenge is a counter claim that Plaintiffs have not been injured within the meaning of the RICO statutes and uses expressions such as "inheritance" and "expectancy" in the explanation for their reasoning.

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<sup>1</sup> Curtis v Brunsting 4:12-cv-592 filed TXSD February 27, 2012



31. Defendants also seek to offer their own opinion and contrary facts, but may not do so in a Rule 12(b)(6) motion and fail to support their opposing claim of facts with affidavits or exhibits, as required for a Rule 12(b)(1) factual challenge and, thus, their claim of opposing facts are not cognizable by the Court within the context of these motions.

32. At page 15 Defendants claim “*The actions Plaintiffs complain of are the rulings and Orders issued by the Honorable Judges*” however, Defendants fail to support their claims with reference to the record and that would be because there are no such events.

33. The complaint makes clear on page 12 of the Addendum (Dkt 26), beginning at line 62 and thereafter, that the Probate Court set motion hearings for lawyers and removed those motions from Calendar for the lawyers, but refused to set Curtis’ Motions for hearing, and the attorneys refuse to answer. (See Dkt 26-5, 6, 8, 11, 14, 15, 17 and 19, the list of exhibits is at page 28 or 31) These records and pleadings are all attached and incorporated into the RICO complaint by reference.

34. Defendant Clarinda Comstock has exclusive control of the Docket in Probate Court No. 4, and it is Defendant Clarinda Comstock that decides what gets set for hearing and when, and what does not find its way to the calendar. Defendant Clarinda Comstock refused to set Plaintiff Curtis’ Motions for hearing (Dkt 26-15 request for setting and Dkt 26-16 transcript of setting conference). Those are the facts alleged in the complaint, and under the law governing the motion to dismiss here, (Dkt 53) Plaintiff believes those are the only facts under consideration.

35. Defendants’ contrary opinions have no veracity in a Rule 12(b)(6) factual challenge at all, and without evidentiary support sufficient to controvert the controlling presumption that Plaintiffs’ facts are true, Defendants’ contrary opinions have no veracity in a Rule 12(b)(1) factual challenge either.

36. The public record of proceedings in the state court may be subject to varying interpretations, but the evidentiary legitimacy of those records clearly outweighs any contrary claims by these Defendants.

**Subject Matter Jurisdiction**

37. The pivotal issue before the Court in regard to all of the motions to dismiss for want of subject matter jurisdiction is whether or not the state probate court properly assumed in rem jurisdiction over the Brunsting trust res, in the custody of a federal Court when trust related claims were filed as “Estate” claims in state courts.

38. Defendants proclaim that they are clothed in an incorporeal substance known as subject matter jurisdiction and that their illicit conduct is thus protected by “*absolute judicial immunity from suit for acts undertaken in their judicial capacity even if they are done maliciously or corruptly*”<sup>2</sup>, but the state courts had no authority to take cognizance of matters related to the Brunsting trusts while those trusts were under the in rem custody of a federal Court. Defendat Bayless’ probate suit was filed the same day the Honorable Kenneth Hoyt issued an injunction against the same Defendants, relating to the same trust and seeking similar relief.

39. The Fifth Circuit Court of Appeals’ Opinion in Curtis v Brunsting 704 F.3d 406 (Dkt 26-17), properly characterized the underlying suit, (Curtis v Brunsting 4:12-cv-00592) as a lawsuit relating only to the Brunsting trusts, not falling under the probate exception to federal diversity jurisdiction.

40. The Fifth Circuit also observed that the Wills of Elmer and Nelva Brunsting bequeathed everything to the Brunsting trusts, that assets in the trust were not assets belonging to the estate and, therefore, not subject to probate administration.

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<sup>2</sup> Dkt 53 Page 12 Ln. 4 (unnumbered)

41. The record is abundantly clear that the Brunsting trusts were in the in rem custody of another court when trust related claims were filed in state courts and that the probate court was completely without subject matter jurisdiction at all times complained of.

42. Where there is no jurisdiction there is no court, no judge and no litigation.

43. When then record is examined, it becomes abundantly clear that no one participated in Curtis v Brunsting in the probate court. Only Plaintiff Curtis pled under the heading of Curtis v Brunsting and none of the motions and pleadings have been answered or set for hearing despite Curtis' best efforts to obtain a fully litigated judicial determination in that court.

44. Defendants provide a plethora of case law relevant to their alternate claim of facts, but erroneous facts are of no value and case law built thereupon is misleading.

45. In the underlying matter, continually referred to by Defendants as a probate case, the lawsuits filed in both state courts related only to the Brunsting trust and were filed in state courts while the Brunsting trust was clearly in the custody of a federal Court.

46. Carl Brunsting had no individual standing to bring claims in probate court, as he is not an heir to either estate.

47. The suit against Candace Kunz-Freed, raises claims involving only the trust, was filed January 29, 2013 while the trust was in the custody of a federal Court, and the Harris County District Court could not take judicial cognizance of the subject matter.

48. The later probate case filed April 9, 2013, raises claims only related to the Brunsting trusts and was also improperly filed into a court that could not take judicial cognizance of the subject matter, by an individual with no standing as an heir of the estate and, as the real party in interest is the trust, Carl also had no standing to bring trust related claims as executor of the Estates.

**Standing**

49. Defendants base their claim that Curtis lacks standing on the misrepresentation that all Curtis has is an expectancy in an estate, but as has been shown, Curtis is not an heir to either Estate, only a beneficiary of the heir in fact trust.

50. Defendants challenge of standing against Plaintiff Munson is that Munson is not party to the underlying matters and has suffered no injury.

51. Munson however, has been compelled to combat this public corruption at great personal expense in time and resources. Over the last five years those costs have been exacerbated by the improper actions of all of these Defendants, placing unnecessary economic burdens upon Plaintiffs' household.

52. Defendants are accused of aiding and abetting a pattern of known predicate act conduct, by Anita and Amy Brunsting in pursuit of their own personal agenda, and each can be shown to have provided a necessary part to the montage. The success or failure of such a venture is not an element of these claims. The mere fact of the attempt to extort is sufficient.

**Dismissal with Prejudice**

53. Defendants ask for dismissal of Plaintiffs' RICO Complaint with prejudice. Such relief is drastic and operates under Federal Rule of Civil Procedure 41(b) as adjudication on the merits.

54. Factors to be weighed in considering dismissal under Rule 41(b) include: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives." *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (quotations omitted).

55. Defendants do not even begin to approach their burden here. Without subject matter jurisdiction their judicial immunity claims fail and we are left with only the facts to consider.

**Tension between Rule 8(a) and 9(b)**

56. Federal Rule of Civil Procedure 8 requires that a complaint put forth “a short and plain statement of the claim showing that the pleader is entitled to relief.” Federal Rule of Civil Procedure 8(a)(2). Each allegation in a complaint must be “simple, concise, and direct.” Federal Rule of Civil Procedure 8(d)(1). This court has affirmed dismissal on Rule 8 grounds where the complaint is “argumentative, prolix, replete with redundancy, and largely irrelevant,” *McHenry*, 84 F.3d at 1177, 1180, and where the complaint is “verbose, confusing and conclusory,” *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981).

**VI. CONSPIRACY AND AIDING AND ABETTING**

57. A defendant in a case charging a conspiracy may be liable for each of the substantive counts charged in an indictment under three separate theories:

1. Actual commission of the crime; 2. Participation in the crime as an aider or abettor; 3. Liability under a Pinkerton theory<sup>3</sup>.

58. A conspiracy is an agreement between two or more people to join together to attempt to accomplish some unlawful purpose. It is a kind of "partnership in crime" in which each member becomes the agent of every other member. It does not matter whether or not the conspiracy was

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<sup>3</sup> *United States v. Ailsworth*, 867 F.Supp. 980, 987 (D. Kan. 1994). The government may prove liability under any alternative theory, and the jury will not return a verdict indicating the precise manner in which the defendant committed the crime. *Id.* Furthermore, a jury finding that one is guilty of aiding and abetting a crime is not the equivalent of a finding of a conspiratorial agreement. *United States v. Palozzale*, 71 F.3d 1233, 1237 (6th Cir. 1995). There is no requirement that there be an agreement in order to convict one of aiding and abetting. *United States v. Frazier*, 880 F.2d 878, 886 (6th Cir. 1989), cert. denied, 493 U.S. 1053, 110 S.Ct. 1142, 107 L.Ed.2d 1046 (1990). Conspiracy to commit a crime and aiding and abetting in the commission are distinct offenses. *Id.* See also *United States v. Superior Growers Supply*, 982 F.2d 173, 178 (6th Cir. 1992).

successful. The essence of the offense is that two or more persons have combined, or mutually agreed, to do something illegal. *Iannelli v. United States*, 420 U.S. 770, 777 (1975)

59. The elements are FIRST: That two or more persons agreed to try to accomplish a common and unlawful plan, as charged in the indictment; and, SECOND: That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose.

60. One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to further some object of the conspiracy. *Blumenthal v. United States*, 332 U.S. 539, 557 (1947) One may become a member of a conspiracy without knowing all of the details of the unlawful plan or the identities of all of the other alleged conspirators. If the defendant, with an understanding of the unlawful character of a plan, knowingly joins in an unlawful scheme on one occasion that is sufficient to convict him of conspiracy, even though he had not participated before and even though he played only a minor part in the conspiracy.

61. The evidence in the case need not show that the alleged members of the conspiracy entered into any express or formal agreement, or that they directly stated between themselves the details of the scheme and its object or purpose, or the precise means by which the object or purpose was to be accomplished. Similarly, the evidence in the case need not establish that all of the means or methods which were agreed upon were actually used or put into operation. Nor must the evidence prove that all of the persons charged were members of the conspiracy. *United States v. Falcone*, 311 U.S. 205, 210(1940).

62. Without subject matter jurisdiction over any Brunsting trust matter these Defendants are without immunity in the present suit and, without their rubber stamp immunity defense, their conduct is fully subject to scrutiny.

63. It is difficult to imagine an acceptable explanation for failure to distinguish between a trust and an estate, given the fact the wills bequeath everything to the trust. It is equally difficult to imagine a satisfactory explanation for refusal to set any of Plaintiff Curtis' motions for hearing and refusal to rule on any substantive matters. A reasonable initial question would be something like, what is the meaning of this? (Exhibits 1, 2 and 3 attached)

64. Plaintiffs point only to the public record in support of facts and these Defendants, claiming to be judges in cases involving these public records, cannot claim ignorance of those facts.

65. Plaintiffs believe they have made substantially more than a prima facia case in the Complaint (Dkt 1), in the Addendum to the Complaint (Dkt 26), in this reply, and in each reply to a motion to dismiss filed in this case to date.

66. As for Mr. Baiamonte, Plaintiff Munson spoke with Mr. Baiamonte and was not satisfied with the answer to inquiries regarding unavailability of a transcript for September 10, 2015.

67. Plaintiff Munson requested a written explanation and Mr. Baiamonte promised to reply with an email. After text message reminders failed to produce the promised statement, Mr. Baiamonte was added to this complaint.

#### **VII. FRIVOLOUS, RULES 12(B)(6) AND 1915(D)**

68. Dismissal of frivolous pleadings are governed by Federal Rule of Civil Procedure §1915(d).

*[t]o the extent that a complaint filed in forma pauperis which fails to state a claim lacks even an arguable basis in law, Rule 12(b)(6) and § 1915(d) both counsel dismissal. But the considerable common ground between these standards does not mean that the one invariably encompasses the other. When a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not. Accordingly, "frivolousness in the §1915(d) context refers to a more limited set of claims than does Rule*

*12(b)(6)[;] ... not all unsuccessful claims are frivolous." Neitzke, 490 U.S. at 328 (footnote omitted).*

69. Under Rule 12(b)(6), a plaintiff with an arguable claim is ordinarily accorded notice of a pending Rule 12(b)(6) motion to dismiss for failure to state a claim and an opportunity to amend the complaint before the motion is ruled upon. These procedures alert him to the legal theory underlying the defendant's challenge, and enable him meaningfully to respond by opposing the motion to dismiss on legal grounds or by clarifying his factual allegations so as to conform to the requirements of a valid legal cause of action. Plaintiffs thus added an Addendum of Memorandum under the authority of Federal Rule of Civil Procedure 15(a)(1).

### **The Estate of Nelva Brunsting**

70. As has been shown, the Fifth Circuit (Dkt 34-4) distinguished between the Brunsting Trust litigation and any prospective probate of the Estates of Elmer or Nelva Brunsting, using the same information available to the probate court, "the Wills of Elmer and Nelva Brunsting" (Dkt 41-2 and 41-3) and in their analysis the Fifth Circuit determined that Brunsting trust assets were not property of either estate and that the trust was in fact the only estate heir.

### **The Brunsting Trusts**

71. Plaintiff Curtis is a beneficiary of an inter vivos trust, not an heir to any estate.

72. Plaintiff Curtis' beneficial interest is property, not an inheritance or expectancy.

73. The estate has no standing to bring claims against beneficiaries of the trust, alleging trespass against the heir in fact (trust), simply because the alleged trespass occurred during the lifetime of a grantor.



### **VIII. SUFFICIENCY OF THE PLEADINGS**

74. Each of these Defendants will claim that Plaintiffs failed to plead a particular act that implicates them individually without regard for the language of the allegations or federal aiding, abetting and conspiracy laws.

### **IX. CONCLUSION**

75. Plaintiffs have rarely found truth to be well received by those it does not flatter.

76. These Defendants needed 10 extra pages to express their disdain for the descriptive labels given to their probate court activities by the general population, such as “Tomb Raiders” and “Probate Mafia”, and to bolster their claims of immunity. Plaintiffs merely adopted the expressions because the shoe fits. The only expression Plaintiff Munson believes he may have coined is “Judicial Black Market” and, quite frankly, if someone has a better explanation for the Gregory Lester/Jill Willard Young Report, in Toto with the rest of this song and dance, Plaintiffs are all ears.

77. A Rule 12 Motion is not a substitute for an answer. Defendants none-the-less use the motion as a vehicle to deny there has been any conspiracy to loot the Brunsting Trusts. If that is true, how did Curtis v Brunsting and the Brunsting trusts completely lose their identity and become the “Estate of Nelva Brunsting” once in the clutches of the probate court?

78. The state probate court could not assume jurisdiction over the Brunsting trusts on April 9, 2013, under any theory, and each of these legal professionals have a duty to know the facts of their cases and the relevant law.

79. Plaintiffs herein respectfully request this Honorable Court take judicial notice of the public record pursuant to Federal Rule of Evidence §201, to wit: Harris County Probate Court No. 4, Case: 412248, 412249, 412249-401, 412249-402 and No. 4:12-cv-00592; Candace

Louise Curtis v. Anita Kay Brunsting; United States District Court for the Southern District of Texas, Houston Division, and the records and pleadings in this action.

80. The record will show that after Carl Brunsting resigned as executor for the “Estates of Elmer and Nelva Brunsting” February 15, 2016, Defendant Bayless filed a number of amendments and supplements to her complaint, but in no event did she change the heading nor did she sever the claims of Carl Brunsting individually from those brought as executor.

81. While the state probate court clearly has jurisdiction over any probate of the Estates of Elmer and Nelva Brunsting, it did not have the authority to take cognizance of the Brunsting trust in the custody of a federal Court.

82. When claims directly relating to the Brunsting trusts are stripped away from the claims filed in the name of the “Estate”, nothing remains. The estate inventory (Dkt 41-6) shows only an old car.

83. After examining the March 9, 2016 transcript (Dkt 26-16), and the detail of events in the Addendum (Dkt 26 pgs 4-30), it is difficult for Plaintiffs to perceive how they could have possibly failed to state a RICO claim when the Complaint is based upon the U.S. Attorney’s Criminal Procedures Manual and the forms provided therein.

84. It is equally difficult to perceive how these Defendants have inadequate notice of the facts when they are entirely contained in the record of the very proceedings Defendants claim to have been adjudicating.

85. The immunity portion of the Rule 12(b)(1) facial challenge fails at the test of subject matter jurisdiction for the reasons stated above, leaving the conduct itself open to examination.

86. Where does corruption get a pass merely because it is clothed in a costume resembling the judicial branch of lawful government? Such notions of immunity are clearly the equivalent of

a theory that a wolf in sheep's clothing is no longer a wolf. The Sheeple on the battle field called the streets of America are not finding that to ring true.

87. Yes, there is a pandemic of public corruption plaguing America and the root causes are all the same. Munson would be more than happy to detail the various color of law operations of lower level state courts replete with incidents and federal lawsuits currently pending from San Diego to New York with stops in such places as Houston and Ferguson. However, the very narrow issue before this Court is one of probate court corruption and this case deals with only one of many such courts.

Wherefore, Plaintiffs move this Honorable Court for an Order denying the Motion to Dismiss (Dkt 53) filed by Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte, August 7, 2016.

Respectfully submitted October 13, 2016,

/s/ Candace L. Curtis  
Candace L. Curtis

/s/ Rik W. Munson  
Rik W. Munson

#### **X. CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on this 13th day of October, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Rik W. Munson  
Rik W. Munson