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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS \* Civil No. H-12-592  
\*  
VERSUS \* Houston, Texas  
\* April 9, 2013  
ANITA KAY BRUNSTING, et al \* 9:50 a.m.

TRO HEARING  
BEFORE THE HONORABLE KENNETH M. HOYT  
UNITED STATES DISTRICT JUDGE

For the Plaintiff:

Ms. Candace Louise Curtis  
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For the Defendants:

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1 THE COURT: Good morning. Please be seated.

2 All right. This is Cause No. 2012-592, Candace  
3 Louise Curtis versus Anita K. Brunsting and others.

4 So let me have an announcement. Is Ms. Curtis  
5 in the courtroom?

6 MS. CURTIS: Yes, Your Honor.

7 THE COURT: All right. And who is representing the  
8 defendants in the case?

9 MR. VIE: George Vie, Your Honor, for the  
10 defendants.

11 THE COURT: And I gather we have several parties  
12 present, correct?

13 MR. VIE: Yes, Your Honor.

14 THE COURT: Are these your clients or --

15 MR. VIE: Yes, Your Honor. Both the defendants are  
16 present.

17 THE COURT: Both defendants.

18 And who are the defendants other than -- I just  
19 show Anita Kay and Amy Ruth. I am sorry. I apologize. You  
20 are representing both?

21 MR. VIE: Yes, Your Honor.

22 THE COURT: Okay. Very good.

23 This is Ms. Curtis' application for a temporary  
24 restraining order. As you might recall, this case was  
25 initially dismissed by the Court with the understanding that,



1 or under the understanding that it could not proceed in  
2 federal court but must proceed in state court.

3 The circuit court disagreed with me, and it's  
4 back; and now we are charged to proceed forward in this case.

5 So what I would like to do is, first of all,  
6 have Ms. Curtis stand and give me a kind of a factual setting  
7 background for what it is that she is seeking, then tell me  
8 what she is seeking and see what testimony, if any, we need  
9 in order to accomplish that.

10 So why don't you go ahead take the floor, Ms.  
11 Curtis, and tell us how this got started and where we are  
12 today.

13 MS. CURTIS: This got started by my parents, Elmer  
14 and Nelva Brunsting, putting together a Brunsting family  
15 living trust in 1996 dividing their estate among the five  
16 children beneficiaries.

17 THE COURT: And I see there are the only three  
18 children represented. Are there other children that are not  
19 included?

20 MS. CURTIS: Yes, sir. My sister Carole and my  
21 brother Carl.

22 THE COURT: Okay. C-a-r-o-l?

23 MS. CURTIS: C-a-r-o-l-e and Carl, C-a-r-l.

24 THE COURT: Well, that C went a long way.

25 MS. CURTIS: C, C, C and then A, A.

1 THE COURT: Went a long way in the family, didn't  
2 it?

3 MS. CURTIS: Yes.

4 THE COURT: Go ahead please.

5 MS. CURTIS: So, my father passed away in 2009 in  
6 April and --

7 THE COURT: And would you tell us his name for the  
8 record.

9 MS. CURTIS: Elmer H. Brunsting.

10 THE COURT: All right.

11 MS. CURTIS: And in July of 2010 my brother Carl  
12 became stricken with encephalitis. And it's a very serious  
13 disease. He was in the hospital for several months, part of  
14 that time in a coma. And my brother was originally appointed  
15 the executor of my parent's estate.

16 THE COURT: Your brother would be Carl?

17 MS. CURTIS: Carl. And also a successor/co-trustee  
18 of the Brunsting Family Living Trust and any resulting  
19 trusts.

20 In approximately 2007, my mother sent an e-mail  
21 to me and asked me if I would mind becoming co-trustee with  
22 my brother Carl because my sister Amy was unstable; and she  
23 was wondering if I would mind coming to Houston whenever  
24 necessary to take care of these things. And I agreed. And  
25 that was the last I heard of it.

1                   Since that time I have received a document,  
2 which is the last, first and only amendment that my father  
3 and mother both signed to the family living trust appointing  
4 Carl and Candace as successor/co-trustees.

5                   THE COURT: Okay. So as it stands now, it is Carl  
6 and Candace who would be the co-trustees of the trust?

7                   MS. CURTIS: Yes, Your Honor, yes.

8                   And after my brother became ill, my youngest  
9 sister Anita took the opportunity to begin seize control of  
10 the trust. She immediately, within three weeks after he  
11 became ill --

12                  THE COURT: When did this happen?

13                  MS. CURTIS: In July of 2010.

14                  THE COURT: 2010. He became apparently  
15 incapacitated or unable to?

16                  MS. CURTIS: Yes. He was in a coma for several  
17 weeks.

18                  THE COURT: Is he still in a coma?

19                  MS. CURTIS: No. He's back at home and doing very  
20 well.

21                  THE COURT: Okay. Very good. Go ahead.

22                  MS. CURTIS: And has been.

23                  THE COURT: I will be asking questions of him.

24                  MS. CURTIS: And so, because of things that are just  
25 simply judgmental and ugly, my sister began to try to wrest

1 control of the trust so that my brother could not have  
2 anything whatsoever to do with it. She took his name off the  
3 safe deposit box which, according to my father's handwritten  
4 letter from 1999, contained all of the information about the  
5 family trust, and then some papers were caused to be drawn  
6 up. One was a qualified beneficiary designation.

7 THE COURT: I'm sorry. Was a what?

8 MS. CURTIS: A qualified beneficiary designation.

9 THE COURT: All right.

10 MS. CURTIS: And several other papers were drawn up  
11 on August 25th, 2010.

12 There was no notice given to any of the  
13 beneficiaries about this qualified beneficiary designation  
14 that was to be prepared and signed. And the only way that I  
15 found out about it was to ask my sister Anita for copies of  
16 trust documents for me to review for a phone conference that  
17 had been called by the trust attorneys that was supposed to  
18 include my mother and all of her children. My brother Carl  
19 was never notified of this phone conference.

20 THE COURT: Was he at the time still in a coma or  
21 incapacitated?

22 MS. CURTIS: No, sir. He was not in a coma, but he  
23 was still in the hospital.

24 THE COURT: Okay.

25 MS. CURTIS: And my mother also was not in on the

1 phone call.

2                   So we had the conference call, and they were  
3 definitely absent; and the conference call apparently was  
4 called to discuss proposed changes to the trust, when in fact  
5 the changes had already been made; and as it boiled down to  
6 the end and various parties hung up, they were going to try  
7 to have my mother declared incompetent because she said that  
8 she did not sign the qualified beneficiary designation and  
9 that in fact what the qualified beneficiary designation said  
10 was not true.

11               THE COURT: Let me ask you a question before we go  
12 forward. What was the purpose -- what did the beneficiaries  
13 receive and how were funds, as you understand it, disbursed  
14 from the trust prior to this August 25th 2010. How was the  
15 trust to be administered?

16               MS. CURTIS: The trust was to be divided into five  
17 personal asset trusts; and I believe that each personal asset  
18 trust would have a trustee, but I do not think it was the  
19 beneficiary.

20               THE COURT: Was that to recognize the five children?

21               MS. CURTIS: Yes.

22               THE COURT: How was your mother to benefit from  
23 this? Was she to get some proceeds out of the funds?

24               MS. CURTIS: My mother was to benefit from all of  
25 the trusts until she passed way.

1 THE COURT: Okay. And then these five trusts  
2 would --

3 MS. CURTIS: Whatever was remaining would be divided  
4 five equal ways.

5 THE COURT: Surely.

6 And then your mother died when?

7 MS. CURTIS: 11-11-11.

8 THE COURT: Oh, is that right?

9 And at that time your father was already  
10 deceased?

11 MS. CURTIS: Yes, Your Honor.

12 THE COURT: So this telephone conference occurred  
13 sometime in August of 2010, just about 14 months prior to her  
14 death?

15 MS. CURTIS: It was in October --

16 THE COURT: October.

17 MS. CURTIS: -- of 2010.

18 THE COURT: About 12 months then, 12 or 13 months  
19 prior to her death.

20 And so go ahead and pick up there.

21 MS. CURTIS: So, anyway, after the phone conference  
22 there was really nothing I could do about anything as far as  
23 I could tell; and so, things were relatively quiet until in  
24 approximately March of 2011 my sister Anita called and said,  
25 "oh, we found some Exxon stock that wasn't in the trust; and

1 so, some of it will be gifted, and then the rest of it, the  
2 trust attorneys are going to figure out how to get it into  
3 the trust."

4 And so I received 160 shares of that stock.  
5 And I was in conversation with sister Carole and was told  
6 that she had received some, but she didn't know how much it  
7 was because she hasn't opened the envelope.

8 THE COURT: Was it your understanding that the 160  
9 shares that you received would have been your one-fifth  
10 share? Is that the way it was to be --

11 MS. CURTIS: That's kind of the way I thought about  
12 it. Not necessarily my one-fifth share, but that each of us  
13 should receive a like amount.

14 THE COURT: Sure.

15 All right. Go ahead.

16 MS. CURTIS: Unbeknownst to me, my sister Carole  
17 received 1,300 plus shares and my sister Amy received over  
18 1,000 shares.

19 I received 160, Anita received 160; but Anita,  
20 as power of attorney beneficiary and trustee, having taken  
21 over from my mother in December of 2010, was conflicted and  
22 not allowed to accept gifts. So she excused it many months  
23 after the fact as being a loan, but she's also not allowed to  
24 take loans from --

25 THE COURT: So was she the person doing the

1 disbursing of these shares?

2 MS. CURTIS: Yes, Your Honor, she was.

3 THE COURT: And she disbursed them in the manner, as  
4 you understand it, the way you just described it, giving a  
5 couple thousand shares to two of your sisters together?

6 MS. CURTIS: Uh-huh.

7 THE COURT: I said "together" meaning added  
8 together, and then 160 to you. And what happened, if  
9 anything, to do with Carl's share?

10 MS. CURTIS: He got nothing.

11 THE COURT: All right. Okay. Go ahead.

12 MS. CURTIS: So my brother has filed a lawsuit in --

13 THE COURT: Probate court?

14 MS. CURTIS: -- state court and also in probate.

15 It's not a lawsuit, but he has filed from probate as  
16 defendant executor. And he has gotten pages and pages and  
17 pages of information from my sisters in another lawsuit that  
18 it was a pre-suit request for depositions to get information  
19 in case they were going to file suit.

20 And they got pages and pages and boxes of  
21 information that was not shared with me until March 28th just  
22 recently, and this paper here was in some of the documents  
23 that they shared with me.

24 THE COURT: What is the title of it?

25 MS. CURTIS: This is a computer share. It's a.



1                   Transfer form. And this is page two of three  
2 pages of the transfer form.

3                   THE COURT: Transfer form relating to?

4                   MS. CURTIS: The Exxon/Mobil stock.

5                   THE COURT: Okay.

6                   MS. CURTIS: And so, at the top of the page my  
7 sister Anita's 160 shares, and the bottom of the page is my  
8 160 shares.

9                   There is two signatures at the bottom of the  
10 page. One is on a W-9 portion, and the other is on, my  
11 understanding that the money would be reinvested in the  
12 account. These signatures are not my signatures; they're  
13 forgeries.

14                  THE COURT: Uh-huh.

15                  MS. CURTIS: I would not have seen these if I had  
16 not had this shared with me by my brother.

17                  THE COURT: And you didn't authorize anyone to make  
18 those signatures for you?

19                  MS. CURTIS: No, I did not. And I have filed a  
20 Securities & Exchange Commission complaint as of last week  
21 about this.

22                  THE COURT: All right.

23                  MS. CURTIS: And I have not heard anything from them  
24 since that time.

25                               I also have two different --

1 THE COURT: Well, let me ask you before you go  
2 further. What did you understand to be the access in the  
3 trust or the total trust as opposed to the individual five  
4 trusts, let's say? What did you understand the gross assets  
5 to be? Is that what you set forth in your petition as being  
6 the assets.

7 In 2010, you show -- I don't know if you have  
8 your petition there with you, but you showed in 2010 there  
9 was Chevron/Texaco, Exxon/Mobil, Edward Jones and a total of  
10 \$554,000 more or less in the -- I gather is this in the  
11 decedent's account.

12 MS. CURTIS: Actually, this is my Request For  
13 Injunction.

14 THE COURT: Yes, page 3.

15 MS. CURTIS: Those are just the net changes.

16 THE COURT: These are what you're calling losses  
17 then?

18 MS. CURTIS: Yes.

19 THE COURT: So what is the total of the estate? How  
20 many? Several million dollars?

21 MS. CURTIS: The farm itself is close to \$3 million,  
22 and everything else when my father passed away was about a  
23 million-and-a-half.

24 THE COURT: So, it's increased in value to about --

25 MS. CURTIS: By virtue of the farm.

1 THE COURT: F-a-r-m, farm?

2 MS. CURTIS: Yes, family farm in Iowa.

3 THE COURT: That was sold?

4 MS. CURTIS: No, it was not.

5 THE COURT: What's on the farm that's increasing  
6 these prices? What are they harvesting?

7 MS. CURTIS: Corn and soybean.

8 THE COURT: Is that for profit or just simply --

9 MS. CURTIS: To my understanding we have a lease  
10 with the farmer.

11 THE COURT: Okay. And so lease itself pays a  
12 certain amount of money annually or however.

13 MS. CURTIS: Yes.

14 THE COURT: Those assets or that money goes into the  
15 estate?

16 MS. CURTIS: I believe so.

17 THE COURT: And that accounts for some of the  
18 increase, as you understand them?

19 MS. CURTIS: Yes.

20 THE COURT: All right. So at this point in time,  
21 "this point in time" being 2012, there has been a total of  
22 338 or 339,000 in assets removed from the estate, and there  
23 is still approximately, as far as you know, three-plus  
24 million dollars in the estate?

25 MS. CURTIS: Yes, Your Honor.

1 THE COURT: Now, I want to try to close this out  
2 just a little bit by asking you: After you received these  
3 documents, I gather -- and when you weren't receiving them,  
4 obviously, because I recall you filed a suit, and one of the  
5 issues was getting your hands on these documents, and you  
6 were not able to get those documents until recently, as I  
7 understand it?

8 MS. CURTIS: The first time I received any  
9 information was in April of 2012, yes.

10 THE COURT: Okay.

11 And since you received those documents, has the  
12 fact that you received those documents confirmed what you  
13 believe to be improper practices on the part of your, I  
14 gather, on the part of your sister Anita?

15 MS. CURTIS: Yes, Your Honor.

16 THE COURT: Is she handling this alone?

17 MS. CURTIS: To my knowledge she is.

18 THE COURT: All right. So it's between her and  
19 however her lawyers are handling this that you are concerned  
20 about?

21 MS. CURTIS: I assume.

22 THE COURT: And your brother has a ongoing suit  
23 presently ongoing?

24 MS. CURTIS: Yes, Your Honor.

25 THE COURT: And what is the status as you understand

1 of that suit, as to how long has it been pending and what is  
2 status of that suit?

3 MS. CURTIS: I'm not exactly sure of the dates of  
4 how long it's been pending. I think since sometime in  
5 February of 2013.

6 THE COURT: Okay. So several months, but not very  
7 long.

8 MS. CURTIS: Right.

9 THE COURT: And is he able to get up and about?

10 MS. CURTIS: Yes.

11 THE COURT: Where is he now?

12 MS. CURTIS: At home, I would assume.

13 THE COURT: And have you communicated with him  
14 regarding what his approach is?

15 MS. CURTIS: Yes, Your Honor. I have.

16 THE COURT: And, of course, you have not joined his  
17 lawsuit?

18 MS. CURTIS: No, I have not.

19 THE COURT: And he has not joined in your lawsuit?

20 MS. CURTIS: No, he has not.

21 THE COURT: Does he have an attorney?

22 MS. CURTIS: Yes, Your Honor, he has.

23 THE COURT: Okay. I gather you now know that some  
24 state court, some county court or probate court, someone did  
25 something, I gather, to give Anita some authority that you

1 did not know she had. Is that what you have come to the  
2 knowledge of?

3 MS. CURTIS: I have come into the knowledge that the  
4 purported successor/co-trustees are in fact imposters because  
5 the documents that made them successor/co-trustees have  
6 digital alterations on them; they have anomalies on the  
7 signature pages. I have two different signature pages for  
8 the qualified beneficiary designation that were sent to me on  
9 two different occasions.

10 THE COURT: Now, whose signatures would be necessary  
11 from your perspective to permit her to go forward? This  
12 qualified beneficiary designee, this was supposed to be Anita  
13 now?

14 MS. CURTIS: It was supposed to divide the estate  
15 into five different personal asset trusts. Carole, Amy and  
16 Anita were going to be trustees.

17 THE COURT: This was a part of you-all's discussion  
18 on the telephone conference as to how this was supposed to  
19 work?

20 MS. CURTIS: Well, I wanted to know how it would put  
21 into place in the first place because I never received any  
22 notice that this was being contemplated.

23 THE COURT: Okay.

24 MS. CURTIS: And come to find out months after the  
25 papers were allegedly signed by my mother, my personal asset

1 trust and my brother Carl's were put under the control of Amy  
2 and Anita.

3 THE COURT: On what authority or what basis.

4 MS. CURTIS: I don't know. I don't know.

5 THE COURT: Okay.

6 And what happens then or what is happening to  
7 those assets?

8 MS. CURTIS: They're spending them.

9 THE COURT: Okay. She, Anita, has authority and can  
10 spend those proceeds --

11 MS. CURTIS: Yes, Your Honor.

12 THE COURT: -- based upon what? Is she considering  
13 herself the qualified beneficiary designee or something?

14 MS. CURTIS: She is considering herself a  
15 successor/co-trustee.

16 THE COURT: Successor/co-trustee.

17 MS. CURTIS: In place of my mother. She did most of  
18 the theft while my mother was still alive when she was acting  
19 with my mothers power of attorney. My mother supposedly  
20 resigned as trustee on December 21st, 2010, and my sister  
21 accepted successor/trustee. And my sister's also a  
22 beneficiary, so she's got a conflict of interest there.

23 THE COURT: So since 2010 you are not aware of, I  
24 gather you're saying you're not aware of the division of the  
25 estate at least designating your portion as being your full

1 one-fifth of the estate?

2 MS. CURTIS: I have never received a notice.

3 THE COURT: You are not aware that that has been  
4 done. In other words, you don't know that that has been  
5 done?

6 MS. CURTIS: No, I do not.

7 THE COURT: And you're not in charge of that, those  
8 assets?

9 MS. CURTIS: That's correct.

10 THE COURT: And so here's my question: What is it  
11 that you're seeking by this lawsuit?

12 MS. CURTIS: I am seeking that my sister and those  
13 who have received unfair distributions to return the money.

14 THE COURT: Okay.

15 MS. CURTIS: I would like them to pay back all of  
16 the interest that was lost on the securities that were cashed  
17 in during that 15 months and spent, diverted to other things.

18 THE COURT: All right.

19 MS. CURTIS: And I would like it to be divided five  
20 ways and for the five beneficiaries to go their separate  
21 ways.

22 THE COURT: And what have you been told, if  
23 anything, even today, if anything, that has prevented this  
24 from happening?

25 MS. CURTIS: I have been told nothing.



1 THE COURT: And you've talked with their counsel,  
2 have you not?

3 MS. CURTIS: Yes, I have.

4 THE COURT: And did you ask him about these  
5 questions or did you put these questions to him?

6 MS. CURTIS: No, I did not.

7 THE COURT: What were you asking? What was the  
8 nature of what you all were trying to accomplish as far as  
9 this injunction is concerned?

10 MS. CURTIS: We were trying to come up with a reason  
11 why we would not go forward with the injunction hearing. And  
12 I had five or six other alternative ways of resolving this.  
13 And he left the room to speak to his clients, and they would  
14 not agree to them.

15 THE COURT: What are you seeking now? What are  
16 those ways that you are seeking, and what is it that you want  
17 to happen here today?

18 MS. CURTIS: I wanted to have an independent trustee  
19 appointed.

20 THE COURT: All right. And that was refused.

21 Okay. What else?

22 MS. CURTIS: I wanted to know who, if any, special  
23 co-trustee was appointed as per this qualified beneficiary  
24 designation.

25 THE COURT: I'm sorry. Say that again.

1 MS. CURTIS: There was provision in the qualified  
2 beneficiary designation for a special co-trustee or a trust  
3 protector; and so, I suggested that maybe the trust protector  
4 take it over as the trustee.

5 THE COURT: All right. Okay.

6 MS. CURTIS: And the other reason was just similar  
7 to that. The Court could appoint an independent trustee who  
8 the defendants would have to obtain approval for any of their  
9 actions.

10 The Court could enjoin the trustees from acting  
11 without approval of the Court or express written approval  
12 from all five beneficiaries.

13 The Court could enjoin trustee from acting  
14 unless and until they can show they're in possession of  
15 authentic documents by submitting the documents purportedly  
16 signed on August 25, 2010 and December 21st, 2010 for a  
17 forensic analysis because the copies that we have have all  
18 been digitally altered and the signatures are fake.

19 THE COURT: Okay.

20 MS. CURTIS: I also asked originally if I could  
21 please know the identification and contact information for  
22 the trust protector, and I was told that the provisions for  
23 the trust protector were at section such and such in the  
24 qualified beneficiary designation, but I didn't get a  
25 straight answer.

1 THE COURT: So there is a document called "qualified  
2 beneficiary designation"?

3 MS. CURTIS: Yes, Your Honor.

4 THE COURT: And you do or do not have a copy of  
5 that?

6 MS. CURTIS: I do have a copy of it but not with me.

7 THE COURT: And you have been told that in -- when  
8 were you told this, today? When were you told where this  
9 provision about the special protector or co-trustee protector  
10 was located?

11 MS. CURTIS: In early 2012.

12 THE COURT: And you were told where to find it?

13 MS. CURTIS: I was told where to find the  
14 provisions, but I asked for the identity.

15 THE COURT: Okay. The identity of that person has  
16 not been given to you?

17 MS. CURTIS: That is correct, or if there even is.

18 THE COURT: If there is such a person.

19 All right. So that's what you're seeking in  
20 terms of your request for benefit -- for the injunction  
21 today; is that correct?

22 MS. CURTIS: Yes, Your Honor. I'm seeking that we  
23 stop the bleeding until we can get to the bottom of it.

24 THE COURT: Have you received any funds from the  
25 trust since 2010? I'm talking about since the death of your

1 mother.

2 MS. CURTIS: No, Your Honor. I have not.

3 THE COURT: You have made it known to -- have you  
4 communicated with your sister -- that's Anita, I believe --  
5 about that?

6 MS. CURTIS: I am not allowed to speak to Anita --

7 THE COURT: Why not?

8 MS. CURTIS: Except through her attorneys.

9 THE COURT: Well, that's untrue. That's your  
10 sister.

11 MS. CURTIS: Well, that's the way I feel about it,  
12 but I'm told I'm not allowed to speak to them, and they won't  
13 talk to me.

14 THE COURT: Who told you this? Who told you this,  
15 that you can't contact her?

16 MS. CURTIS: I inferred that from --

17 THE COURT: Did she tell you that, is what I am  
18 asking?

19 MS. CURTIS: No. She didn't tell me that because  
20 she hasn't spoken to me.

21 THE COURT: Well, have you tried to speak to her?

22 MS. CURTIS: Yes, Your Honor, I have.

23 THE COURT: What happens when you try to speak to  
24 her?

25 MS. CURTIS: I call. She doesn't answer. I leave a

1 voice mail, she doesn't call me back.

2 The same thing happened with my other sister  
3 Amy. I called and left a voice mail. She did not return my  
4 call. This was more than a year ago.

5 THE COURT: So they refuse to speak to you about  
6 this is what you are saying?

7 MS. CURTIS: Yes, Your Honor.

8 THE COURT: Go ahead and have a seat. Thank you.  
9 Counsel.

10 MR. VIE: Yes, Your Honor.

11 THE COURT: Why can't you come to some  
12 accommodation?

13 MR. VIE: Here's the situation. I just want to give  
14 you a little bit of background so that you understand in  
15 terms of the exhibits I put before you.

16 THE COURT: I don't have any exhibits yet. Well,  
17 some paper put up here.

18 Oh, the list. I see.

19 MR. VIEW: Yes, sir.

20 THE COURT: I haven't read these.

21 MR. VIE: Just to provide some assistance in  
22 answering your question, Your Honor. Exhibit 1 is a 60-or-so  
23 page document. That is the family trust document.

24 THE COURT: All right.

25 MR. VIE: And on page 1 of the document it says that

1 her father and mother had created a trust, it's an  
2 irrevocable trustee, and that the initial trustee shall be  
3 Anita Kay. So, Anita is the trustee under this document.

4 Because you heard a lot about this qualified  
5 beneficiary designation.

6 THE COURT: No. I heard about the co-trustees.

7 MR. VIE: So I wanted the Court to understand that  
8 this document --

9 THE COURT: Let me ask so we don't go down a rabbit  
10 trail. Was there a point in time when Carl was the  
11 co-trustee?

12 MR. VIE: I'm sorry?

13 THE COURT: Was there a time when Carl, the brother,  
14 was the co-trustee?

15 MR. VIE: I don't know if that -- I don't know with  
16 respect to this document if that's correct or not.

17 I understand that at one point there was a  
18 communication from the mother where she considered other  
19 family members serving in her role. But the documents that I  
20 have given you, the second exhibit that I have given you is  
21 where with respect to the mother's living trust while she was  
22 alive, she decided to have Anita appointed as her successor  
23 trustee instead, and then they created this certificate of  
24 trust.

25 THE COURT: That would have been relative to the

1 entirety of the irrevocable trust or was it simply her  
2 portion of the assets?

3 MR. VIE: It was with respect to the living trust  
4 that was created when she --

5 THE COURT: No, no, no. Here's what I am saying.  
6 The father is now deceased.

7 MR. VIE: Yes.

8 THE COURT: His wife entered into a irrevocable  
9 trust, and either he leaves all of you that in the trust to  
10 her benefit or his share goes into some other, goes into a  
11 trust for the children at that point.

12 So what happened?

13 MR. VIE: The father and mother created the  
14 irrevocable trust, which I have identified as Exhibit 1.

15 THE COURT: Okay.

16 MR. VIE: When the father died, his assets went into  
17 this living trust where their mother had assets to the  
18 living -- there was a sub trust created, a successor trust  
19 and a decedent's trust. The mother had that.

20 THE COURT: So she has all of the assets at that  
21 point?

22 MR. VIE: Yes. And the mother was able to make  
23 gifts and did make gifts to a number of the family members.  
24 So when the plaintiff was referencing the \$13,000 gift that  
25 she received and the others, these were gifts that her mother

1 while alive had directed. And my client Anita, as the  
2 successor trustee under this appointment, Exhibit 2, would  
3 make those transactions occur. But these were gifts from the  
4 mother.

5                   And then the mother dies, and this irrevocable  
6 trust --

7                   THE COURT: And did the mother die, according to  
8 what Ms. Curtis is saying, in December more or less, I guess?

9                   MR. VIE: November of 2010, Your Honor.

10                  THE COURT: November of 2010, okay.

11                  MS. CURTIS: 2011.

12                  THE COURT: 2011.

13                  MR. VIE: 11-11-2011.

14                  THE COURT: Right.

15                  MR. VIE: After that point, then Anita as trustee  
16 prepares a schedule of the estate, the context of the mother,  
17 and that money was going into the family trust; and that's  
18 one of the exhibits that she's attached.

19                  THE COURT: Well, wait a minute. What money is  
20 going into the family trust? Because now this trust, the  
21 trust that exists that is handling all this is the mother's  
22 living trust, right?

23                  MR. VIE: No, Your Honor. When she died, the living  
24 trust no longer exists.

25                  THE COURT: Oh, obviously.



1                   But before that, all of the assets were going  
2 into the living trust for the mother.

3                   MR. VIE: Right.

4                   THE COURT: And now the mother dies in November of  
5 2011, and then what happens?

6                   MR. VIE: Then we have the family trust, and there  
7 is created again a sub trust of a survivor's trust and the  
8 decedent's trust.

9                   THE COURT: And the family trust now reverts back to  
10 the irrevocable trust?

11                  MR. VIE: Yes, Your Honor.

12                  THE COURT: And in the irrevocable trust or in that  
13 trust there is a provision that says how those, how that  
14 trust is to be divided into five distinct trusts for the  
15 children?

16                  MR. VIE: My understanding is that there is a  
17 document under this complicated plan by which each of the  
18 individual beneficiaries, the five children, the four  
19 daughters and the son, they would have these asset trusts.  
20 Those trusts have not been created.

21                  THE COURT: Well, I am asking whether or not as a  
22 part of the -- as to your understanding, you have read it, is  
23 that a part of what the family trust required as far as you  
24 know? You said there's a document like it's some separate  
25 thing.

1 MR. VIE: Well, there's a -- I understand, Your  
2 Honor.

3 It's a rather long document. I understand and  
4 agree we are that the conclusion of this trust now at this  
5 point is to divide the assets to the five beneficiaries, and  
6 then each of their assets go into these asset trusts.

7 THE COURT: Separate and distinct from each other  
8 and for the benefit of each of the designated beneficiaries.

9 MR. VIE: Yes.

10 And as the plaintiff suggested, I believe the  
11 situation is that her trust, for example, she is not a  
12 trustee. One of her siblings is the trustee.

13 THE COURT: Even after it's divided off and given to  
14 her?

15 MR. VIE: Yes. And in these asset trusts, other  
16 members --

17 THE COURT: So someone who has a trust, like Anita  
18 herself, would have her own separate and distinct assets?

19 MR. VIE: Yes, sir.

20 THE COURT: And she'd be in charge of her own  
21 assets?

22 MR. VIE: No, no. There would be -- somebody else  
23 would be the trustee.

24 THE COURT: Of all of these five trusts?

25 MR. VIE: Yes -- no, of each.

1 THE COURT: Who is "someone else?" I mean --

2 MR. VIE: Well, for example, Carl's could be Anita  
3 and Amy's could be Carole.

4 THE COURT: But the documents say how this happened,  
5 though.

6 MR. VIE: These trusts have not been created yet.  
7 There has been no distribution.

8 THE COURT: I understand that. You are telling me  
9 that, but I am trying to find out whether or not the creation  
10 of these trusts require these beneficiaries to have someone  
11 else in charge of their money.

12 MR. VIE: That is my understanding. And she can  
13 correct me if I am wrong, and my clients can correct me as  
14 the trustees if I'm wrong.

15 THE COURT: So Anita -- somebody would be in charge  
16 of Anita's?

17 MR. VIE: Yes. That's right.

18 THE COURT: And then somebody else would be -- and  
19 Anita would be in charge of somebody else's?

20 MR. VIE: That's my understanding.

21 THE COURT: And these kids -- and they're not kids  
22 anymore, but these five siblings would be at each other's  
23 throats for the rest of their lives because --

24 MR. VIE: No. They'd each have their own --

25 THE COURT: Well, no. They got them, but they're

1 not in charge of it, is what I understand.

2 MR. VIE: All right.

3 THE COURT: That's what I am trying to say. In  
4 other words, I'd have to call my sister to get my money.

5 MR. VIE: What I know about the asset revocable --  
6 the asset trust is they have not been created yet.

7 As the Court heard, there are two lawsuits.  
8 There is this lawsuit and there is her brother's lawsuit. We  
9 are not parties to her brother's lawsuit. Her brother's  
10 lawsuit is brought in his capacity as the executor of his  
11 father's and mother's estates. It's in Harris County  
12 District Court. We're not parties to it.

13 THE COURT: Well that would be either the product of  
14 a will being probated --

15 MR. VIE: Yes, sir.

16 THE COURT: -- or it would be the product of an  
17 intestate proceeding. Which is it?

18 MR. VIE: The will has been probated.

19 THE COURT: So there is a will probate separate and  
20 apart from the trust?

21 MR. VIE: Yes, Your Honor.

22 THE COURT: And how does that overlay on the trust  
23 since all of the assets are in the trust?

24 MR. VIE: Well, I don't know that it overlays; but  
25 what I am trying to suggest to the Court is: One, since the

1 mother died, there has been no distributions to anyone,  
2 not --

3 THE COURT: I get that. I am trying to figure  
4 out --

5 MR. VIE: Since you haven't seen the distribution, I  
6 wanted the Court to understand that no one has.

7 THE COURT: But somebody got some money out of it or  
8 there has been a loss in value to the trust itself.

9 MR. VIE: She says that the stock that was invested  
10 with the brokerage houses may have lost money, is one of the  
11 things that she suggested in her motion.

12 THE COURT: Right.

13 MR. VIE: My point was to suggest that there has  
14 been no distributions since the mother died from the trust  
15 that Anita is the trustee for to anyone.

16 THE COURT: And you said the one that Anita is in  
17 charge of. What is Anita in charge of?

18 MR. VIE: Exhibit 1.

19 THE COURT: Okay. The entirety?

20 MR. VIE: Yes, sir.

21 THE COURT: That's what I am trying to get to.

22 MR. VIE: Yes.

23 THE COURT: Okay.

24 MR. VIE: And it's unlikely there will be any  
25 distributions until both this suit is resolved and her

1 brother's suit that he brought.

2 THE COURT: Well, this suit might resolve it.

3 That's not their concern.

4 But what I am trying to find out is whether or  
5 not in the -- the question I was trying to get back was in  
6 the Carl's suit, I guess in probate court, whether or not  
7 that suit, which did not come up in the responses in the way  
8 that I understood it, whether or not that suit that impact  
9 whether or not this Court should be proceeding with this  
10 trust.

11 MR. VIE: No, Your Honor.

12 THE COURT: So it's separate and apart since the  
13 probate's completed.

14 MR. VIE: The probate has been filed. The suit is  
15 brought by him in his capacity as executor.

16 THE COURT: Is he without bond and independent?

17 MS. CURTIS: Yes.

18 MR. VIE: He's an independent executor. He is  
19 bringing the suit against the attorneys.

20 THE COURT: So he doesn't need to do anything else  
21 other than file it and do this accounting and all of that and  
22 then do whatever the will tells him to do.

23 MR. VIE: The litigation that he has brought is  
24 against the attorneys that created these trusts.

25 THE COURT: That's not even -- that's separate and

1 distinct from this lawsuit.

2 MR. VIE: Okay.

3 THE COURT: And it's separate and distinct from the  
4 estates because that's a malpractice lawsuit.

5 MR. VIE: Yes, sir.

6 THE COURT: Okay. So I am not concerned about that  
7 at all.

8 I was trying to make sure when he brought his  
9 suit, he was not simply arguing that somehow Anita had  
10 finagled her way into this position and she had squandered  
11 certain assets and then we've got these parallel lawsuits.

12 MR. VIE: I understand, Your Honor. And that was my  
13 point as well was to let you know that we are not parties to  
14 that litigation, it's not a claim in that litigation as the  
15 claims are --

16 THE COURT: And neither is the plaintiff here a  
17 party to that litigation.

18 MR. VIE: That is correct, Your Honor.

19 THE COURT: Okay.

20 So, the only suit that's pending dealing with  
21 the assets of these parent's estate is this lawsuit.

22 MR. VIE: Yes, Your Honor.

23 THE COURT: All right.

24 So what the plaintiff is saying on page 3 of  
25 her petition having to do with the December dates of 10, 12

1 and so on and what she considered to be "losses of the  
2 estate" are losses that I gather are decreases in assets that  
3 would be attributable to movement in the market.

4 MR. VIE: That is the specific. And, Your Honor,  
5 you are referring to the complaint or to the motion that has  
6 been filed for temporary relief?

7 THE COURT: I'm looking at the motion right now.  
8 That should be Instrument No. 35.

9 MR. VIE: Yes. With respect to that, there is an  
10 argument being made there that there has been a loss and it  
11 is the result of the investment of the securities.

12 THE COURT: You made a comment earlier that until  
13 the other lawsuit and this lawsuit is resolved. That lawsuit  
14 has nothing at all to do with the resolution of this estate.

15 MR. VIE: Well, I --

16 THE COURT: I'm telling you that.

17 MR. VIE: Okay.

18 THE COURT: There is nothing that should -- there is  
19 nothing going on in Carl's suit that prevents these parties  
20 from following what they have been instructed to follow in  
21 the trust document.

22 MR. VIE: Okay. I understand if that's the  
23 Court's direction.

24 THE COURT: Is there something that I am missing?

25 MR. VIE: Not that I am aware of, Your Honor.



1 THE COURT: That's a malpractice suit. And they  
2 get some money out of it, either he gets it or maybe he  
3 distributes it among his brothers and sisters, but it doesn't  
4 have anything to do with the distribution of this estate.

5 MR. VIE: My understanding -- the reason that I  
6 understood the case to be differently is that I understood  
7 that the purpose of the litigation that he had brought in  
8 state court was claiming that the attorneys who created these  
9 trusts had done so improperly so that we were in a situation  
10 in which we are here before this Court, and the Court is  
11 suggesting we should wind this thing up and distribute to all  
12 the beneficiaries.

13 THE COURT: It's going to be wound up. It's going  
14 to be wound up in this court.

15 Here's what I'm suggesting. I am suggesting  
16 that this will not become a feast and famine, feast for the  
17 lawyers and famine for the beneficiaries in this Court where  
18 we are sitting around churning the time out and the parties  
19 are charging out of that lawsuit, defense of that lawsuit,  
20 which you are not doing, apparently, unless -- are you the  
21 lawyer that created the trust?

22 MR. VIE: No, Your Honor.

23 THE COURT: So that's a separate law firm.

24 MR. VIE: Yes, Your Honor.

25 THE COURT: Yeah. So there is no reason for you to

1 be or your firm to be involved in the expenditure of that, of  
2 monies out of that lawsuit.

3 MR. VIE: And we aren't, Your Honor.

4 THE COURT: And there is no reason for Ms. Curtis to  
5 be concerned about spending money out of her assets for that  
6 lawsuit.

7 MR. VIE: Understand.

8 THE COURT: So, you can distribute what you got  
9 whether you get some more or not. It doesn't require -- this  
10 is not a probate where you got to gather everything together  
11 because everything is together.

12 MR. VIE: Okay.

13 THE COURT: The entire estate is together.

14 MR. VIE: Yes, Your Honor.

15 THE COURT: And if there is a lawsuit, and it's  
16 questionable whether or not Curtis has a lawsuit or not  
17 because he wasn't the creator and the payor for that creation  
18 of that trust.

19 So, the point I am making is, obviously he had  
20 no contractual relationship with the firm, and it's going to  
21 be seriously flawed -- seriously difficult for him to sue for  
22 malpractice when he wasn't -- when there is no  
23 attorney/client relationship.

24 MR. VIE: Understood, Your Honor.

25 THE COURT: So, the point I'm getting to here is

1 under this trust that is situated here, what my plaintiff,  
2 Ms. Curtis, I believe is saying is that she is, these assets  
3 are not being distributed, and she's of the opinion that  
4 there is something untoward going on, whether that's true or  
5 not.

6 MR. VIE: Yes, Your Honor.

7 THE COURT: And that there is no reason why she  
8 should be standing out in the field trying to get information  
9 about this trust and the distribution of these assets when  
10 she is equally entitled to any and all information just like  
11 Anita or anybody else.

12 MR. VIE: I understand that.

13 THE COURT: So, what is it then that prevents these  
14 parties from right now settling this suit?

15 MR. VIE: From settling it?

16 THE COURT: Yes. All they got to do is distribute  
17 the assets.

18 MR. VIE: Two things, Your Honor. And it's just my  
19 observation, because obviously the Court does not have to  
20 agree with me.

21 THE COURT: Sure.

22 MR. VIE: I provided the underlying documents that  
23 support the schedule that the plaintiff has attached to this  
24 motion for temporary relief. I have given her yesterday, in  
25 response to her request for production, some 5,000 pages.

1                   She has told me that she wants to examine  
2 those, all of those underlying documents, stock transfers,  
3 checks and everything else.

4                   You have heard from the plaintiff that she  
5 believes this very instrument is false.

6                   THE COURT: "This very instrument" meaning the  
7 family trust?

8                   MR. VIE: Family trust. That it's a forgery or that  
9 documents have been forged.

10                   And I have offered, in response to the request  
11 for production, to make the originals, which I understand the  
12 trust attorney, those attorneys in the other lawsuit, to make  
13 those available for inspection and copying so that she can  
14 see them and satisfy herself that the underlying trust is in  
15 fact a legal and appropriate trust.

16                   THE COURT: Okay.

17                   MR. VIE: So that was one of the --

18                   THE COURT: And that the signatures have not been  
19 forged or at least they're original signatures.

20                   MR. VIE: Yes. In other words, one problem of  
21 trying to settle the disposition of the trust today is that  
22 the plaintiff disputes the accuracy of the accounting and the  
23 accuracy and legitimacy of the trust.

24                   THE COURT: Right.

25                   MR. VIE: And so, that was one issue.

1           The second issue, respectfully, is that I  
2 understood that given that the Harris County litigation  
3 contested the accuracy and validity of the trust, that again  
4 there was a risk of inconsistent positions if we were to  
5 treat the trust as valid and fund this while they litigated  
6 over in Harris County.

7           THE COURT: They don't have jurisdiction over there.  
8 I do. That's what the circuit court has told me. And that's  
9 the part that you said I might disagree; and you're right, I  
10 do.

11           I would not sit here and wait on somebody  
12 Harris County to figure out whether or not they have  
13 jurisdiction over an issue, which they do, but they don't  
14 have jurisdiction of the assets.

15           MR. VIE: I wasn't thinking as much of the  
16 jurisdiction, Your Honor, as I was thinking of the risk of  
17 inconsistent judgments. In other words --

18           THE COURT: Not if I get it resolved, there won't be  
19 any inconsistent to resolve.

20           If they get it resolved, then it probably won't  
21 be inconsistent because I'm obligated and then obliged to  
22 follow at least theoretically the findings of any court of  
23 competent jurisdiction.

24           MR. VIE: Yes, Your Honor.

25           And the third issue, which I don't think would

1 give the Court pause but is something I thought of, is the  
2 fact that all the beneficiaries are not parties to this  
3 litigation.

4 THE COURT: That won't bother me at all because I do  
5 have authority and jurisdiction over the person who you tell  
6 me has the duty and the responsibility to act.

7 MR. VIEW: So those are my --

8 THE COURT: That's it.

9 So, I want this resolved within 90 days. And  
10 if I have to appoint a trustee or somebody to handle this  
11 and get it done, I'll do it. It will cost the estate. And  
12 if I find that there has been mischief, it is going to cost  
13 individuals. And that will be a separate and distinct  
14 hearing.

15 So what I am telling the parties, and I am  
16 saying to you and to all those who have ears to hear, that  
17 this matter is going to get resolved. It's not going to turn  
18 into one of these long, drawn-out episodes like the ones we  
19 see on TV that go on for years where lawyers make money and  
20 people walk away broke.

21 MR. VIE: Yes, Your Honor.

22 THE COURT: Who is doing the accounting in this  
23 process? Has anybody put their arms around the assets and  
24 made any accounting at all?

25 MR. VIE: There is a CPA in Iowa that prepares the

1 tax returns each and every year for the estate, and we are  
2 getting --

3 THE COURT: How they get in Iowa? Is that where the  
4 family was from originally?

5 MR. VIE: The parents, yes, Your Honor. And the  
6 farm, as you heard, is in Iowa.

7 THE COURT: Okay.

8 MR. VIEW: And so, there is a CPA who has been  
9 involved throughout this period and files the trust income  
10 tax returns, and he is available.

11 MS. CURTIS: I object to that.

12 THE COURT: Hold on.

13 Go ahead.

14 MR. VIE: I think I have answered the Court's  
15 question.

16 THE COURT: Yes.

17 MR. VIEW: And would have the most, would have the  
18 best familiarity beyond --

19 THE COURT: How much money does he generally charge  
20 for his annual -- I guess he does his annual filings of  
21 reports. Is this something that's pretty cursory or --

22 MR. VIEW: I'm sorry. And there is a distinction.  
23 The documents that are attached as the schedule in that  
24 accounting that are attached to the motion that has been  
25 filed for injunctive relief, temporary schedules.

1 THE COURT: Those were prepared?

2 MR. VIE: By the defendant, by Anita in her capacity  
3 as trustee.

4 THE COURT: Okay.

5 MR. VIEW: I was responding to the Court's question  
6 in terms of who's the best person that could get their hands  
7 around it and that type of thing.

8 The CPA in Iowa obviously has to know all of  
9 the information available to the trust so that he can file  
10 the tax returns. He also pays and makes sure that the  
11 profits --

12 THE COURT: Then that might not be a good thing for  
13 me because I don't have jurisdiction over him.

14 MR. VIE: Okay.

15 THE COURT: But what I wanted to know was whether or  
16 not there was a person here locally, since I believe the  
17 defendants are here locally. They don't have a local CPA who  
18 is in charge of the estate.

19 MR. VIE: That's correct, Your Honor.

20 THE COURT: That would be Anita herself.

21 And then as far as the tax returns and all that  
22 annually which goes on, whether you got money or not, that  
23 would be done by the accountant in --

24 MR. VIE: Sioux City, Iowa.

25 THE COURT: Yeah, in Iowa.



1                   And excuse me. What were you about to say?  
2 You disagree with what, Ms. Curtis?

3                   MS. CURTIS: I disagree with allowing Rick Rickers,  
4 who is --

5                   THE COURT: Is that the attorney?

6                   MS. CURTIS: -- our cousin. He's the accountant in  
7 Iowa.

8                   THE COURT: He's your cousin?

9                   MS. CURTIS: He's our cousin.

10                  THE COURT: Okay.

11                  MS. CURTIS: He is also apparently the manager of  
12 the farm, and he began to file the tax returns --

13                  THE COURT: I've already said probably enough to  
14 give you some pause, to allay those concerns. But these are  
15 other reasons why he should not be doing accounting. He has  
16 a conflict of interest.

17                  MS. CURTIS: One reason why he should not be doing  
18 the accounting is because I have reason to believe that the  
19 farm lease, taking it away from the buyers, who were my  
20 father's very close friends, was notarized with a signature  
21 that was not my father's. I have not been able to look at  
22 that yet. I only have emails that purport that, but I would  
23 like to get copies of those.

24                  THE COURT: Let me address a couple of things.

25                               First of all, when we don't have information,

1 we can imagine a lot of things that may or may not be true,  
2 Okay?

3 MS. CURTIS: Yes.

4 THE COURT: That could be. I mean, all kind of  
5 thoughts and ideas go through our head when they don't have  
6 the information.

7 Here's what this Court cannot do. This Court  
8 cannot chase after each of your concerns. You have got  
9 enough money, you can hire anybody you want to do any kind of  
10 investigation you want done.

11 What I intend to do based upon the mandate from  
12 the circuit court is to try to address the concerns that you  
13 have. And they just can't be accusations, and I don't have  
14 any interest -- when I say I don't have any interest, I have  
15 an interest in outcomes, but I don't have an interest in the  
16 case so that I'm supposed to be doing things that would  
17 accomplish something for you except upon your filed  
18 documents. It's in your best interest, and I think I talked  
19 to you on the phone conference --

20 MR. VIE: Yes.

21 THE COURT: -- with both of you on the phone as  
22 well, that really this is not a matter that you should be  
23 trying to handle yourself. You should hire an attorney to do  
24 it for you, or at least part of it for you.

25 Now, I believe that it's in the Court's best

1 interest to preserve the assets of the estate and to bring to  
2 a point a going-forward process that this Court appoint  
3 someone to do an accounting of the assets and then make that  
4 accounting to the Court.

5 Now, you don't have to agree with me, but it's  
6 going to be an accounting of what the assets are. Whether  
7 something has been taken or mismanaged or mishandled is not  
8 going to be a part -- that's not the kind of accounting  
9 that's going to go on here.

10 What is, and that is what's invested, where  
11 it's invested and how it's invested is going to be the  
12 Court's concern. Once that accounting is in place, the  
13 question is whether or not the Court is going to be required  
14 or whether or not Ms. Brunsting will go forward in her  
15 capacity or not.

16 If she fails, then the Court will direct or put  
17 someone else in that position to do that, to move into this  
18 area or division so that the assets can be distributed or  
19 whatever beneficiaries. That's where I am in this case, and  
20 that's where the circuit court I believe has me. So I think  
21 it's in all of our best interest to appreciate this process.

22 In light of that, the Court is of the opinion  
23 that there are no expenditures that should be made unless  
24 they're made upon the approval of the Court. So, in other  
25 words, if Mr., up in Utah --

1 MR. VIEW: Iowa.

2 MS. CURTIS: Rickers in Iowa.

3 THE COURT: Mr. Rickers needs to pay the farmer. We  
4 used to call those sharecroppers sort of. It's a kind of a  
5 sharecropper thing where someone comes in farms the land and  
6 you get a percentage of it. If Mr. Rickers and the  
7 sharecroppers and others need to pay out bills and things,  
8 they should be petitioning the Court for that. That's where  
9 we are now.

10 We're at a point where I'm going to have to  
11 take charge in order to make sure that what I am doing has  
12 sanctity and has, well, trust going forward. What I am going  
13 to do is simply to try to make sure that the parties are all  
14 going to have equal standing and footing in this process. So  
15 that's part of what I am going to do. I'm going to enter an  
16 injunction in that regard.

17 Now, anybody who claims they want to bill the  
18 estate for something, whether it's lawyers or not, I am  
19 concerned about whether or not your bill should be paid by  
20 the estate because of this circumstance.

21 MR. VIE: I understand.

22 THE COURT: If the parties are going to agree, if  
23 the parties are going to come together and agree that your  
24 fee should be paid, then we should then move to a situation  
25 where we have a mediator in place or a designee in place who

1 will then make sure that if Ms. Curtis needs counsel, she can  
2 get that. That equally would be paid out of the estate.

3           It would not include Curtis because I am not  
4 going to be involved in the litigation of whether or not this  
5 is a good trust or not. I'm going to presume that it's a  
6 good trust, and I am going to go forward from there. If  
7 Curtis proves otherwise, he can get that money from the  
8 lawyers, and that would be certainly to his advantage or  
9 benefit.

10           MS. CURTIS: Are you talking about my brother Carl?

11           THE COURT: Yes. I said Curtis. I meant Carl. I  
12 apologize. You can see I'm struggling here.

13           MS. CURTIS: Too many C's.

14           MR. VIE: For the record, is it 90 days, Your Honor?

15           THE COURT: Yeah. I said we should try to wrap this  
16 up in 90 days, but I believe that if I appoint -- and you can  
17 suggest someone. I don't know if you know someone. Just  
18 give me a couple names. If not, I will designate someone to  
19 do this and enter an order to that effect.

20           It may be that because of the lack of trust  
21 that it may not need to be, unless both of you are  
22 designating somebody that you can agree upon, it may be  
23 better for me to have some person independent of the sides  
24 unless you all can agree upon the person or firm that should  
25 take care of this business.

1 MR. VIE: So we will get together and try to arrive  
2 at an agreed CPA that could provide the accounting the Court  
3 requests.

4 THE COURT: Sure. And we have a lot of them here in  
5 Houston just like we got -- I don't know anybody in  
6 California, but I want somebody I have got some jurisdiction  
7 over.

8 MR. VIEW: So if we're unable to do so we'll notify  
9 the Court we were unable to reach an agreement?

10 THE COURT: Sure. And you need to do that by the  
11 end of the week.

12 MR. VIEW: Yes, Your Honor.

13 THE COURT: You are going to be here what, today?

14 MS. CURTIS: I leave at 4:00 o'clock.

15 THE COURT: 4:00 o'clock today. Well, then you need  
16 to talk fast and see if you all can agree. Maybe you should  
17 talk over lunch. That way you can kind of size each other  
18 up. Eating together sometimes brings out good things.

19 And so, if you will do that by the end of the  
20 week, I will then prepare an order entering a temporary  
21 retraining order against the expenditure of any funds.  
22 Notice will be not just to you but to you in terms of Anita  
23 because I think she holds the purse in this situation. If  
24 there is any money to be paid to anybody up in Utah or  
25 anyplace else, she would be person who would authorize it or

1 do it.

2                   The accountant isn't do it, as I understand it,  
3 right?

4           MR. VIE: No. He is just preparing the necessary  
5 documents.

6           THE COURT: Right. So the purse strings here in  
7 Houston, she can certainly prepare through you whatever  
8 documents are necessary for parties to be paid.

9           MR. VIEW: Yes, Your Honor.

10          THE COURT: And then hopefully that report can get  
11 done in 30 or 40 days, and then we can have a hearing. If  
12 there is some dispute about summary areas of the report, we  
13 can have a hearing about that. If there is a memorandum or  
14 recommendation as relates to how to go forward with this  
15 "asset trust," that is the distribution, we can do that.

16                   If the parties can reach an accommodation as to  
17 how those assets ought to be dealt with, how silent a trust  
18 and they all sign off on it, we can do that. It's just a  
19 matter of how you want to do it. The trust is not going to  
20 control unless you want it to control at this point.

21          MR. VIE: Yes, Your Honor.

22          THE COURT: Under the circumstances, it seems to me  
23 there's going to be a continuous bickering and mistrust.

24                   Anything else?

25          MS. CURTIS: No, Your Honor.

1 MR. VIEW: No, Your Honor.

2 THE COURT: Let me have Ms. Anita Brunsting come  
3 forward.

4 Good morning. Did you drop something on your  
5 foot?

6 MS. BRUNSTING: I broke my foot.

7 THE COURT: Raise your right hand.

8 Do you solemnly swear or affirm that any  
9 testimony you will give in this case will be the truth, the  
10 whole truth, nothing but the truth so help you God?

11 MS. BRUNSTING: I swear.

12 THE COURT: You've heard the discussion here in the  
13 courtroom, have you not?

14 MS. BRUNSTING: (Indicating in the affirmative.)

15 THE COURT: And I know that you have got counsel,  
16 and you can speak with him about the implications and  
17 concerns that the Court has about making sure that the assets  
18 are accounted for. And you certainly can work through him on  
19 any matters that you need to address to the Court. And, of  
20 course, counsel understands that he is to communicate both  
21 with the Court and with Ms. Curtis on any matters that he is  
22 presenting to the Court.

23 Is there any question about anything I have  
24 said -- I don't mean disagreement because you can certainly  
25 disagree with me about anything -- but is there any question



1 that you might have about anything I've said that you need me  
2 to answer, or certainly you have your attorney present.

3 MS. BRUNSTING: I need the trust account to pay.  
4 I've got the forms from the CPA. Can I move forward on that?

5 THE COURT: I think you should probably file a short  
6 motion and simply serve a copy of it on opposing counsel, Ms.  
7 Curtis, and forward it with a short order to me, and that  
8 wouldn't be a problem. This should be based upon the tax  
9 forms.

10 MR. VIE: Yes, sir.

11 And in terms of notice to the Court -- I'm  
12 sorry, not notice to the Court, the Court directing notice,  
13 do I notify the other beneficiaries?

14 THE COURT: Absolutely.

15 MR. VIE: Okay.

16 THE COURT: Even though they're not a party, they  
17 are beneficiaries and we should keep them in the loop.

18 MR. VIEW: I just wanted to bring that up.

19 THE COURT: Yeah. Should be in the loop because it  
20 doesn't make sense for us to have to go back and pull them  
21 forward a month.

22 MR. VIE: I will prepare appropriate submissions for  
23 payments that I would like. If the Court will approve it,  
24 then the trustee will make the payments.

25 THE COURT: Are these to be paid on or before April

1 15th or is there another cycle?

2 MS. BRUNSTING: No, by April 15th.

3 THE COURT: All right. So either they will get to  
4 me on Thursday or whatever, and I'll sign off on them, on the  
5 motion and the order, and that shouldn't be a problem.

6 You are not going to have to liquidate any  
7 assets to deal with that, are you?

8 MS. BRUNSTING: No. We have a checking account with  
9 enough that I can pay it.

10 THE COURT: Right.

11 MS. BRUNSTING: What about any incoming? The farm  
12 is rented, so we get a check twice a year.

13 THE COURT: Your function and role is to make those  
14 deposits as they come in.

15 MS. BRUNSTING: So I can continue to deposit them?

16 THE COURT: Continue depositing. All I am trying to  
17 do is control the outgo. What comes in as an expense is what  
18 counsel needs to see, and they have a proper and appropriate  
19 motion.

20 And if these things come in -- if this is a  
21 once a month kind of sit down and write out the bills kind of  
22 thing, then that's the way he should probably handle it. At  
23 some point just sit down and you prepare a list of things  
24 that you need to have done and certainly provide the forms or  
25 whatever you need.

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MR. VIE: Yes, Your Honor.

MS. BRUNSTING: Okay.

THE COURT: All right. Thank you very much.

All right, counsel. That's all I have. And I'll prepare an order and get it out perhaps by tomorrow afternoon. There should not and in my opinion will not need to be a bond posted. These are parties of equal status as it relates to the assets, so no bond is going to be required.

I think, Ms. Curtis, you need to follow my advice. At some point consider getting an attorney, someone you trust to work with you, all right.

Okay. Thank you very much.

MR. VIE: Thank you, Your Honor.

(Conclusion of Proceedings)

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CERTIFICATION

I, Fred Warner, Official Court Reporter for the United States District Court for the Southern District of Texas, Houston Division, do hereby certify that the foregoing pages 1 through 53 are a true and correct transcript of the proceedings had in the above-styled and numbered cause before the Honorable KENNETH M. HOYT, United States District Judge, on the 9th day of April, 2013.

WITNESS MY OFFICIAL HAND at my office in Houston, Harris County, Texas on this the 5th day of August, A.D., 2013.

\_\_\_\_\_  
Fred Warner, CSR  
Official Court Reporter

MIME-Version: 1.0

Content-Type: multipart/mixed; boundary="-----\_Part\_483675\_1625879494.1443134736376"

On Monday, June 15, 2015 3:40 PM, Candace Curtis <occurtis@sbcglobal.net> wrote:

Anita and Amy have a fiduciary **obligation** to provide **ALL** of the beneficiaries with the same information regarding trust income and expenses, on a regular basis. **IT IS THEIR DUTY TO ACCOUNT**, and to keep us advised of our beneficial interests, yet they have failed to properly do so for more than 4 and a half years.

Judge Butts' September 4, 2014 order states that the trustees:

"- provide all parties with notice of their intent to pay all federal income taxes... within five business days of the receipt of the amount of taxes due along with all documentation received from the accountant of the amount of such taxes and provide all parties with copies of all tax returns to be filed... and all invoices from the accountant related to the preparation of federal and state income tax returns...; and provide all parties with copies of the checks paid within five business days of the date of payment and a copy of all executed documents filed with the checks;"

Your flagrant disrespect of the federal injunction, calling it questionable, and Anita's willful violation of the injunction is contemptible, to say the least.

None of the criteria of Judge Butts' order has been met.

Please provide the backup for the 2014 Decedent's Trust Form 1041. Line 14 - Attorney, accountant, and return preparer fees, in the amount of \$16,831, needs to be supported in more detail, as does the capital gain on line 4.

Please send copies of all bank and brokerage statements for 2014. It is possible these were forwarded earlier to prior counsel, but I don't have them.

The payment to Kroese & Kroese P.C. for the "farm lease" (BRUNSTING005519) was unauthorized and a violation of the injunction.

Amy and Anita's failure to negotiate the EE Bonds before they reached the point where they "may not be reissued or replaced" cannot be excused. The assertion that they did not know about them, when they themselves disclosed their existence in their April 9, 2013 CD, simply won't cut it. On August 13, 2013, in response to their objection to the Report of Master, at item 4, I identify the missing EE Bonds as known assets of the trust that the trustees did not account for. On September 3, 2013, at a hearing on the Report of Master, during Mr. West's testimony, he mentioned his curiosity as to the whereabouts of said bonds. A check with the Treasury Department website revealed how easy it is to have the bonds replaced or reissued when they have been lost, or stolen (as the case may be). One need only submit the documentation as listed on the attached letter I received from the Treasury Department, dated October 8, 2014. I do not possess this documentation, the trustees are supposed to have these instruments.

This failure equates to approximately \$6,500.00 in lost value of the trust assets. Whether it is irresponsible, reckless, careless, negligent, or intentional, is inconsequential in the face of the blatant refusal of the trustees to properly protect and account for these assets. It is not even a little amusing that three years after Anita allegedly became trustee, that she should claim

17-20360.1728

ignorance as to the trusts' ownership interest in those bonds or that after more than 2 years of attempting to get them to account for the bonds it is apparently the plaintiff's fault for not consenting to the trustees' cashing of bonds not even in their possession.

This electronic communication shall stand as a demand for a full, true, and complete accounting, certified as such, in conformance with the Texas Property Code and the common law.

It is also my final informal demand for the fiduciary disclosure, which the trustees full well know is the property of all five beneficiaries, and I do not have to pay them anything to meet their fiduciary obligations. Let's start with the July 1, 2008 appointment that you assert has already been disclosed.

Candace L. Curtis  
218 Landana Street  
American Canyon CA 94503  
925-759-9020  
occurtis@sbcglobal.net

---

Attachments:

10082014 EE Bond Treasury Response Letter to candy.pdf

4.4 MB

# GRIFFIN & MATTHEWS

*Attorneys at Law*  
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## FACSIMILE TRANSMISSION

<b>To:</b>	Bobbie Bayless		713.522.2218		713.522.2224
	Darlene Payne Smith	<b>Fax:</b>	713.658.1921	<b>Phone:</b>	713.752.8640
	Bradley Featherston		281.759.3214		281.759.3213

<b>From:</b>	Neal E. Spielman	<b>Pages:</b>	29 including this cover page	<b>Date:</b>	6/24/2015
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**Re:** Cause No. 412,249-401; *Carl Brunsting, et. al. v. Anita Brunsting, et. al.*; In Probate Court No. Four (4) of Harris County, Texas

### PLEASE DELIVER AS SOON AS POSSIBLE

- Amy Brunsting's Objections, Answers and Responses to Candace Louise Curtis' Written Interrogatories and Request for Production (with Verification)

**THIS FACSIMILE TRANSMISSION (AND/OR THE DOCUMENTS ACCOMPANYING IT) IS LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION WHICH IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE AND MAY CONTAIN INFORMATION BELONGING TO THE SENDER WHICH IS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE. If the reader of this message is not the intended recipient, you are hereby notified that any use, dissemination, distribution or reproduction of this message is strictly prohibited. If you have received this message in error, please immediately notify the sender by telephone.**

**GRIFFIN & MATTHEWS**  
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June 24, 2015

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NEAL E. SPIELMAN  
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Ms. Candace Louise Curtis  
218 Landana Street  
American Canyon, California 94503

**Via C.M.R.R.R.**  
**7014 0150 0001 5384 0078**

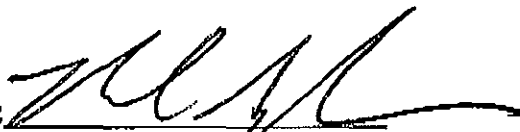
RE: Cause No. 412,249-401; *Carl Brunsting, et. al. v. Anita Brunsting, et. al.*; In  
Probate Court No. Four (4) of Harris County, Texas

Dear Ms. Curtis:

In accordance with the Texas Rules of Civil Procedure, enclosed please find my client's  
Objections, Answers and Responses to the written interrogatories and requests for production  
recently issued. My client's verification is also enclosed.

Very truly yours,

Griffin & Matthews

By:   
Neal E. Spielman

NES:mf

Enclosures

cc: Ms. Bobbie G. Bayless  
Bayless & Stokes  
*Via Facsimile: 713.522.2218*

Ms. Darlene Payne Smith  
Crain, Caton & James  
*Via Facsimile: 713.425.7945*

Mr. Bradley E. Featherston  
The Mendel Law Firm, L.P.  
*Via Facsimile: 281.759.3214*



NO. 412,249-401

CARL HENRY BRUNSTING, et. al.	§	IN PROBATE COURT
v.	§	NUMBER FOUR (4) OF
ANITA KAY BRUNSTING, et. al.	§	HARRIS COUNTY, TEXAS


**AMY RUTH BRUNSTING'S  
OBJECTIONS, ANSWERS AND RESPONSES TO CANDACE LOUISE CURTIS'S  
WRITTEN INTERROGATORIES AND REQUESTS FOR PRODUCTION**

*TO: Candace Louise Curtis, Pro Se, – 218 Landana Street, American Canyon, California  
94503*

Amy Ruth Brunsting, serves these Objections, Answers and Responses to Candace Louise Curtis' Written Interrogatories and Request for Production in accordance with the Texas Rules of Civil Procedure.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: 

NEAL E. SPIELMAN  
Texas State Bar No. 00794678  
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Houston, Texas 77079  
281.870.1124 - Phone  
281.870.1647 - Facsimile

*ATTORNEYS FOR DEFENDANT,  
AMY RUTH BRUNSTING*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 24<sup>th</sup> day of June 2015, to the following in the manner set forth below:

**Candace Louise Curtis -- Pro Se:**

Candace Louise Curtis  
218 Landana Street  
American Canyon, California 94503  
***Via C.M.R.R.R. 7014 0150 0001 5384 0078***

**Attorneys for Carl Henry Brunsting:**

Bobbie G. Bayless  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098  
***Via Facsimile: 713.522.2218***

**Attorneys for Carole Ann Brunsting:**

Darlene Payne Smith  
Alec B. Covey  
Crain, Caton & James  
Five Houston Center  
1401 McKinney, 17<sup>TH</sup> Floor  
Houston, Texas 77010  
***Via Facsimile: 713.425.7945***

**Attorneys for Anita Kay Brunsting:**

Bradley E. Featherston  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, Texas 77079  
***Via Facsimile: 281.759.3214***

  
NEAL E. SPIELMAN

**OBJECTIONS, ANSWERS & RESPONSES**

Amy Brunsting ("Amy" or "Respondent") objects to the interrogatories and requests for production issued by Candace Louise Curtis ("Candace") to the extent they are, by Candace's own admission, first made pursuant to "fiduciary obligations" allegedly owed to her. If, via the trust documents, Candace actually has the right to inquire into the topics covered in her interrogatories and requests for production, then that right is subject to other provisions in the trust documents requiring her to pay costs associated with responding, which she has not done. As a result, Amy's purported obligation to address these issues with Candace has not yet been triggered, and will not trigger until, at least, all necessary costs have been paid.

To the extent Candace's interrogatories and requests for production are issued pursuant to the Texas Rules of Civil Procedure, Amy's objections, answers and responses are as follows:

**Interrogatory No. 1 (Really, Interrogatories 1-4)**

- (a) Regarding the Affidavit in Support of Removal of Lis Pendens, Sworn to and signed by you on March 6, 2012, at Item 5 you state:

*"As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston."*

**With respect to this statement:**

- i. **Has a Personal Asset Trust been set up for?**

1. **Candace Louise Curtis**
2. **Carole Ann Brunsting**
3. **Carl Henry Brunsting**
4. **Amy Ruth Brunsting**
5. **Anita Kay Brunsting**

**If the answer to any of 1 - 5 is yes, please state when and how each personal asset trust was "set up", how and from what assets each was funded. Please explain also the dispositive provisions for the personal asset trusts and the instruments from which each article was derived. Please also explain what administrative provisions were used to "set up" the personal asset trusts and identify the instrument(s) from which those provisions were derived.**

**If the answer to any of 1 - 5 is no, please explain the process for the creation of the personal asset trust(s) and itemize, with a particularity, the causes for your failure to establish said trust(s).**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The Personal Asset Trusts have not been established. This is a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. If, as and when formed, they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees.

(b) At item 10 you state:

*"The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the Lis Pendens so the sale can be consummated, for the benefit of all of the heirs".*

**The house sold more than 3 years ago, what benefit has any heir received from the sale of the house?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is vague, confusing, premature, misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The proceeds from the sale of the house have been deposited in an interest-bearing account where they will remain pending resolution of the various legal proceedings initiated by Carl and Candace

(c) At item 3 in your Affidavit in Support of Removal of Lis Pendens, dated March 6, 2012, you state:

*"The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance."*

With respect to this statement:

**Our father died April 1, 2009. At the time of his death the named successor co-trustees, as per the 2007 Amendment, were Carl and Candace. "Our parents" removed your name as successor co-trustee with the 2007 Amendment, and my name remained as a successor co-trustee with Carl. What instruments created between the 2007 Amendment and our father's death indicate: "our parents did not feel she was competent to handle her own inheritance"?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

All of them. Taken in their totality, the documents evidence our parents changing attitudes and confidence in Candace and Carl's respective abilities to properly care for themselves, manage money, make reasonable decisions, avoid negative influences in the form of spouses and/or significant others, etc.

**Interrogatory No. 2 (Really, Interrogatories 5-8)**

In your Verified Answer to Plaintiff Carl Brunsting's Petition for Declaratory Judgment, for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, filed May 13, 2013, you state:

*"AMY RUTH BRUNSTING F/F/A AMY RUTH TSCHIRHART is not liable as Trustee of the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Brunsting Asset Trust because such trusts have not been created and therefore do not contain any trust property."*

Section 3(A)(A) at page 5 of the August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment" states:

*A. Establishment of the Personal Asset Trust:*

*A Personal Asset Trust shall be created for a beneficiary of the Trust when, under any other provision of this Trust Agreement, a distribution of the Trust Estate specified to be made to said beneficiary's Personal Asset Trust first occurs.*

Pursuant to Article X Section "A" of the family trust, distributions were specified to be made to the five personal asset trusts at the death of the Surviving Founder.

*Section A. Our Beneficiaries*

*Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:*

That event occurred on November 11, 2011.

- (a) **What clause in what trust instrument allows the trustees to ignore the dispositive provisions of Article X (compelling establishment of personal asset trusts) and to continue acting as trustees for the Survivor's and Decedent's trusts well beyond the period of time necessary to settle those trusts?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Further, it is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

- (b) **Did the trustees ever have any intention of funding individual asset trusts? If yes, when, for whom, in what proportions, and based upon what criteria?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. Further, it seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Upon becoming co-trustee, my intent was to follow my mother's wishes as expressed in the documents drafted for her by her attorneys, at her request. Subsequently, the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl have prejudiced my ability to do so.

- (c) Did the trustees ever intend to render full, true, and complete accounts? If yes, why have proper accounts not been rendered?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. Further, it seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons. Additionally, it is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Upon becoming co-trustee, my intent was to follow my mother's wishes as expressed in the documents drafted for her by her attorneys, at her request. Subsequently, the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl have prejudiced my ability to do so.

- (d) Which of the ten purposes for establishing personal asset trusts, expressed in the August 25, 2010 "Qualified beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", were considered in the decision not to express and fund personal asset trusts?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The document speaks for itself relative to the Trustor's intent. This notwithstanding, the Personal Asset Trusts have not been established as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. If, as and

when formed, they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees.

**Interrogatory No. 3 (Really, Interrogatories 9-10)**

You communicated with Frost Bank by email on January 24, 2012 "about the management of the trust accounts for my brother Carl and my sister Candy". Your email states "A copy of the trust is attached". The only attachment was the August 25, 2010 "Qualified beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement".

- (a) **Is it your opinion that the 8/25/2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" constitutes the complete trust agreement from which the personal asset trusts are to be created?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. It is confusing, misleading and capable of causing jury confusion. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

- (b) **What was the reason why Frost Bank declined the management of the trust accounts for Carl and Candy?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. It is vague, confusing, misleading and capable of causing jury confusion. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

My understanding is that Frost Bank declined as a result of real property being located outside the State of Texas. Whether there were other or different reasons, I cannot say.

**Interrogatory No.4 (Really, Interrogatories 11-15)**

In 2011, you, Ann, and Jack each received distributions in the form of Exxon and Chevron securities.

- (a) **Were you involved in the decision to distribute those assets? If yes, what trust distribution standard was utilized and what facts were considered in relation to those standards as that criteria relates to each of the five Brunsting beneficiaries?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.



Subject to the foregoing and without waving the foregoing objections, Respondent states:

The Exxon and Chevron securities were received while my mother was still alive. They were presented as gifts. I was not involved in mother's decision.

**(b) Were you aware that those distributions were not equal?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Yes, I was aware that the gift I received was not the same amount as the gifts received by Ann and Jack. However, to my knowledge, the amounts received by Ann and Jack were equal in amount to similar gifts received by mother's other grandchildren

**(c) Were you aware that Carl received no stock or other assets of any kind at that time?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I do not believe this is a true statement. I believe, at or around this time, Carl was receiving monies from mother directly and/or via mother's payment of bills, invoices or other expenses.

**(d) Were you involved in the decision making process in labeling those distributions as gifts?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I do not believe that any monies, securities, etc. given out by mother while she was alive were distributions; but, no, I was not involved in any "decision" of this sort.

**(e) Was any specific trust property directed to be distributed by the 8/25/2010 exercise of the Article III Qualified Beneficiary Designation? If yes; what was the specific property, to who**



**was the specific property directed to be distributed, when, in what proportions and according to what criteria?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I was not a co-trustee until after mother died in November 2011, so I was not involved in anything that occurred up until that time, and Candace's lawsuit began approximately 3 months later. As to specific trust property and its distribution, the documents speak for themselves.

**Interrogatory No. 5 (Really, Interrogatories 16-26)**

As co-trustee, regarding the exercise of "Sole and Absolute Discretion" in recent opposition to a distribution to Candace Curtis:

**(a) What are, and how did the trustees interpret, the particular distribution standards contained in "the trust"?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

**(b) What is the trustee's process for making discretionary distribution decisions?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or

obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

- (c) **What does the trustee require when asked to consider other resources and establish the beneficiary's standard of living?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

- (d) **Does the trust require a beneficiary to waive their right of privacy as a condition of receiving a beneficial interest? If so, identify the controlling provisions and the instrument(s) that contain those provisions.**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

**(e) Does the trustee work with distribution advisors? If so, who and when? If not, why not?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

My ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

**(f) What types of distributions would the trustees like a beneficiary to receive?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to distribution standards stated therein.

**(g) For what purposes can the beneficiary request a distribution from the trust?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to distribution standards stated therein.

**(h) When would the trustees like distributions to be made and in what priority?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious,

consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to distribution standards stated therein. Further, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. Resolution of these lawsuits could serve as a means by which it might be determined "when" (and to whom) distributions may be made.

**(i) What circumstances should or should not exist prior to a distribution from "the trust"?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to distribution standards stated therein. Further, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. Resolution of these lawsuits could serve as a means by which it might be determined "when" (and to whom) distributions may be made.

**(j) Who should be involved in the decision making process?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to distribution standards stated therein.

**(k) What factors does the decision-maker measure in determining the beneficiary's need for a distribution?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious,

consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to distribution standards stated therein.

Respondent invokes all rights and remedies associated with instances of offensive discovery abuse, including without limitation, a request for a protective order. This request is occasioned, in part, by Candace Louise Curtis' abuse of the Texas Rules of Civil Procedure and her violation of "discrete sub-part" standards and restrictions. Candace Louise Curtis has issued more interrogatories than she is permitted to issue under the Rules. Until her interrogatories are re-drafted to remedy the violation, or pending further instructions from the Court, additional objections to the remaining interrogatories are reserved, as are additional factual answers.

**(l) What facts were relied upon in your determination to oppose distributions to Candace?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 6 (Really, Interrogatories 27-29)**

On March 8, 2011, Anita sent an email to you, Candy, and Carole in which she said:

*"I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care."*

**(a) Did you meet with Candace Freed to discuss any trust business prior to the death of Nelva Brunsting? If yes, provide the dates and explain the purposes for each of those meetings.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) How much were you involved with Anita's efforts to convince Nelva to alter the terms of the trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(c) How much was Carole involved with Anita's efforts to convince Nelva to alter the terms of the trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No.7 (Really, Interrogatories 30-31)**

Instruments are alleged to have been signed by Nelva Brunsting on August 25, 2010.

**(a) Were you involved in discussions involving the creation or signing of the August 25, 2010 trust amendment instrument(s)? If yes, explain the circumstances leading up to the creation of the instrument.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 8 (Really, Interrogatories 32-33)**

Instruments are alleged to have been signed by Nelva Brunsting on December 21, 2010.

**(a) Were you involved in the preparatory discussions? If yes, please explain the circumstances leading up to the creation of the December 21, 2010 instruments.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 9 (Really, Interrogatories 34-37)**

Pursuant to the Provisions of the 2005 Restatement, Administration of the Decedent's trust in Article IX:

**(a) Did Nelva have the authority to remove the trustees of the Decedent's Trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) Did the exercise of the Qualified Beneficiary Designation and Testamentary Power of Appointment, dated 8/25/2010, appoint specific property to any specified beneficiary or beneficiaries?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(c) Did the Limited Testamentary Power of Appointment, dated 8/25/2010, direct distributions of principal of the Decedent's Trust in a manner that discharged the surviving Founder's legal obligations to any beneficiary of the Decedent's Trust? If yes, please explain with a specificity as it affects each of the five Brunsting heirs/beneficiaries.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(d) If Nelva discharged her legal obligations to a beneficiary of the Decedent's Trust, what beneficiary(s) and to what extent did Nelva discharge her legal obligations to those beneficiaries?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 10 (Really, Interrogatories 38-41)**

Please refer to George Vie's July 15, 2013 letter to the Special Master and Attachment 1 to these interrogatories when considering the following questions. Note that Attachment 1 is a summary of your Schedule F, plus distributions to beneficiaries from the Edward Jones account during the 10-year period covered by the schedule, also including the \$100,000.00 distribution Anita received in 2005 to pay off her house.

Your letter states that:

*"Numerous gifts were given to the older Brunsting children (Carl, Candace and Carole); Candace's sons, Kevan Curtis and Andy Curtis (currently in their mid-30s); and Carl's*



*daughter, Marta Brunsting Huntsman (prior to Mr. Brunsting's death) to assist with their college, business and/or wedding expenses."*

Attachment 1 demonstrates that during the 10-year period of the schedule, approximately 46% of the distributions went to Candy, Carole, Carl, Kevan and Andy, with the balance of approximately 54% going to you, Anita and your respective children. Nothing was noted to have been received by Marta during the 10-year period.

- (a) **Please state with specificity the dates and amounts of all gifts given to the older beneficiaries and the source of the information in support of these alleged transactions, as claimed by you in your July 15, 2013 letter of intended influence addressed to the Special Master.**

**Answer:**

**Objection.** Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

- (b) **Our Dad died April 1, 2009. The only noted transactions labeled as gifts to Kevan and Andy Curtis are dated October 2, 2009. Please state with specificity the dates and amounts of all other alleged gifts given to Kevan, Andy, or Marta between 2001 and April 1, 2009, the source of the information in support of these transactions, and the reason why these transactions were not listed on any schedules. If none say none.**

**Answer:**

**Objection.** Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

In general the July 15, 2013 letter to the Master attempts to provide explanation for the accelerated dissipation of trust assets while our Mother was still alive. These take-my-word-for it assertions have not been supported by Generally Accepted Accounting Principles (GAAP) in any disclosures. The recap of distributions, or gifts if you want to call them that, reflected on Attachment 1, clearly shows an inequity.

- (c) **Were you involved in the decision making process for any of those distributions? If yes, explain.**

**Answer:**

**Objection.** Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

- (d) **In your July 15, 2013 letter to the Master you claim "Defendants are individuals, not financial professionals." Did you hire financial professionals to assist you in meeting the obligations commensurate with your fiduciary duties? If yes, who, when, and what did they do? If not, why not?**

**Answer:**

**Objection.** Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.



**Interrogatory No. 11 (Really, Interrogatories 42-56)**

Regarding the August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement"

- (a) **What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article III power?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

- (b) **What changes to the administrative provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article III power?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

- (c) **What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article III power?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

- (d) **What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article III power?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

- (e) **What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

- (f) **What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(g) What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(h) What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(i) What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(j) What changes to the administrative provisions of the Survivor's Trust (Article VIII) were affected by the 8/25/2010 exercise of the Article VIII LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(k) What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(l) Has the Brunsting Family Trust ever been amended or revoked by a court of competent jurisdiction?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(m) **Has the Elmer H. Brunsting Irrevocable Decedent's trust ever been amended or revoked by a court of competent jurisdiction?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(n) **Was any specific trust property directed to be distributed by the 8/25/2010 exercise of the Article VIII Limited Testamentary Power of Appointment? If yes, what was the specific property; to who was the specific property directed to be distributed; when, in what proportions; and, according to what criteria?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(o) **What specific trust property was directed to be distributed by the 8/25/2010 exercise of the Article IX limited testamentary power? According to what standard was it to be distributed, when, how and to whom was it to be distributed?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 12 (Really, Interrogatories 57-65)**

With respect to the August 25, 2010 QBD "Section B. Trustor's Intent in Establishing Personal Asset Trusts,"

**Intention 1. To protect and conserve trust principal**

EE Bonds have long been known to exist, yet have never been included in the list of assets of the trust, or accounted for by the trustees. This was brought to your attention at the hearing in connection with the Report of Master in July 2013. Anita received a letter from the Treasury dated December 4, 2014, referring to "your recent transaction and/or inquiry", which says the search "identified the unredeemed bonds described on the enclosed list". It goes on to state "The Department of the Treasury requires the properly completed forms be submitted in order to process the claims." A check with the Treasury Department gave a total value of the bonds as approximately \$6,452.64. A statement at the end of the Bond List received as an attachment to the correspondence says: **"\*If there are any bonds marked with an asterisk, they are within one month of their final maturity and may not be reissued or replaced."** All bonds on the list are marked with an asterisk.

(a) **Why was your inquiry made more than one year after you were noticed of the existence of those EE Bonds?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) What claim(s), if any, were requested to be processed?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(c) Were the properly completed forms subsequently submitted? If no, why not? If yes, what were the results and why have the transaction records not been disclosed to Plaintiff(s)?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary

The Decedent's Trust has received farm income every year, which has not been distributed since 2012. Consequently the decedent's trust owed hefty income taxes each year.

**(a) Why have those taxes not been reduced by distributions of farm income to personal asset trusts for the five beneficiaries? What advice have you obtained or been given regarding income taxes paid by the trusts, if any?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 3. To benefit and provide for the financial needs of the beneficiary and his or her descendants;

**(a) In what way have you respected this intention?**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Answer:**

Intention 5 To invest in non-consumables, such as a principal residence, in order to provide the beneficiary with the liberal use and enjoyment of such property, without charge, rather than make a distribution of trust assets to the beneficiary or purchase them in the name of the beneficiary. It is the Trustor's desire in this regard that the beneficiary, to the extent possible, use his or her own resources to pay for living expenses and consumables in order to reduce the size of such beneficiary's estate subject to estate taxes and claims of third parties;

**(a) In what way have you considered the needs and resources of beneficiary Candace Curtis in your distribution considerations?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) What facts did you rely upon in evaluating the needs and personal resources of beneficiary Candace Curtis in your distribution considerations?**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 6. To invest in reasonable business ventures, including business start-ups, where the beneficiary is a principal or otherwise involved in such ventures or start-ups;

**(a) What inquiry did you make in effort to determine the existence of business ventures or start-ups that beneficiary Candace Curtis may be involved in as a part of your distribution considerations?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) In your determination not to fund individual asset trusts what facts were considered in relation to any of the remaining expressed intentions for such actions?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 13 (Really, Interrogatories 66-69)**

The Bates stamped documents included in Plaintiffs document production P6-P155, "My Trustee Manual". Chapter 2, P19-P22 is titled "BEFORE GETTING STARTED: A FEW IMPORTANT "DO'S AND DON'TS".

Please review pages 2-1 through 2-4 of My Trustee Handbook and answer the following questions with specificity:

**(a) Which of the eight "Do's" have you done?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) Which of the eight "Do's" have you not done?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(c) Which of the nine "Do Not's" have you done?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(d) Which of the nine "Do Not's" have you not done?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 14 (Really, Interrogatories 70-75)**

In establishing Personal Asset Trusts for the beneficiaries

**(a) Describe the steps you have taken to honor the provisions at Page 6 Item C of the August 25, 2010 QBD regarding PERSONAL ASSET TRUST PROVISIONS, as those provisions relate to the personal asset trusts for each of the five Brunsting beneficiaries?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) What dispositive and administrative provisions flow to the personal asset trusts from the Decedent's Trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(c) What dispositive and administrative provisions flow to the personal asset trusts from the Survivor's Trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(d) When the dispositive provisions of the Decedent's Trust and those of the amended Survivor's Trusts are in direct conflict, what provisions of which instrument are controlling? Why?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(e) When the administrative provisions of the Decedent's Trust and those of the Survivor's Trusts are in direct conflict, what provisions of which instrument are controlling? Why?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(f) Describe the steps you have taken to honor the provisions of Article X, Section B (l)(a)(i) of the Brunsting Family Trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 15 (Really, Interrogatories 76-77)**

**Accounts and Accounting**

**(a) How can you create personal asset trusts and fulfill the purposes of the trust without a full, true, and complete statutory accounting?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) When and how did the acting trustees inform the beneficiaries regarding their beneficial interests?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

## OBJECTIONS AND RESPONSES

### Request for Production No. 1

Schedule F - Purports to be a partial gifting reconciliation from Elmer and Nelva Brunsting from 2001, as developed from checking transactions. Please provide any bank statements beginning January 1, 2001 through the present that have not already been provided.

#### Response:

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

### Request for Production No. 2

Please provide any Edward Jones statements beginning January 1, 2001 through the present that have not already been provided.

#### Response:

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

### Request for Production No. 3

Please provide a true and correct copy of the "Appointment of Successor Trustees" dated July 1, 2008 referenced in such instruments as the Certificates of Trust bearing Bates Stamps P6783, V&F 000004; P6784, V&F 000005 and P6785, V &F 000006.

#### Response:



Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

**Request for Production No. 4**

Please provide a true and correct copy of the "Agreement" signed by Nelva Brunsting establishing the rate of trustee compensation claimed in the April 2012 spreadsheets and July 2013 Master's report. Please also include a copy of any letters of notice of change in trustee compensation, along with proofs of certified mailing to beneficiaries, as required by the Texas property statutes.

**Response:**

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

**Request for Production No. 5**

Please provide any and all parole evidence indicating Nelva's knowledge of and direct participation in discussions related to "changes to the trust" specifically in regard to the instruments dated August 25, 2010, and those dated December 21, 2010.

**Response:**

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request. Further, it seeks information, which – if it exists – is in the hands of third parties over whom Respondent has no control.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

**Request for Production No. 6**

Please provide copies of all supporting documentation upon which 2014 taxes were calculated and paid in regard to any Brunsting related trust(s).

**Response:**

Materials responsive to this Request have previously been provided by Anita Brunsting directly and/or through counsel. Additional responsive materials are in the process of being accumulated and will likewise be provided by Anita Brunsting directly and/or through counsel.

VERIFICATION

STATE OF TEXAS

COUNTY OF Comal

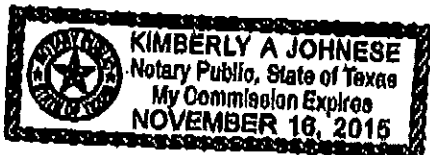
Before me, the undersigned notary, on this day personally appeared AMY RUTH BRUNSTING, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

My name is Amy Ruth Brunsting, and I am over 18 years of age, of sound mind and capable of making this verification. I have read answers to the interrogatories issued to me by Candace Louise Curtis. Unless otherwise noted in the content of the answers, the facts stated are within my personal knowledge and are true and correct.

*Amy Brunsting*

Printed Name: Amy Brunsting  
Date: 6-19-15

Sworn to and subscribed before me by Amy Brunsting on the 19 day of June, 2015.



*Kimberly A. Johnese*  
Notary Public in and for the State of Texas

**Subject:** Fw: Mediation Preparation  
**From:** Candace Curtis <occurtis@sbcglobal.net>  
**Date:** 6/17/2016 11:27 AM  
**To:** Rik Munson <blowintough@att.net>

On Wednesday, March 30, 2016 8:01 PM, Candace Curtis <occurtis@sbcglobal.net> wrote:

Dear Anita and Amy,

I find it hard to imagine what we will be mediating without information about the assets.

I have attached an Excel spreadsheet created using the information in the supplemental production dated June 25, 2015 (bates 5671-5813). Once you receive the March 2016 bank and brokerage statements it should be simple enough for you to fill in the blanks (highlighted in blue) and return it.

The Report of Master reflects \$96,740.01 in farm rental income from October 5, 2012 through March 5, 2013. Please fill in the farm rental income detail from March 6, 2013 through March 30, 2016 on the spreadsheet.

I am particularly concerned about four (4) accounts which had dividend income in 2014, yet I have been unable to find any statements for these accounts.

The Master's Report lists dividend income for Chevron account 9415:

9/9/11	\$465.04
12/9/11	487.02
3/9/12	490.82
6/11/12	549.72
9/10/12	554.60
12/10/12	4.36

It appears that the bulk of the account was liquidated between September 10 and December 10, 2012. 2014 TOTAL dividends were \$21.53.

Where did that money go??????? Please provide ALL of the account statements for this account.

The remaining three 1099s for which there is no backup (that I can find) in the records are:

Chevron 9407  
Chevron 7657  
MetLife 6968

I did find that on 12/12/14 Metlife put \$33.25 in B of A account 3523. What exactly is that for? If it is an annuity, what are the terms?

Please provide the March 2016 statements for the two Chevron accounts (9407 and 7657).

17-20360.1759

Please be sure to include everyone in this email when you return the requested data. I think you will have all of the current statements by the middle of April, so I expect the information by April 15, 2016. You should request the older statements from the custodians right away if you don't have them, as it might take awhile.

We are all entitled to the information I am asking for and I see no point in picking a mediation date before we know if there will be anything to discuss.

Sincerely,

Candy

Candace L. Curtis  
218 Landana Street  
American Canyon, CA 94503  
925-759-9020  
occurtis@sbcglobal.net

— Attachments: —

---

2016-06-25 disclosure recap.xlsx

11.4 KB

17-20360.1760

**Candace Louise Curtis**  
218 Landana Street  
American Canyon CA 94503  
925-759-9020  
occurtis@sbcglobal.net

April 16, 2016

To Anita Brunsting and Amy Brunsting and their Counsel of Record:

Please take note that Candace Louise Curtis v Anita Brunsting and Amy Brunsting, et al. (Curtis v Brunsting) is a distinctly separate suit from the claims filed by Carl Brunsting, whether individually or on behalf of the estate of Nelva Brunsting.

Curtis v Brunsting began in the federal Court 11 months before the estate's claims were filed in the Harris County District Court January 29, 2013, and 14 months prior to the claims filed in the Harris County Probate Court April 9, 2013.

Curtis v Brunsting came to the Harris County Probate Court under a remand order obtained by defendants as part of a stipulated agreement. The remand order is on file with the Probate Court accepted without qualification or reservation. The order in pertinent part reads:

*It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.*

*SIGNED on this 15th day of May, 2014.*

Defendants and their Counsel are advised that they are in violation of the federal injunction and orders issued April 9, 2013 by The Honorable Judge Kenneth Hoyt, United States District Court Judge for the Southern District of Texas, and in violation of other specific orders issued by Judge Hoyt in the course of the federal litigation as reflected in the transcripts of the federal hearings on file with the Probate Court.

The "federal and state rules impose a duty of candor, good faith and fair dealing on attorneys representing clients in the courts and in the matter at issue this notice is required by Fed. R. Civ. P. 11(b).

Counsel is further advised that violation of a federal injunction is a very serious matter and may be treated as a mere civil contempt, but may also result in criminal sanctions under Title 18 of the United States Code, depending upon the severity of the violations.

The violations I am looking at are extremely serious and involve continued refusal to act and continued misapplications of valuable consideration in direct violation of a federal injunction not to mention the law of the Brunsting trust(s).

Counsel and their clients have willfully violated federal Court orders, including but not limited to an order for disclosures of information to Plaintiffs and all the other beneficiaries. The Court also entered an order that paying Defendants' attorney's fees is not a liability of the trust

and that attorneys can only be paid from the trust by the mutual agreement of all the beneficiaries. My consent has neither been requested, nor has it been given, nor have I received complete disclosures of the information ordered by the federal Court.

Counsel and their clients are also reminded that the remand from the federal to the state court was the product of a multi-faceted arrangement in which Defendants and their counsel agreed to honor the federal court injunction and the orders entered as if there had been no remand.

Plaintiff Curtis respectfully requests that counsel advise as to how it would remedy its multitude of ethical violations within 21 days, as provided by Rule 11(b). The rest of this message is contained in those rules.

Please see attached Rule 11(b) Motion for Sanctions with Points and Authorities.

Sincerely,

Candace L. Curtis

Southern District of Texas, Texas  
515 RUSK ST HOUSTON TX 77002

CASE #: 4:16-CV-01969

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON

Plaintiff

vs

CANDACE KUNZ-FREED; ALBERT VACEK JR; BERNARD LYLE MATHEWS III; NEAL SPIELMAN;  
BRADLEY FEATHERSTON; STEPHEN A MENDEL; DARLENE PAYNE SMITH; JASON OSTROM; GREGORY  
LESTER; ET AL

Defendant

AFFIDAVIT OF SERVICE

I, KIMBERLY BARTHOLOMEW, make statement to the fact;  
That I am a competent person more than 18 years of age or older and not a party to  
this action, nor interested in outcome of the suit. That I received the documents stated  
below on 08/25/16 10:43 am, instructing for same to be delivered upon Brusting, Amy Ruth.

That I delivered to : Brusting, Amy Ruth.

the following : SUMMONS; VERIFIED COMPLAINT FOR DAMAGES; COURT PROCEDURES  
AND PRACTICES; CERTIFICATION OF SERVICE IN REMOVED ACTION; ORDER  
FOR CONFERENCE AND DISCLOSURE; NOTICE OF LAWSUIT (16)

at this address : 2582 County Ledge  
NEW BRAUNFELS, Comal County, TX 78132

Manner of Delivery : by PERSONALLY delivering the document(s) to the person  
above.

Delivered on : August 30, 2016 7:52 am

My name is KIMBERLY BARTHOLOMEW, my date of birth is December 27th, 1978, and my  
address is 103 Vista View Trl #103, Spicewood, TX 78669 and U.S.A. I declare under  
penalty of perjury that the foregoing is true and correct.  
Executed in CALDWELL County, State of Texas, on the 31st day of

August, 2016.



KIMBERLY BARTHOLOMEW Declarant  
2113

Texas Certification#: SCH-10964 Exp. 06/30/17

Private Process Server  
Professional Civil Process Of Texas, Inc  
103 Vista View Trail Spicewood TX 78669  
(512) 477-3500

PCP Inv#: A16803289  
Reference : 4:16-CV-01969

Service Fee: 70.00  
Less Fee: .00  
Page Fee: .00

Curtis, Candace L

RETURN TO CLIENT



AX02A16803289



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

ORIGINAL

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Amy Ruth Brunsting
2582 Country Ledge
New Braunfels, TX 78132

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT DAVID J. BRADLEY

Date: AUG 17 2016

Handwritten signature of David J. Bradley
Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:16-cv-01969

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Amy Ruth Brunsting  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States District Court  
Southern District of Texas  
**FILED**  
SEP 12 2016  
David J. Bradley, Clerk of Court

CANDACE LOUISE CURTIS &  
RIK WAYNE MUNSON

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VS.

CIVIL ACTION NO. 4:16-cv-01969  
(Alfred H. Bennett)

CANDACE KUNZ-FREED,  
ALBERT VACEK, JR., ET AL

**Defendant Anita Brunsting's Motion for Access to Electronic Filing**

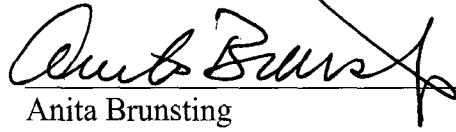
TO THE HONORABLE JUDGE OF SAID COURT:

I, Anita Brunsting, am a Pro Se defendant in the above-styled case. I am aware that non-attorneys are not approved for accounts in the Court's electronic filing system. I request that the Court waive this requirement and approve my use of a PACER account to enable me to electronically file documents in this case. I hereby affirm that:

1. I have reviewed the requirements for e-filing and agree to abide by them.
2. I understand that once I register for e-filing, I will receive notices and documents only by email in this case and not by regular mail.
3. I have regular access to the technical requirements necessary to e-file successfully:
  - a. A computer with internet access.
  - b. An email account on a daily basis to receive notifications from the Court and notices from the e-filing system.
  - c. A scanner to convert documents that are only in paper format into electronic files.
  - d. A printer or copier to create documents.
  - e. A word-processing program to create documents.

- f. A pdf reader and a pdf writer to convert word processing documents into pdf format, the only electronic format in which documents can be e-filed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anita Brunsting", written over a horizontal line.

Anita Brunsting  
203 Bloomingdale Circle  
Victoria, Texas 77904  
Pro Se Defendant



8. Bradley Featherston  
Featherston Tran PLLC  
20333 State Highway 249, Suite 200  
Houston, Texas 77070  
Defendant
9. Stephen A. Mendel  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, Texas 77079  
281-759-3213  
Defendant
10. Darlene Payne Smith  
Crain, Caton & James  
Five Houston Center, 17<sup>th</sup> Floor  
1401 McKinney, Suite 1700  
Houston, Texas 77010  
Defendant
11. Jason B. Ostrom  
Ostrom Morris, P.L.L.C  
6363 Woodway, Suite 300  
Houston, Texas 77056  
713-863-8891  
Defendant
12. Gregory Lester  
955 N. Dairy Ashford, Suite 220  
Houston, Texas 777079  
Defendant
13. Jill Willard Young  
MacIntyre, McCulloch, Stanfield  
and Young, L.L.P.  
2900 Wesleyan, Suite 150  
Houston, Texas 77027  
Defendant
14. Bobbie Bayless  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098  
Defendant
15. Christine Riddle Butts  
Harris County Civil Courthouse  
201 Caroline, 7<sup>TH</sup> floor  
Houston, Texas 77002  
Defendant

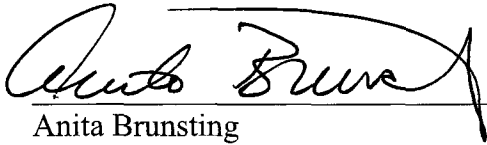
16. Clarinda Comstock  
Harris County Civil Courthouse  
201 Caroline, 7<sup>TH</sup> floor  
Houston, Texas 77002

Defendant

17. Toni Biamonte  
Office of the Court Reporter  
Harris County Civil Courthouse  
201 Caroline, 7<sup>TH</sup> floor  
Houston, Texas 77002

Defendant

on this 9<sup>TH</sup> day of September 2016.



Anita Brunsting

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS &  
RIK WAYNE MUNSON

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VS.

CIVIL ACTION NO. 4:16-cv-01969  
(Alfred H. Bennett)

CANDACE KUNZ-FREED,  
ALBERT VACEK, JR., ET AL

**Order Garnating Defendant Anita Brunsting's  
Motion for Access to Electronic Filing**

The Court considered defendant Anita Brunsting's Motion for Access to Electronic Filing.

Finding that good cause exists, the motion is GRANTED.

IT IS SO ORDERED.

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
United States District Judge



United States District Court  
Southern District of Texas  
FILED

SEP 12 2016

David J. Bradley, Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS &  
RIK WAYNE MUNSON

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VS.

CIVIL ACTION NO. 4:16-cv-01969  
(Alfred H. Bennett)

CANDACE KUNZ-FREED,  
ALBERT VACEK, JR., ET AL

**Defendant Anita Brunsting's**  
**Certificate of Interested Parties**

Defendant, Anita Brunsting, files this certificate of interested parties pursuant to the Court's July 6, 2016 Order, ¶ 2 [Dkt. No. 3]. Persons or entities with an interest in the outcome of this case are as follows:

1. Plaintiffs:

- A. Candace Louise Curtis
- B. Rik Munson

2. Defendants:

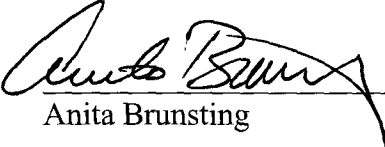
- A. Candace Kunz-Freed
- B. Albert Vacek, Jr.
- C. Bernard Lyle Matthews
- D. Anita Brunsting
- E. Amy Brunsting
- F. Neal Spielman
- G. Bradley Featherston
- H. Stephen A. Mendel
- I. Darlene Payne Smith
- J. Jason Ostrom
- K. Gregory Lester
- L. Jill Willard Young
- M. Bobbie Bayless
- N. Christine Riddle Butts
- O. Clarinda Comstock
- P. Toni Biamonte



6. Amy Ruth Brunsting  
2582 Country Ledge  
New Braunfels, Texas 78132  
Defendant
7. Neal E. Spielman  
Griffin & Matthews  
1155 Dairy Ashford, Suite 300  
Houston, Texas 77079  
Defendant
8. Bradley Featherston  
Featherston Tran PLLC  
20333 State Highway 249, Suite 200  
Houston, Texas 77070  
Defendant
9. Stephen A. Mendel  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
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Defendant
10. Darlene Payne Smith  
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Ostrom Morris, P.L.L.C  
6363 Woodway, Suite 300  
Houston, Texas 77056  
713-863-8891  
Defendant
12. Gregory Lester  
955 N. Dairy Ashford, Suite 220  
Houston, Texas 77079  
Defendant
13. Jill Willard Young  
MacIntyre, McCulloch, Stanfield  
and Young, L.L.P.  
2900 Wesleyan, Suite 150  
Houston, Texas 77027  
Defendant

14. Bobbie Bayless Defendant  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098
15. Christine Riddle Butts Defendant  
Harris County Civil Courthouse  
201 Caroline, 7<sup>TH</sup> floor  
Houston, Texas 77002
16. Clarinda Comstock Defendant  
Harris County Civil Courthouse  
201 Caroline, 7<sup>TH</sup> floor  
Houston, Texas 770002
17. Toni Biamonte Defendant  
Office of the Court Reporter  
Harris County Civil Courthouse  
201 Caroline, 7<sup>TH</sup> floor  
Houston, Texas 77002

on this 9<sup>TH</sup> day of September 2016.

  
Anita Brunsting

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States District Court  
Southern District of Texas  
**FILED**  
SEP 16 2016

CANDACE LOUISE CURTIS &  
RIK WAYNE MUNSON

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**David J. Bradley, Clerk of Court**

VS.

CIVIL ACTION NO. 4:16-cv-01969

CANDACE KUNZ-FREED,  
ALBERT VACEK, JR., ET AL

**Defendant Anita Brunsting's Rule 12(b)(6)**  
**Motion to Dismiss for Plaintiffs' Failure to State a Claim**

Plaintiffs sued me, defendant, Anita Brunsting, along with eleven (11) attorneys, two (2) judges, and a court reporter for alleged RICO violations. The complaint should be dismissed because the plaintiffs fail to state a claim upon which relief can be granted.

Plaintiffs allege that I am involved in a racketeering enterprise in a probate case pending in Harris County Probate Court No. 4, under C.A. No. 412,249-401, *Estate of Nelva Brunsting, Deceased*. Plaintiffs refer to this alleged racketeering entity as the "Harris County Tomb Raiders, a.k.a. the Probate Mafia." Plaintiffs allege, among other things, that I engaged in illegal wiretapping, theft/extortion, forgery of internal revenue forms, wire fraud, and fraudulent transfer of securities in furtherance of a county-wide conspiracy that negatively effected the plaintiffs.

As an example of the lack of specificity of their claims as to myself or my attorneys, the plaintiffs claim that I and one of my attorneys engaged in illegal wiretapping merely because there were recordings of phone messages from the decedent's (my mother's) answering machine produced during the course of discovery and produced as required by law. In addition, their claim fails to explain how I could cause a wiretap on my mother's phone, or how my attorneys could be involved

in obtaining recordings that predate their involvement in the case.

Another example comes from plaintiffs' theft/extortion claims, which state that my attorneys and I used an "extortion instrument" to defend against plaintiff Curtis' demand for a disbursement. There are at least two problems with this allegation: (1) the alleged "extortion instrument" was created by my mother's attorney and executed before I became a trustee; and (2) there are no facts to show how, where, when, what, or why I used this alleged "extortion instrument" to harm the plaintiffs. Nor do the plaintiffs' explain the type of harm I supposedly caused.

The alleged "extortion instrument" is a qualified beneficiary trust (QBT) prepared by defendant Alfred Vacek, Jr. at the request of his client (my mother), Nelva Brunsting, years before the alleged act of extortion. Neither I, nor Mr. Mendel, nor Mr. Featherston, or anyone else associated with the Mendel Law Firm were involved in drafting the QBT. Without an explanation of how I participated in the creation of the instrument, or knew that the QBT could be used to extort the plaintiffs, there is not sufficient information in the complaint to allow me to defend against this claim. In addition, the term "extortion" generally means taking something of value by force or threats, and there are no facts to show that I took anything by force or threat.

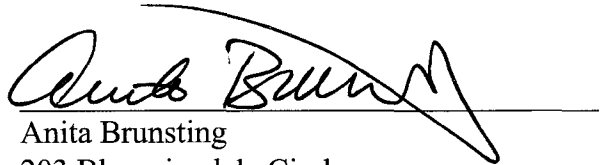
In short, plaintiffs' claims are vague, conclusory, and based entirely on inference and speculation.

I incorporate by reference as though set forth in full herein the arguments and legal authorities found in Defendants Candace Kunz-Freed and Albert Vacek, Jr.'s Motion to Dismiss for Failure to State a Claim (Docket Entry 19, 09/07/16) and Bobbie G. Bayless' Motion to Dismiss for Failure to State a Claim (Docket Entry 23, 09/07/16), as they apply to the claims against me.

**Prayer**

I pray that the Court grant my motion to dismiss for plaintiffs' failure to state a claim and for such other and further relief, general and special, legal and equitable, to which I may be entitled to receive.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anita Brunsting", is written over a horizontal line. The signature is cursive and somewhat stylized.

Anita Brunsting  
203 Bloomingdale Circle  
Victoria, Texas 77904  
Pro Se Defendant





9. Stephen A. Mendel Defendant  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, Texas 77079  
281-759-3213
10. Darlene Payne Smith Defendant  
Crain, Caton & James  
Five Houston Center, 17<sup>th</sup> Floor  
1401 McKinney, Suite 1700  
Houston, Texas 77010
11. Jason B. Ostrom Defendant  
Ostrom Morris, P.L.L.C  
6363 Woodway, Suite 300  
Houston, Texas 77056  
713-863-8891
12. Gregory Lester Defendant  
955 N. Dairy Ashford, Suite 220  
Houston, Texas 77079
13. Jill Willard Young Defendant  
MacIntyre, McCulloch, Stanfield  
and Young, L.L.P.  
2900 Wesleyan, Suite 150  
Houston, Texas 77027
14. Bobbie Bayless Defendant  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098
15. Christine Riddle Butts Defendant  
Harris County Civil Courthouse  
201 Caroline, 7<sup>TH</sup> floor  
Houston, Texas 77002
16. Clarinda Comstock Defendant  
Harris County Civil Courthouse  
201 Caroline, 7<sup>TH</sup> floor  
Houston, Texas 770002

17. Toni Biamonte  
Office of the Court Reporter  
Harris County Civil Courthouse  
201 Caroline, 7<sup>TH</sup> floor  
Houston, Texas 77002

Defendant

on this 15<sup>TH</sup> day of September 2016.

  
Anita Brunsting

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS &  
RIK WAYNE MUNSON

§  
§  
§  
§  
§  
§

VS.

CIVIL ACTION NO. 4:16-cv-01969  
(Alfred H. Bennett)

CANDACE KUNZ-FREED,  
ALBERT VACEK, JR., ET AL

**Order Granting Defendant Anita Brunsting's  
Rule 12(b)(6) Motion to Dismiss for Plaintiffs' Failure to State a Claim**

The Court considered defendant Anita Brunsting's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' Failure to State a Claim.

Finding that the plaintiffs' failed to state a claim for which relief may be granted, the defendant's motion is GRANTED and the plaintiffs' suit is dismissed.

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED

SEP 16 2016

David J. Bradley, Clerk of Court

CANDACE LOUISE CURTIS & §  
RIK WAYNE MUNSON §  
§  
VS. §  
§  
CANDACE KUNZ-FREED, §  
ALBERT VACEK, JR, ET AL §

CIVIL ACTION NO. 4:16-cv-01969  
(Alfred H. Bennett)

**Defendant Amy Brunsting's Motion for Access to Electronic Filing**

TO THE HONORABLE JUDGE OF SAID COURT:

I, Amy Brunsting, am a Pro Se defendant in the above-style case. I am aware that non-attorneys are not approved for accounts in the Court's electronic filing system. I request that the Court waive this requirement and approve my use of a PACER account to enable me to electronically file documents in this case. I hereby affirm that:

1. I have reviewed the requirements for e-filing and agree to abide by them.
2. I understand that once I register for e-filing, I will receive notices and documents only by email in this case and not by regular mail.
3. I have regular access to the technical requirements necessary to e-file successfully:
  - a. A computer with internet access.
  - b. An email account on a daily basis to receive notifications from the Court and notices from the e-filing system.
  - c. A scanner to convert documents that are only in paper format into electronic files.
  - d. A printer or copier to create documents.
  - e. A word-processing program to create documents.

- f. A pdf reader and a pdf writer to convert word processing documents into pdf format, the only electronic format in which documents can be e-filed.

Respectfully submitted,

//s// Amy Brunsting

---

Amy Brunsting  
2582 Country Ledge Drive  
New Braunfels, Texas 78132  
Pro Se Defendant

## Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following persons via first class mail:

- |  |                   |
|--|-------------------|
| 1. Candace L. Curtis<br>218 Landana Street<br>American Canyon, CA 94503<br>925-759-9020  | Plaintiff, Pro Se |
| 2. Rik Wayne Munson<br>218 Landana Street<br>American Canyon, CA 94503<br>925-349-8348   | Plaintiff, Pro Se |
| 3. Candace Kunz-Freed<br>c/o Cory S. Reed<br>Thompson, Coe, Cousins & Irons, L.L.P.<br>One Riverway, Suite 1400<br>Houston, TX 77056 | Defendant         |
| 4. Albert Vacek, Jr.<br>c/o Cory S. Reed<br>Thompson, Coe, Cousins & Irons, L.L.P.<br>One Riverway, Suite 1400<br>Houston, TX 77056  | Defendant         |
| 5. Bernard Lyle Matthews III<br>11777 Katy Freeway, Suite 300 South<br>Houston, TX 77079   | Defendant         |
| 6. Anita Kay Brunsting<br>203 Bloomingdale Circle<br>Victoria, TX 77904  | Defendant         |
| 7. Neal E. Spielman<br>Griffin & Matthews<br>1155 Dairy Ashford, Suite 300<br>Houston, TX 77079                                      | Defendant         |
| 8. Bradley Featherston<br>Featherston Tran PLLC<br>20333 State Highway 249, Suite 200<br>Houston, TX 77070                           | Defendant         |

9. Stephen A. Mendel Defendant  
The Mendel Law Firm, L. P.  
1155 Dairy Ashford, Suite 104  
Houston, TX 77079
10. Darlene Payne Smith Defendant  
Crain, Caton & James  
Five Houston Center, 17<sup>th</sup> Floor  
1401 McKinney, Suite 1700  
Houston, TX 77010
11. Jason B. Ostrom Defendant  
Ostrom Morris, P. L. L. C.  
6363 Woodway, Suite 300  
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955 N. Dairy Ashford, Suite 220  
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and Young, L. L. P.  
2900 Wesleyan, Suite 150  
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Bayless & Stokes  
2931 Ferndale  
Houston, TX 77098
15. Christine Riddle Butts Defendant  
Harris County Civil Courthouse  
201 Caroline, 7<sup>th</sup> floor  
Houston, TX 77002
16. Clarinda Comstock Defendant  
Harris County Civil Courthouse  
201 Caroline, 7<sup>th</sup> floor  
Houston, TX 77002

17. Toni Biamonte  
Office of the Court Reporter  
Harris County Civil Courthouse  
201 Caroline, 7<sup>th</sup> floor  
Houston, TX 77002

Defendant

on this 14<sup>th</sup> day of September 2016.

//s// Amy Brunsting

---

Amy Brunsting



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS &  
RIK WAYNE MUNSON

§  
§  
§  
§  
§  
§

VS.

CIVIL ACTION NO. 4:16-cv-01969  
(Alfred H. Bennett)

CANDACE KUNZ-FREED,  
ALBERT VACEK, JR, ET AL

**Order Granting Defendant Amy Brunsting's  
Motion for Access to Electronic Filing**

The Court considered defendant Amy Brunsting's Motion for Access to Electronic Filing.

Finding that good cause exists, the motion is GRANTED.

IT IS SO ORDERED,

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Sealed Court Records  
Southern District of Texas  
FILED

SEP 16 2016

David J. Bradley, Clerk of Court

CANDACE LOUISE CURTIS &  
RIK WAYNE MUNSON

§  
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§

VS.

CIVIL ACTION NO. 4:16-cv-01969  
(Alfred H. Bennett)

CANDACE KUNZ-FREED,  
ALBERT VACEK, JR, ET AL

**Defendant Amy Brunsting's**  
**Certificate of Interested Parties**

Defendant Amy Brunsting, files this certificate of interested parties pursuant to the Court's July 6, 2016 Order, ¶ 2 [Dkt. No. 3]. Persons or entities with an interest in the outcome of this case are as follows:

1. Plaintiffs:

- A. Candace Louise Curtis
- B. Rik Wayne Munson

2. Defendants:

- A. Candace Kunz-Freed
- B. Albert Vacek, Jr.
- C. Bernard Lyle Matthews
- D. Anita Kay Brunsting
- E. Amy Ruth Brunsting
- F. Neal Spielman
- G. Bradley Featherston
- H. Stephen Mendel
- I. Darlene Payne Smith
- J. Jason Ostrom
- K. Gregory Lester
- L. Jill Willard Young
- M. Bobbie Bayless
- N. Christine Riddle Butts
- O. Clarinda Comstock
- P. Toni Biamonte

Respectfully submitted,

//s// Amy Brunsting

---

Amy Brunsting  
2582 Country Ledge Drive  
New Braunfels, Texas 78132  
Pro Se Defendant

### **Certificate of Service**

I certify that a true and correct copy of the foregoing instrument was served on the following persons via first class mail:

- |  |                   |
|--|-------------------|
| 1. Candace L. Curtis<br>218 Landana Street<br>American Canyon, CA 94503<br>925-759-9020  | Plaintiff, Pro Se |
| 2. Rik Wayne Munson<br>218 Landana Street<br>American Canyon, CA 94503<br>925-349-8348   | Plaintiff, Pro Se |
| 3. Candace Kunz-Freed<br>c/o Cory S. Reed<br>Thompson, Coe, Cousins & Irons, L.L.P.<br>One Riverway, Suite 1400<br>Houston, TX 77056 | Defendant         |
| 4. Albert Vacek, Jr.<br>c/o Cory S. Reed<br>Thompson, Coe, Cousins & Irons, L.L.P.<br>One Riverway, Suite 1400<br>Houston, TX 77056  | Defendant         |
| 5. Bernard Lyle Matthews III<br>11777 Katy Freeway, Suite 300 South<br>Houston, TX 77079   | Defendant         |
| 6. Anita Kay Brunsting<br>203 Bloomingdale Circle<br>Victoria, TX 77904  | Defendant         |

7. Neal E. Spielman Defendant  
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Houston, TX 77002

16. Clarinda Comstock  
Harris County Civil Courthouse  
201 Caroline, 7<sup>th</sup> floor  
Houston, TX 77002

Defendant

17. Toni Biamonte  
Office of the Court Reporter  
Harris County Civil Courthouse  
201 Caroline, 7<sup>th</sup> floor  
Houston, TX 77002

Defendant

on this 14<sup>th</sup> day of September 2016.

//s// Amy Brunsting

---

Amy Brunsting

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’ Joint Answer to Defendant Albert Vacek, Jr. and Defendant Candace Kunz-Freed’s Motions 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 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 September 7, 2016, Defendants Albert Vacek, Jr. and Candace Kunz-Freed, collectively V&F, filed motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), (Dkt 19), and Federal Rule of Civil Procedure 12(b)(1) (Dkt 20).
4. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26) as a factual supplement to the RICO complaint. (Dkt 1)

5. Plaintiffs hereby incorporate the Addendum in response to Defendants' claim of a want of specific allegations against Vacek & Freed and the other affirmative defenses.

## II. STANDARDS OF REVIEW

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

6. 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).

7. 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).

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

8. 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).

9. 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).

10. 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).

11. 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.*

12. 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).

### III. ISSUES PRESENTED

13. Plaintiffs have not adequately pled the necessary predicate acts.

14. Plaintiffs have failed to allege an unlawful act against V & F.

15. Plaintiffs have failed to adequately plead with particularity their fraud-based predicate acts as required by Federal Rule 9(b).

16. Plaintiffs have failed to plead reliance in connection with their fraud related claims.

17. Plaintiffs have failed to plead a cognizable RICO enterprise.
  - a. Plaintiffs' enterprise allegations are too vague and conclusory.
  - b. Plaintiffs' alleged enterprise lacks continuity.
  - c. Plaintiffs have failed to adequately plead a pattern of racketeering activity.
  - d. Plaintiffs have not adequately alleged a conspiracy claim under § 1962(d).
  - e. Plaintiffs' claims should be dismissed because Plaintiffs' allegations do not satisfy RICO's proximate cause standard.
  - f. Plaintiffs' claims should be dismissed because a violation of the Hobbs act does not create a private cause of action.
  - g. Plaintiffs' claims should be dismissed because V & F cannot be civilly liable for aiding and abetting.
  - h. Plaintiffs' claims should be dismissed because Plaintiffs have not adequately pled a violation of Plaintiffs' civil rights.
  - i. Plaintiffs have not adequately pled a claim under § 1983.
  - j. Plaintiffs have not met the Nexus/joint-action test.
  - k. Plaintiffs have not met the public function/state coercion or encouragement tests.
  - l. Plaintiffs have not adequately pled a claim under § 1985.
  - m. Tortious interference with inheritance rights is not a recognized cause of action in Texas.

#### **IV. CONTEXTUAL SUMMARY**

18. 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.

19. Plaintiff Curtis is not an heir to any estate and has no inheritance expectancy, is not party to any estate litigation and does not believe there is any estate litigation as a matter of law.

20. This RICO lawsuit is a culmination of 4 and one-half years of multi- jurisdictional litigation that began in the federal court as a simple breach of fiduciary under diversity jurisdiction<sup>1</sup> seeking accounting and fiduciary disclosures, went to the Fifth Circuit<sup>2</sup> and back to the TXSD and then to Harris County Probate (where no one has heard of it since<sup>3</sup>), and the controversy is now back in an honorable federal Court under federal question jurisdiction.

21. 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>4</sup> as an Addendum of Memorandum (Dkt 26), supplementing the original RICO complaint in this case.

## V. HISTORY OF THE CONTROVERSY

According to the record:

22. In 1996, Elmer Brunsting and his wife Nelva Brunsting created the original Brunsting Family Living Trust for their benefit, for the benefit of their five primary issue, as well as for the remaindermen grandchildren and great grandchildren. (Exhibit A1 – Art. I Sec. (c) attached E1-E61)

23. The Brunstings restated their Trust in 2005 (A2 attached E62-E148) and amended the restatement in 2007 (A3 attached E149-E151).

24. Elmer Brunsting was declared incompetent in June 2008 and passed on April 1, 2009.

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

<sup>2</sup> Curtis v Brunsting 704 F.3d 406 (2013)

<sup>3</sup> Dkt 25 Motion to Dismiss filed by Jill Young wondering "What is Curtis v Brunsting?"

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

25. At the death of Elmer Brunsting the inter vivos “family” trust became irrevocable and divided its assets among an irrevocable decedent’s trust and a revocable survivor’s trust.

26. Nelva Brunsting passed on November 11, 2011 and a number of illicit instruments surfaced that had been drafted after Elmer Brunsting became incompetent and after he passed, that claim to have effected changes that could not have been made under the law of the trust. (Dkt 26-14)

27. The acting trustees, Anita and Amy Brunsting, refused to answer, account or provide disclosures and after two unsuccessful demand letters<sup>5</sup> advising Defendants Anita and Amy Brunsting to do the right thing, Plaintiff Curtis brought suit.

## VI. HISTORY OF THE LITIGATION

28. Plaintiff Curtis filed a Petition in the United States District Court for the Southern District of Texas, Houston Division, under Diversity Jurisdiction on February 27, 2012, claiming breach of fiduciary, seeking disclosures and a full, true, complete accounting<sup>6</sup> and other lawful and equitable relief.

29. On March 6, 2012, Vacek & Freed staff attorney Defendant Bernard Mathews, appearing under the letterhead “Green and Mathews” filed a motion for an emergency order, accompanied by a false affidavit signed and verified by Defendant Amy Brunsting (A4 attached E152-E155), in which Mathews implied the existence of a probate exception to Plaintiff’s claims, knowing full well he had filed a nearly identical claim on behalf of plaintiff Reginald Parr, not in the probate court but in the Harris County District Court, only 3 days earlier.<sup>7</sup>

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<sup>5</sup> Exhibits 17 and 20 in the original federal complaint at pages 67-68, and 71-79 respectively.

<sup>6</sup> Case 4:12-cv-592 Candace Louise Curtis v Anita and Amy Brunsting filed TXSD 2/27/2012

<sup>7</sup> Parr v Dunegan 2012 13022 (190<sup>th</sup> Judicial District)

30. On March 8, 2012, in reliance upon the material misrepresentations contained in Defendants' Motion and Affidavit, Judge Hoyt dismissed Plaintiff Curtis' Pro se Petition sua sponte, under the probate exception to federal diversity jurisdiction. Plaintiff Curtis filed a timely notice of appeal and was forced to endure the delay and expense of that effort.

31. Then on March 9, 2012, Bobbie Bayless filed a petition for deposition before suit on behalf of Carl Brunsting in Harris County District Court.<sup>8</sup>

32. *On January 9, 2013*, the Fifth Circuit Court of Appeals, in a unanimous decision, reversed and remanded back to the Southern District of Texas clearly verifying that the Brunsting trust is not the estate of Nelva Brunsting.<sup>9</sup>

33. Plaintiff Curtis immediately filed for a protective order.

34. *On January 29, 2013*, Carl Brunsting, as Executor of the estate of Nelva Brunsting, filed suit against trust attorney Candace Kunz-Freed and Vacek & Freed P.L.L.C. in the Harris County District Court raising claims exclusively related to the Brunsting trusts then in the custody of the federal court.<sup>10</sup>

35. On April 9, 2013, in response to Plaintiff Curtis' application for a protective order, the Honorable Kenneth Hoyt issued an Order enjoining Defendants Amy and Anita Brunsting from spending trust funds or liquidating trust assets without the Court's approval and commanding specific performance. (A5 attached E156-E160)

36. Also on April 9, 2013 Bobbie Bayless filed claims against Amy, Anita and Carole Brunsting in Harris County Probate Court No. 4, in the name of Carl Brunsting individually (412249-401) and as executor of the estate of Nelva Brunsting (412249) and after trailing and

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<sup>8</sup> 201214538 - (Court 080)

<sup>9</sup> Curtis v Brunsting 704 F.3d 406

<sup>10</sup> No. 2013-05455; Carl Henry Brunsting v. Candace Freed & Vacek & Freed; 164th Judicial District Court of Harris County, TX

dogging Plaintiff Curtis' litigation always one step behind, Bayless named federal Plaintiff Curtis a "Nominal Defendant" while alleging no claims. (A6 attached E161-E180)

37. Due to a change of circumstances in late 2013, Plaintiff Curtis retained Houston attorney Jason Ostrom to assist with her federal lawsuit.

38. Upon appearing in the matter Mr. Ostrom conceived of an arrangement by which Defendants agreed to modification of Plaintiff's Petition to include her brother Carl Henry Brunsting as an involuntary plaintiff, thus polluting diversity and facilitating a remand to Harris County Probate Court on May 22, 2014.(A7 attached E181-E185)

39. In exchange, Defendants agreed to abide by the federal injunction and all orders of the federal Court and on that basis the Court approved the amended complaint and entered an Order for Remand to the Harris County Probate Court. (A8 attached E186-E187)

40. The Motion granting Plaintiff Curtis' remand was filed in the estate of Nelva Brunsting, No. 412249 on June 6, 2014, and the Harris County Clerk assigned Curtis v Brunsting auxiliary number 412249-402.

41. The Defendants ask the Court to believe Plaintiffs are responsible for a myriad of lawsuits, but Probate No. 4 has three cases on record and Harris County District Court has two more. Only one of these suits was filed by Plaintiff Curtis and it was filed in the federal court on February 27, 2012. The state court cases are:

- a. No. 201214538 – 80<sup>th</sup> Judicial District Court of Harris County Texas, Carl Henry Brunsting and the estate of Nelva Brunsting Petition to take depositions before suit.
- b. No. 412249 Carl Henry Brunsting executor of the estate of Nelva Brunsting, vs Amy, Anita and Carole Brunsting.
- c. No. 412249-401 Carl Henry Brunsting Individually vs Amy, Anita and Carole Brunsting, and

- d. No. 412249-402 Candace Curtis v Anita and Amy Brunsting, filed TXSD February 27, 2012, remanded from the federal court to the state probate court May 9, 2014.
- e. No. 2013-05455 - Carl Henry Brunsting v. Candace Freed & Vacek & Freed; 164th Judicial District Court of Harris County Texas. (A9 attached E188-E207)

## **VII. THE HEINOUS EXTORTION INSTRUMENT**

42. An instrument called “Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement” (QBD) allegedly signed by Nelva Brunsting and notarized by Candace Kunz-Freed on August 25, 2010, was propped up as an amendment to the irrevocable trust agreement after Elmer’s death, when the trust agreement could only be amended or revoked by a court of competent jurisdiction. (Exhibit A2 @ E69) (See also Dkt26-4 QBD signature page anomalies)

43. The record shows the QBD was drafted and notarized by Defendant Candace Freed. This instrument has been the object of numerous unresolved motions for summary and declaratory judgment in the state probate court (Dkt 26-5, 26-11, 26-14) and those motions remain unresolved because the probate court refused to rule on any substantive issues. There would be a logical reason for that, albeit not an ethical one.

44. Plaintiffs hereby incorporate the Addendum of Memorandum filed September 15, 2016 (Docket entry 26) as if fully restated and would ask the Court to review (Dkt 26-5 E20-E28), (Dkt 26-8 E343-E393), (Dkt 26-11 E406-E452), (Dkt 26-14 E497-E1187), and (Dkt 26-19 E1252-E1253) as follows:

- a. Dkt 26-5 is Defendant(s) Anita and Amy Brunsting’s joint no evidence motion for partial summary judgment, filed in the state probate court June 26, 2015, claiming the Plaintiffs could produce no evidence of the invalidity of the extortion

instrument also known as the August 25, 2010 QBD. That motion was scheduled to be heard on the last day set for summary judgment motions, August 3, 2015 but has never been heard. (Dkt 26-19)

- b. Dkt 26-11 (E406-E452) is Plaintiff Curtis' answer to Exhibit 26-5, along with motion and demand to produce the QBD and qualify it as evidence so one could discuss its efficacy or the lack thereof. Those motions have never been heard.
  - c. Dkt 26-7 (E289-E342) is the federal Injunction Hearing Transcript
  - d. Dkt 26-8 is Carl Brunsting's Motion for Protective Order (E343-E393) regarding wiretap recordings.
  - e. Dkt 26-14 (E497-E1187) is an unresolved motion for partial summary and declaratory judgment that expressly seeks to have the illicit instruments, drafted by Candace Freed, at the request of Anita Brunsting, including the heinous extortion instrument, declared invalid. The probate court has refused to set these motions for hearing.
  - f. Dkt 26-16 (E1189-E1242) March 9, 2016 ambush hearing transcript.
  - g. Dkt 26-19, the agreed upon Docket Control Order.
45. As the Rule 60 Motion states (Dkt 26 pgs 3-31) Defendant(s)' Amy and Anita Brunstings' joint No-Evidence motion was removed from the calendar along with Bayless' "Carl Brunsting" Motion for Partial Summary Judgement and Curtis' Motion and demand to produce evidence, allegedly to hear an emergency motion for protective order (Dkt 26-8 E343-E393 and transcript of hearing Dkt 26-12 E453-E494) regarding wiretap recordings disseminated by Anita Brunsting's counsel, Defendant Bradley Featherston, via certified mail on or about July 1, 2015.



46. All of the motions regarding the legitimacy of instruments and actions were kicked to the curb along with the Docket Control Order (Dkt 26-19 E1252-E1253) and the scheduled trial date, while Plaintiff Curtis was on an airplane home from the July 22, 2015 hearing appointing Temporary Administrator Gregory Lester. (Dkt 25-A). There is no order in the probate record that would explain any changes to the docket scheduling Order.

47. Plaintiff Curtis then filed her motion for partial summary and declaratory judgment (Dkt 26-14) and asked to have dispositive motion hearings placed back on the Calendar (Dkt 26-15 E1188) asking, as well, to have the case of Anita and Amy Brunsting's co-conspirator Defendant Candace Freed, transferred from the Harris County District Court and consolidated in the probate Court with the rest of the co-conspirators.

#### **VIII. DEFENDANTS' RULE 12(B)(6) AND 9(B) ARGUMENTS**

48. Defendants Vacek and Freed (V&F), in support of their Rule 12(b)(6) Motion to Dismiss (Dkt 19) offer the detailed background statement from their accompanying Rule 12(b)(1) Motion (Dkt 20) claiming facts inapposite to those of the complaint and whereas an alternative set of facts may be pled and considered under a Rule 12(b)(1) factual attack, no such authority exists with a Rule 12(b)(6) challenge.

49. Defendants seek to incorporate their alternate claim of facts presented under Rule 12(b)(1) but do not support those claims by affidavit, exhibits or specific reference to any evidentiary hearings in which such matters were judicially determined, because there have not been any evidentiary hearings or substantive issues decided since the injunction hearing, April 9, 2013, in the federal Court (Dkt 26-7 E289-E342).

50. After 2 and one-half years in the Probate Court, the only place in the record of any related proceeding where one can actually see findings of fact and conclusions of law is in the federal injunction issued by the Honorable District Judge Kenneth Hoyt April 9, 2013.

51. In Section A of Defendants' Arguments and Authorities V&F claim Plaintiffs have not adequately pled a violation of the RICO Act and in support they cite to the elements necessary to plead 18 U.S.C. 1962(b). Plaintiffs agree they have not pled a violation of 1962(b), as Plaintiffs plead 1962(c) claims, which are substantially different from the 1962(b) claims filed against several judges of the Harris County Probate Court in the Sheshtawy, Peterson, Rizk RICO suit filed March 18, 2016<sup>11</sup>. The motions to dismiss in that case were taken under advisement by that Court September 12, 2016, and this case is related by continuity.

52. Defendants use RICO as a blanket general term when the RICO statutes are each very narrow and prohibit four separate and specific kinds of activity. The elements of 18 U.S.C. §1962(a), §1962(b) and §1962(c) are distinguishable, and elements of one cannot be merged with those of another under the generalized term RICO.

53. Ultimately Defendants insist Plaintiffs are pleading claims not contained within the four corners of the RICO complaint, such as malpractice, or that Plaintiffs failed to meet the evidentiary particulars that concatenate each Defendant's conduct to a pattern of racketeering activity.

54. Defendants ask the court to view the complaint in a vacuum, while simultaneously asking the court to assume a contrary view of the facts by proxy under their unsupported companion Rule 12(b)(1) factual challenge (Dkt 20).

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<sup>11</sup> Case 4:16-cv-00733 filed TXSD 3/18/2016

**IX. DEFENDANTS' RULE 12(B)(1) ARGUMENTS**

55. Defendants' first allegory is that the matter before the court is merely the latest lawsuit filed in some "Brunsting Sibling Saga" and "Plaintiff Candace Louise Curtis' second attempt to have a federal judge consider these issues".

56. Defendants fail to mention that the first federal Court issued an injunction in response to Plaintiff Curtis' application, finding the four necessary criteria to have been met, including a likelihood of prevailing on the merits. That hearing was held before the Honorable Kenneth Hoyt, April 9, 2013, and represents the only evidentiary hearing amongst a plethora of state court lawsuits filed by Bobbie Bayless in name of Carl Brunsting and the estate of Nelva Brunsting.

57. When Plaintiffs filed this RICO suit there was no docket control order in any state court, no trial date, the probate Court refused to set hearings on the pending dispositive motions, and Plaintiff Curtis was, and is, continually being threatened with deprivation of property, under the illicit QBD instrument drafted by Defendant Candace Kunz-Freed, that Defendants Amy and Anita Brunsting perpetually refuse to produce and qualify as evidence. (Dkt 26-7)

58. Defendants V&F at page 2 plead that Curtis' first federal lawsuit alleged similar claims, but fail to mention that nothing substantive has been resolved in the original suit 4:12-cv-592, and that those unresolved claims are subsumed within the RICO matter that is currently before this Court, because the state court has refused Plaintiff Curtis access to the court and due process of law, refusing to exercise jurisdiction while pretending they had it to begin with.

59. Plaintiff will admit that both suits arise from a common set of facts and that the facts necessary for the pending RICO complaint were developed over the course of the Defendants' perpetual efforts to avoid evidentiary hearings and especially any situation where they would

have to actually produce the archetype of the QBD instrument, drafted and notarized by Candace Freed, and qualify it as evidence.

60. Defendants assert at item 15 that:

*On July 24, 2015 Judge Butts appointed Greg Lester ("Lester"), as a temporary administrator, to determine the merits of the claims asserted in the various lawsuits.*

61. On January 20, 2016 Lester provided a report, (Dkt 26-9) wherein he concluded:

- *All of the legal actions taken by Nelva were within her authority;*
- *Any damages for unequal distribution can be resolved by equalizing the distributions to all siblings; and*
- *Recommended that the Probate Court should uphold the "No Contest" Clause*

62. What the Lester Report actually says is “All of the legal actions taken by Nelva were within her authority under the broad language of the restatement.” Mr. Lester fails to list the actions allegedly taken by Nelva Brunsting which he concludes to have been “legal actions” nor does he cite to any specific language in any trust instrument in support of his vague assertions, while ignoring the specific language of the trust and the existing record.

63. Defendants V&F also cite that Mr. Lester “Recommended that the Probate Court should uphold the "No Contest" Clause.” Plaintiffs are certain V&F and Lester each refer to the “Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement” (the alleged 8/25/2010 QBD a.k.a. the extortion instrument).

64. Rather than argue over facts not in evidence, Plaintiffs will simply quote the closing paragraph of Plaintiffs’ Addendum of Memorandum at line 120<sup>12</sup>. (Dkt 26)

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<sup>12</sup> Case 4:12-cv-00592 Document 115 Filed in TXSD on 08/03/16 Page 1 of 27 and as an Addendum to the Complaint filed in 4:16-cv-1969 in TXSD 7/05/2016

*120. If there is such a magical document as this 8/25/2010 QBD, that trumps federal injunctions and the Orders of a federal Judge, renders remand agreements nugatory, removes fiduciary obligations, forecloses beneficial interests, taints the blood of innocent remaindermen, amends what can only be amended by a court of competent jurisdiction and revokes what can only be revoked by a court of competent jurisdiction, the Defendants and their attorneys should be brought before an honorable Court where they will actually be compelled to produce the supernatural thing and qualify it as evidence.*

65. If any Defendant could have produced the instrument and qualified it as evidence, they would have done so long ago. Instead, they pull their joint no evidence motion from calendar on the very last day for summary judgement hearings and negate the agreed upon docket control order, and then show up March 9, 2016 acting as if the thing had been held to be valid. (Dkt 26-16)

66. Defendants argue that similar claims are currently pending in a malpractice suit in state court, but no state court ever had the capacity to assume in rem jurisdiction over the Brunsting trust res in the custody of a federal court.

67. Whether or not the facts are common, professional carelessness is not an element of a racketeering lawsuit and Defendants cling to their claim of professional negligence because it is the only thing that gives them any hope of hiding their enterprise participation behind the Doctrine of Privity.

## **X. STANDING**

68. Defendants' Motion seeks to down-play participation in a lawyer-run wealth redistribution enterprise, asking the Court to believe the matter at issue is no more than a family dispute, as if the betrayal of fiduciary obligations and the violation of property laws was a mere soap opera. Nothing could be further removed from reality. Every Judge in the Harris County

Probate Court is being sued in the Southern District of Texas, under either racketeering or civil rights, or both, and that does not appear to be a coincidence.

69. One thing Plaintiffs and Defendants appear to agree on is that Munson is not a party to any of the prior lawsuits nor is he a beneficiary of the Brunsting Family of Trusts, and that: “It is inconceivable that he could be injured as a result of V&F’s drafting of the estate planning documents.” Unfortunately Defendants seek to discolor the facts while omitting the obvious.

70. Plaintiffs filed as Private Attorneys General under the Racketeer Influenced Corrupt Organization statutes, individually and on behalf of the public interest.

71. A recent Carnegie report (Exhibit A10 attached E208-E245) cites judicial corruption as a major factor affecting domestic security and international trade, because companies are reluctant to invest in foreign trade or set up foreign offices in nations with low human rights ratings because of the inability to depend on the protections of law.

72. Because Plaintiff Munson’s standing has been specifically challenged, the following information is in order. Munson is also a victim of public corruption in his local environment and believes public corruption conspiracies are infectious social diseases, and that the single greatest threat to the security of a free state comes from a corrupt judiciary as the judiciary is the final vestige for seeking remedy within the established system.

73. There are three variations on the private attorney general and those are the substitute, the simulated and the supplemental. A supplemental private attorney general is generally a private attorney who acts to supplement the public prosecutorial function, which is what Congress envisioned in fashioning 18 U.S.C. 1964(c) after the 1914 Clayton Act. The RICO statutes are an example of the Private Attorney General as a “Supplemental Law Enforcer”, and the only place

in our law where a private citizen can be a private attorney general without also being an attorney.

74. In claiming Munson lacks standing, Defendants' motion claims that he has suffered no tangible injury to his business or property but, unlike Defendants, Plaintiff Munson does not so easily put a dollar and cents price tag on public justice nor is required to do so. Conspiracies involving public corruption of this type, adversely affects not only the public interest generally but also individual claimants and the efficacy of the work product of honest legal professionals.

75. The People are offended by the mere notion that the public suffers no tangible injury as a direct and proximate result of public corruption and do not accept the idea that public offenses do not injure the morals of the society or that members of the public have no standing to prosecute public corruption. A tangible injury need not be significant for standing purposes and every member of the body politic has a property interest in honest government. Any conduct that injures trade is also injurious to the public trust. Congress created the private right of remedy at 18 U.S.C. 1964(c) specifically for the purposes stated herein.

76. All of these Defendants are converting our court rooms, institutions, and resources intended for the administration of public justice, into a place of conducting illicit private business for personal gain, thus diminishing and often eliminating the availability of those resources for the honest administration of public justice, while also injuring individual members of the public as part of their enterprise operations.

77. Curtis v Brunsting is not the estate of Nelva Brunsting,<sup>13</sup> a beneficiary of a trust is not an heir and a racketeering conspiracy is not malpractice.

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<sup>13</sup> Curtis v Brunsting 704 F.3d 406

## XI. CONCLUSION

78. Curtis v Brunsting is not an isolated specific instance but merely one example of a variation on a shakedown practiced over and over again against elder, disadvantaged and familial victims.

79. Each of these Defendants will claim that Plaintiffs failed to plead a particular act that implicates them in a conspiracy, but Candace Kunz-Freed was the architect of this entire fiasco (Dkt 26-11 and 26-14) and the very real fact here is that Defendant Candace Kunz-Freed is accused of using the Vacek Design in drafting and notarizing the illicit documents that provided Anita Brunsting with the appearance of authority used to commit numerous specifically alleged predicate acts.

80. Another very real fact is that without those falsified and illicitly drafted documents, none of these other Defendants would have had the opportunity to perform their part in the color of litigation racketeering conspiracy.

81. It would be improper for the Court to dismiss a Petition unless the claimant can prove no set of facts that would entitle it to relief. That is clearly not the case here. Plaintiff Curtis' original complaint made a prima facia claim by affidavit and 46 attached exhibits, (4:12-cv-592 filed TXSD 2/27/2010), and each has maintained its veracity throughout. The fiduciaries in that earlier action, Anita and Amy Brunsting, have yet to meet their burden of bringing forth evidence.

82. The notion that Vacek & Freed can betray Privity, enter into and cultivate conflicting interests undermining the efficacy of the products and services sold to Elmer and Nelva Brunsting, and still cling to the protection of the doctrine of privacy, is an interesting concept that begs an audience.



Wherefore Plaintiffs move this Honorable Court for an Order denying the Motions to Dismiss filed by Defendants Albert Vacek, Jr. and Candace Kunz-Freed, August 7, 2016. (Dkt 19 and 20).

Respectfully submitted,

/s/ Candace L. Curtis  
Candace L. Curtis

/s/ Rik W. Munson  
Rik W. Munson

**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 27th day of September, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis  
Candace L. Curtis

/s/ Rik W. Munson  
Rik W. Munson

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Curtis, et al

Plaintiffs

v

Kunz-Freed, et al

Defendants

§  
§  
§  
§  
§  
§

Civil Action No. 4:16-cv-01969

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**ORDER**

Upon due consideration, Defendants Rule 12(b)(1) and 12(b)(6) Motions to Dismiss filed on August 7, 2016 by Defendants Albert Vacek Jr. & Candace Kunz-Freed in the above styled cause (Dkt #19 & 20) should be Denied.

It is SO ORDERED

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Alfred H Bennet  
United States District Judge

Attached Exhibits

A1 - Original 1996 Trust	E1-E61
A2 - 2005 Restatement	E62-E148
A3 - 2007 Amendment	E149-E151
A4 – Amy March 6, 2012 Affidavit	E152-E155
A5 - 2013-04-09 Preliminary Federal Injunction	E156-E160
A6 - PBT-2013-115617 Bayless Probate Petition filed 4/9/2013	E161-E180
A7 - 2014-05-09 Ostrom Motion for Remand	E181-E185
A8 - 2014-05-22 PBT-2014-170812 Federal Order Granting Remand	E186-E187
A9 – Bayless District Court Petition filed 1/29/2013	E188-E207
A10 - Carnegie Corruption and Security Report	E208-E245

**THE  
BRUNSTING FAMILY  
LIVING TRUST**

*Prepared By*

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# **THE BRUNSTING FAMILY LIVING TRUST**

## **Article I**

### **The Founding of Our Family Living Trust**

#### **Section A. Our Declaration of Trust**

This trust declaration is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas. We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

#### **Section B. The Title of Our Trust**

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.

Our trust may also be known as:

ELMER H. BRUNSTING and NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

#### **Section C. Our Beneficiaries and Family**

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

<u>Name</u>	<u>Birth Date</u>
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.



## **Article II**

### **Transfers of Assets to Our Trust**

#### **Section A. Our Initial Contribution**

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

#### **Section B. Additions to Our Trust**

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

#### **Section C. Our Separate and Community Accounts**

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

## **Article III**

### **Our Right to Amend or Revoke This Trust**

#### **Section A. We May Revoke Our Trust**

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

#### **Section B. We May Amend Our Trust**

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.

#### **Section C. Income Tax Matters**

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

## **Article IV**

### **Our Trustees**

#### **Section A. Original Trustees**

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

#### **Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Trustee in the following order:

First, ANITA KAY RILEY

Second, CARL HENRY BRUNSTING

Third, AMY RUTH TSCHIRHART

A successor Trustee shall be replaced by the next named successor in the order listed above when he or she has resigned or is unable to continue to serve as Trustee due to death or disability. Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

#### **Section C. No Bond is Required of Our Trustees**

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

**Section D. Resignation or Removal of Our Trustees**

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

**Section E. Affidavit of Authority to Act**

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

\_\_\_\_\_  
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public - State of Texas

**Section F. Documentary Succession of Our Trustees**

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence of a successor's authority to serve and act as the Trustee of the trust.

### **Section G. Our Trustees' Compensation**

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

### **Section H. Multiple Trustees**

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

### **Section I. Delegation of Authority**

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

**Section J. Successor Corporate Trustees**

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

**Section K. Partial and Final Distributions**

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

**Section L. Court Supervision Not Required**

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

## **Article V**

### **Insurance Policies and Retirement Plans**

#### **Section A. Our Authority While We Are Living**

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

##### **1. The Founder's Rights**

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

##### **2. Our Trustee's Obligations**

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

#### **Section B. Upon the Death of a Founder**

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits

which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

**1. Collection of Non-Retirement Death Proceeds**

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

**2. Retirement Plan Elections**

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

**3. Collection Proceedings**

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee, in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

**4. Payor's Liability**



**Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.**

## **Article VI**

### **For So Long As We Both Shall Live**

#### **Section A. Our Use of Income and Assets**

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

#### **Section B. If One or Both of Us Are Disabled**

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

### **Section C. Income Tax Matters**

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

## **Article VII**

### **Upon the Death of One of Us**

#### **Section A. Settlement of Affairs**

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

#### **1. Deceased Founder's Probate Estate**

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased

Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

## **2. Exempt Property Excluded**

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

## **3. Apportionment of Payments**

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

## **Section B. Division and Distribution of Trust Property**

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

**1. Creation of the Survivor's Trust**

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

**a. Numerator of the Fractional Share**

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

**b. Denominator of the Fractional Share**

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

**2. Creation of the Decedent's Trust**

The Decedent's Trust shall consist of the balance of the trust property.

**Section C. Valuation of Property Distributed to the Survivor's Trust**

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

**Section D. Conversion of Nonproductive Property**

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

#### **Section E. Survivor's Right to Refuse Property or Powers Granted**

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

#### **Section F. Allocation of Trust Property**

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

**Section G. Distributions from Retirement Plan to the Survivor's Trust**

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

**a. Form of Distribution**

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

**b. Income Requirement**

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

**c. Retirement Plan Expenses**

In calculating "all income earned by the Retirement Plan", our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.



## **Article VIII**

### **Administration of the Survivor's Trust**

#### **Section A. Creation of Two Survivor's Shares**

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

##### **1. Survivor's Share One**

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

##### **2. Survivor's Share Two**

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

#### **Section B. Administration of Survivor's Share One**

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

##### **1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

##### **2. The Surviving Founder's Right to Withdraw Principal**

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

**3. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

**4. The Surviving Founder's General Power of Appointment**

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

## **Section C. Administration of Survivor's Share Two**

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

### **1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

### **2. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

### **3. The Surviving Founder's Limited Testamentary Power of Appointment**

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

### **Section D. Administration of Both Survivor's Shares at Surviving Founder's Death**

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

#### **1. The Surviving Founder's Final Expenses**

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

**2. Redemption of Treasury Bonds**

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

**3. Coordination with the Personal Representative**

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

**a. Authorized Payments**

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

**b. Purchase of Assets and Loans**

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

**c. Distributions from the Personal Representative**

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

**4. Trustee's Authority to Make Tax Elections**

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

**a. Alternate Valuation Date**

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

**b. Deduction of Administration Expenses**

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

**c. Taxes and Returns**

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

**Section E. Subsequent Administration of the Survivor's Trust**

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

## **Article IX**

### **Administration of the Decedent's Trust**

#### **Section A. Use of Income and Principal**

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.
2. **PRINCIPAL**
  - a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed \$5,000.00.
  - b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.
  - c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

#### **Section B. Guidelines for All Distributions**

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.



### **Section C. Guidelines for Discretionary Distributions**

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

### **Section D. Termination of the Decedent's Trust**

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only. Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.
2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

## Article X

### Upon the Death of the Survivor of Us

**Section A. Our Beneficiaries**

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

<u>Beneficiary</u>	<u>Share</u>
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

**Section B. Distribution to our Beneficiaries**

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share set aside for CANDACE LOUISE CURTIS shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CANDACE LOUISE CURTIS, free of the trust.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share set aside for CAROL ANN BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CAROL ANN BRUNSTING, free of the trust.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share set aside for CARL HENRY BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CARL HENRY BRUNSTING, free of the trust.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, the trust share set aside for CARL HENRY BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share set aside for AMY RUTH TSCHIRHART shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to AMY RUTH TSCHIRHART, free of the trust.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living

descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share set aside for ANITA KAY RILEY shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to ANITA KAY RILEY, free of the trust.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

**Section C. Administration of the Share of a Decedent of a Deceased Beneficiary**

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be held in trust if the descendant of the deceased beneficiary is under 21 years of age, or is disabled or incapacitated.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section D. Subsequent Children**

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section E. Guidelines for Discretionary Distributions**

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

**Section F. Guidelines for All Distributions**

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

**Section G. Ultimate Distribution**

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

<u>Beneficiary</u>	<u>Share%</u>
CENTRAL COLLEGE OF IOWA Pella, Iowa	100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

## **Article XI**

### **Protection of Beneficial Interests**

#### **Section A. Protection of the Interests of Our Beneficiaries**

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

#### **Section B. Unproductive or Underproductive Assets**

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

#### **Section C. No Contest of Our Trust**

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any

amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

#### **Section D. Our Trustee's Authority to Keep Property in Trust**

Unless this trust declaration provided otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

##### **1. Distributions of Trust Income and Principal**

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

##### **2. Methods of Distribution**

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

- (a) Directly to such beneficiary;
- (b) To his or her parent, guardian or legal representative;
- (c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;



- (d) To any person with whom he or she is residing;
- (e) To some near relative or close friend; or
- (f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;
- (g) To persons, corporations or other entities for the use and benefit of the beneficiary;
- (h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or
- (i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the



parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

**3. Termination and Ultimate Distribution**

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

## **Article XII**

### **Our Trustees' Powers and Authority**

#### **Section A. Applicability of Texas Trust Code and Other Statutes**

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

#### **Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries**

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

#### **Section C. General Investment and Management Powers**

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

### **Originally Contributed Properties**

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

### **Additional Properties**

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

### **Securities Powers**

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

### **Investment of Cash Assets**

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

### **Unproductive or Wasting Assets**

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the

Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

### **Personal Residence and Furnishings of Personal Residence**

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

### **Mineral Properties**

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

#### **Power to Enter Into or Continue Business Activities**

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

#### **Banking Authority**

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

#### **Corporate Activities**

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

#### **Agricultural Powers**

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

### **Real Estate**

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

### **Authority to Sell or Lease and Other Dispositive Powers**

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

### **Warranties and Covenants**

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

### **Trustee's Compensation**

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

### **Employment and Delegation of Authority to Agents**

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

### **Power to Release or Abandon Property or Rights, and to Pursue Claims**

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when

the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

#### **Nominal Title and Use of Nominees**

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

#### **Power to Lend Money and Guarantee Obligations**

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

#### **Power to Borrow**

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

#### **Payment of Indebtedness and Settlement Costs**

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.



Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

#### **Transactions Between the Trustee and Our Personal Representatives**

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

#### **Commingling Trust Estates**

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

#### **Addition of Accumulated Income to Principal**

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.



### **Distributions Not Treated as Advancements**

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

### **Tax Elections**

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

### **Transactions in Which the Trustee Has A Direct or Indirect Interest**

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

**Section D. Apportionment of Receipts and Expenses Between Income and Principal**

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

**Section E. Records, Books of Account and Reports**

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for the inspection or audit by the beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is or could be entitled to receive a present income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

#### **Section F. Trustee's Liability**

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

#### **Section G. Duty of Third Parties Dealing with Trustee**

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

#### **Section H. Division and Distribution of Trust Estate**

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when

the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

### **Section I. Life Insurance**

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

### **Section J. Insured Trustee's Authority**

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

#### **Section K. Estimated Income Tax Payment Allocation**

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

#### **Section L. Merger of Trusts**

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity

serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

**Section M. Termination and Distribution of Small Trust**

If, in the discretionary judgment of the person(s) or entity serving as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

**Section N. Elimination of Duty to Create Identical Trusts**

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

**Section O. Powers of Trustee Subsequent to an Event of Termination**

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

**Section P. Requesting Financial Information of Trust Beneficiaries**

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.



## **Section Q. Retirement Plan Elections**

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

## **Section R. Qualification as a Qualified Subchapter S Trust**

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

### **1. A Sole Beneficiary**

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

### **2. Multiple Beneficiaries**

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

### **3. Outright Distribution**

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

## Article XIII

### Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

Any course of study or instruction at any institution for specialized, vocational or professional training.

Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

4. Founders. The term "Founders" means the "grantors", "trustors", "settlers" or any other name given to the makers of this trust either by law or by popular usage.
5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals,



other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.
8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.
9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.
10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

It must clearly evidence the interest of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.
12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.
13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.
14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

## **Article XIV**

### **Miscellaneous Matters**

#### **Section A. Distribution of Personal Belongings by Memorandum**

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

#### **Section B. Special Bequests**

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

**Section C. The Rule Against Perpetuities**

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

**Section D. Jurisdiction**

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

**Section E. Dissolution of Our Marriage**

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

**Section F. Maintaining Property in Trust**

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

**Section G. Survival**

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

**Section H. Simultaneous Death**

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

**Section I. Changing the Trust Situs**

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

**Section J. Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

**Section K. Headings of Articles, Sections and Paragraphs**

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

**Section L. Notices**

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section M. Delivery**

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section N. Duplicate Originals**

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

**Section O. Severability**

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

**Section P. Gender, Plural Usage**

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

**Section Q. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

**Section R. Generation Skipping Transfers**

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

**Section S. Elective Deductions**

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: October 10, 1996

\_\_\_\_\_  
ELMER H. BRUNSTING, Founder

\_\_\_\_\_  
NELVA E. BRUNSTING, Founder

\_\_\_\_\_  
ELMER H. BRUNSTING, Trustee

\_\_\_\_\_  
NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

COUNTY OF HARRIS

On October 10, 1996, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

\_\_\_\_\_  
Notary Public, State of Texas



**THE RESTATEMENT OF  
THE BRUNSTING FAMILY  
LIVING TRUST**

*Prepared By*

Albert E. Vacek, Jr.

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# THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

## Article I

### Our Family Living Trust

#### Section A. The Restatement of Our Trust

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

#### Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.

Our trust may also be known as:

ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

**Section C. Our Beneficiaries and Family**

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

<u>Name</u>	<u>Birth Date</u>
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust

during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

## Article II

### Transfers of Assets to Our Trust

#### Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

#### Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

#### Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

## **Article III**

### **Our Right to Amend or Revoke This Trust**

#### **Section A. We May Revoke Our Trust**

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

#### **Section B. We May Amend Our Trust**

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.

#### **Section C. Income Tax Matters**

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and



deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

## Article IV

### Our Trustees

#### Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

#### Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

**Section C. No Bond is Required of Our Trustees**

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

**Section D. Resignation or Removal of Our Trustees**

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

**Section E. Affidavit of Authority to Act**

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

\_\_\_\_\_  
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public - State of Texas

**Section F. Documentary Succession of Our Trustees**

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The affidavit may, at the Trustee’s discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence of a successor’s authority to serve and act as the Trustee of the trust.

**Section G. Our Trustees’ Compensation**

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney’s, accountant’s and other professional fees.

**Section H. Multiple Trustees**

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

**Section I. Delegation of Authority**

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

**Section J. Successor Corporate Trustees**

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

**Section K. Partial and Final Distributions**

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

**Section L. Court Supervision Not Required**

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

**Section M. Health Insurance Portability and Accountability Act (HIPAA) of 1996 Compliance**

In order to maintain the integrity of this trust declaration and to meet our estate planning desires and goals, our Trustees shall comply with the directive set forth in this Section to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

**1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information**

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and

deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

## **2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founders' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. Each of the Founders have separately signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

## **3. Determination of "Incompetence" or "Incapacity"**

For purposes of this Trust, and notwithstanding any other conflicting provisions contained in this Trust Declaration or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or



estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founders, the Founders hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founders' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or



such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event this Trust Declaration does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of this trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

Each of the Founders have separately signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of this trust agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the trust agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

## Article V

### Insurance Policies and Retirement Plans

#### Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

##### 1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

##### 2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

## **Section B. Upon the Death of a Founder**

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

### **1. Collection of Non-Retirement Death Proceeds**

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

### **2. Retirement Plan Elections**

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

### **3. Collection Proceedings**

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee,

in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

#### **4. Payor's Liability**

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

### **Section C. Special Provisions Pertaining to Tax-Deferred Trust Assets**

Since the Founders anticipate that tax-deferred plans such as 401(k) plans, IRA's, SEP's and similar retirement plans and tax-deferred accounts might name this trust as the designated beneficiary in the event of the death of the Founders, the following provisions will hereby apply in all respects with regard to the assets and proceeds of such plans, notwithstanding that other provisions in this Agreement are in conflict with the following provisions:

#### **1. Minimum Distribution**

It is the purpose and intent of the Founders that this trust will qualify as a "designated beneficiary" pursuant to Section 401(a)(9) of the Internal Revenue Code and the term "Minimum Required Distribution" shall mean such mandatory distributions as are required to qualify this trust pursuant to the said Section 401(a)(9) of the Internal Revenue Code.

#### **2. Distribution Restrictions**

Notwithstanding any other provision in this trust declaration, and except as provided in this Article, the Trustee may not distribute to or for the benefit of the estate of either Founder, any charity or any other non-individual beneficiary, any benefits payable to this trust under any qualified retirement plan, individual retirement account or other retirement arrangement subject to the "Minimum Required Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code, or other comparable provisions of law. It is the intent

of the Founders that all such retirement benefits be distributed to or held only for individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. This paragraph shall not apply to any charitable bequest which is specifically directed to be funded with assets other than those encompassed by this provision.

**3. Exclusion of Older Adopted "Descendants"**

Notwithstanding any other provision hereof or state law, the class of the Founders' (or any other persons) "issue" or "descendants" shall not include an individual who is the Founders' (or such persons') "issue" or "descendants" by virtue of legal adoption if such individual (i) was so adopted after the Required Beginning Date of a Founder or a Founder's death, whichever occurs first, and (ii) is older than the oldest beneficiary of this trust who was a living member of said class on the earlier of said dates. The "Required Beginning Date," for purposes of this paragraph means April 1 of the year following the year in which the plan participant reaches 70½, or, if later, the date on which this trust is first named as a beneficiary of any retirement plan, benefit or arrangement subject to the "Minimum Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code. The said Section 401(a)(9) of the Internal Revenue Code is incorporated by reference in this trust declaration for all purposes, together with applicable treasury regulations pertaining thereto.

**4. Payment of Estate Taxes of Plan Participant**

Except as required by state law, the trustee shall not use any plan benefits to pay a plan participant's estate taxes.

**5. Delivery of Trust to Plan Administrator**

If the Founders have not previously done so, the Trustee shall deliver a copy of this trust declaration to any plan administrator within the time limits required by applicable statute, as well as final and proposed treasury regulations.

**6. Distribution to the Beneficiaries**

Notwithstanding any other provision contained in this trust declaration to the contrary, the Trustee shall withdraw from the individual retirement account or other retirement plan payable to the trust, and distribute directly to the beneficiaries named herein, each year, the Minimum Required Distribution for such year based on the oldest beneficiary's life expectancy. After the death

of a beneficiary, the Trustee shall pay income of the trust and such Minimum Required Distribution to the descendants of such deceased or remainder beneficiary, as specified in Article X of this trust declaration.

**7. Distribution of More Than the Minimum Distribution**

The Trustee is authorized in its sole and absolute discretion, to distribute to the beneficiary and contingent beneficiaries more than the Minimum Required Distribution if deemed necessary and appropriate prior to the mandatory distributions of trust assets provided in Article X of this trust declaration.

## **Article VI**

### **For So Long As We Both Shall Live**

#### **Section A. Our Use of Income and Assets**

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

#### **Section B. If One or Both of Us Are Disabled**

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.



Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

### **Section C. Income Tax Matters**

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

### **Section D. Residence Homestead**

Pursuant to Section 11.13 of the Texas Property Tax Code, a qualifying trust may claim the statutory homestead exemption provided by the said Texas Property Tax Code as well as other provisions of Texas law. In order to comply with the said Texas Property Tax Code provisions, the Founders hereby agree as follows:

1. Our residence shall be owned by us through a beneficial interest in this qualifying trust;
2. Our residence shall be designed or adapted for human residence;



3. Such property shall at all times be used as our residence;
4. Such property will be occupied by us as Founders or Trustors of this trust as a result of our beneficial interest in this qualifying trust;
5. By separate deed of our residential property, we have conveyed our interest in such real property to this qualifying trust and are therefore qualified as "Trustors" pursuant to the said Code;
6. This revocable intervivos trust is a "Qualifying Trust" in that we specifically provide that as Trustors of the trust we have the right to use and occupy as our principal residence the residential property rent free and without charge except for taxes and other costs and expenses which may be specified in this instrument. Such right to use and occupation shall be for life or until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and
7. This trust has acquired the property in an instrument of title that
  - a. describes the property with sufficient certainty to identify it and the interest acquired;
  - b. is recorded in the real property records of the county in which the property is located; and
  - c. is executed by one or both of us as Trustors or by our personal representatives.

## **Article VII**

### **Upon the Death of One of Us**

#### **Section A. Settlement of Affairs**

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

#### **1. Deceased Founder's Probate Estate**

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

## **2. Exempt Property Excluded**

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

## **3. Apportionment of Payments**

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside

of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

## **Section B. Division and Distribution of Trust Property**

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

### **1. Creation of the Survivor's Trust**

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

#### **a. Numerator of the Fractional Share**

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

#### **b. Denominator of the Fractional Share**

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

## **2. Creation of the Decedent's Trust**

The Decedent's Trust shall consist of the balance of the trust property.

### **Section C. Valuation of Property Distributed to the Survivor's Trust**

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

### **Section D. Conversion of Nonproductive Property**

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

### **Section E. Survivor's Right to Refuse Property or Powers Granted**

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

## **Section F. Allocation of Trust Property**

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

## **Section G. Distributions from Retirement Plan to the Survivor's Trust**

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

### **1. Form of Distribution**

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

**2. Income Requirement**

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

**3. Retirement Plan Expenses**

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

## **Article VIII**

### **Administration of the Survivor's Trust**

#### **Section A. Creation of Two Survivor's Shares**

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

##### **1. Survivor's Share One**

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

##### **2. Survivor's Share Two**

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

#### **Section B. Administration of Survivor's Share One**

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

##### **1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.



**2. The Surviving Founder's Right to Withdraw Principal**

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

**3. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

**4. The Surviving Founder's General Power of Appointment**

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

### **Section C. Administration of Survivor's Share Two**

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

#### **1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

#### **2. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

### **3. The Surviving Founder's Limited Testamentary Power of Appointment**

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

### **Section D. Administration of Both Survivor's Shares at Surviving Founder's Death**

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

#### **1. The Surviving Founder's Final Expenses**

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

## **2. Redemption of Treasury Bonds**

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

## **3. Coordination with the Personal Representative**

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

### **a. Authorized Payments**

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

**b. Purchase of Assets and Loans**

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

**c. Distributions from the Personal Representative**

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

**4. Trustee's Authority to Make Tax Elections**

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

**a. Alternate Valuation Date**

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

**b. Deduction of Administration Expenses**

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

**c. Taxes and Returns**

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

**Section E. Subsequent Administration of the Survivor's Trust**

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

## Article IX

### Administration of the Decedent's Trust

#### Section A. Use of Income and Principal

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.
2. **PRINCIPAL**
  - a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed \$5,000.00.
  - b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.
  - c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

#### Section B. Guidelines for All Distributions

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

### **Section C. Guidelines for Discretionary Distributions**

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

### **Section D. Termination of the Decedent's Trust**

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only (but only to the extent such undistributed principal and income have not been transferred or assigned to the Decedent's Trust by virtue of a disclaimer executed by the surviving Founder). Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the



appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

## Article X

### Upon the Death of the Survivor of Us

#### Section A. Our Beneficiaries

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

<u>Beneficiary</u>	<u>Share</u>
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

#### Section B. Distribution to our Beneficiaries

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share created for CANDACE LOUISE CURTIS shall be held in trust and administered and distributed as follows:

- i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

iii. General Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CANDACE LOUISE CURTIS' share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CANDACE LOUISE CURTIS' death.

In exercising this general power of appointment, CANDACE LOUISE CURTIS shall specifically refer to this power.

CANDACE LOUISE CURTIS shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CANDACE LOUISE CURTIS the right to appointment of property to CANDACE LOUISE CURTIS' own estate. It also specifically grants to CANDACE LOUISE CURTIS the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CANDACE LOUISE CURTIS may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the limited testamentary power to appoint to or for the benefit of CANDACE LOUISE CURTIS' descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CANDACE LOUISE CURTIS' share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CANDACE LOUISE CURTIS' death.

CANDACE LOUISE CURTIS may make distributions among CANDACE LOUISE CURTIS' descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CANDACE LOUISE CURTIS shall determine.

This power shall not be exercised in favor of CANDACE LOUISE CURTIS' estate, the creditors of CANDACE LOUISE CURTIS' estate or in any manner which would result in any economic benefit to CANDACE LOUISE CURTIS.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share created for CAROL ANN BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

iii. General Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CAROL ANN BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CAROL ANN BRUNSTING's death.

In exercising this general power of appointment, CAROL ANN BRUNSTING shall specifically refer to this power.

CAROL ANN BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CAROL ANN BRUNSTING the right to appointment of property to CAROL ANN BRUNSTING's own estate. It also specifically grants to CAROL ANN BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CAROL ANN BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CAROL ANN BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CAROL ANN BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CAROL ANN BRUNSTING's death.

CAROL ANN BRUNSTING may make distributions among CAROL ANN BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CAROL ANN BRUNSTING shall determine.

This power shall not be exercised in favor of CAROL ANN BRUNSTING's estate, the creditors of CAROL ANN BRUNSTING's estate or in any manner which would result in any economic benefit to CAROL ANN BRUNSTING.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share created for CARL HENRY BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the net income from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the principal from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

iii. General Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CARL HENRY BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CARL HENRY BRUNSTING's death.

In exercising this general power of appointment, CARL HENRY BRUNSTING shall specifically refer to this power.

CARL HENRY BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CARL HENRY BRUNSTING the right to appointment of property to

CARL HENRY BRUNSTING's own estate. It also specifically grants to CARL HENRY BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CARL HENRY BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CARL HENRY BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CARL HENRY BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CARL HENRY BRUNSTING's death.

CARL HENRY BRUNSTING may make distributions among CARL HENRY BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CARL HENRY BRUNSTING shall determine.

This power shall not be exercised in favor of CARL HENRY BRUNSTING's estate, the creditors of CARL HENRY BRUNSTING's estate or in any manner which would result in any economic benefit to CARL HENRY BRUNSTING.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, and without exercising a power of appointment outlined above, the trust share set aside for CARL HENRY



BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share created for AMY RUTH TSCHIRHART shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

iii. General Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, AMY RUTH TSCHIRHART's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at AMY RUTH TSCHIRHART's death.

In exercising this general power of appointment, AMY RUTH TSCHIRHART shall specifically refer to this power.

AMY RUTH TSCHIRHART shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to AMY RUTH TSCHIRHART the right to appointment of property to AMY RUTH TSCHIRHART's own estate. It also specifically grants to AMY RUTH TSCHIRHART the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as AMY RUTH TSCHIRHART may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the limited testamentary power to appoint to or for the benefit of AMY RUTH TSCHIRHART's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of AMY RUTH TSCHIRHART's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at AMY RUTH TSCHIRHART's death.

AMY RUTH TSCHIRHART may make distributions among AMY RUTH TSCHIRHART's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as AMY RUTH TSCHIRHART shall determine.

This power shall not be exercised in favor of AMY RUTH TSCHIRHART's estate, the creditors of AMY RUTH

TSCHIRHART's estate or in any manner which would result in any economic benefit to AMY RUTH TSCHIRHART.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share created for ANITA KAY RILEY shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

iii. General Testamentary Power of Appointment

ANITA KAY RILEY shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last

will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, ANITA KAY RILEY's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at ANITA KAY RILEY's death.

In exercising this general power of appointment, ANITA KAY RILEY shall specifically refer to this power.

ANITA KAY RILEY shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to ANITA KAY RILEY the right to appointment of property to ANITA KAY RILEY's own estate. It also specifically grants to ANITA KAY RILEY the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as ANITA KAY RILEY may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

ANITA KAY RILEY shall have the limited testamentary power to appoint to or for the benefit of ANITA KAY RILEY's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of ANITA KAY RILEY's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at ANITA KAY RILEY's death.

ANITA KAY RILEY may make distributions among ANITA KAY RILEY's descendants in equal or unequal amounts, and on

such terms and conditions, either outright or in trust, as ANITA KAY RILEY shall determine.

This power shall not be exercised in favor of ANITA KAY RILEY's estate, the creditors of ANITA KAY RILEY's estate or in any manner which would result in any economic benefit to ANITA KAY RILEY.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

**Section C. Administration of the Share of a Descendant of a Deceased Beneficiary**

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be divided into as many shares as shall be necessary to create shares for each then living descendant of such deceased beneficiary on a per stirpes basis. For example, if a deceased beneficiary has a deceased child who leaves children, then the share that would have passed to such deceased child shall be shared equally among his or her living children on a per stirpes basis. Each such share shall be held in trust to be administered as follows:

1. Distribution of Trust Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the net income from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

2. Distribution of Trust Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the principal from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

When such descendant reaches the age of 30 or if, on the creation of his or her trust share, he or she has already attained the age of 30, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute an amount not greater than fifty percent of the accumulated net income and principal, as it is then constituted, free of trust. If more than one written request for distribution is made by such descendant, our Trustee shall not cumulatively distribute to such descendant, in response to all such requests, more than fifty percent of the accumulated income and principal of the trust as it existed on the date of the first request for a distribution made under this paragraph by such descendant or fifty percent of the total trust funds remaining at the date of any subsequent request, whichever is the lesser amount.

When such descendant reaches the age of 40 or if, on the creation of his or her trust share, he or she has already attained the age of 40, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute the balance of the accumulated net income and principal of such trust share, as it is then constituted to such descendant, free of trust. Undistributed funds shall continue to be held in trust.

If a descendant of a deceased beneficiary should die before the complete distribution of such trust share, the trust share shall terminate and our Trustee shall distribute the balance of the trust share to the surviving descendants of such descendant, share and share alike, per stirpes. If such descendant of a deceased beneficiary dies with no surviving descendants, then such share shall terminate and be distributed to the remaining descendants of the deceased beneficiary, share and share alike, per stirpes. If there are no descendants of such deceased beneficiary, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the accumulated income and principal of the trust share as provided in Section G of this Article.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section D. Subsequent Children**

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section E. Guidelines for Discretionary Distributions**

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

**Section F. Guidelines for All Distributions**

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

**Section G. Ultimate Distribution**

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:



<u>Beneficiary</u>	<u>Share%</u>
CENTRAL COLLEGE OF IOWA Pella, Iowa	100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate, unmarried, owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate, unmarried, owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.



## Article XI

### Protection of Beneficial Interests

#### Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

#### Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

#### Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

#### **Section D. Our Trustee's Authority to Keep Property in Trust**

Unless this trust declaration provides otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

##### **1. Distributions of Trust Income and Principal**

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

## 2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

- (a) Directly to such beneficiary;
- (b) To his or her parent, guardian or legal representative;
- (c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;
- (d) To any person with whom he or she is residing;
- (e) To some near relative or close friend; or
- (f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;
- (g) To persons, corporations or other entities for the use and benefit of the beneficiary;
- (h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or
- (i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

### **3. Termination and Ultimate Distribution**

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

### **Section E. Application to Founders**

Notwithstanding anything in this agreement to the contrary, this Article shall not apply to, modify or affect the surviving Founder's right to receive the net income from the Survivor's Trust as set forth and provided for in this agreement.

## **Article XII**

### **Our Trustees' Powers and Authority**

#### **Section A. Applicability of Texas Trust Code and Other Statutes**

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

#### **Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries**

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

#### **Section C. General Investment and Management Powers**

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

### **Originally Contributed Properties**

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

### **Additional Properties**

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

### **Securities Powers**

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

### **Investment of Cash Assets**

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In

determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

### **Unproductive or Wasting Assets**

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

### **Personal Residence and Furnishings of Personal Residence**

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

### **Mineral Properties**

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.



Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

#### **Power to Enter Into or Continue Business Activities**

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

#### **Banking Authority**

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

#### **Corporate Activities**

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and



liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

### **Agricultural Powers**

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

### **Real Estate**

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

### **Authority to Sell or Lease and Other Dispositive Powers**

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

### **Warranties and Covenants**

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

### **Trustee's Compensation**

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

### **Employment and Delegation of Authority to Agents**

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

### **Power to Release or Abandon Property or Rights, and to Pursue Claims**

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

### **Nominal Title and Use of Nominees**

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

### **Power to Lend Money and Guarantee Obligations**

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

### **Power to Borrow**

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

### **Payment of Indebtedness and Settlement Costs**

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

### **Transactions Between the Trustee and Our Personal Representatives**

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

### **Commingling Trust Estates**

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

### **Addition of Accumulated Income to Principal**

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

### **Distributions Not Treated as Advancements**

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

### **Tax Elections**

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

### **Transactions in Which the Trustee Has A Direct or Indirect Interest**

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

#### **Section D. Apportionment of Receipts and Expenses Between Income and Principal**

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

#### **Section E. Records, Books of Account and Reports**

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.



The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

#### **Section F. Trustee's Liability**

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

### **Section G. Duty of Third Parties Dealing with Trustee**

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

### **Section H. Division and Distribution of Trust Estate**

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

### **Section I. Life Insurance**

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.



The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

#### **Section J. Insured Trustee's Authority**

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented

by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

#### **Section K. Estimated Income Tax Payment Allocation**

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

#### **Section L. Merger of Trusts**

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

**Section M. Termination and Distribution of Small Trust**

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

**Section N. Elimination of Duty to Create Identical Trusts**

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

**Section O. Powers of Trustee Subsequent to an Event of Termination**

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

**Section P. Requesting Financial Information of Trust Beneficiaries**

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

### **Section Q. Retirement Plan Elections**

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

### **Section R. Qualification as a Qualified Subchapter S Trust**

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

#### **1. A Sole Beneficiary**

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

#### **2. Multiple Beneficiaries**

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

#### **3. Outright Distribution**

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the

newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

## Article XIII

### Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

Any course of study or instruction at any institution for specialized, vocational or professional training.

Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

4. Founders. The term "Founders" means the "grantors", "trustors", "settlor" or any other name given to the makers of this trust either by law or by popular usage.
5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals, other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.
6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.
8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.
9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.



10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.
12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.
13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.
14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.



## **Article XIV**

### **Miscellaneous Matters**

#### **Section A. Distribution of Personal Belongings by Memorandum**

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

#### **Section B. Special Bequests**

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

**Section C. The Rule Against Perpetuities**

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

**Section D. Jurisdiction**

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

**Section E. Dissolution of Our Marriage**

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

**Section F. Maintaining Property in Trust**

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

### **Section G. Survival**

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

### **Section H. Simultaneous Death**

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

### **Section I. Changing the Trust Situs**

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

### **Section J. Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

### **Section K. Headings of Articles, Sections and Paragraphs**

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

**Section L. Notices**

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section M. Delivery**

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section N. Duplicate Originals**

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

**Section O. Severability**

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

**Section P. Gender, Plural Usage**

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity

as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

**Section Q. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

**Section R. Generation Skipping Transfers**

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.


**Section S. Elective Deductions**

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

  
ELMER H. BRUNSTING, Founder

  
NELVA E. BRUNSTING, Founder

  
ELMER H. BRUNSTING, Trustee

  
NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

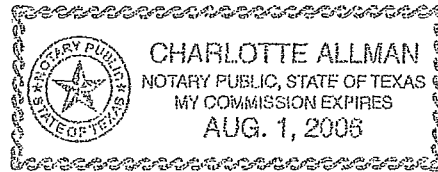
COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

*Charlotte Allman*

\_\_\_\_\_  
Notary Public, State of Texas



# Exhibit 8

The 2007 Amendment to the Brunsting Family Trust



FIRST AMENDMENT TO THE RESTATEMENT TO  
THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING and NELVA E. BRUNSTING, the Founders of the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, hereby amend the said Trust, as follows, to-wit:

1. The said trust entitled "The Brunsting Family Living Trust dated October 10, 1996" is hereby amended so that any and all references to "ANITA RILEY" shall be to "ANITA BRUNSTING". Said correction is incorporated herein as a part of the Brungsting Family Living Trust dated October 10, 1996 for all purposes.

2. Article IV, Section B of the said Trust entitled "Our Successor Trustees" is hereby amended so that from henceforth Article IV, Section B is replaced in its entirety with the Article IV, Section B set forth in Exhibit "A" attached hereto and incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996, as restated on January 12, 2005, for all purposes.

3. All amendments set forth in this instrument are effective immediately upon execution of this document by the Founders.

4. All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

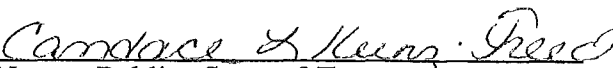
WITNESS OUR HANDS this the 6th day of September, 2007.

  
\_\_\_\_\_  
ELMER H. BRUNSTING,  
Founder and Trustee

  
\_\_\_\_\_  
NELVA E. BRUNSTING,  
Founder and Trustee

THE STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me on the 6th day of September, 2007, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

  
\_\_\_\_\_  
Notary Public, State of Texas

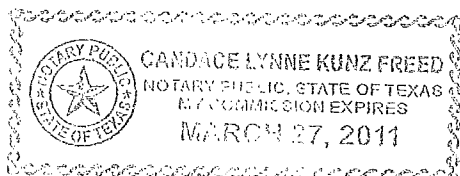


EXHIBIT "A"

**Article IV**

**Our Trustees**

**Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Co-Trustees:

**CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS**

**CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS** shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then **THE FROST NATIONAL BANK** shall serve as sole successor Trustee.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

# Exhibit 1

Affidavit filed in the federal court by Defendant Amy Brunsting March 6, 2012

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS

§  
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§  
§  
§  
§  
§  
§

CIVIL ACTION NO. H-12-CV-592

vs.

ANITA KAY BRUNSTING, and  
AMY RUTH BRUNSTING

**AFFIDAVIT IN SUPPORT OF REMOVAL OF LIS PENDENS**

STATE OF TEXAS §  
COUNTY OF COMAL §

Before me, the undersigned authority, appeared Amy Ruth Brunsting who after being duly sworn by me did state:

1. My name is Amy Ruth Brunsting. I am over 18 years of age, competent to make this affidavit, and have personal knowledge of the facts stated herein.

2. This case involves the allegations of my sister, Candace Louise Curtis, who is disgruntled with the amount of information and accounting I and my sister have provided to her while acting in our capacity as Co-Successor Trustees of the Brunsting Family Living Trust.

3. The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance. She began issuing threats and demands within weeks after our mother died, and before we have had a chance to evaluate the proper handling of assets in the estate, including the largest asset, a farm in Iowa.

4. Her various complaints will be addressed in some greater detail if this court believes it has jurisdiction over the administration of a living trust. However, of immediate concern is the potential chilling effect that Candace filing of a *lis pendens* may have on the sale of our parent's residential homestead, which is scheduled to close on March 9, 2012.

5. As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston. We therefore have prepared and offered the house for sale. None of the heirs

have objected to this plan, including Candace. Our authority to sell is contained in Article IX, Section C of the Brunsting Family Living Trust. The specific provision regarding real estate appears on page 9-5 of the document under the heading of "Real Estate" and this section can be viewed in the copy of the trust supplied by Candace as an exhibit to her Complaint.

6. We first obtained an appraisal of the property. This is attached hereto as Exhibit "A". This appraisal, dated in January of this year, placed the fair market value of the property at \$410,000. We listed the property for \$469,000 and were fortunate enough to attract a buyer, Brett C. McCarroll, who offered \$469,000. The contract for this sale is attached as Exhibit "B". Although originally scheduled to close in February, the closing has been moved to this Friday, March 9.

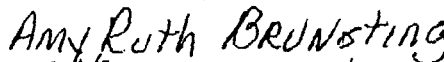
7. As further evidence of the fair value of the proposed sale, I attach the Harris County Appraisal District tax appraisal, showing the taxable value of the property to be approximately \$270,000.


8. We have attempted to provide Candace with enough information to evaluate her position in the trust administration, and have sent her preliminary spreadsheets with a listing of assets and liabilities, as best we have been able to determine in the short time since our mother's death on November 11, 2011. She is not satisfied with the information we have provided and has stated her objective of tying up the administration of the estate until she gets a response that satisfies her. She is the only one of the five heirs who has taken this position, and as can be gleaned from her lengthy, and mostly inaccurate unsworn statement, filed with the complaint, relates to her animosity towards the two of us in the manner we attempted to aid our mother in the final months of her life.

9. If this sale is not consummated on the scheduled closing date, we have no assurance that the buyer will await the resolution of Candace's complaints and the sale will, in all likelihood, be lost. This will result in further expense to the trust estate for maintenance and upkeep to the property without any appreciation in the value. The house was originally shown for sale fully furnished. It is now empty. It's "buyer appeal" has been diminished and this could also jeopardize future sale prospects if this sale is lost.

10. The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the lis pendens so the sale can be consummated, for the benefit of all of the heirs.

  
AMY RUTH BRUNSTING



Sworn to and signed before me by , on this 6<sup>th</sup> day of March, 2012.

*Teresa Simmons*  
Notary Public in and for the State of Texas



Church of Christ  
1665 Business Loop 35 S.  
New Braunfels, TX 78130

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" **B. Contentions of the Parties** "

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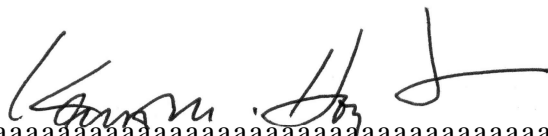
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NO. 412.249-401

**PROBATE COURT 4**

04102013:0918:PO048

ESTATE OF § IN PROBATE COURT  
 NELVA E. BRUNSTING, § NUMBER FOUR (4) OF  
 DECEASED § HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, § IN PROBATE COURT  
 individually and as independent §  
 executor of the estates of Elmer H. §  
 Brunsting and Nelva E. Brunsting §

vs. §

ANITA KAY BRUNSTING f/k/a §  
 ANITA KAY RILEY, individually, §  
 as attorney-in-fact for Nelva E. Brunsting, §  
 and as Successor Trustee of the Brunsting § NUMBER FOUR (4) OF  
 Family Living Trust, the Elmer H. §  
 Brunsting Decedent's Trust, the §  
 Nelva E. Brunsting Survivor's Trust, §  
 the Carl Henry Brunsting Personal §  
 Asset Trust, and the Anita Kay Brunsting §  
 Personal Asset Trust; §  
 AMY RUTH BRUNSTING f/k/a §  
 AMY RUTH TSCHIRHART, §  
 individually and as Successor Trustee §  
 of the Brunsting Family Living Trust, §  
 the Elmer H. Brunsting Decedent's Trust, §  
 the Nelva E. Brunsting Survivor's Trust, §  
 the Carl Henry Brunsting Personal §  
 Asset Trust, and the Amy Ruth Tschirhart §  
 Personal Asset Trust; §  
 CAROLE ANN BRUNSTING, individually §  
 and as Trustee of the Carole Ann §  
 Brunsting Personal Asset Trust; and §  
 as a nominal defendant only, §  
 CANDACE LOUISE CURTIS § HARRIS COUNTY, TEXAS

*1 pers. in  
4/9/13*

**PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING,  
 FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR  
 INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES**

APR 10 2013 *ka*

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, CARL HENRY BRUNSTING, individually and as Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting, filing his Petition for Declaratory Judgment, for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, together with Request for Disclosures, and in support thereof would show the Court as follows:

**I.**

**Discovery Control Plan**

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

**II.**

**Parties**

2. Plaintiff is the duly appointed personal representative of the estates of both his father, Elmer H. Brunsting (“Elmer”),<sup>1</sup> and his mother, Nelva E. Brunsting (“Nelva”).<sup>2</sup> These estates are collectively referred to herein as the “Estates.” In his individual capacity, Plaintiff is referred to herein as “Carl.” Carl was previously a successor trustee of the Brunsting Family Living Trust created on October 10, 1996 and restated on January 12, 2005 (the “Family Trust”). Carl is a beneficiary of the Family Trust and the other trusts created by its terms. Elmer was a trustee and a beneficiary of the Family Trust, and Nelva was also a trustee and beneficiary of the Family Trust and its successor trusts. The successor trusts of the Family Trust resulted pursuant to the terms of the

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<sup>1</sup>Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

<sup>2</sup>Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.

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Family Trust upon Elmer's death. Those successor trusts are the Elmer H. Brunsting Decedent's Trust ("Elmer's Decedent's Trust") and the Nelva E. Brunsting Survivor's Trust ("Nelva's Survivor's Trust"). Those are sometimes collectively referred to herein as the "Successor Trusts." Carl is also the beneficiary, but not the trustee, of the Carl Henry Brunsting Personal Asset Trust ("Carl's Trust") which was created pursuant to the terms of the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment signed on 8/25/10 (the "8/25/10 QBD"). As will be further discussed herein, Plaintiff believes the 8/25/10 QBD was the result of undue influence, was done when Nelva lacked capacity and/or was created by deception so that Nelva did not understand or consent to the document. In fact, it is far from clear what documents Nelva even signed or knew existed.

3. Defendant Anita Kay Brunsting f/k/a/ Anita Kay Riley is Carl's sister. It is believed that Anita's counsel will accept service, but, if not, Anita can be served with process at her home at 203 Bloomingdale Circle, Victoria, Victoria County, Texas 77904. In her individual capacity and when acting pursuant to the power of attorney purportedly executed by Nelva on August 25, 2010 ("8/25/10 POA"), this Defendant will be referred to herein as "Anita." Anita was named as a successor trustee under the terms of the tainted 8/25/10 QBD. Pursuant to the terms of that document, upon Nelva's death, Anita was to become co-trustee of the Family Trust and the Successor Trusts. On December 21, 2010, however, Nelva purportedly signed a resignation of her position as trustee and appointed Anita to be her successor even before her death. From that point until her mother's death on November 11, 2011, Anita acted as the sole trustee of the Family Trust and the Successor Trusts. As will be discussed herein, Plaintiff believes Anita convinced Nelva to resign from her trustee position and to appoint Anita as her replacement through improper means and for improper purposes. The terms of the tainted 8/25/10 QBD made Anita co-trustee of Carl's Trust.



Anita is also beneficiary and trustee of the Anita Kay Brunsting Personal Asset Trust (“Anita’s Trust”).

4. Defendant Amy Ruth Brunsting f/k/a/ Amy Ruth Tschirhart (“Amy”) is Carl’s sister.

It is believed that Amy’s counsel will accept service, but, if not, Amy can be served with process at her home at 2582 Country Ledge, New Braunfels, Comal County, Texas 78132. Pursuant to the terms of the tainted 8/25/10 QBD, Amy became a co-trustee of the Family Trust and the Successor Trusts upon Nelva’s death. Anita and Amy in their capacity as trustees of the Family Trusts and the Successor Trusts are sometimes collectively referred to herein as the “Current Trustees”. Amy is also the beneficiary and the trustee of the Amy Ruth Brunsting Personal Asset Trust (“Amy’s Trust”). The terms of the tainted 8/25/10 QBD also made Amy co-trustee of Carl’s Trust.

5. Defendant Carole Ann Brunsting (“Carole”) is Carl’s sister. Carole may be served with process either at her home at 5822 Jason St., Houston, Harris County, Texas 77074 or at her place of employment at Cameron’s offices at 1333 West Loop South, Suite 1700, Houston, Texas 77027. Carole was named in Nelva’s health care power of attorney and was made a joint signatory on Nelva’s bank account when Anita took over as trustee. Carole is also the beneficiary and trustee of the Carole Ann Brunsting Personal Asset Trust (“Carole’s Trust”).

6. Candace Louise Curtis (“Candy”) is Carl’s sister. Candy is named in this action only because these claims impact her rights as a beneficiary of various trusts. Plaintiff does not seek to recover any damages from Candy, and it is anticipated that Candy will waive service of process. Candy and Carl were the only Brunsting siblings whose right to be trustees of their own trusts after Nelva died were extinguished by the changes implemented in the tainted 8/25/10 QBD. Candy is the beneficiary of the Candace Louise Curtis Personal Asset Trust (“Candy’s Trust”) of which Anita and Amy are the co-trustees.

III.

Jurisdiction

7. Plaintiff brings this cause of action pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code. More specifically, Plaintiff brings this proceeding to:

- (a) establish, construe the terms of, and determine the rights and liabilities of the parties under the Family Trust, the Successor Trusts, and the trusts purportedly created pursuant to the terms of the tainted 8/25/10 QBD;
- (b) require an accounting of all the trusts and other transactions resulting from Anita, Amy, and Carole's exercise of control over Elmer and Nelva's remaining assets, however held;
- (c) determine damages resulting from Anita, Amy, and Carole's wrongful acts, including, but not limited to, numerous breaches of fiduciary duties;
- (d) impose a constructive trust over assets wrongfully transferred, as well as anything of value obtained through the use of assets wrongfully transferred;
- (e) obtain injunctive relief to preserve Elmer and Nelva's assets, however held, until the records concerning the transfers of assets can be examined and appropriate remedies can be sought so that the improper transfers can be reversed and the assets can be properly allocated and distributed.

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Stephanie  
SECURITY OFFICER  
HARRIS COUNTY CLERK



IV.

Venue

8. Venue in this cause is in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1) because all, or substantially all, of the acts giving rise to Plaintiff's claims occurred in Harris County, Texas.

V.

Background Facts

9. On October 10, 1996, Elmer and Nelva established the Family Trust. The Family Trust was restated on January 12, 2005. The Family Trust was initially revocable, but only until the death of either Elmer or Nelva. Thus, when Elmer died on April 1, 2009, the Family Trust became irrevocable. At that point, the Family Trust's assets were to be divided between Elmer's Decedent's Trust and Nelva's Survivor's Trust pursuant to Article VII of the Family Trust.

10. At some point, Anita and Amy implemented a plan to take over their parents' remaining assets and divide the spoils. That plan was made feasible when Carl became seriously ill with encephalitis in July, 2010. Carl had been an obstacle to Anita and Amy's plans, so they seized the opportunity to become even more aggressive in controlling their mother's actions. Carole's initial resistance to Anita and Amy's scheme was apparently eliminated through transfers of assets to which she was not entitled.

11. Anita and Amy carried out their plan of replacing their mother's wishes with their own with the help of Nelva's own legal counsel. The result was the tainted 8/25/10 QBD. Through bullying and deception, that document was executed without regard to Nelva's capacity and notwithstanding Nelva's apparent lack of understanding, knowledge, or consent to what was occurring. The 8/25/10 QBD removed Carl from his successor trustee roles. At that time all prior

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powers of attorney were revoked and replaced with one giving Anita control of her mother's affairs. During the same period, Nelva's safe deposit box to which Carl had access was closed and a new one opened giving Anita access instead. Anita and Amy apparently determined which documents would be prepared, regardless of whether Nelva agreed with or even knew what they were doing. The only document which Anita and Amy wanted but seem to have been unsuccessful in implementing was a document intended to exclude Carl's daughter and granddaughter from inheriting through Nelva.

12. Perhaps because it became too difficult to even pretend to be obtaining Nelva's signature on documents needed to take all the steps Defendants wanted to take, or because Anita, Amy, and Carole did not want to wait for Nelva's death to begin using her assets for their own purposes, other steps were taken to obtain complete control of Nelva's assets, however held. Anita and Amy's continued efforts resulted in Nelva's purported resignation as trustee and purported appointment of Anita as substitute trustee of the Family Trust and the Successor Trusts on December 21, 2010. Thereafter, Anita used her position as trustee to repeatedly transfer assets for her own benefit and that of her children, for Amy's benefit and the benefit of Amy's children, and for Carole's benefit. Anita disregarded the terms of the Family Trust as she saw fit. For example, Anita began paying herself an exorbitant trustee's fee. Anita also began paying her own credit card bills, as well as other personal expenses, such as payments for her children's automobiles and educational expenses, from the Family Trust and Successor Trusts' accounts.

13. On December 31, 2010, an account was established, allegedly for Nelva's benefit to be used on day to day expenses but on which Carole was a signatory. Over the next year, more than \$150,000 was transferred from trust accounts by Anita and spent by Carole on what appears to be predominantly items for Carole's own benefit. At the same time, Anita was draining the other

accounts owned by Elmer's estate, Nelva, or the Successor Trusts, at least in part for her own purposes and/or other improper purposes.

14. On March 24, 2011, Anita divided the more than 4,000 shares of Exxon Mobile stock purportedly owned by the Family Trust between Elmer's Decedent's Trust and Nelva's Survivor's Trust. Then on May 9, 2011, Anita transferred 1,120 shares of that stock from Nelva's Survivor's Trust to Amy. On June 13, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to herself, and on June 15, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to Candy. An finally, on June 15, 2011, Anita transferred 1,325 shares from Elmer's Decedent's Trust to Carole. No shares were transferred to Carl, despite Anita's knowledge of Carl's serious health crisis and large medical expenses. In fact, Carl's family was not even informed of the transfers of stock and did not learn about them until after Nelva's death.

15. On June 14, 2011, Anita also transferred 135 shares of Chevron stock purportedly owned by Nelva's Survivor's Trust to each of her two children and to each of Amy's two children. No similar gift was made to either Carl's daughter or granddaughter or to Candy's two sons. Moreover, Carl's entire family was excluded from conversations addressing the status of the Brunsting estate, changes in the trusts, and Nelva's removal from involvement with and control over the trusts. Instead of assisting with Carl's medical bills, it is believed that trust assets were used to hire investigators to follow Carl's wife of 30 years and that a GPS tracking device was even placed on Carl's wife's car without her consent, at the apparent direction of Anita and Amy.

16. On Nelva's death on November 11, 2011, Amy joined Anita as co-trustee of the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust. Assets were to be divided equally into separate trusts for each of the Brunsting children upon Nelva's death. Until the tainted 8/25/10 QBD, each of the Brunsting children would have been trustee of their own trusts, but in the

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tainted 8/25/10 QBD, both Carl and Candy were removed as trustees of their own trusts. Instead, Anita and Amy were named co-trustees of both Carl's Trust and Candy's Trust.

17. Of course, by the time of Nelva's death, the remaining assets had already been plundered. Indeed, two days before Nelva died, Anita even closed the safe deposit box used by Nelva and no inventory of its contents have ever been provided although it had been where valuable items and documents had been kept. A number of valuable items remain unaccounted for after Nelva's death, such as a significant amount of savings bonds which it is believed either Anita, Amy, or Carole have not admitted they discovered and kept. Likewise, no effort was made to value, preserve, inventory, and properly divide personal property.

18. Of course, many things have not been accounted for or properly shared with Plaintiff. Plaintiff has not, for example, been provided with a copy of the lease of the most valuable asset his parents owned, a multimillion dollar farm in Iowa. To the extent information has been provided because Plaintiff has sought it and even filed a pre-suit discovery action to obtain it, that information has made it clear the plundering started long ago and only court intervention or complete dissipation of the assets will stop it. Apparently the Current Trustees believe the division of assets should be made based on the terms of the tainted 8/25/10 QBD, and without taking into consideration what Anita, Amy & Carole have already taken.

V.

**Construction of Trust and Suit for Declaratory Judgment**

19. The 8/25/10 QBD contains a broad *in terrorem* clause providing that a party forfeits their interest in the resulting trust if contesting its provisions. Plaintiff asserts that the *in terrorem* clause is overly broad and void as against public policy because it prohibits the trust beneficiaries

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from questioning any of the circumstances surrounding the Current Trustees' improper actions in this case, thereby preventing them from protecting their interests.

20. In addition, Plaintiff seeks declaratory relief construing the validity, terms, responsibilities, and obligations of the various documents signed or purportedly signed by Elmer and Nelva. In other words, Plaintiff also asks this Court to determine Plaintiff's rights and Defendants' responsibilities.

21. If the Court fails to find that the *in terrorem* clause is void as against public policy to the extent it prohibits beneficiaries from questioning the actions resulting in the QBDs and the actions supposedly taken under its terms, Plaintiff asks, in the alternative, that the Court construe the documents at issue herein and declare that Plaintiff's actions in filing and pursuing this action do not violate the *in terrorem* clause.

22. Plaintiff, in fact, seeks to determine and enforce his partents' intent and to further the purposes of that intent. In doing so, Plaintiff was required to bring this action requesting declaratory relief and an accounting. Such actions would not constitute a contest even if the provision were not void because it is against public policy.

23. Plaintiff further asserts that he had just cause to bring this lawsuit and that he has brought the action in good faith. Therefore, no forfeiture should result from the action.

## VI.

### **Demand for Trust Accounting**

24. Defendants have provided insufficient, conflicting, and unsupported information to Plaintiff accounting for the assets and transactions concerning the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust.



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25. The Texas Trust Code and the trust indentures require the Current Trustees to keep complete and accurate books of account with regard to the trusts, trust property and all transactions pertaining thereto and to provide the appropriate information to the beneficiaries, but they have failed to do so. Plaintiff, therefore, requests that this Court order Defendants to account for the administration of all the trusts.

## VII.

### Breach of Fiduciary Duties

26. Defendants have breached their duties as fiduciaries, both because of their formal positions as trustees of the various trusts, as agents for Nelva, and/or because of their family relationship to their parents and their brother. Carole also had fiduciary duties to Plaintiff, particularly after becoming a signatory on Nelva's account. Not only is the family relationship one involving a high degree of trust, influence, and confidence, but in this particular case, the fiduciary obligations were magnified because of the dominance on the part of the fiduciaries and the weakness and dependence on the part of the parties to whom Defendants owed fiduciary duties. They have breached their responsibilities by, among other things, transferring valuable property without receiving appropriate consideration and taking assets for their own benefit and use and in violation of their duties and the trust instruments themselves. Breaches of fiduciary duty by Defendants include, but are not limited to, the following:

- a. failing to keep and provide clear, regular, accurate, and complete accountings of assets;
- b. resisting accountings of property and transactions;
- c. failing to abide by the terms of the various trust instruments;
- d. failing to preserve property and to prevent losses of property;

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- e. conveying property in ways which were detrimental and in violation of their obligations;
- f. entering into transactions which were not in the best interests of persons and trusts to whom they owed fiduciary obligations;
- g. becoming involved in matters in which Anita, Amy, and Carole represented interests which conflicted with those of their parents, Carl, and the trusts and their beneficiaries, including Nelva;
- h. failing to be loyal to their family members and the trust beneficiaries and to take actions based upon the best interests of Nelva, Carl, and the trusts;
- i. failing to deal impartially, fairly, and equally with Nelva, Carl, and the trusts;
- j. failing to prevent transfers, gifts, or removal of assets;
- k. failing to make appropriate and equal distributions;
- l. failing to adequately inform the beneficiaries about assets and transactions and beneficiaries' rights;
- m. misrepresenting or allowing misrepresentations concerning assets and transactions and beneficiaries' rights;
- n. failing to prevent transactions which were detrimental to their family members and the trusts;
- o. allowing the payment of inappropriate amounts from assets they purportedly held as fiduciaries; and
- p. failing to follow and otherwise enforce the terms of the trust instruments.

27. In connection with actions by Defendants with regard to transactions involving self-dealing, Defendants, acting in a fiduciary capacity have the burden of establishing the propriety of

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those transactions. Defendants must prove those transactions were fair and equitable to Plaintiff, and the transactions at issue in this case clearly were not.

28. As a result of Defendants' various actions described herein, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

29. Because Defendants' actions were committed willfully and maliciously, Plaintiff also requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

### VIII.

#### Conversion

30. Defendants' actions constitute conversion of property to which Plaintiff had a superior right, and as a result of such conversion, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

31. Because Defendants' conversion was committed willfully and maliciously, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

### IX.

#### Negligence

32. Defendants had a duty to Plaintiff to use reasonable care to protect his interests in the capacities specified herein. Defendants failed to exercise such reasonable care, in that they allowed assets rightfully belonging to Elmer's estate, Nelva, and the various trusts of which Plaintiff was a beneficiary to be wrongfully removed, thereby improperly taking them or preventing their distribution to Plaintiff. As a result of Defendants' negligence, Plaintiff has been damaged in amounts in excess of the minimum jurisdictional limits of this Court.



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33. Defendants' actions constituted gross negligence in that Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to Plaintiff's rights. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

**X.**

**Tortious Interference with Inheritance**

34. Defendants' actions constitute tortious interference with Carl's inheritance rights.

35. As a direct and proximate result of Defendants' tortious interference with Carl's inheritance rights, Carl has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

36. Defendants' various actions were committed willfully, maliciously, and with the intent to conceal the true nature of the estate and the trusts to Carl's detriment. Accordingly, Carl requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

**XI.**

**Constructive Trust**

37. Plaintiff seeks the imposition of a constructive trust over the assets to which he is entitled, including all property improperly transferred by Anita and Amy, including, but not limited to, the property received by Anita, Amy, Carole, and their insiders or related entities, as well as the profits Defendants received as a result of the transfer of those assets. Plaintiff also seeks the imposition of a constructive trust over the assets of Anita, Amy, and Carole's Trusts to the extent needed to reverse the improper transfers. Plaintiff thus requests a distribution of those assets in the

amount lawfully due the Plaintiff, together with all interest accrued from the time such distribution should have been made.

**XII.**

**Civil Conspiracy**

38. Defendants combined to accomplish the unlawful objectives of facilitating the breach of duties to Plaintiff, as well as the commission of fraud and fraudulent concealment. Such actions by Defendants amount to a civil conspiracy.

39. As a direct and proximate result of the civil conspiracy between the Defendants, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

40. Defendants' actions in furtherance of the civil conspiracy were taken willfully and maliciously, all to the detriment of Plaintiff. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of the Court.

**XIII.**

**Fraudulent Concealment**

41. Plaintiff was not aware of Defendants' wrongful actions. That is because Defendants took affirmative steps to deceive Nelva and Plaintiff and to conceal their wrongful actions from Nelva and Plaintiff. As a result of this affirmative deception by Defendants and Nelva and Plaintiff's reasonable reliance on that deception, Plaintiff did not know of these claims in this action until well after his mother's death on November 11, 2011, and, in fact, Plaintiff still does not know the full extent of his claims.

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**XIV.**

**Discovery Rule**

42. Plaintiff affirmatively pleads the discovery rule and asserts that his claims have been brought within the required periods from the date when he knew, or reasonably should have known, that his claims had accrued.

**XV.**

**Tolling of Limitations**

43. Tex. Civ. Prac. & Rem. Code Ann. §16.062 tolls the limitations period for Plaintiff because of Elmer and Nelva's deaths.

**XVI.**

**Conditions Precedent**

44. All conditions precedent to the recovery of the relief sought hereunder have occurred or have been performed. Plaintiff is prosecuting this action in good faith and with just cause for the purpose of determining and protecting the assets of the trusts.

**XVII.**

**Prejudgment Interest**

45. Plaintiff is also entitled to prejudgment interest on his claims.

**XVIII.**

**Request for Attorneys' Fees**

46. Plaintiff requests that he be allowed to recover his fees and expenses for this action pursuant to Tex. Civ. Prac. Rem. Code Ann. §37.009. Plaintiff further requests that this Court award Plaintiff his costs and reasonable and necessary attorney's fees which had to be incurred prior to and

in connection with this matter pursuant to Tex. Prop. Code Ann. §114.064. Plaintiff also seeks awards for any appellate fees that may be required in connection with this action.

**XIX.**

**Request for Injunctive Relief**

47. Plaintiff also seeks injunctive relief. The expedited consideration of this request is essential due to the need to preserve the information concerning these trusts and the assets in these trusts. Plaintiff asks for an Order preventing Defendants and their agents from destroying, hiding or transferring the records and assets of the Family Trust, the Successor Trusts, and any trust created pursuant to the terms of the 8/25/10 QBD, or taking any other steps normally afforded to parties in Defendants' purported positions with regard to such trusts or the property Defendants have received which would result in a loss or secretion of the property, which would remove property from this Court's jurisdiction or control, or which would frustrate this Court in its exercise of jurisdiction or control, or thwart the purposes of the trust instruments by depriving Plaintiff of his rights.

48. Plaintiff further requests the Court direct Defendants to refrain from conducting any business or entering into any transactions on behalf of the trusts without the prior written consent of Plaintiff during the pendency of this action.

49. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with the assets of the trust to which he is entitled, and that unless appropriate orders are issued by this Court, Defendants will make additional transfers to avoid Plaintiff's rights and this Court's authority. Plaintiff will suffer irreparable harm, damage, and injury unless Defendants, their relatives, partners, agents, servants, attorneys, accountants, employees, assigns, representatives and those persons in active concert or in participation with them are ordered by this Court to secure and preserve all documents and other information concerning the trusts wherever it

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may now be located. Plaintiff requests that Defendants be further ordered to refrain from taking any action with regard to the assets formerly or presently owned by Elmer, Nelva, or any of the trusts, moving or transferring any such assets, changing any positions of authority or exercising any powers or rights afforded to them as a result of the trusts, or applicable law. If orders are not entered as requested, Plaintiff will be irreparably harmed because assets can be further transferred, secreted or otherwise disbursed, and Defendants' prior actions while in control of these assets indicates they will indeed take those steps because they have already taken similar steps.

50. Plaintiff has no adequate remedy at law to preserve the assets at issue, and the loss of assets would be irreparable because if the assets are transferred or sold, the cash received in such a transaction could be even more easily be lost, hidden, or removed from this Court's control by Defendants, or if spent, will be lost to Plaintiff.

51. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with assets or income from the Trust, and Defendants and those acting in concert with them will continue to transfer assets in an attempt to avoid Plaintiff's rights. Unless appropriate orders are issued by this Court, nothing will prevent Defendants and those acting in concert with them will from continuing with their prior course of improper conduct. Therefore, Plaintiff will suffer irreparable harm, damage, and injury unless Defendants and their relatives, partners, agents, attorneys, employees, and those persons in active concert or in participation with them are ordered by this Court to cease all disbursements and transfers of assets from Elmer, Nelva, and the trusts, as well as from the assets they have already taken from Elmer, Nelva, and the trusts.

XXI.

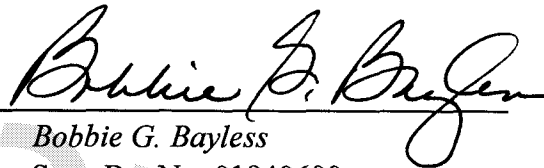
**Plaintiff's Requests for Disclosures to Defendants**

52. Pursuant to Rule 194, T.R.C.P., the Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a) - (l).

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the parties listed above be cited to appear and answer, and that on final hearing this Court declare the rights, duties and liabilities of the parties to the Trust and enter a judgment as sought by Plaintiff and for such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

BAYLESS & STOKES

By: 

*Bobbie G. Bayless*

State Bar No. 01940600

2931 Ferndale

Houston, Texas 77098

Telephone: (713) 522-2224

Telecopier: (713) 522-2218

bayless@baylessstokes.com

*Attorneys for Plaintiff*



VERIFICATION

STATE OF TEXAS §

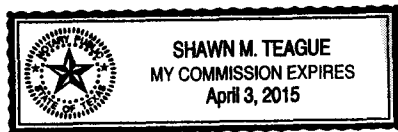
§

COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared CARL HENRY BRUNSTING, who, being by me duly sworn on oath deposed and said that he is the Plaintiff in this action; that he has read the foregoing pleading and that every statement contained in that document is within his knowledge and is true and correct.

*Carl Henry Brunsting*  
CARL HENRY BRUNSTING

SUBSCRIBED AND SWORN TO BEFORE ME on the 8<sup>th</sup> day of April, 2013, to certify which witness my hand and official seal.



*Shawn M. Teague*  
Notary Public in and for the  
State of T E X A S  
Printed Name: Shawn M. Teague  
My Commission Expires: 4-3-2015

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UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS,  
PLAINTIFF

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VS.

CIVIL ACTION NO. 4:12-CV-00592  
JUDGE KENNETH M. HOYT

ANITA KAY BRUNSTING,  
AMY RUTH BRUNSTING,  
AND DOES 1-100,  
DEFENDANTS

JURY TRIAL DEMANDED

MOTION TO REMAND

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candice Louis Curtis and files this Motion to Remand pursuant to Federal Rule of Civil Procedure 15(a), and in support thereof would respectfully show as follows:

I. INTRODUCTION

1. Plaintiff filed her Original Petition bringing causes of action against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust. Diversity jurisdiction existed between Plaintiff and Defendants.
2. Contemporaneously with this Motion, Plaintiff is filing her Motion for Leave to File First Amended Petition, which will add necessary parties to this case in order to have complete adjudication of all matters and to avoid inconsistent judgments. Necessary parties include Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased and Carole Brunsting.
3. Plaintiff believes that the filing of the First Amended Petition and addition of necessary parties will destroy the diversity jurisdiction that is required by 28 U.S.C. § 1332(a).
4. Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased, is currently a party to



an action pending in Harris County Probate Court Number Four involving the same parties. Similar issues of fact and law are pending in that court.

## II. ARGUMENTS AND AUTHORITIES

5. Here, the interests of justice and comity with State courts counsel in favor of this Court abstaining from exercising further jurisdiction over this Action and remanding it to Harris County Probate Court Number Four.
6. The First Amended Petition seeks a declaration as to certain Trust documents, and complete relief as to this issue cannot be granted without the addition of necessary parties, which will destroy diversity jurisdiction.
7. If this Court retains this case despite the lack of diversity, it is possible that inconsistent judgments may be reached as between this Court and Harris County Probate Court Number Four where the Estate of Nelva Brunsting, Deceased is pending and where similar issues of fact and law are currently pending.
8. Because diversity jurisdiction will be destroyed via the First Amended Petition and because similar issues of fact and law are pending before Harris County Probate Court Number Four, equity mandates that this cause be remanded to Harris County Probate Court Number Four and consolidated with the cause pending under Cause Number 412,249.
9. Counsel for Defendants Anita Brunsting and Amy Brunsting has been consulted and is not opposed to the remand.

## IV. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) remand this cause of action to Harris County Probate Court Number Four to be consolidated into Cause Number 412,249 and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/*Sain*

A limited Liability Partnership

BY: /s/ Jason B. Ostrom

JASON B. OSTROM

(Fed. Id. #33680)

(TBA #24027710)

NICOLE K. SAIN THORNTON

(TBA #24043901)

5020 Montrose Blvd., Ste. 310

Houston, Texas 77006

713.863.8891

713.863.1051 (Facsimile)

Attorneys for Plaintiff

#### CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he has conferred with opposing counsel and they are unopposed to this motion to remand.

/s/ Jason B. Ostrom

Jason B. Ostrom

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

/s/ Jason B. Ostrom

Jason B. Ostrom

UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS,  
PLAINTIFF

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VS.

CIVIL ACTION NO. 4:12-CV-00592  
JUDGE KENNETH M. HOYT

ANITA KAY BRUNSTING,  
AMY RUTH BRUNSTING,  
AND DOES 1-100,  
DEFENDANTS

JURY TRIAL DEMANDED

ORDER GRANTING PLAINTIFF’S MOTION TO REMAND

The matter before the Court is the Plaintiff’s Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be granted.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff’s First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are

opposed to this remand and that no parties have filed any objection thereto. It is, therefore,

ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429. It is further,

ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

---

JUDGE PRESIDING

412249

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Nelva Brunsting, Deceased

CANDACE LOUISE CURTIS, *et al*,

Plaintiffs,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

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CIVIL ACTION NO. 4:12-CV-592

**ORDER GRANTING PLAINTIFF'S MOTION TO REMAND**

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

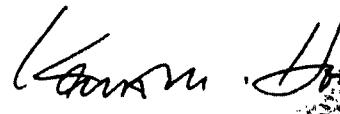
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05222014:1501:P0014

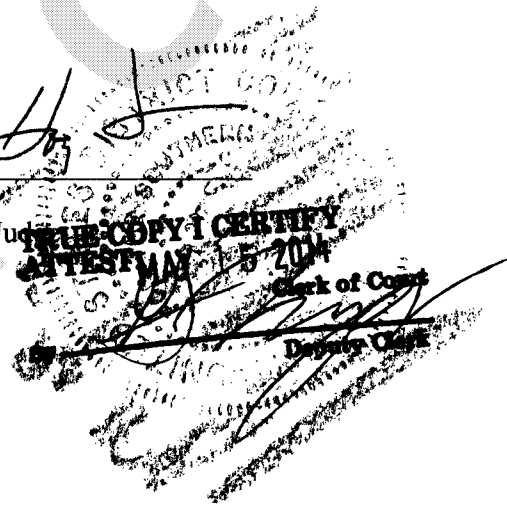
It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15<sup>th</sup> day of May, 2014.



Kenneth M. Hoyt  
United States District Judge



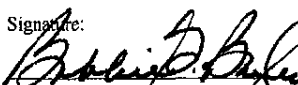
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2014 MAY 22 PM 2:11  
Star Stewart  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

Filed 13 January 29 P12:34  
 Chris Daniel - District Clerk  
 Harris County  
 ED101J017296628  
 By: Nelson Cuero

**CIVIL CASE INFORMATION SHEET**  
**2013-05455 / Court: 164**

CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_ COURT (FOR CLERK USE ONLY): \_\_\_\_\_  
 Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting vs.  
 STYLED Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm  
 (e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

<b>1. Contact information for person completing case information sheet:</b>		<b>Names of parties in case:</b>		<b>Person or entity completing sheet is:</b>	
Name: Bobbie G. Bayless	Email: bayless@baylessstokes.com	Plaintiff(s)/Petitioner(s): Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
Address: 2931 Ferndale	Telephone: 713.522.2224	Defendant(s)/Respondent(s): Candace L. Kunz-Freed and Vacek & Freed, PLLC, f/k/a The Vacek Law Firm, PLLC		Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
City/State/Zip: Houston, TX 77098	Fax: 713.522.2218	[Attch additional page as necessary to list all parties]			
Signature: 	State Bar No: TX - 01940600				
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>					
<i>Civil</i>			<i>Family Law</i>		
<b>Contract</b> Debt/Contract <input checked="" type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input checked="" type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	<b>Injury or Damage</b> <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability. <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	<b>Real Property</b> <input type="checkbox"/> Eminent Domain/ Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus— Pre-indictment <input type="checkbox"/> Other:	<b>Marriage Relationship</b> <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	<b>Post-judgment Actions (non-Title IV-D)</b> <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocal (UIFSA) <input type="checkbox"/> Support Order <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
<b>Employment</b> <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	<b>Other Civil</b> <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:				
<b>Tax</b> <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<b>Probate &amp; Mental Health</b> Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:				
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	

NO. 2013-05455

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

IN THE DISTRICT COURT OF

vs.

HARRIS COUNTY, TEXAS

CANDACE L. KUNZ-FREED AND  
VACEK & FREED, PLLC f/k/a  
THE VACEK LAW FIRM, PLLC

164<sup>th</sup> JUDICIAL DISTRICT

WAIVER OF CITATION AND SERVICE OF PROCESS

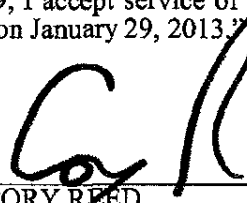
STATE OF TEXAS

COUNTY OF HARRIS

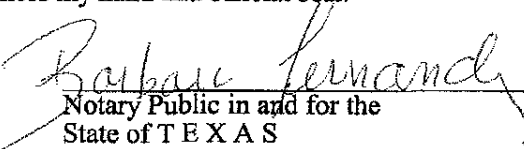
BEFORE ME, the undersigned Authority, on this day personally appeared CORY REED,  
known to me and who being by me duly sworn upon oath deposed and stated as follows:

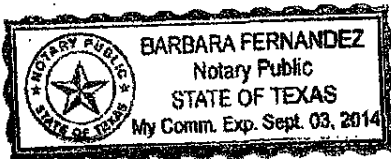
"My name is Cory Reed. I am an attorney at Thompson Coe Cousins & Irons, LLP,  
counsel for Vacek & Freed, PLLC. Plaintiff has forwarded to me a copy of the  
Original Petition and Request for Disclosures filed in this case. By authorization of  
my client and pursuant to Tex. R. Civ. P. 119, I accept service of process on its  
behalf, with such service considered effective on January 29, 2013."

Further affiant sayeth not.

  
\_\_\_\_\_  
CORY REED

SUBSCRIBED AND SWORN TO BEFORE ME on this the 30<sup>th</sup> day of  
January, 2013, to certify which witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public in and for the  
State of TEXAS  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_





Filed 13 January 30 P12:04  
Chris Daniel - District Clerk  
Harris County  
ED101J017298842  
By: Wanda Chambers

NO. 2013-05455

<b>CARL HENRY BRUNSTING,</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>INDEPENDENT EXECUTOR OF THE</b>	§	
<b>ESTATES OF ELMER H. BRUNSTING</b>	§	
<b>AND NELVA E. BRUNSTING</b>	§	
	§	
<b>vs.</b>	§	<b>HARRIS COUNTY, T E X A S</b>
	§	
<b>CANDACE L. KUNZ-FREED AND</b>	§	
<b>VACEK &amp; FREED, PLLC f/k/a</b>	§	
<b>THE VACEK LAW FIRM, PLLC</b>	§	<b>164<sup>th</sup> JUDICIAL DISTRICT</b>

**PLAINTIFF’S FIRST AMENDED PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**COMES NOW Plaintiff, Carl Henry Brunsting, Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting and files this First Amended Petition against Defendants, Candace L. Kunz-Freed, Individually (“Freed”) and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC (the “Law Firm”) (collectively, the “Defendants”), and in support thereof would show the Court the following:**

**I.**

**DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

## II. PARTIES

2. Plaintiff is the duly appointed personal representative of the estates of both his father, Elmer H. Brunsting (“Elmer”),<sup>1</sup> and his mother, Nelva E. Brunsting (“Nelva”).<sup>2</sup>

3. Defendant Freed is an attorney licensed to practice law in the State of Texas who can be served at her principal place of business, 11777 Katy Freeway, Suite 300, Houston, Texas 77079.

4. Defendant Law Firm is a professional limited liability company formed under the laws of the State of Texas for the practice of law which can be served through its registered agent, Albert E. Vacek, Jr., at 11777 Katy Freeway, Suite 300, Houston, Texas 77079. Defendant Law Firm is believed to be the successor to the Law Offices of Albert E. Vacek, Jr., P.C.

5. Other parties and entities involved in the facts relevant to this petition but who are not named as defendants herein include the following:

- a. The Brunsting Family Living Trust was created in 1996 by Elmer and Nelva based on the advice of the Law Firm. The trust instrument was prepared by the Law Firm. The Brunsting Family Living Trust, any amendments thereto, and the trusts created pursuant to its terms are collectively referred to herein as the “Family Trust”. Plaintiff was to be the successor trustee of the Family Trust until that was changed through documents prepared by the Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it.
- b. Anita Kay Brunsting f/k/a/ Anita Kay Riley (“Anita”) is Plaintiff’s sister. Anita became trustee of the Family Trust through documents prepared by Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it. During that same period, Anita was named to act on Nelva’s behalf in a power of attorney prepared by Defendants.
- c. Amy Ruth Brunsting f/k/a/ Amy Ruth Tschirhart (“Amy”) is Plaintiff’s sister. Amy became trustee of the Family Trust through documents prepared by

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<sup>1</sup>Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

<sup>2</sup>Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.

Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it (Anita and Amy in their capacity as trustees of the Family Trust are sometimes collectively referred to herein as the “Current Trustees”).

- d. Carole Ann Brunsting (“Carole”) is Plaintiff’s sister, the party named in Nelva’s health care power of attorney prepared by Defendants, and the party made a joint signatory on a bank account which received significant transfers from the Family Trust after Anita became trustee of the Family Trust. According to Carole, that arrangement was Freed’s idea.
- e. Candace Louise Curtis (“Candy”) is Plaintiff’s sister. Candy and Carl were the only beneficiaries of the Family Trust whose rights were diminished by the changes implemented by the Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it.

### **III. JURISDICTION AND VENUE**

6. This Court has jurisdiction and venue over this case because all of the Defendants maintain their principal places of business in Harris County, Texas, and the acts and omissions giving rise to Plaintiff’s claims occurred in Harris County, Texas. The damages being sought by Plaintiff exceed the minimum jurisdictional limits of the court.

7. Venue is proper in this Court pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1), and (3) because all of the Defendants have their principal office in Harris County, Texas; Elmer and Nelva resided in Harris County, Texas; and all, or substantially all, of the acts and omissions giving rise to Plaintiff’s claims occurred in Harris County, Texas.

### **IV. FACTUAL BACKGROUND**

8. This is a case involving Defendants’ negligence, breach of fiduciary duty and other acts or omissions in their representation of Elmer and Nelva, both individually and in their capacities as trustees of the Family Trust. Defendants’ actions constitute negligent misrepresentation, negligence *per se*, deceptive trade practices, conversion, fraud, commercial bribery, breaches of their fiduciary duties, as well as aiding and abetting, assisting and encouraging repeated breaches of

fiduciary duty. Alternatively, a conspiracy existed between Defendants, and the Current Trustees for that unlawful purpose.

9. The Defendants assisted the Current Trustees 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 actions of the Defendants, the Current Trustees 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.

10. Despite the Law Firm's representations to Elmer and Nelva that the Family Trust would preserve their plans for their estate, Defendants took direction from the Current Trustees, while 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 the Current Trustees 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 the Current Trustees 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 facilitating the loss which actually occurred.

11. Moreover, it is believed that Defendants assisted the Current Trustees in various ways intended to prevent Nelva from even understanding that documents were being prepared by Defendants at the Current Trustee's request, why those documents were being prepared, and what

the impact of the documents would be. It is believed that in assisting the Current Trustees in obtaining their improper objectives, Defendants, among other things:

- a. failed to address Nelva's lack of capacity to make changes to the Family Trust and her power of attorney,
- b. failed to address the undue influence being exercised over Nelva by the Current Trustees,
- c. planned for and prepared documents without explaining the impact of those documents to Nelva and without obtaining reasonable input directly from Nelva,
- d. instead discussed changes to the terms of the Family Trust, and ultimately changes to Nelva's control over the Family Trust with the Current Trustees, with some, but not all, of Nelva's children, and to the exclusion of Nelva,
- e. facilitated signatures by Nelva in circumstances which allowed there to be confusion about what was being signed and which failed to insure that Nelva signed documents with consent, with proper capacity, and with knowledge and understanding of what she was signing,
- f. failed to properly advise Elmer and Nelva on the terms of the Family Trust and the proper administration of the Family Trust,
- g. failed to insure that documents being prepared and arrangements being made in cooperation with the Current Trustees were not being used to improperly remove assets to the improper benefit of Anita, Amy, and Carole,
- h. failed to protect Nelva's rights, both individually and as trustee of the Family Trust,
- i. preferred the rights of the Current Trustees to those of Nelva and it is believed even suggested methods of undermining Nelva's rights and wishes to the Current Trustees so as to accomplish the objectives of the Current Trustees,
- j. failed to refuse the representation of the Current Trustees so as to prevent a conflict of interest and failed to advise Nelva that Defendants' role in advising the Current Trustees was in direct conflict with Defendants' role as Nelva's counsel,
- k. failed to take steps to inform Nelva of the objectives of the Current Trustees or to otherwise prevent those objectives,

- l. failed to take steps to prevent the Current Trustees and Carole from converting assets belonging to Nelva, Elmer's estate, or the Family Trust, and even facilitated the conversion of assets, and
- m. failed to require the Current Trustees to administer the Family Trust properly, in keeping with the terms of the Family Trust, and in the best interests of the beneficiaries, including Nelva.

12. Defendants' knowledge of the Nelva's lack of consent to the actions taken by Defendants is evident from, among other things, the apparent existence of documents which were not signed in Freed's presence but were made to appear as if they were, Nelva's refusal to sign documents prepared at the request of the Current Trustees, and Defendants' involvement in arranging and participating in discussions behind Nelva's back.

13. 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 the Current Trustees 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, the Current Trustees and Carole were in a position 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 continued to claim to be representing the Current Trustees but 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.

#### **V. ATTORNEY-CLIENT RELATIONSHIP**

14. At all times material hereto, Freed was a partner, shareholder, representative, agent and/or associate attorney engaged in the practice of law at the Law Firm. All of the specific acts complained of herein are attributable to Freed's conduct while associated with the Law Firm as a

partner, agent, servant, representative and/or employee. Freed's liability and responsibility is vicarious and joint and several. Plaintiff further pleads the legal theory of *respondeat superior* as between Freed and the Law Firm.

15. Also, at all times material hereto, the Law Firm, whether acting directly, or indirectly or vicariously through its partners, agents, servants, representatives and/or employees, acted as legal counsel for Elmer and Nelva, both individually and as trustees of the Family Trust. Therefore, as the Law Firm's clients, Elmer and Nelva were entitled to absolute fidelity from all of the Defendants because of the fiduciary duty owed to them by Defendants. Plaintiff, as the personal representative of Elmer and Nelva's estates, is the successor to Elmer and Nelva's rights for purposes of establishing privity with Defendants.

## VI. CAUSES OF ACTION

### A. Negligence

16. Defendants' actions as described herein constitute negligence. Of course, nothing Elmer or Nelva did, or failed to do, caused or in any way contributed to cause the occurrences that resulted in the losses and damages complained about herein. To the extent Defendants did not properly, adequately, and/or timely understand the terms of the Family Trust or other documents Defendants themselves prepared or to the extent Defendants failed to apply the applicable Texas law as it related to their representation of and responsibilities to Elmer and Nelva, Defendants' acts or omissions set out herein constitute violations of the applicable standard of care for reasonably prudent and competent attorneys practicing law in Texas.

17. But for Defendants' actions as set forth herein, the damages complained of herein would not have been suffered. Thus, Defendants' conduct was a proximate and/or producing cause

of losses and damages suffered by Plaintiff. Those damages exceed the jurisdictional limits of this court.

**B. Negligence Per Se – Violation of Texas Penal Code § 32.43;  
Commercial Bribery**

18. Additionally, without waiving any of the foregoing, Defendants' acts are a violation of Penal Code Section 32.43. Specifically, that statute, in pertinent part, states:

- (b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, intentionally or knowingly solicits, accepts or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.
- (c) A person commits an offense if he offers, confers, or agrees to confer any benefit, the acceptance of which is an offense under Subsection (b).

19. Defendants' actions fall squarely within the statutory definition of commercial bribery set forth above. Defendants, while aware of their fiduciary duties to Nelva and with knowledge of applicable Texas law, violated subsection (b) above by accepting and/or agreeing to accept payments from the Current Trustees for changes made which directly impacted Nelva's rights, and by agreeing to continue to represent the Current Trustees after facilitating Nelva's removal as trustee of the Family Trust. This violation of this section of the Penal Code forms an additional basis for Plaintiff's assertion that such acts constitute negligence *per se*.

**C. Negligence Per Se – Violation of Texas Penal Code §7.02(a)(2) & (3); Criminal  
Responsibility for Conduct of Another**

20. The Current Trustees also violated Section 32.45 of the Texas Penal Code (misapplication of Fiduciary Property). Pursuant to section 32.45, a violation occurs when a trustee intentionally, knowingly or recklessly misapplies property he holds as a fiduciary in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the



Nelva. Those representations supplied false information for Elmer and Nelva's guidance. Defendants did not exercise reasonable care or competence in making the representations or in obtaining or communicating information described herein. Elmer and Nelva had no choice but to rely on the representations to their detriment, and Elmer and Nelva were in the identifiable class of people who would be expected to rely on such representations.

25. Specifically, Defendants represented, among other things, that Elmer and Nelva's plan for their estate would be protected, and Defendants negligently failed to disclose to Nelva that the Current Trustees were changing that plan in ways Nelva did not know, understand, or approve. Defendants also failed to disclose to Nelva that Defendants were representing the interests of the Current Trustees, rather than Nelva's interests. The circumstances described herein indicate Defendants knew their representations were false and that there were failures to properly disclose relevant information to Nelva. Representations to Elmer and Nelva to the contrary and the lack of disclosure to Nelva amount to misrepresentations of facts and law material to Defendants' representation of Elmer and Nelva.

26. But for Defendants' actions, the damages sought herein would not have been sustained. Those damages are in excess of the jurisdictional limits of this court.

#### **E. Breach of Fiduciary Duty**

27. Defendants, acting for the benefit of Elmer and Nelva, owed them duties to act with loyalty and utmost good faith, to act with perfect candor, to act with integrity of the strictest kind, to be fair and honest in dealing with them, to provide full disclosure to them of all circumstances concerning their representation of Elmer and Nelva's interests, and to act without concealment or deception—no matter how slight. Defendants breached these duties owed to Elmer and Nelva through, among other things, the actions described herein. Instead of protecting or benefitting their original

property is held. The Current Trustees' actions involved substantial risk of loss for Nelva and the Family Trust, and ultimately that risk became reality.

21. Defendants' actions violate Section 7.02(a)(2) & (3) of the Texas Penal Code in that they acted with the intent to assist the commission of the Current Trustees' violation of Section 32.45 of the Texas Penal Code and aided or attempted to aid in the Current Trustees' violation of that section. Additionally, the Defendants, having a legal duty to prevent the Current Trustees from violating Section 32.45 of the Texas Penal Code, acted instead with the intent to assist the Current Trustees in violating Section 32.45 of the Texas Penal Code and failed to make a reasonable effort to prevent the commission of the offense.

22. These statutes are designed to protect a class of persons to which Nelva, the Family Trust, and its beneficiaries, including Nelva, belong against the type of injury suffered. The language of the statutes set out a clear prohibition from dealing inappropriately with property held by a fiduciary or assisting another in doing so. The Defendants did just that in assisting or allowing the Current Trustees to improperly obtain control of and misuse assets owned by Nelva or the Family Trust. As a result, the statutes are of the type that impose tort liability because they codify the duties owed by parties such as Defendants when dealing with fiduciaries and fiduciaries' obligations.

23. The Defendants' violation of these statutes was without legal excuse as all attorneys are charged with knowledge of the law. The Defendants' breach of the duty imposed by these statutes proximately caused injury to Plaintiff because it resulted in the depletion of Nelva's assets or of the Family Trusts' assets. This conduct also amounts to negligence *per se*.

#### **D. Negligent Misrepresentation**

24. In the alternative and without waiving any of the foregoing, Defendants are liable for damages based on negligent misrepresentation. Defendants made representations to Elmer and

clients, Defendants took on the representation of the Current Trustees and made it possible for the Current Trustees to enrich themselves and Carole at Nelva's expense. In doing so, Defendants benefitted by being compensated for their actions and by taking up the representation of the Current Trustees which apparently continues to this day. Thus, both Defendants' interests and the interests of Defendants' new clients, the Current Trustees, were placed above Nelva's interests, resulting in a breach of Defendants' fiduciary duties.

**F. Aiding & Abetting Current Trustees' Breaches of Fiduciary Duty**

28. Alternatively, and without waiving any of the foregoing, Defendants are liable under all three doctrines of aiding and abetting a breach of fiduciary duty and the Current Trustees' violation of certain Penal Code statutes described herein by: (1) assisting and encouraging; (2) assisting and participating; and (3) concert of action. The Current Trustees and Anita acting under Nelva's power of attorney were the primary actors who committed torts and crimes which amount to breaches of fiduciary duties as described herein. Defendants had knowledge of the Current Trustees' tortious/criminal conduct and had the intent to assist them in committing those acts.

29. The Current Trustees' acts and omissions constitute breaches of fiduciary duty. A fiduciary relationship existed between the Current Trustees and the Family Trust and its beneficiaries, including Nelva. An additional fiduciary relationship was also created because of Anita's appointment in the power of attorney also prepared by Defendants for execution by Nelva. The Current Trustees, and Anita acting under Nelva's power of attorney, breached their fiduciary duties through, among other things, acts of self-dealing; concealing material facts about their disbursement of assets belonging to Nelva, Elmer's estate, and/or the Family Trust; and making unauthorized disbursements of such assets to or for the benefit of themselves and their children, to

Carole, and to Defendants, all to Plaintiff's financial detriment. Defendants assisted and/or participated in those breaches of fiduciary duty.

**a. Assisting & Encouraging**

30. Defendants gave the primary actors assistance and encouragement in committing the torts by, among other things, drafting the instruments which gave the Current Trustees and Anita control of the assets, drafting instruments which were used to improperly transfer those assets, assisting in obtaining Nelva's signature on documents and/or notarizing such documents, and advising the Current Trustees about such actions. This assistance and encouragement was a substantial factor in causing the breach of fiduciary duty because Defendants' voluntary assistance provided the very apparatus that allowed the Current Trustees and Anita to take unfair advantage of Nelva, Elmer's Estate, the Family Trust, and its beneficiaries, including Nelva.

**b. Assisting & Participating**

31. Defendants' actions alleged herein also constitute aiding and abetting the Current Trustees' and Anita's breaches of fiduciary duties by assisting and participating in those breach of trust and fiduciary duties. Defendants substantially assisted the Current Trustees and Anita in their actions to take control from Nelva and to then improperly disburse the assets over which the Current Trustees and Anita had assumed control from Nelva. Defendants' assistance and participation, separate from the Current Trustees' acts, breached Defendants' duties to Nelva. Defendants, by virtue of their purported representation of the Current Trustees and the other actions described herein, violated their duties as Nelva's legal counsel.

**c. Concert of Action**

32. Defendants are also liable for aiding and abetting the Current Trustees' and Anita's tortious conduct by their concert of action. Defendants' actions in helping the Current Trustees and

Anita obtain control was not only likely to cause damage, it did cause damage by resulting in changes to the terms of the Family Trust and Nelva's power of attorney without Nelva's effective consent and, thereafter, resulting in improper disbursements to or for the benefit of Amy, Anita, and Carole. Defendants' actions in assuming the Current Trustees' representation when it was in conflict with Nelva's representation was intentional and/or grossly negligent. Defendants' own acts, along with the Current Trustees' and Anita's acts, caused the damages sustained by Plaintiff which are in excess of the jurisdictional limits of this court.

### **G. Fraud**

33. In the alternative and without waiving any of the foregoing, Plaintiff will show that Defendants' acts and omissions constituted fraud in that Defendants made material misrepresentations or omissions which included, among others, that Elmer and Nelva's plan for their estate would be protected, as well as Defendants' failure to disclose to Nelva that the Current Trustees were changing that plan in ways Nelva did not know, understand, or approve. Defendants also failed to disclose to Nelva that Defendants were representing the interests of the Current Trustees, rather than Nelva's interests. The circumstances described herein indicate Defendants knew that the representations were false and that there were failures to properly disclose relevant information to Nelva. Representations to Elmer and Nelva to the contrary and the lack of disclosure to Nelva amount to misrepresentation of facts and law material to Defendants' representation of Elmer and Nelva. Defendants either made those misrepresentations or omissions with knowledge of their falsity or made them recklessly without any knowledge of the truth and as a positive assertion. The misrepresentations and omissions were made with the intention that they should be acted on by Elmer and Nelva, and, indeed, Elmer and Nelva were compelled to rely on the

misrepresentations or omissions. As a result, Elmer and Nelva suffered damages in excess of the jurisdictional limits of this court.

34. All of the foregoing acts or failures to disclose were a proximate cause of Plaintiff's damages which are in excess of the jurisdictional limits of this court.

#### **H. Conversion**

35. Defendants' actions constitute conversion of assets to which Elmer's estate and Nelva had a superior legal right. Those actions are the proximate cause of the damages specified herein which are in excess of the jurisdictional limits of this court.

#### **I. Conspiracy**

36. Defendants' actions further constitute conspiracy to commit fraud and/or breach of fiduciary duty. Defendants and the Current Trustees were a combination of two or more persons. The object of the combination was to accomplish an unlawful purpose. Specifically, the object of the combination was to commit the breaches of fiduciary duty described herein.

37. The Current Trustees, Anita, and the Defendants had a meeting of the minds and had knowledge of the object and purpose of the conspiracy. The Current Trustees and Anita committed unlawful, overt acts to further the conspiracy by breaching their fiduciary obligations to Nelva, the Family Trust, and the beneficiaries of the Family Trust, including Nelva. Defendants committed overt acts to further the conspiracy by taking the improper actions they took to place the Current Trustees and Anita in a position of control and then to assist in the improper transfer of assets to or for the benefit of Amy, Anita, and Carole. As a proximate result of the wrongful acts underlying the conspiracy, Plaintiff suffered damages in excess of the jurisdictional limits of this court.

**J. Deceptive Trade Practices**

38. Defendants are liable under the Texas Deceptive Trade and Practices Act (hereinafter “DTPA”) because (i) Elmer and Nelva were consumers, (ii) Defendants violated specific provisions of the DTPA, and (iii) the violations were a producing cause of Plaintiff’s damages.

39. 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 described herein while accepting representation of and payment from Elmer and Nelva and thereafter facilitating the Current Trustees’ improper actions.

40. 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 the Current Trustees, shows that Defendants’ conduct, described herein, was committed knowingly and intentionally as those terms are defined by TEX. BUS. & COM. CODE ANN. Section 17.46 *et seq.* Accordingly, Defendants are liable to Plaintiff for additional damages as provided by the DTPA, including treble damages and reasonable attorney’s fees necessary to bring this cause of action, all of which are being sought herein.

**VII. TOLLING, FRAUDULENT CONCEALMENT, AND DISCOVERY RULE**

41. Plaintiff would show that suit has been brought within the applicable statutory limitations periods. Such cause of action does not accrue until such time as there has been a legal injury and Plaintiff has brought suit within the applicable limitations of the time that Plaintiff suffered a legal injury, as that term is described in law.

42. Because Defendants fraudulently concealed information related to their involvement as described herein and/or failed to disclose same to Elmer, Nelva, or Plaintiff, this action has been

brought within the applicable period of limitations based upon when the injured parties learned, or in the exercise of reasonable diligence, could have learned of the actions.

43. To the extent any party pleads the statute of limitations as a defense, Plaintiff hereby asserts the discovery rule and would show that suit was filed within two years of Plaintiff's knowledge of such facts as would lead a reasonably prudent person to discover the Defendants' wrongful acts.

44. Further, Elmer's and Nelva's deaths resulted in a tolling of the statute of limitations, pursuant to Tex. Civ. Prac. & Rem. Code §16.062.

## **VIII. DAMAGES**

### **A. Actual Damages**

45. Regarding the causes of action and conduct alleged above, Plaintiff has sustained actual losses which were proximately caused by the joint conduct of Defendants. Plaintiff's damages exceed the minimum jurisdictional limits of this court. After completion of discovery, Plaintiff will amend the pleadings in order to indicate more specifically the type and amount of damages suffered.

### **B. Forfeiture of Fees**

46. Defendants' breaches of fiduciary duty and violations of the Texas Penal Code legally deprive them of any right to a fee. Nonetheless, Defendants received fees for their services. Therefore, as additional damages, Plaintiff is entitled to a return of all fees actually collected by Defendants in their representation of Elmer, Nelva, or the Family Trust.

### **C. Treble Damages**

47. As previously stated herein, Plaintiff seeks a money judgment as allowed by the DTPA, including treble damages.



**D. Punitive Damages**

48. Plaintiff seeks to recover punitive damages from Defendants, taking into consideration the nature of the wrong, the character of the conduct involved, the degree of Defendants' culpability, the situation and sensibilities of the parties concerned, the extent to which such conduct offends a public sense of justice and propriety, and Defendants' net worth. Additionally, Plaintiff will also show by clear and convincing evidence that Defendants acted with malice because their acts and omissions were either with a specific intent to substantially cause damage to Elmer and Nelva, or, when viewed objectively from the standpoint of Defendants at the time of the occurrences in question, involved an extreme degree of risk, considering the probability and magnitude of harm to Elmer and Nelva. Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Elmer and Nelva. Thus, Plaintiff requests that the fact finder determine an appropriate punitive damages award.

**E. Attorney's Fees**

49. Because of Defendants' violation of the DTPA, the Trusts are entitled to reasonable attorney's fees necessary to prosecute this action. A reasonable attorney's fee recovery, including appellate fees, should be assessed against the Defendants. Plaintiff is also entitled to recover attorney's fees against Defendants pursuant to Tex. Prop. Code Ann. §114.064.

**IX. INTEREST AND CONDITIONS**

50. Plaintiff is entitled to prejudgment interest.

51. All conditions precedent to Plaintiff's right to recover have been performed or have occurred. The 60 day pre-suit notice normally required by Tex. Bus. & Comm. Code §17.505(a) is

not required because it is impracticable in light of the potential argument that certain limitations periods are nearing expiration.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays that Defendants be cited to appear and answer herein and that, after a trial on the merits, the Court grant the relief sought herein and award such other and further relief, both legal and equitable, to which Plaintiff is entitled.

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless

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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to counsel of record via Telecopier on the 30<sup>th</sup> day of January, 2013, as follows:

Cory Reed  
Thompson Coe Cousins & Irons, LLP  
One Riverway, Suite 1600  
Houston, Texas 77056

/s/ Bobbie G. Bayless  
BOBBIE G. BAYLESS



**CARNEGIE**  
ENDOWMENT FOR  
INTERNATIONAL PEACE



# **CORRUPTION**

## **The Unrecognized Threat to International Security**

**Working Group on Corruption and Security**



**CARNEGIE**  
ENDOWMENT FOR  
INTERNATIONAL PEACE

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# **CORRUPTION**

## **The Unrecognized Threat to International Security**

Working Group on Corruption and Security

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## Participants

**This paper grew out of a workshop and follow-on activities in which the following organizations, among others, took part:**

American University Washington College of Law  
Bloomberg News  
Business Executives for National Security  
Canadian Department of Foreign Affairs, Trade, and Development  
Carnegie Endowment for International Peace  
Egyptian Initiative for Personal Rights  
Egyptian Transparency and Integrity Center  
Fund for Peace  
Global Financial Integrity  
Global Integrity  
Global Witness  
Good Governance Group  
Leveraged Outcomes LLC  
National Endowment for Democracy  
Norwegian Ministry of Foreign Affairs  
Office of the Special Inspector General for Afghanistan Reconstruction  
Open Society Foundations  
Transparency International, Secretariat  
Transparency International, country chapters: Bangladesh, Colombia, Peru  
Transparency International, Defence and Security  
U.S. Department of Defense  
U.S. Department of Justice  
U.S. Department of State  
U.S. Department of the Treasury  
World Bank Group  
World Justice Project

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## Summary

Systemic corruption has an unrecognized bearing on international security. Policymakers and private companies often pay insufficient attention to corruption when deciding what foreign and defense policies to pursue or where to invest. Greater understanding of the nature of acute corruption and its impact on global security would contribute to a better assessment of costs and benefits and therefore to improved policy and practice.

### Security Implications of Severe Corruption

- Acute corruption should be understood not as a failure or distortion of government but as a functioning system in which ruling networks use selected levers of power to capture specific revenue streams. This effort often overshadows activities connected with running a state.
- Such systematic corruption evokes indignation in populations, making it a factor in social unrest and insurgency.
- It contributes to other international security threats, such as symbiotic relationships between states and transnational organized crime networks, facilitation for terrorist organizations, permeable international security regimes, and acute economic disruptions.
- Corruption does not fuel these threats alone. It combines with other risk factors, such as ethnic, religious, or linguistic rifts in a population or severe economic disparities, to increase the likelihood of a security challenge.
- Western policymakers typically prioritize other considerations, such as immediate security imperatives, the economic or strategic value of maintaining relations with a given government, or return on investment, over corruption concerns. As a result, Western institutions and individuals often enable corrupt governments, exacerbating security threats and incurring sometimes dangerous reputational risk.

### Recommendations for Public- and Private-Sector Decisionmakers

**Rigorously analyze systemically corrupt countries.** Gather information on the structure of ruling networks, the levers of power and revenue streams they capture, and other risk factors with which acute corruption may be interacting.

**Use the analysis to inform choices on engaging with severely corrupt regimes.** Policymakers and business executives alike should conduct nuanced cost-benefit

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analyses before deciding to invest in a systemically corrupt state. Where involvement is unavoidable or fulfills a separate policy priority, modifications to standard operating procedures can reduce the likelihood of crises and help avoid the costs associated with interventions that might otherwise be required.

**Devise creative ways to avoid enabling systemic corruption.** Decisionmakers should take advantage of the wide variety of available tools and leverage when approaching corrupt countries (see appendix in full paper). Depending on the circumstances, changes in diplomatic practice, military assistance, development efforts, aid to civil society, membership requirements for multilateral regimes, business investment, and rules regulating international capital flows will be required.

## Corruption: Misunderstanding the Impact

The latest in a string of popular uprisings that have toppled governments from Tunisia to Kyrgyzstan escalated into a crisis in 2014 as Ukrainians threw off the rule of then president Viktor Yanukovich and Moscow responded by invading Crimea.

At the same time, jihadis from several continents flocked to Syria, where an estimated 150,000 people were dead after three years of civil war and millions fled their homes. In Afghanistan, Taliban insurgents were exacting a record toll on local security forces as North Atlantic Treaty Organization (NATO) troops were leaving a still-unstable country in the wake of their withdrawal. And in Nigeria, militants from the Boko Haram extremist group were conducting a series of attacks on schoolchildren and villagers, while the governor of the country's central bank was fired for investigating the disappearance of some \$20 billion in oil revenues.

Is there a thread linking these far-flung events, all high on the West's list of security priorities?

Acute, structured government corruption is a factor in all of them. Yet, despite the remarkable correlation, the role this phenomenon may play in exacerbating international insecurity is often overlooked.

Corruption is typically seen as a pathology, a fraying at the edges of a system or, at worst, a sign of system failure. Consequently, much of the work to devise remedies is entrusted to aid agencies and local civil society actors, whose hard-fought efforts strive for small-scale, concrete successes. These interventions tend to be focused on remedying technical deficiencies or building capacity.

But in a range of countries around the globe, corruption *is* the system. Governments have been repurposed to serve an objective that has little to do with public administration: the personal enrichment of ruling networks. And they achieve this aim quite effectively. Capacity deficits and other weaknesses may be part of the way the system functions, rather than reflecting a breakdown.

This structural dynamic—together with the strong correlation between acute corruption and breaches of international security—suggests that corruption may be a higher-stakes problem than has been commonly thought. Foreign and defense policymakers, as well as multinational corporations, need to mainstream consideration of corruption into their decisionmaking processes.

But currently, Western governments and key business actors are not well set up to respond in this holistic way. Information on the organization, manning,

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**The role structured government corruption may play in exacerbating international insecurity is often overlooked.**

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and practices of kleptocratic networks in key countries is not systematically gathered. Corruption is not on the agenda for high-level bilateral exchanges. Experts and specialized departments working on the issue are rarely at the table when critical decisions are made. They are insufficiently resourced even to carry out the relatively marginal tasks they are assigned. And relationships or cooperation models come in too few varieties, precluding subtle or creative ways of furthering anticorruption priorities so an all-or-nothing approach prevails.

A better understanding of acute and structured corruption as a functioning system, and of how it interacts with other risk factors to exacerbate threats to international security, could better public- and private-sector decisionmaking in a number of ways. It would:

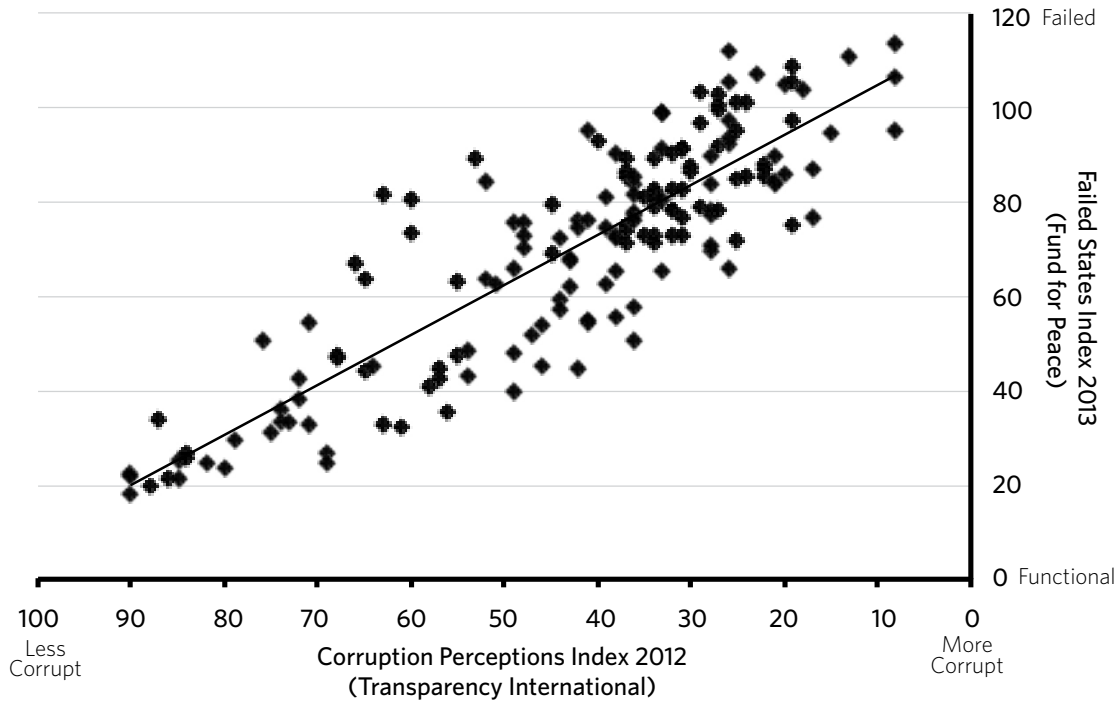
- Improve risk analysis, flagging countries such as Tunisia or Egypt prior to their respective revolutions in 2011, where—despite surface stability—kleptocratic governance, combined with other risk factors, made upheaval likely. It might help determine whether other countries, including Algeria, Angola, Bulgaria, Ethiopia, Turkey, and Uzbekistan, fall into this category today.
- Contribute to a more accurate calculation of the real trade-offs when foreign policy priorities compete.
- Paint a more detailed picture of how different interventions—including diplomatic interactions, military cooperation, private investment, and humanitarian and development assistance—play out in environments marked by acute corruption.
- Contribute to more sustainable peace deals by reducing the distortion of negotiations between governments or between governments and insurgent groups that often hampers post-conflict consolidation.

As a result, a more sophisticated understanding of acute corruption could reduce the need for military interventions once crises erupt by helping head them off through more effective use of nonmilitary policy instruments, before conflict actually breaks out. Or, where intervention has taken place, it could increase the chances of achieving security objectives by improving operations.

## Corruption and Security: Basic Correlations

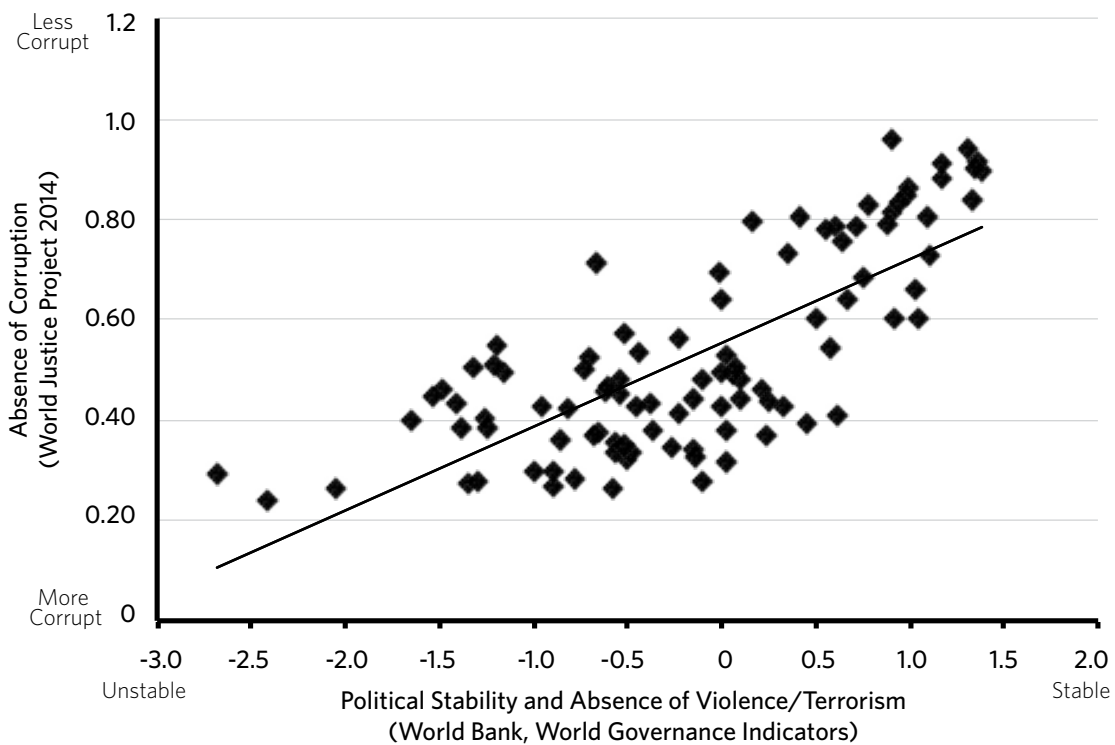
An overlay of well-known indices tracking corruption on the one hand and violence or instability on the other reveals a visible correspondence: countries characterized by severe corruption also tend to suffer conflict or state failure (see figures 1 and 2). Twelve of the fifteen lowest-ranking countries on Transparency International's 2013 Corruption Perceptions Index, for example, are the scene of insurgencies, harbor extremist groups, or pose other grave threats to international security.

Figure 1. **Corruption and State Failure**



Source: Osama Diab.

Figure 2. **Political Stability and Absence of Corruption**



While such simple correlations are arresting, they are not very informative about the dynamics of systemic corruption and how, precisely, it may threaten global security. Transparency International's Corruption Perceptions Index does a great service by focusing world attention on the problem of corruption and mobilizing efforts to fight it. While it was never intended to be an authoritative analytical tool, however, analysts and policymakers often use it that way—despite Transparency International's caveats.<sup>1</sup> Based in part on attitudes of elite business communities, such indices may be distorted by some of the sophisticated forms today's acute corruption takes, diminishing their value in helping predict security risks.<sup>2</sup> When public funds are pumped into private banks to maintain a country's capital reserves, for example, the pillage of those banks by kleptocratic elites may be invisible to outside observers—as was the case when Tunisia was widely seen as an exemplar of accountable government just months before its anticorruption revolution.<sup>3</sup> Where pure pay-to-play arrangements are dressed up as foreign direct investments in local industries, as occurs regularly in Uzbekistan's communications sector,<sup>4</sup> outside perceptions of corruption may not match the reality.

Pinpointing a correlation between failing states and states that are seen as corrupt, moreover, proves nothing about causation. Could a reputation for chaos merely be translating into a reputation for corruption, muddying the analytical waters? How to determine if state collapse is providing opportunities for corruption or if corruption is causing state collapse?

Finally, the notion that disintegrating states pose dangers to their neighborhoods constitutes little more than a tautology. More difficult to discern are clues that states seen as stable—such as Tunisia, Egypt, or Mali in 2010 or Cameroon today—may represent significant threats.

To usefully build on the correlations between severe corruption and threats to international security, closer examination is needed of both the ways corruption is structured in a given country and the independent risk factors with which it interacts.

## Categories of Systemic Corruption

At issue in this context is not garden-variety corruption, the kind that exists in every country. Such public-sector criminality is never to be condoned, and it presents its own security hazards. At the most basic level, such hazards can be described as vulnerabilities that mischief makers will exploit.

But the situation is qualitatively different when a country harbors endemic corruption that pervades the political system, or when the critical levers of government action are captured—resulting in a veritable repurposing of the state to the material benefit of a few elite networks. That kind of severe corruption poses security risks of a different order.

Such acutely corrupt countries fall into two rough categories.<sup>5</sup>

The first consists of those whose corruption is relatively structured, whose governing systems have been bent to benefit one or a very few cliques, best thought of as networks. States may have one or multiple kleptocratic networks, which often coexist only uneasily.

One example of this type is former president Hosni Mubarak's Egypt, where two main networks controlled much of the economy—the military on the one hand and a crony capitalist network led by Mubarak's son Gamal on the other. Ukraine under former president Yanukovich also fits this mold. Afghanistan, counterintuitively, is another case, for while different networks divide up the major revenue streams, President Hamid Karzai's arbitrage has remained paramount in providing access to opportunities—and in providing protection from legal repercussions. Other countries that fit this pattern include Algeria, Angola, Azerbaijan, Cameroon, Peru under former president Alberto Fujimori, Tunisia under former president Zine el-Abidine Ben Ali, Uzbekistan, and Venezuela.

In this category of corrupt states, kleptocratic networks control the government functions that matter.

A top priority is instruments of force, both formal and informal. In Algeria and Pakistan, the ruling network is co-equal with the primary instrument of force: the army. The same is true in Egypt today. There, under Mubarak, Gamal's crony capitalist network captured its own armed branch, the detested Amn al-Shurta, or auxiliary police, omnipresent throughout Egyptian life. In Ben Ali's Tunisia, the army was excluded from the workings of the kleptocracy and the police provided the ruling network with muscle. In Cameroon, President Paul Biya relies heavily on the army's elite Rapid Response Battalion (Bataillon d'Intervention Rapide).

To ensure impunity, kleptocratic networks typically co-opt judicial function. Afghanistan's Karzai regularly calls his attorney general to influence cases or personally orders the release of suspects from pre-trial detention, aborting the cases against them.<sup>6</sup> In Cameroon, Biya himself appoints every member of the judiciary, "from the chief justice of the supreme court to the lowliest clerk," in the words of Christophe Fomunyoh of the National Democratic Institute.<sup>7</sup> Judges in Mubarak's Egypt retained a significant degree of formal independence—although the rules of criminal procedure removed much of their discretion and cultural factors encouraged a legitimist stance. As a result, the judiciary could not constitute an effective accountability mechanism.<sup>8</sup>

Control over legislative systems further guarantees corrupt networks' ability to achieve their objectives. Arranging technical legality for corrupt activities by way of legislation that suits them is a hallmark of kleptocracies. "They made villainous laws to circumvent law by law," says anticorruption activist Taoufik Chamari of Ben Ali's Tunisia. The retired administrator of an urban zone in Alexandria, Egypt, remembered how Ahmad Fathi Sorour, speaker of parliament under Mubarak, "made laws for Gamal so he could circumvent the whole judicial system." In Azerbaijan, President Ilham Aliyev and his New



Azerbaijan Party control the legislature, an arrangement that facilitates “legal corruption” in ways that mask the criminality of elite windfalls.<sup>9</sup> Otherwise, kleptocracies give network members a (revocable) pass to ignore laws.

The financial system played a remarkable role in Ben Ali’s Tunisia. Banks tendered loans to Ben Ali insiders with no expectation of recovery—except as a punishment. “Every year there was a list of loans that were written off,” says Tunis public accountant Imed Ennouri. “Accountants would sign off on the decisions to keep getting work.” Tax fraud functioned the same way: many were allowed to dodge taxes, but audits were used as a means of coercion.<sup>10</sup>

In Algeria, Egypt, Nigeria, Russia, and Uzbekistan, among other countries, the civil service siphons significant public funds into private purses through fraudulent contracting procedures. Typical ruses include funding unnecessary or overpriced public works projects, substituting inferior materials for the costly, high-quality ones called for in a contract, and contracting with companies run by officials’ family members. Civil servants are also instrumental in awarding public assets (such as land or business licenses) to network members at below-market prices.

Critical to the dynamic of this structured kleptocracy—and its impact on populations—is the significant vertical integration of the networks involved. While elite capture of staggering rents may dominate headlines, it is far from the sole dimension of corruption. Abusive extortion of “petty” bribes, with a percentage demanded by superiors up the chain, is also a key element, and one that adds to the population’s sense of grievance. Officials purchase their positions at a hefty price and then have to make good on their investments, adding to their incentive to extort bribes. Shakedowns become a daily feature of ordinary people’s lives, often inflicted with a humiliating arrogance that adds a psychological twist to the material hardship victims suffer. For those living under them, these governments become a source of lacerating shame.

The second category of severely corrupt states is somewhat different. It includes those that may experience pervasive corruption, but without the same degree of consolidation at the top of the pyramid. Monopolies on the instruments of force may be less complete, so elite networks may engage in open, violent competition to capture revenue streams—conflict that itself threatens international security. Competition over land, resources, and state revenues has fueled recent electoral violence in Ivory Coast. Pervasive, but fragmented, corrupt networks have similarly driven insecurity in Colombia for years. Local government structures, more fragile than their national counterparts, are often easier to capture. Border localities in particular play an important role for trafficking networks and may be prime targets.

Or the corrupt system in these states may simply be less coordinated. A federal political infrastructure may prevent centralization, as in India, or the weakness of government institutions even at the top may preclude the degree of control exercised by corrupt networks in the first category of states. Some

further examples of this type include Colombia, Guatemala, Honduras, Mexico, Somalia, and South Sudan.

Naturally, any effort to categorize such complex phenomena will be imperfect. Some countries may fall on the cusp between these two broad categories, and their placement or precise description may be the subject of significant debate.

Even this schematic framework, however, suggests that statements about absolute levels of corruption may be of limited value, either for predicting risk or tailoring interventions. As Dominik Zaum of the University of Reading points out, “Afghanistan and Burma (Myanmar) might have the same score on Transparency International’s Corruption Perceptions Index, but how corruption affects governance, economic development, and security, what its implications are, and how it is best addressed will be different for each of these countries.”<sup>11</sup> Popular attitudes may also differ in important details and should be investigated directly in each environment.

Similarly, emphasis on different “types” of corruption within a single country can also be misleading. When the U.S. government was developing anti-corruption policy for Afghanistan in late 2010, the underlying analysis made a sharp distinction between “grand corruption,” perpetrated by political leaders, “petty corruption,” which was seen as greasing the wheels of public administration and therefore not a concern, and “predatory corruption”—largely defined as police shakedowns—which was described as most offensive to ordinary people.<sup>12</sup> Usually, however, different types of corruption like these prove to be interconnected elements of a fairly unified system whose structure and vertical integration such descriptions underestimate. To entirely disaggregate them is akin to describing the steering and brakes of a car as two entirely separate machines.

## Revenue Streams

The objective in both groups of countries is, of course, wealth. Some sources of elite rents are so distinctive in their impact as to be identified with a special category of government malfunction. The “resource curse” describes countries blessed with natural resources whose riches do little to improve their populations’ development outcomes. Hydrocarbon or mineral wealth, because of its concentration and frequent designation as government property, is particularly susceptible to capture by kleptocratic networks. Or such apparently free riches may spawn violent competition between more equally matched networks.

Looked at another way, however, natural resources represent merely one of a number of revenue streams that acutely corrupt governments seek to capture. Identifying such revenue streams on a country-by-country basis may help better understand the nature of each corrupt structure and suggest improved ways of engaging.

In resource-poor countries, public land is a source of wealth that kleptocratic networks almost universally endeavor to award to themselves. In arid

countries, such as Afghanistan or Sudan, access to water and thus suitability for agriculture is the key feature determining a piece of land's value. Elsewhere, as in Morocco or Tunisia, the most important factor may be proximity to the seashore or other tourist attractions. In tiny Bahrain, land of any kind is so scarce that the government has undertaken repeated dredging operations—at public expense—to add to the island's surface area, increasing it by some 10 percent over several decades.<sup>13</sup> Most of the new land was awarded to regime insiders for development purposes. Elsewhere, control over land corridors allows corrupt officials to dominate traffic in arms, drugs, and other destabilizing goods.

In Afghanistan, Colombia, and Yemen, opium, cocaine, or other narcotics may be a critical revenue stream that governing networks tap, usually with profoundly destabilizing consequences. Logging or the trade in restricted wildlife products may be particularly lucrative in other countries. “In Zimbabwe,” write two of France's most distinguished Africa analysts, Jean-François Bayart and Béatrice Hibou, along with the African Studies Center's Stephen Ellis, “the

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**International officials should not underestimate the degree to which corrupt networks structure themselves to monopolize external financial assistance.**

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traffic in ivory and rhinoceros horn has involved not only guerrilla movements but also the military authorities.”<sup>14</sup> Cash crops, too, such as cocoa, cotton, or palm oil, may be captured in destructive ways by kleptocratic networks.

International officials should not underestimate the degree to which corrupt networks structure themselves to monopolize external financial assistance. Ill-advised European Union or World Bank infrastructure loans—such as those financing the construction of an unnecessary high-speed rail line linking Rabat to Casablanca in Morocco or the \$115 million the World Bank accorded to Kenya in 1996—have become another revenue stream for corrupt governments. And when these governments are overthrown, successor regimes are left to pay back the loans, prompting citizens of some postrevolutionary countries to push for reductions in this “odious debt.”<sup>15</sup>

Military or counterterrorism assistance provided to Algeria, Egypt, Pakistan, or Yemen may provide a perverse incentive to ensure the persistence or appearance of some terrorist activity in order to keep the dollars flowing. Even the service of soldiers, like Ghana's, as peacekeepers may become a critical revenue stream enabling kleptocratic networks.

“Government-operated nongovernmental organizations,” referred to as GONGOs, may also be founded, expressly in order to capture development grants.<sup>16</sup> Or governments may stridently demand that foreign assistance be channeled directly into state budgets, exploiting donor countries' sensitivity to sovereignty issues or development practitioners' desire to encourage local ownership and avoid creating parallel structures.

So-called petty bribery, too, when added up, proves not to be petty at all and can represent a significant revenue stream. Typical totals could make a real difference to national economies. In Afghanistan, the annual sum of daily shakedowns people suffered at the hands of the police, doctors, judges, or

clerks processing applications for licenses, passports, or even death certificates is estimated to total between \$2 billion and \$4 billion.<sup>17</sup>

Finally, in far too many countries that practice any degree of electoral politics, campaign financing and expenditure constitute a significant source of revenue. The sheer quantity of money in politics distorts and compromises the political process and often serves as a cover for outright bribery and payoffs.

The choice of revenue stream will vary in different countries, depending on geography, topography, and historical factors, and should be examined as part of a comprehensive portrait of a given kleptocratic structure. An understanding of which revenue streams serve primarily to sustain and enable abusive government corruption—as opposed to those that provide some benefits to the population—may help inform more constructive public- and private-sector engagements.

## External Enablers

In today's globalized world, no country or governing system exists in a vacuum. The ability of highly corrupt governments to monopolize their countries' resources is facilitated by outside enablers—often respectable Western institutions and individuals. Perhaps the most significant such enabler is the international banking industry. Despite real changes to banking secrecy norms and measures to curb money laundering, this sector continues to serve as a key vector for transferring national wealth into private hands and secreting it outside the country.<sup>18</sup> Other Western professionals, such as prestigious attorneys or accounting firms, often acting through regional subsidiaries, play a similar, if less central, role.

Careless or undifferentiated promotion of private investment by foreign ministries in the West can provide a whitewash for dubious sectors within a corrupt country, misleading Western businesses that look to their governments for signals on how to operate abroad.

In Cameroon and Ukraine, a more powerful kleptocratic network in a neighboring country (in Nigeria and Russia, respectively) has served as a key enabler for ruling elites. The stronger network may provide cash or cut-rate natural resources, collude in customs fraud, or provide other facilities that reinforce the weaker network.

Corrupt officials also use photo opportunities with Western chiefs of state, status-enhancing personal relationships, or exchanges of favors to their advantage. These officials may brandish membership in “best-practices” associations, such as the Extractive Industries Transparency Initiative or other such international clubs, to attract increased development funds or private investment.<sup>19</sup>

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## Security Threats

Many analysts see corruption—or “elite bargains”—as constituting a factor of stability in some cases, as long as competing networks divide the spoils rather than fighting over them. Making this argument in the context of Afghanistan and India, one analyst contends that elite corruption has been pivotal in creating political stability and promoting developmental goals. “Corruption,” he contends, “must be accepted as an undesirable but nonetheless potentially legitimate mechanism for engaging with societies organized along different lines.”<sup>20</sup> U.S. President Barack Obama, in a 2009 BBC interview, described then Egyptian president Mubarak as a “force for stability and good in the region.”<sup>21</sup>

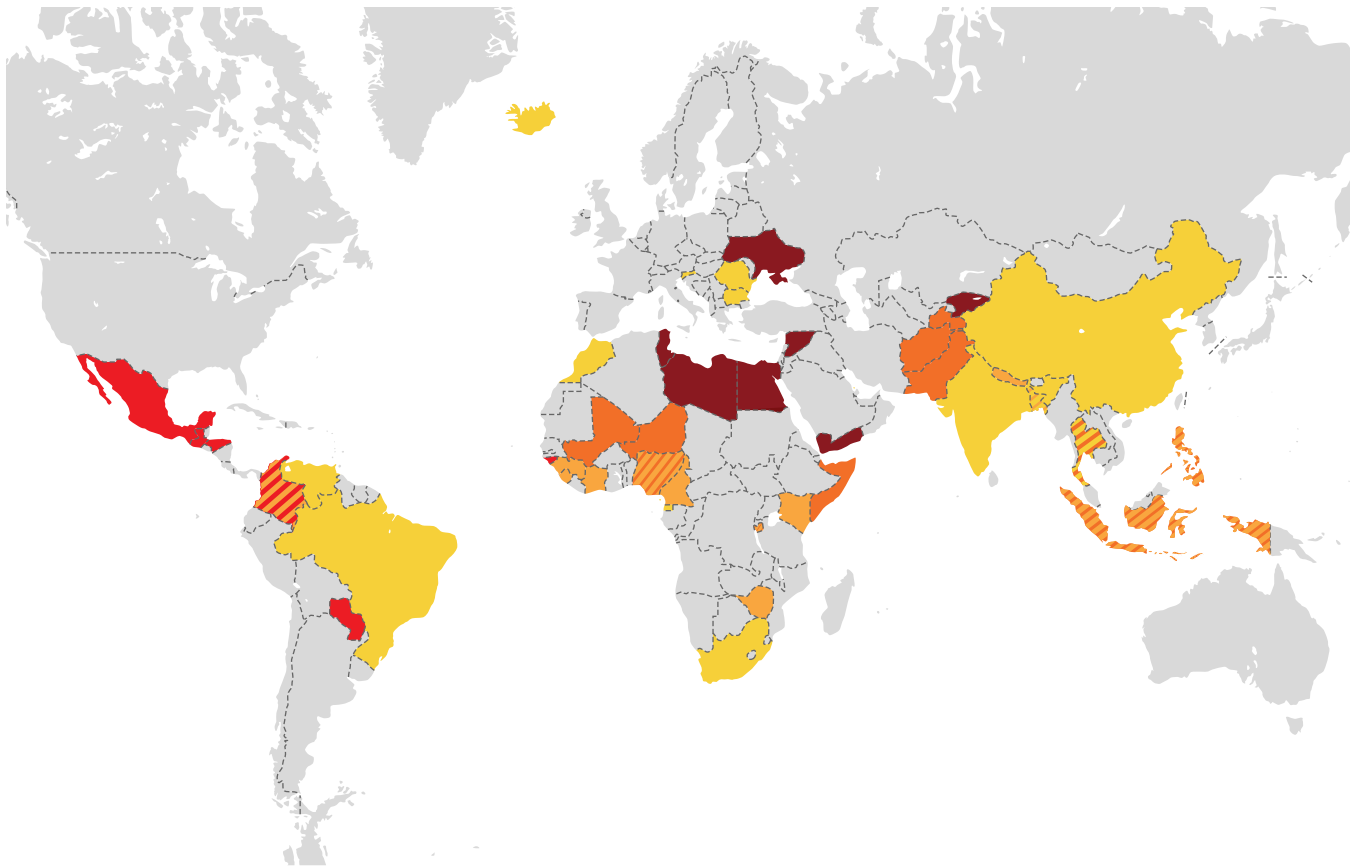
Yet, such an analysis, in its focus on elites, underestimates the agency of ordinary people—their perceptions of corruption (not Western assumptions of what those perceptions might be) and the increasing tendency of populations to lash out violently against governing systems they can no longer tolerate. The security implications of acute corruption, in fact, are likely to outweigh its potential advantages (figure 3). They vary in type depending on the structure of corrupt networks, the levers of power they capture, and the revenue streams upon which their sights are set.

One such threat, still often underestimated, is the rage that acute—and especially structured and concentrated—corruption can ignite in its victims and the likelihood that some will express that rage in violent or destabilizing ways. Every country that harbors an extremist insurgency today suffers from kleptocratic governance, including such apparent outliers as the Philippines or Thailand. The motivational literature of those extremist movements is littered with references to corruption.<sup>22</sup>

Every government that faced significant mass protests during the 2011 Arab uprisings, from Tunisia to Egypt, Syria, Bahrain, and Yemen, perpetrated acute corruption on behalf of narrow cliques that included top government officials and their close relatives. Marchers shouted anticorruption slogans, while posters displayed political leaders behind bars. Ukraine is just the most recent country on that list. And as mobile and electronic communications give citizens more access to information and to each other, levels of outrage—and mobilization—are likely to keep rising.

Where the United States or other Western countries are seen as enabling the kleptocratic practices of corrupt governments, moreover, some of the victims’ rage will inevitably be directed outward, past the hated regime and toward its perceived American or allied backers.

Figure 3. **Corruption Related Security Incidents Since 2008**



- Sudden regime change or war due to anti-kleptocracy protests**  
 Egypt, Kyrgyzstan, Libya, Syria, Tunisia, Ukraine, Yemen
  
- Serious violence due to corrupt alliances with trafficking networks**  
 Colombia, Guatemala, Guinea-Bissau, Honduras, Mexico, Paraguay
  
- Insurgency or coup traceable in part to outrage at corruption**  
 Afghanistan, Burundi, Indonesia, Mali, Niger, Nigeria, Pakistan, Philippines, Somalia, Tajikistan, Thailand
  
- Severe electoral violence sparked by corruption/corrupt state institutions**  
 Bangladesh, Burundi, Cameroon, Colombia, Cote d'Ivoire, Guinea, Indonesia, Kenya, Nepal, Nigeria, Philippines, Sierra Leone, Zimbabwe
  
- Widespread, serious popular protest or coup attempts against corruption**  
 Bahrain, Bangladesh, Brazil, Bulgaria, China, Equatorial Guinea, Iceland, India, Morocco, Romania, Slovenia, South Africa, Thailand, Venezuela

For Atiyah Abd al-Rahman, a prominent member of al-Qaeda killed in a U.S. drone strike in 2011, the main rationale for the attacks on September 11, 2001, was the U.S. role in enabling Arab kleptocracies. In 2009, he decried U.S. and Western officials for “setting up in our countries treasonous regimes loyal to them, then backing these corrupt regimes and governments against their populations.” This Western support for Middle Eastern kleptocracies, according to Rahman, was “the true cause that motivated the mujahidin to carry out” the 9/11 attacks.<sup>23</sup>

To the victims, in other words, the foreign governments that play an enabling role often seem no less corrupt than their own. And, exposed by ever-greater electronic media transparency, hypocritical discrepancies between stated values and actual behavior are increasingly telling.

But these dramatic recent examples of the security fallout from acute corruption do not exhaust its possible implications for international stability.

The loss of state legitimacy is a crucial factor in many crises. For, although transnational organized crime attracts much enforcement attention, the exploits of effective criminal networks do not violate expectations. Criminals behave nefariously by definition. But citizens have quite different presumptions of their governments, whose functions are supposed to include protection, care, and neutral regulation of social and economic activities. So when governments systematically behave in criminal ways, their legitimacy founders. Profound disenchantment results, and the very fabric of society begins to fray—with unpredictable consequences.

When every government function is up for sale to the highest bidder, furthermore, violations of international as well as domestic law become the norm. Nonproliferation or international sanctions regimes are regularly circumvented.<sup>24</sup> Intellectual property rights are ignored.

Acutely corrupt governance aids extremist organizations not only by motivating indignant citizens to join them, moreover, but also by providing a haven and logistical support for those very same groups, as officials become lax—for a fee. Nairobi residents exchange grim remarks about the “Shabab bribe” (double the normal rate) that allowed attackers from the terrorist group al-Shabab to infiltrate the Westgate Mall in a September 2013 siege that claimed more than 60 lives. In the same vein, trafficking rings that have secured safe passage past corrupt officials for migrants or sex slaves may provide transit for mules carrying a dirty bomb.

In Albania, Argentina, Bulgaria, Colombia, Honduras, Mexico, Montenegro, Mozambique, and Myanmar, among other highly corrupt countries, public officials have entered into profoundly destabilizing alliances, even symbiosis, with transnational criminal superpowers—drug and weapons syndicates whose activities span continents. While Western law enforcement efforts have focused increasingly on criminal networks in the past decade or two, the close interweaving of such networks with corrupt governments that helps sustain



them is sometimes overlooked. In these and other cases, some rival criminal network, often posing as a “Robin Hood,” may mount a violent challenge to corrupt government networks. Such scenarios have exacted a shocking price from populations both inside and beyond national boundaries.<sup>25</sup>

In some cases, corrupt ruling elites may deliberately cultivate conflict because of the diverse opportunities for profiteering and wealth transfer that fighting affords. Persistent underdevelopment as well as the miseries attendant upon civil strife also provide access to international assistance, which corrupt officials may be loath to give up. A perverse incentive structure can thus be created, with corruption and conflict interacting symbiotically.

The militaries in countries where public corruption is pervasive make unreliable allies. As defense funding is siphoned off to the purses of the powerful, armies are often poorly trained and equipped, their rosters full of “ghost soldiers.” Officers sell matériel, including to the very enemies they are supposed to be fighting. Military professionalism and capabilities are inadequate to protect borders, leaving such countries vulnerable to attack.

Kleptocratic governments cannot be expected to honor the conditions attached to the provision of military aid. Proliferation, forging of end-user certificates, and other types of fraud are likely to be the norm. And cooperation, like Pakistan’s in allowing NATO to use its overland routes into Afghanistan, is often provided only for a price, which can be raised as soon as dependence is established.

Other corruption-related security threats burn on a slower fuse. Corrupt government practices contribute to severe economic distortions, threatening financial-sector stability, for example, when fraudulent banking practices prevail. Kleptocratic networks undermine the economic diversity of their countries, as they focus government energies on resource streams they can capture. Other economic sectors wither or are actively undermined by cheating on customs or other types of unfair competition. Economic opportunities dry up. Unemployment rises. And the distortions that result can have destabilizing impacts on entire economic ecosystems.

Acute corruption damages physical ecosystems just as indelibly. Local and national officials in these contexts do not care much about environmental degradation. Their policies—or lack thereof—often exacerbate the impact of climate change, for example, and incapacitate efforts to curb it. Worsening environmental conditions, in turn, increase the suffering of populations, making them more likely to revolt.<sup>26</sup> In climate-vulnerable zones, such as Haiti or the Philippines, the impact of natural disasters is compounded by corruption.

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## Interaction With Other Risk Factors

Corruption—or any other single driver—cannot be solely blamed for such complex phenomena as insurgency, revolution, economic depression, or the partial capture of states by transnational criminal organizations. Other factors, in combination with kleptocratic governance, increase the likelihood of a severe international security event at a given time.

The geographic proximity of networks determined to exploit weaknesses, such as al-Qaeda franchises capitalizing on local grievances in Syria or Mali, for example, or criminal superpowers on the hunt for leaders who can be co-opted, as in Mexico, is one such factor.

A deep rift in self-identification within a population, be it religious (as in Nigeria or Syria), ethnic and linguistic (Turkey), or related to national identity (Ukraine), might be another risk factor, as might a preexisting separatist movement. Severe economic disparities caused by local geographic or environmental factors can also increase the likelihood of security challenges. Such discrepancies are evident in Nigeria between the north and the comparatively rich south; in Syria, where residents of drought-stricken areas launched the 2011 protests; and in Tunisia, with its sharp development disparity between the affluent northern coastal area and the impoverished interior. Climate impacts or environmental damage contribute to risk factors in this category.

A consideration of the security implications of corruption in a given country should examine risk factors such as these that may conjugate with it. In many cases, security implications are exacerbated by a feedback loop between acute corruption and these other key risk factors.

## Policy Trade-Offs

Significant progress has been made over the past fifteen years in building an international network of laws and conventions aimed at curbing many aspects of corruption, such as the Organization for Economic Cooperation and Development's anti-bribery convention, the Group of 20's Anti-Corruption Action Plan, and stricter international money-laundering rules.

But when nations or businesses interact bilaterally with partners in highly corrupt environments, immediate priorities still tend to trump corruption concerns. This reflex should come as no surprise. Policy decisions are always the product of trade-offs between competing or even conflicting priorities, options, or policy preferences promoted by different government agencies or various departments within a single corporation.

Some of the considerations weighing on Western policymakers that may conflict with an anticorruption agenda include the value of maintaining a relationship with a particular government, especially when the country in question is seen as the “least bad” in a tough geographic neighborhood or has become the

sole source of needed goods, facilities, or services. Several kleptocratic governments maintain privileged relationships with other problem countries, and their service as interlocutors is needed. Some corrupt states have strategic geographic locations that make friendly relations with them seem paramount. Or, as in the case of China or Russia, the complexity of the great-power relationship may seem to overpower any possibility of addressing corruption.

Targeted corrupt officials may be conscious of the other items on their Western partner's agenda and strike back in ways that threaten those other priorities. To deter punitive action, venally corrupt officials may close overland routes or airspace, for example, leverage access to prized resources, cease sharing intelligence or complying with international treaties, or refuse to assist diplomatically with other problem countries when crises arise. Pressure on such governments may precipitate instability in their countries—or their leaders may suggest that it will, presenting short-term kleptocratic stability as the only alternative to chaos. Mubarak defended his rule as being “in the interest of stability, in the interest of ensuring people about [the] future.”<sup>27</sup>

The time and bandwidth of top Western decisionmakers are even rarer commodities than spare money in their budgets, and policies that might help curb acute corruption place demands on all three. Short-term, crisis-driven decisionmaking, often the result of such constraints, favors work with whomever the current foreign partner happens to be. It encourages focus on leaders in general, not populations. It also reinforces risk aversion.

Without an accurate measure of the risks, however, or of the true likely costs and benefits of all courses of action, officials will often misjudge policy trade-offs. Resulting decisions may be counterproductive. A better understanding of the nature of acute corruption and its implications for international security—as well as systematic analysis of the costs of *not* addressing it and the availability of “least bad” alternatives—would contribute to improved policy and practice in government, civil society, and business.

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## Operational Implications

This framework for understanding acute corruption, together with the rigorous study of relevant countries along the lines suggested above, may help rebalance short-term versus long-term policy trade-offs. The resulting new calculus may incite officials to shape and use some of the plentiful leverage available to government agencies—ideally in a concerted, strategic, and synchronized fashion. (Please see appendix for a partial list.) And even where opportunities to change kleptocratic behavior may seem slim, the benefits of distancing Western governments from these practices may be non-negligible.

The implications of applying this framework differ for various sectors. For the intelligence community, new priority information requirements must be drafted to capture the types of information critical to better understanding acute corruption. Without explicit tasking, collectors and analysts will not focus on such topics. The security implications of acute corruption should be included in national intelligence estimates and similar documents. Such new requirements will entail the re-tasking of intelligence capacity from other duties—such as targeting—to this effort.

Diplomats will need to significantly change their assumptions about and procedures for interacting with officials from corrupt states. They should assume that such governments will structure themselves to capture most Western interventions—from development aid to high-level visits—for their own benefit, not that of their people. As a result, diplomats should moderate the imperative to preserve good relationships with counterpart governments at almost any cost. (This rule tends to hold except in cases of countries with little strategic significance for the diplomat's home country, or states considered enemies—in which case the opposite rule tends to apply.) Too often, despite the great flexibility of available diplomatic tools, an all-or-nothing approach prevails.

Foreign assistance—both bilateral and multilateral—must be better tailored to avoid its capture as just another rent. Donors should apply stricter conditionality, including monitoring and payback clauses if benchmarks are not met.

This thinking might also suggest ways to more carefully tailor military assistance so that it contributes to beneficiary nation stability where doing so is a priority while also helping improve government practices. Cooperation with units known to serve as kleptocratic networks' attack dogs might be reduced, or the types of hardware provided to them restricted. Unnecessary, status-enhancing weaponry might be placed off-limits to such governments. And training opportunities might be shaped with these considerations in mind.

Operational implications for units deploying to such environments include changes in contracting procedures, as well as more careful selection of local partners and less tolerance of abusive behavior in exchange for these partners' helpfulness in meeting other requirements.

Analyzing acute corruption through this lens also reveals significant lessons as to the benefit of anticorruption programs that work on the margins of a kleptocratic system, especially when the bulk of international support and interaction enables that selfsame system. The Combined Joint Interagency Task Force Shafafiyat, an anticorruption program in Afghanistan, has made important contributions in road testing new military contracting procedures and exposing officers to corruption concerns. However, the guidance provided to Shafafiyat called for letting the kleptocratic Afghan system itself take the lead in eradicating corruption—a policy oxymoron. And with the U.S. government supporting these corrupt actors by way of cash deliveries, among numerous other benefits, the messages sent to corrupt Afghan officials were at best mixed. Policymakers should avoid overemphasizing marginal anticorruption

programs as offsets when most engagements with corrupt governments cut in favor of their abuses.

Implications for support to civil society organizations are similarly far-reaching. No corrupt regime can be reformed or revamped without significant demand and persistent struggle on the part of the local population. However, international government and business enablers of such regimes should not use this fact as an excuse to off-load their own responsibilities onto the shoulders of often inexperienced, vastly out-resourced, and vulnerable civil society organizations.

Autocratic governments have been lashing out at such groups with unaccustomed ferocity in recent years, especially those that obtain funding and technical assistance from abroad.<sup>28</sup> External support is more crucial than ever in these contexts but must be provided in smarter ways, with more attention to potential impacts on civil society organizations and actors, especially their physical safety. Such support, moreover, must be part of a holistic approach that includes reductions in donor-nation actions that enable the very regimes civil society groups are fighting.

Membership in international “clubs” such as the World Trade Organization or the European Union or participation in specialized transparency regimes, even such donor frameworks as Millennium Challenge Corporation grants, can serve as useful incentives and forcing functions for improving kleptocratic practices. These groups often include requirements that provide tools for civil society’s opposition to ongoing corruption.

However, when standards for entry are too lax, membership in such organizations can have the opposite of their intended effect. They may serve as a fig leaf, conveying a seal of international approval for unacceptable practices. In the worst cases, they open the door to increased financial support without preventing capture of the money by corrupt governing networks.

Implications for business actors include a more nuanced cost-benefit analysis for investing in such environments altogether. These assessments should include the likelihood of reputational risk, as consumers and employees pay increasing attention to the conditions under which goods are produced.

Applying this framework can help businesses identify sectors or partners less central to kleptocratic functioning or avoid inputs, logistics, or markets over which corrupt government networks have monopoly control and can thus block access in return for payment. It will also help predict increasingly sophisticated versions of pay-to-play bribery demands, which will inevitably fall under the purview of legislation such as the U.S. Foreign Corrupt Practices Act as such laws evolve.

Perhaps most importantly, a better understanding of the impact of severe corruption will raise the stakes for those businesses that typically act as external enablers to acutely corrupt systems—such as accountants, legal service providers, and especially banks—and highlight the long-term costs of playing this role.

The interaction between new manifestations of acute government corruption, especially visible since the mid-1990s, and public reactions, which are also taking new forms, is still insufficiently understood. But the role of corruption in catalyzing significant international security hazards is now undeniable. Careful study of its ramifications in specific contexts can help policymakers make better choices among a broader array of options for engagement to reduce the likelihood of open conflict or crisis.

## Appendix: Recommended Approaches

Below is a nonexhaustive list of approaches to highly corrupt countries that are available to different private- and public-sector actors. Some can be incorporated into routine operating procedures. Others, used selectively and in combination as appropriate, constitute elements of a targeted strategy to help curb acute corruption in particular countries—in concert with local civil society.

### Chief of State

- Enunciate a clear anticorruption policy by means of an executive order, presidential memorandum, or similar instrument, directing all agencies to apply relevant authorities and resources to the effort.
- Consider acute corruption when deciding whether to engage in publicized, status-enhancing face-to-face meetings with a foreign chief of state or bestow public accolades.

### Intelligence

- Include corruption in annual assessments of security risks compiled by intelligence communities.
- Increase the number of personnel assigned to study the structure, manning, operating procedures, favored revenue streams, facilitators, protection mechanisms, patterns of life, and vulnerabilities of corrupt governing networks.
- Design new collection requirements to fill knowledge gaps regarding corrupt networks, including the ways in which Western governments and private-sector actors enable such systems, and focus on financial intelligence.
- Establish “fusion cells,” bringing different types of specialized expertise to bear collectively on the problem.
- Subject intelligence agency payments to key members of corrupt governing networks to high-level interagency debate.

### Diplomacy

- Consider a foreign official’s kleptocratic practices when shaping engagements with him or her. Avoid inadvertently glorifying those practices through publicized high-level interactions or overly close personal relationships.

- Include corruption in talking points for bilateral meetings, but avoid threats of repercussions if political will to follow up is lacking. Where Western countries possess concrete leverage, actions speak louder than words. In other situations, diplomatic imprimatur is highly desired by corrupt leaders.
- Avoid using corrupt networks' cutouts for everyday business.
- Exercise more discretion regarding the officials who will be sent on high-status training and cooperation opportunities.
- Make use of expansive visa-denial authorities.
- Provide expedited visas and other facilities to bona fide whistle-blowers and justice professionals legitimately seeking to address the problem.
- Take corruption (and corrupt networks' preferred revenue streams) into account when promoting bilateral trade and investment. Western businesses take their cues from their governments and should not be encouraged into a facilitating relationship with a severely corrupt government.
- Encourage the implementation and monitoring of relevant multilateral agreements and the tightening of standards for entry as appropriate.
- Press for more stringent banking regulations in new money-laundering and asset-sheltering safe havens, such as the United Arab Emirates, Singapore, Africa, and Central Asia.

### **Financial System**

- Make full use of authorities for enhanced monitoring of financial transactions by money-laundering suspects and politically exposed persons.
- Consider establishing a new, more stringent deposit thresholds for automatic referral for investigation.
- Apply current sanctions programs (such as those for foreign narcotics kingpins or transnational organized crime) to kleptocratic officials whose activities fall within these categories.
- Enact, by executive order or legislation, a new sanctions regime aimed at kleptocratic government officials. Language can be adapted from the 2014 Ukraine Support Act (H.R. 4278) that imposed sanctions on Russian individuals.
- Provide investigative personnel and enhanced technical assistance for asset-recovery cases, especially for countries that are transitioning away from kleptocratic governance—like the twelve-person “rapid response” team created by the U.S. Federal Bureau of Investigation (FBI) in April 2014.

- Develop clear criteria to define politically exposed persons and require enhanced monitoring of their assets in U.S. banks. Monitor compliance with those requirements.
- Pressure developing countries to reform their banking systems holistically rather than merely requiring higher capital reserves.

### **Law Enforcement**

- Increase incentives for investigators (the FBI and its equivalents) working on white-collar crime and financial investigations.
- Target prosecutions under anti-bribery legislation and the Racketeer Influenced and Corrupt Organizations Act (or their equivalents) at businesses suspected of bribing a corrupt official who is part of a network under policy focus.
- Use plea bargains and other incentives to gain a broader picture of bribe takers, network operations, and other bribe payers.
- Prosecute dual nationals under Western national law.
- Enhance and more carefully target prosecutions under civil law against assets connected to a crime (in rem forfeiture). Target current, not just former, ruling kleptocrats, and include prestigious real-estate or other property held in Western countries.
- Build a routine (interagency) mechanism for determining the best way to repatriate seized assets, taking the current nature of the relevant government into account.
- Push for reinforced searches and seizures of cash above the legal limit in airports that serve as hubs, such as Delhi, Dubai, or Frankfurt.
- Provide robust legal assistance to law enforcement professionals in transitioning nations.
- Expand victims' rights to sue in third-party jurisdictions.

### **Development Assistance**

- Cease to consider corruption as primarily a technical problem to be addressed by means of capacity building or equipment support.
- Apply personnel to the task of understanding, on a country-by-country basis, how development assistance, including infrastructure loans and Millennium Challenge assistance, becomes a "rent" captured by kleptocratic ruling networks. The use of government-organized nongovernmental organizations (GONGOs) and other cutouts, pervasive contract padding, and other financial irregularities should be assessed upstream of decisions to provide aid or loans.



- Change incentive structures within aid organizations that exclusively reward the spending of money so that equal consideration can be given to the policy and development advantages of *not* providing aid as to those of providing aid in a severely corrupt environment.
- Facilitate collection of information on financial irregularities and other misuses of development assistance through systematic guidance to project managers, standard reporting forms, and whistle-blower facilitation, protection, and rewards.
- Write firm “zero-tolerance” clauses into development assistance contracts regarding financial irregularities that provide for repayment of aid money in case of violation.
- Systematically suspend aid payments when suspicion of financial irregularity or misuse warrants investigation.
- Direct officials who manage aid, by means of standard contracting guidelines, to avoid implementing partners whose beneficial owners are members of corruption networks. Conduct rigorous cost-benefit analyses when doing so is impossible.
- Include independent monitoring and evaluation in every aid contract. Include the budget line in the program funds, not the overhead.
- Expand the mandates of inspectors general to include systematic oversight for financial irregularities, along the lines of Norway’s financial control units or the U.S. offices of special inspectors general for reconstruction in Afghanistan and Iraq. Increase staff as necessary.
- Provide anticorruption capacity-building and technical support only to those governments that show a bona fide desire to combat the problem.
- In kleptocratic environments, provide anticorruption support to civil society organizations (including professional or sectoral organizations as appropriate) that are inclined and structured to take on the problem.
- Support measures to increase transparency, especially in countries with robust civil society anticorruption efforts. But cease thinking of transparency as a synonym for accountability and assuming that transparency measures in and of themselves lead to accountability.

### **Security Sector**

- Train military units that will be forward deployed (especially special operations teams) to consider the potential downstream effects of inadvertently enabling kleptocratic networks when they establish themselves on foreign soil or participate in train and assist missions.

- Instruct military trainers to observe, report on, and intervene in their trainees' corrupt practices.
- Assign military intelligence assets to the task of understanding the linkages and practices of host-nation partners.
- Provide guidance to contracting officers to avoid local security companies or service providers whose beneficial owners are members of corrupt networks.
- Take corruption into consideration when awarding and shaping military assistance and cooperation packages and when designing and implementing disarmament, demobilization, and reintegration programs for foreign militias.
- In cases where the Western chief of defense effectively serves as chief diplomat (especially countries formally or effectively run by militaries, such as Pakistan or Egypt), expand considerations beyond the usual military-to-military relationship boundaries, using tools from the "intelligence" and "diplomacy" sections above.

#### **Multilateral Initiatives**

- Make use of relevant approaches from the "development assistance" section above.
- Apply transparency guidelines to grants, making information on their purpose and effective expenditure available to host-nation populations.
- Enforce and if necessary tighten reporting requirements for the financial services industry and land registries under such programs as the Extractive Industries Transparency Initiative.
- Police enforcement of such anticorruption conventions as the Organization for Economic Cooperation and Development's anti-bribery convention or the United Nation's anticorruption convention.
- Consider establishing international monitoring bodies for one or more such conventions, along the lines of the Organization for the Prohibition of Chemical Weapons.
- Ensure high bars to entry, so that multinational institutions and initiatives do not serve to legitimize acutely corrupt governments and the multinational corporations that do business with them.
- Further reduce barriers to sharing financial intelligence.
- Choose not to hold important international meetings in acutely corrupt countries.

- Place the issue of acute corruption and its various security, economic, and environmental impacts high on the agenda for important international summit meetings such as the Group of Seven.
- Consider canceling “odious debt” for formerly corrupt countries in transition.

### **Citizens**

- Identify civil society organizations fighting corruption in their home countries and, where doing so will not endanger them, financially support or publicize these groups’ work.
- Identify key Western facilitators and enablers (such as banks and law firms) and spotlight their role.
- Mount public campaigns against such enablers or multinational corporations that make significant investments in sectors that serve as key revenue streams for corrupt networks.
- Shed light on the ways corrupt governments attract foreign investment, such as by shutting down competition, deactivating local labor or environmental legislation, and forgiving taxes. Such favors also hurt Western economies by creating unfair competition.
- Publicize corrupt officials’ purchases of luxury property in Western countries.
- Develop agile social media platforms to raise awareness and engage in these campaigns.
- Report bribe solicitations when seeking to invest in corrupt countries.

## Notes

- 1 TI also publishes a yearly Global Corruption Barometer, which captures local public opinion on corruption and integrity reports, filed by each of TI's national chapters. See "In Detail: Global Corruption Barometer 2013," [www.transparency.org/gcb2013/in\\_detail](http://www.transparency.org/gcb2013/in_detail).
- 2 Hannes Baumann, "The Mood of Capital: Corruption Perception in Ben Ali's Tunisia," lecture delivered at Georgetown University, Tuesday, February 19, 2014, <http://vimeo.com/87583233>. Baumann argues that Transparency International's Corruption Perceptions Index privileges the views of the business elite over the perceptions of academics, policymakers, and non-elites. This source bias can create a dissonance between TI's score and the reality of corruption in a country because "business elites can tolerate corruption as long as capital accumulation is not unduly disturbed. Hence, they report a relatively low corruption score to the surveys that form the basis of the Transparency International index." The 2010/2011 WEF survey that is weighted heavily in the Corruption Perceptions Index contracted a firm run by a Ben Ali affiliate, likely further distorting Tunisia's score on the index. A 2012 version of his argument can be found here: <http://brismes2012.files.wordpress.com/2012/02/hannes-baumann-what-tunisias-revolution-tells-us-about-corruption.pdf>.
- 3 See Transparency International, "Corruption Perceptions Index 2009," [www.transparency.org/research/cpi/cpi\\_2009](http://www.transparency.org/research/cpi/cpi_2009). See also Beatrice Hibou, *La Force de L'Obeissance: Economie Politique de la Repression en Tunisie* (Paris: La Decouverte, 2006), English edition: *The Force of Obedience: The Political Economy of Repression in Tunisia* (Cambridge: Polity Press, 2011).
- 4 See for example, Swedish public television's Mission: Investigation Documentaries on Teliasonera in Uzbekistan. "Teliasonera in Million Dollar Deal With Dictatorship," September, 19, 2012, [www.svt.se/ug/teliasonera-i-miljardaffar-med-diktatur](http://www.svt.se/ug/teliasonera-i-miljardaffar-med-diktatur).
- 5 We have deliberately chosen to sidestep a semantic concern that preoccupies many students of this issue: the distinction between "kleptocracies" and countries that are "merely" very corrupt. That distinction roughly maps to the two categories of country we discuss. A useful examination of the structures of corrupt networks is to be found in Michael Johnston, *Syndromes of Corruption* (Cambridge: Cambridge University Press, 2005). See also Mats Lundahl, "Inside the Predatory State: The Rationale, Methods, and Economic Consequences of Kleptocratic Regimes," *Nordic Journal of Political Economy* 24 (1997) for an overview of kleptocratic systems and patterns of rent extraction. Bruce Bueno de Mesquita and Alastair Smith, *The Dictator's Handbook: Why Bad Behavior Is Almost Always Good Politics* (New York: Public Affairs, 2011) examines how small ruling cliques maintain power; Robert Bates, *When Things Fell Apart: State Failure in Late Century Africa* (New York: Cambridge University Press, 2008) examines the differences between good governance and predatory governance.
- 6 About the release of an arrested corruption suspect in the summer of 2010, Karzai himself told ABC News "Absolutely I intervened . . . I intervened very, very

- strongly,” <http://abcnews.go.com/ThisWeek/week-transcript-karzai-khan-levitt/story?id=11454631&page=4>.
- 7 Constitution of the Republic of Cameroon. art. 37. sec. 3: “The President of the Republic shall guarantee the independence of judicial power. He shall appoint members of the bench and for the legal department.” Consequently, analysts explain that the court’s hands are “chained to the back.” See Peter Ateh-Afac Fossungu, *Democracy and Human Rights in Africa: The Politics of Collective Participation and Governance in Cameroon* (Mankon, Bamenda: Langaa Research & Pub. CIG, 2013), 146–53.
  - 8 Nathan Brown, “Why Do Egyptian Courts Say the Darndest Things?” *Washington Post*, March 25, 2014.
  - 9 Robert Coalson, “Azerbaijani President Aliyev Named Corruption’s ‘Person of the Year,’” Radio Free Europe Radio Liberty, January 2, 2013, [www.rferl.org/content/azerbaijan-ilham-aliyev-corruption-person-of-the-year/24814209.html](http://www.rferl.org/content/azerbaijan-ilham-aliyev-corruption-person-of-the-year/24814209.html).
  - 10 Both of these aspects of the functioning of Ben Ali’s state are remarkably documented by Hibou in *La Force de l’Obeissance*.
  - 11 Dominik Zaum, “Political Economies of Corruption in Fragile and Conflict-Affected States: Nuancing the Picture,” U4 Brief, U4 Anti-Corruption Resource Center, September 2013, 4.
  - 12 See for example, Adam Entous, Julian Barnes, and Siobhan Gorman, “U.S. Shifts Afghan Graft Plan,” *Wall Street Journal*, September 20, 2010.
  - 13 See Sarah Chayes and Mokhtar Awad, “Bahrain’s Unequal Distribution,” Carnegie Endowment for International Peace, February 13, 2013, <http://carnegieendowment.org/2013/02/13/bahrain-unequal-distribution/fm9u>.
  - 14 Jean Francois Bayart, Stephen Ellis, and Beatrice Hibou, *The Criminalization of the State in Africa* (Bloomington, Ind.: Indiana University Press, 1999), 89. See also Jeffrey Gettleman, “Elephants Dying in Epic Frenzy as Ivory Fuels Wars and Profits,” *New York Times*, September 3, 2012, [www.nytimes.com/2012/09/04/world/africa/africas-elephants-are-being-slaughtered-in-poaching-frenzy.html?pagewanted=all&r=0](http://www.nytimes.com/2012/09/04/world/africa/africas-elephants-are-being-slaughtered-in-poaching-frenzy.html?pagewanted=all&r=0).
  - 15 See “Preventing Odious Obligations: A New Tool for Protecting Citizens From Illegitimate Regimes,” Center for Global Development, November 22, 2010, [www.cgdev.org/publication/preventing-odious-obligations-new-tool-protecting-citizens-illegitimate-regimes](http://www.cgdev.org/publication/preventing-odious-obligations-new-tool-protecting-citizens-illegitimate-regimes) or “Reducing Corruption and Improving Accountability in Aid Projects Through Targeting,” Aid Data Beta blog, June 6, 2013, <http://aiddata.org/blog/reducing-corruption-and-improving-accountability-in-aid-projects-through-targeting>. See also “Drop Egypt’s Debt,” [www.dropegyptstdebt.org](http://www.dropegyptstdebt.org).
  - 16 Dan Jordan Smith, *A Culture of Corruption: Everyday Deception and Popular Discontent in Nigeria* (Princeton, N.J.: Princeton University Press, 2007), 102–104.
  - 17 See UNODC, “Corruption in Afghanistan: Recent Patterns and Trends,” December 2012, [www.unodc.org/documents/frontpage/Corruption\\_in\\_Afghanistan\\_FINAL.pdf](http://www.unodc.org/documents/frontpage/Corruption_in_Afghanistan_FINAL.pdf). See also Integrity Watch Afghanistan, “National Corruption Survey 2014,” [www.iwaweb.org/ncs/\\_2014/executive\\_summary.html](http://www.iwaweb.org/ncs/_2014/executive_summary.html).
  - 18 See for example, “Undue Diligence: How Banks Do Business With Corrupt Regimes,” Global Witness, March 2009.
  - 19 See Nicholas Shaxson, “Nigeria’s Extractive Industries Transparency Initiative: Just a Glorious Audit?” Chatham House, November 2009, [www.chathamhouse.org/publications/papers/view/109174](http://www.chathamhouse.org/publications/papers/view/109174), or on EU concerns regarding membership standards for Hungary, Mihály Fazekas, Lawrence Peter King, and István János Tóth, “Hidden Depths. The Case of Hungary,” *The Anticorruption Report* (vol. 1), Barbara Budrich Publishers and ANTICORRP, September 5, 2013, <http://anticorpp.eu/publications/the-anticorruption-report-1-hidden-depths-the-case-of-hungary>.
  - 20 Vivek Sharma, “Give Corruption a Chance,” *National Interest*, November 1, 2013, <http://nationalinterest.org/article/give-corruption-chance-9276>. See also Stefan Lindemann, “Inclusive Elite Bargains and the Dilemma of Unproductive Peace:

- A Zambian Case Study,” *Third World Quarterly* 32, no. 10 (2011), or, as Eugene Rumer put it in “Chaos, Not Democracy May Be Real Alternative to Dictators in Central Asia,” *National Interest*, July 18, 2005, <http://nationalinterest.org/article/chaos-not-democracy-may-be-real-alternative-to-dictators-in-central-asia-2744>, “No amount of scorn can make up for the fact that there may be no better alternative to Karimov’s regime.”
- 21 Webb, “Obama Interview: The Transcript,” BBC World Service, June 2, 2009, [www.bbc.co.uk/worldservice/news/2009/06/090602\\_obama\\_transcript.shtml](http://www.bbc.co.uk/worldservice/news/2009/06/090602_obama_transcript.shtml).
- 22 See, for instance, Stephen Carter and Kate Clark, *No Shortcut to Stability: Justice, Politics, and Insurgency in Afghanistan* (London: Chatham House, 2010), [www.chathamhouse.org/sites/default/files/public/Research/Asia/1210pr\\_afghanjustice.pdf](http://www.chathamhouse.org/sites/default/files/public/Research/Asia/1210pr_afghanjustice.pdf).
- 23 “Al-Sahab Video Discusses Economic Crisis, Arab ‘Corruption,’ Torture, Part 1 of 2,” September 23, 2009, [www.dailymotion.com/video/x19sfqp\\_as-sahab-the-west-and-the-dark-tunnel-part-1\\_travel](http://www.dailymotion.com/video/x19sfqp_as-sahab-the-west-and-the-dark-tunnel-part-1_travel).
- 24 See “Corruption and Nuclear Proliferation” in *Corruption, Global Security, and World Order* (Cambridge: World Peace Foundation and the American Academy of Arts and Sciences, 2009), 124–67.
- 25 See, for instance, Kevin Casas-Zamora, ed., *Dangerous Liaisons: Organized Crime and Political Finance in Latin America and Beyond* (Washington, D.C.: Brookings Institution Press, 2013).
- 26 Thomas Friedman has examined this relationship with respect to Syria. See, for instance, “The Other Arab Spring,” *New York Times*, April 7, 2012, [www.nytimes.com/2012/04/08/opinion/sunday/friedman-the-other-arab-spring.html](http://www.nytimes.com/2012/04/08/opinion/sunday/friedman-the-other-arab-spring.html). Note, similarly, the acute water and resource shortages in the north of Nigeria, where Boko Haram is most active.
- 27 “Mubarak on Charlie Rose (raw transcript),” McClatchy, August 17, 2009, <http://blogs.mcclatchydc.com/cairo/2009/08/mubarak-on-charlie-rose-raw-transcript.html>.
- 28 See Thomas Carothers and Saskia Brechenmacher, *Closing Space: Democracy and Human Rights Support Under Fire* (Washington, D.C.: Carnegie Endowment for International Peace, 2014).

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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	§	

**PLAINTIFF’S ANSWER TO DEFENDANT BOBBIE BAYLESS FEDERAL RULES OF CIVIL PROCEDURE 12(B)(6) MOTION TO DISMISS**

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**I. NATURE AND STAGE OF THE PROCEEDING**

1. This is a public interest lawsuit alleging a conspiracy involving public corruption as it relates to the legitimate administration of justice.

2. Plaintiffs in the above titled action, brought 18 U.S.C. §1964(c) Racketeer Influenced Corrupt Organization and other claims (RICO, 18 U.S.C. §1962(c) and 18 U.S.C. §1962(d)) both individually and as private attorneys general on behalf of the public trust on July 5, 2016 in the Southern District of Texas.

3. On September 7, 2016, Pro se Defendant, Bobbie Bayless, filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt #23).

4. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26) as a supplement to the RICO Complaint filed July 5, 2016 in the above titled Court. Plaintiffs hereby incorporate the Addendum of Memorandum (Dkt 26) by reference as if fully restated herein.

**II. CONTEXTUAL SUMMARY**

5. 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, and Defendants Amy and Anita Brunsting, and also includes the

remaindermen grandchildren and great grandchildren of Grantors Elmer and Nelva Brunsting et al., per stirpes.

6. Plaintiff Curtis is not an heir to any estate, has no inheritance expectancy, is not party to any estate litigation and does not believe there is an estate.

7. This racketeering lawsuit is a culmination of four and one half years of multi-jurisdictional litigation that began in the federal court as a simple breach of fiduciary under diversity jurisdiction seeking accounting and fiduciary disclosures. During that time the underlying causes for the lawsuits have revealed themselves as the product of an organized symphony of actors combined in an illicit color of law wealth redistribution enterprise operating out of Harris County Probate Courts and thus the matter properly returns to the federal court under federal question.

According to the public record:

8. In 1996 Elmer Brunsting and his wife Nelva Brunsting created the original Brunsting Family Living Trust for their benefit, for the benefit of their 5 primary issue, as well as for their remaindermen grandchildren and great grandchildren. (Exhibit A1 attached E1-E61)

9. The Brunsting's restated their Trust in 2005 (Exhibit A2 attached E62-E148) and amended the restatement in 2007 (Exhibit A3 attached E149-E151).

10. Elmer Brunsting was declared incompetent in June 2008 and passed on April 1, 2009.

11. At the death of Elmer Brunsting the inter vivos "family" trust became irrevocable and divided its assets among an irrevocable decedent's trust and a revocable survivor's trust.

12. Nelva Brunsting passed on November 11, 2011 and a number of illicit instrument were drafted after Elmer Brunsting became incompetent and after he passed, claiming changes had been made that could not be made under the law of the trust. The 8/25/2010 QBD (Dkt 26-14,

(E740-E776)<sup>1</sup> (also called the extortion instrument) and the several appointments of successor trustee are just such instruments (Dkt 26-14 E497-E1187)<sup>2</sup>

13. The acting trustees, Anita and Amy Brunsting, refused to answer, account or provide disclosures and after two unsuccessful demand letters<sup>3</sup> advising Defendants Anita and Amy Brunsting to do the right thing, Plaintiff Curtis brought suit.

### III. A HISTORY OF THE LITIGATION

14. Candace Curtis v Anita and Amy Brunsting (4:12-cv-592) began in the federal court in the Southern District of Texas on February 27, 2012, was dismissed under the Probate exception to federal diversity jurisdiction March 8, 2012 and Curtis filed timely notice of appeal.

15. On March 9, 2012 Defendant Bayless filed a Petition to take depositions before suit in the Harris County District Court.

16. On January 9, 2013 the Fifth Circuit issued a unanimous opinion with Order for Reverse and Remand published *Curtis v Brunsting* 704 F.3d 406. (Exhibit A4 attached E152-E158)

17. On January 29, 2013 Defendant Bobbie Bayless filed a suit in the Harris County District Court against Defendants Vacek & Freed, in the name of the “estate of Nelva Brunsting”. (Exhibit A5 attached E159-178)

18. In late 2013 Plaintiff Curtis enlisted the assistance of Houston Attorney Jason Ostrom.

19. Immediately upon appearing as Plaintiff Curtis’ representative in the federal lawsuit, Defendant Jason Ostrom (Ostrom) arranged a remand to the Harris County Probate Court to consolidate Plaintiff Candace Curtis’ lawsuit with that of her brother Plaintiff Carl Brunsting, allegedly to afford complete relief to the parties. (Dkt 26-1 E1-E4)

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<sup>1</sup> This instrument was the subject of Defendant Amy and Anita Brunsting’s No-evidence Motion for Partial Summary Judgment (Dkt 26-5 E20-E28, Dkt 26-11 E406-E452 Curtis answer and demand to produce evidence)

<sup>2</sup> Curtis 20 page Motion for partial summary and declaratory judgment with numerous exhibits that remains unanswered by Defendants Anita and Amy Brunsting.

<sup>3</sup> Case 4:12-592 Exhibits 17 and 20 in the original federal complaint at pages 67-68, and 71-79 respectively.

20. Thus Ostrom amended Curtis federal complaint to add Carl Henry Brunsting as an Involuntary Plaintiff in order to pollute diversity so he could perfect a remand to state court to consolidate federal Plaintiff Curtis with state court Plaintiff Carl Brunsting.

21. However, Carl Brunsting's counsel, Defendant Bobbie Bayless, named federal plaintiff Curtis a Defendant in that suit. Defendant Ostrom et al., thereafter misplaced "Plaintiff Curtis" and "Curtis v Brunsting" in the probate court record under the heading of the estate of Nelva Brunsting as herein after more fully reappears.

#### IV. STATEMENT OF THE ISSUES

22. Bayless argues Plaintiffs have failed to state a claim and seeks to dismiss pursuant to Federal Rule 12(b)(6).

*Defendant Bayless claims:*

2. *This case is related to a case pending in Harris County Probate Court, #4 in cause number 412249 – 401, styled Carl Henry Brunsting et al., vs. Anita Kay Brunsting et al.*

3. *The allegations relating to Bayless are minimal*

4. *Plaintiffs entire claim as articulated in paragraph 131 of the complaint is based on Bayless but postponement of a hearing on the motion for partial summary judgment Bayless filed in the probate proceeding on behalf of her client Carl Brunsting. That action is not wrongful and cannot support a cause of action which can be asserted by these plaintiffs under any circumstances*

5. *Bayless certainly did postpone the hearing on her own motion for partial summary judgment that plaintiffs have no right to even complain about Bayless actions in representing her client, Carl Brunsting, much less to Bayless for it.*

6. *Plaintiffs have not provided one single fact to support their apparent position that Bayless is a person who is engage in a pattern of racketeering activity connected to the acquisition establishment conduct or control of an enterprise and that Bayless participated in the operation or management of that enterprise.*

## V. STANDARD OF REVIEW

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

23. 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).

24. 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).

## VI. THE ARGUMENT

25. Candace Curtis’ breach of fiduciary lawsuit against Anita and Amy Brunsting filed in the federal court on February 27, 2012, involves only the Brunsting trusts.

26. Bobbie Bayless’ “estate” suit was filed in Harris County District Court January 29, 2013 alleging that Candace Kunz-Freed conspired with Anita, Amy and Carole Brunsting to improperly wrest control of the Brunsting trusts away from Trustee Nelva Brunsting. (A5)

27. On April 9, 2013, the same day Plaintiff Curtis obtained an injunction against acting trustees Anita and Amy Brunsting in the federal court (Exhibit A6 attached E179-E183 and A6-1

E184-E237), Defendant Bobbie Bayless filed suit in Harris County Probate Court alleging that Anita, Amy and Carole Brunsting conspired with District Court Defendant Candace Kunz-Freed to improperly wrest control of the Brunsting trusts away from then trustee Nelva Brunsting. (Exhibit A7 attached E238-E257)

28. In *Curtis v Brunsting* 704 F.3d 406, the Fifth Circuit explained the doctrine of comity by citing to the Supreme Courts' clarification of the "distinctly limited scope" of the probate exception,<sup>4</sup> in *Marshall v Marshall* 547 U.S. 289:

*[W]e comprehend the 'interference' language in Markham as essentially a reiteration of the guiding principle that, when one court is exercising in rem jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.<sup>5</sup>*

29. When Defendant Bobbie Bayless filed claims exclusively related to the Brunsting family of trusts under "executor of the estate of Nelva Brunsting" in Harris County District Court on January 29, 2013, she knew the Brunsting Trusts were in the custody of Honorable United States District Judge Kenneth Hoyt and that the Brunsting trust res had been in the custody of the federal court since February of 2012.

30. Bayless also knew on April 9, 2013, when she filed a lawsuit in the Harris County Probate Court, that Honorable United States District Judge Kenneth Hoyt had issued an injunction against self-proclaimed trustees Anita and Amy Brunsting earlier that very same day.

31. Not only did the Harris County District and Probate Courts lack subject matter jurisdiction over any Brunsting Trust matter under the laws of comity and the Doctrine of

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<sup>4</sup> Id. at 310.

<sup>5</sup> Id. at 311-12.

Custodia legis, but Bayless also knew the wills of both Grantors bequeathed everything to the Brunsting family trust, and that the trust, as the only heir to the estate, was the only real party in interest.

32. Knowledge of the complete absence of jurisdiction is the only thing that explains the probate Court's absolute refusal to rule on any substantive issues, and the perpetual position that the Court would not act without agreement between the parties.

33. It also explains Bobby Bayless' removal of summary judgment hearings from calendar and the participation of all the Defendant lawyers in attempting to intimidate Plaintiff Curtis into thinking she would be deprived of her property rights if she did not enter into an unholy settlement agreement.

34. Apparently Bayless' theory is that trespass against the Brunsting trust during the life of Nelva Brunsting created claims belonging to the estate. However, the only heir to the estate is the trust and thus any claims of trespass against the trust are claims belonging to the cestui que and not the fiction called "estate".

35. The estate flow chart (Exhibit A8 attached E258) shows that under the plan there is no probate after the death of the first spouse, the estate plan avoids guardianship and there is no probate after the death of the second spouse.

36. The record will show Candace Freed implemented an attempt to have Grantor Nelva Brunsting declared incompetent and probate has been filed after the death of the second grantor, so apparently none of the claims made by any of these Defendants have produced the promised fruit.

37. The record will also show that the entire controversy is traceable to instruments drafted and notarized by Candace Freed at the request of Anita Brunsting. (Dkt 26-11)



38. On June 26, 2015 Defendants filed a No-Evidence motion for partial summary judgement (Dkt 26-5 E20-E28) claiming Plaintiffs could produce no evidence that the 8/25/2010 QBD (extortion instrument) was invalid.

39. On July 13, 2015 Attorneys for Plaintiff Carl Brunsting and the Defendants filed notices setting hearing on their dispositive motions for August 3, 2015. (Dkt 26-10)

40. Also on July 13, 2015 Plaintiff Curtis filed an answer to Defendants' no-evidence motion with a motion and demand to produce evidence, demanding Defendants produce the archetype of the alleged 8/25/2010 QBD and qualify it as evidence. Defendants cannot produce the 8/25/2010 QBD instrument and qualify it as evidence and have steadfastly refused to do so for more than four years. (Dkt 26-4 & 26-11)

#### **VII. THE PROCEEDINGS ARE IN STASIS BY DESIGN**

41. In reviewing the original lawsuit the Fifth Circuit could clearly see that Curtis v Brunsting is a lawsuit related only to the Brunsting Trusts.

42. However, once having removed the federal litigation to the state probate court Defendant, Jason Ostrom, immediately abandoned Curtis v Brunsting and adopted the heading of the estate of Nelva Brunsting. (Exhibit A9 attached E259-E266).

43. What happened to Curtis v Brunsting? Once in the probate court Defendants Bayless, Ostrom, Payne-Smith, Butts, Featherston and Spielman concocted a scheme to disappear Curtis v Brunsting as "estate of Nelva Brunsting" (Exhibits A10 attached E267-E271)

44. The problem is that Bayless, the attorney for Carl Brunsting, named federal Plaintiff Curtis a defendant in that suit.

45. Federal Plaintiff Curtis, having filed her federal law suit 11 months earlier than Bayless' District Court suit and 14 months earlier than Bayless' probate court suit disappeared in the probate record after the remand to state probate court.

46. Thus federal Plaintiff Curtis became nothing but a defendant in Bayless' probate law suit fantasy and just vanished like the docket control order, summary judgement and trial. Was there was a fire?

47. There is no docket control order (Exhibit A11 attached E272-E273) and no trial date in place in the trust litigation or in any related matter pending in the Harris County Probate or District Courts and no substantive determinations on any issue have been entered in those courts.

48. Rather than set dispositive motions for hearing on Plaintiff Curtis' request, Plaintiff was threatened with deprivation of property by Defendants Anita and Amy Brunsting's counsel, Defendants Neal Spielman and Stephen Mendel, and threatened by a court with no jurisdiction with being ordered to a second mediation with Defendants who have established an intractable record of having no intentions of honoring any legal or moral obligations.

49. All of these gymnastics were for the illicit purpose of concealing the total absence of jurisdiction while getting attorney fees paid from the Brunsting money cow trust. (Dkt 26-16 E1189-E1242)

#### **VIII. THE CONDUCT OF THESE DEFENDANTS IS HEINOUS**

50. Carl Brunsting fell ill and was in a coma in July of 2010 and by August 25, 2010 the heinous extortion instrument was produced with the sole intention of seizing the Brunsting trust wealth and threatening the victims of that theft with total deprivation of property rights for any effort of the beneficiary victims to protect their beneficial interests by seeking judicial remedy.

51. According to the brutal deposition Carl Brunsting was subjected to in the state District Court, Carl and his wife Drina paid Bobbie Bayless more than a quarter of a million dollars and Bayless stabbed them in the back at the finish line after taking thier money for poser advocacy in a court with no authority to provide any relief, of any kind, at any time!

### **IX. CONCLUSION**

52. Each of these Defendants insists this RICO lawsuit is about estate litigation and inheritance expectancies. Plaintiff Curtis is not an heir to any estate and has no inheritance expectancy. Plaintiff Curtis became a “cestui que” of an inter vivos trust in 1996 when it was created.

53. Defendants claim to be trust and estate plan professionals and should know a cestui que is a person with a beneficial interest in a trust res a.k.a. a beneficiary. When one of several cestui ques of a trust dies the share of the res previously belonging to the decedent remains property of the trust and is managed or distributed as per the terms of the trust and do not become assets belonging to a fiction called an “estate”, which is the whole purpose behind creating an inter vivos trust.

54. In the case in point the only heir to any estate is “the trust” therefore the cestui que is the real party in interest and not the estate. All right of claim is within the province of the beneficiary or the trustee as the case may be, but there is no right of any claims in any estate.

55. Bobbie Bayless had no business bringing trust related claims in probate on behalf of Carl Brunsting in his individual capacity, as he is not an heir to the estate, nor did Carl have standing as executor of the estate to bring claims relating to the trust in the probate court.

56. This lawsuit is about racketeering and a concerted effort to redistribute the Brunsting trust assets amongst a cabal of attorneys under an estate lawsuit litigation pretext.

57. Bayless dogged the federal litigation at every step and knew full well when she filed her trust related claims as estate claims that the Brunsting family of trusts were in the custody of a federal court and that no court could assume in rem jurisdiction over a res in the custody of another court, *Curtis v Brunsting* 704 F.3d 406, 409-410.

58. When Defendant Bayless filed her trust related claims in the state Probate Court on April 9, 2013 she knew that similar claims were before two other courts, that only one court could have custody of the res.

### **X. RELIEF REQUESTED**

59. Defendants are before this Honorable Court because of a concerted effort to game the judicial process and while knowingly and intentionally pretending jurisdiction, these Defendants attempted to force resolution of the underlying controversy by intimidation induced agreement, rather than on the merits. The usual course appears to be ruling against victims whose claims have been undermined by their own counsel, but with the knowing want of jurisdiction here the normal ruse was unavailable.

60. Plaintiff Curtis is a property owner who wants possession, control, use and enjoyment of her property and Defendants seek to deprive her of that property, avoid the law and avoid substantive resolution on the merits for their own private purposes.

61. Plaintiff Munson is a member of the body politic of this country and like Plaintiff Curtis and the rest of the nation, Munson has a common property interest in legitimate governance and the honest administration of Justice.

62. There is a public policy preference in favor of resolution on the merits. Plaintiff Curtis' demand for access to the Court and to the due process of law was obstructed and denied in the

state court and that matter is ripe for summary and declaratory judgement on the pleadings from that court.

Wherefore Plaintiffs move this Honorable Court for an Order denying the Rule 12(b)(6) Motion to Dismiss filed by Defendant Bobbie Bayless August 7, 2016, (Dkt 23).

Respectfully submitted,

/s/ Candace L. Curtis  
Candace L. Curtis

/s/ Rik W. Munson  
Rik W. Munson

**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 27th day of September, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis

Candace L. Curtis

/s/ Rik W. Munson

Rik W. Munson

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

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**ORDER**

Upon due consideration, the Rule 12(b)(6) Motion to Dismiss filed by Defendant Bobbie Bayless in the above styled cause on August 7, 2016 (Document 23) should be Denied.

It is SO ORDERED

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Alfred H Bennet  
United States District Judge

**ATTACHED EXHIBITS**

A1 - Original 1996 Trust	E1-E61
A2 - 2005 Restatement	E62-E148
A3 - 2007 Amendment	E149-E151
A4 - 2013-01-09 Curtis v. Brunsting_ 704 F.3d 406_Lexis	E152-E158
A5 2013-01-29 District Court Complaint against Freed	E159-E178
A6 - 2013-04-09 Preliminary Federal Injunction	E179-183
A6-1 - 2013-04-09 Injunction Transcript-Hoyt	E184-E237
A7 - 2013-04-09 PBT-2013-115617 Bobbies Original Petition	E238-E257
A8 - Brunsting Trust Flow Chart	E258
A9 - 2015-02-12 2015-02-12 Ostrom 2nd amended complaint	E259-E266
A10 - 2015-03-09 Consolidation Order	E267-E271
A11 - 2015-02-20 Docket Control Order	E272-E273



**THE  
BRUNSTING FAMILY  
LIVING TRUST**

*Prepared By*

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*General Matters*

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**Article XIV**      **Miscellaneous Matters**

# **THE BRUNSTING FAMILY LIVING TRUST**

## **Article I**

### **The Founding of Our Family Living Trust**

#### **Section A. Our Declaration of Trust**

This trust declaration is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas. We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

#### **Section B. The Title of Our Trust**

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.

Our trust may also be known as:

ELMER H. BRUNSTING and NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

#### **Section C. Our Beneficiaries and Family**

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

<u>Name</u>	<u>Birth Date</u>
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

## **Article II**

### **Transfers of Assets to Our Trust**

#### **Section A. Our Initial Contribution**

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

#### **Section B. Additions to Our Trust**

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

#### **Section C. Our Separate and Community Accounts**

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

## **Article III**

### **Our Right to Amend or Revoke This Trust**

#### **Section A. We May Revoke Our Trust**

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

#### **Section B. We May Amend Our Trust**

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.

#### **Section C. Income Tax Matters**

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

## **Article IV**

### **Our Trustees**

#### **Section A. Original Trustees**

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

#### **Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Trustee in the following order:

First, ANITA KAY RILEY

Second, CARL HENRY BRUNSTING

Third, AMY RUTH TSCHIRHART

A successor Trustee shall be replaced by the next named successor in the order listed above when he or she has resigned or is unable to continue to serve as Trustee due to death or disability. Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

#### **Section C. No Bond is Required of Our Trustees**



No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

**Section D. Resignation or Removal of Our Trustees**

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

**Section E. Affidavit of Authority to Act**

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

\_\_\_\_\_  
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public - State of Texas

**Section F. Documentary Succession of Our Trustees**

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence of a successor's authority to serve and act as the Trustee of the trust.

### **Section G. Our Trustees' Compensation**

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

### **Section H. Multiple Trustees**

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

### **Section I. Delegation of Authority**

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

**Section J. Successor Corporate Trustees**

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

**Section K. Partial and Final Distributions**

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

**Section L. Court Supervision Not Required**

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

## **Article V**

### **Insurance Policies and Retirement Plans**

#### **Section A. Our Authority While We Are Living**

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

##### **1. The Founder's Rights**

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

##### **2. Our Trustee's Obligations**

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

#### **Section B. Upon the Death of a Founder**

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits

which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

**1. Collection of Non-Retirement Death Proceeds**

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

**2. Retirement Plan Elections**

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

**3. Collection Proceedings**

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee, in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

**4. Payor's Liability**

**Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.**

## **Article VI**

### **For So Long As We Both Shall Live**

#### **Section A. Our Use of Income and Assets**

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

#### **Section B. If One or Both of Us Are Disabled**

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

### **Section C. Income Tax Matters**

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.



## **Article VII**

### **Upon the Death of One of Us**

#### **Section A. Settlement of Affairs**

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

#### **1. Deceased Founder's Probate Estate**

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased

Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

## **2. Exempt Property Excluded**

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

## **3. Apportionment of Payments**

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

## **Section B. Division and Distribution of Trust Property**

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

**1. Creation of the Survivor's Trust**

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

**a. Numerator of the Fractional Share**

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

**b. Denominator of the Fractional Share**

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

**2. Creation of the Decedent's Trust**

The Decedent's Trust shall consist of the balance of the trust property.

**Section C. Valuation of Property Distributed to the Survivor's Trust**

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

**Section D. Conversion of Nonproductive Property**

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

#### **Section E. Survivor's Right to Refuse Property or Powers Granted**

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

#### **Section F. Allocation of Trust Property**

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

**Section G. Distributions from Retirement Plan to the Survivor's Trust**

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

**a. Form of Distribution**

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

**b. Income Requirement**

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

**c. Retirement Plan Expenses**

In calculating "all income earned by the Retirement Plan", our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

## **Article VIII**

### **Administration of the Survivor's Trust**

#### **Section A. Creation of Two Survivor's Shares**

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

##### **1. Survivor's Share One**

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

##### **2. Survivor's Share Two**

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

#### **Section B. Administration of Survivor's Share One**

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

##### **1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

##### **2. The Surviving Founder's Right to Withdraw Principal**

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

**3. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

**4. The Surviving Founder's General Power of Appointment**

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

## **Section C. Administration of Survivor's Share Two**

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

### **1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

### **2. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.



### **3. The Surviving Founder's Limited Testamentary Power of Appointment**

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

### **Section D. Administration of Both Survivor's Shares at Surviving Founder's Death**

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

#### **1. The Surviving Founder's Final Expenses**

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

**2. Redemption of Treasury Bonds**

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

**3. Coordination with the Personal Representative**

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

**a. Authorized Payments**

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

**b. Purchase of Assets and Loans**

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

**c. Distributions from the Personal Representative**

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

**4. Trustee's Authority to Make Tax Elections**

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

**a. Alternate Valuation Date**

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

**b. Deduction of Administration Expenses**

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

**c. Taxes and Returns**

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

**Section E. Subsequent Administration of the Survivor's Trust**

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

## **Article IX**

### **Administration of the Decedent's Trust**

#### **Section A. Use of Income and Principal**

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.
2. **PRINCIPAL**
  - a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed \$5,000.00.
  - b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.
  - c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

#### **Section B. Guidelines for All Distributions**

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

### **Section C. Guidelines for Discretionary Distributions**

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

### **Section D. Termination of the Decedent's Trust**

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only. Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.
2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

## Article X

### Upon the Death of the Survivor of Us

#### Section A. Our Beneficiaries

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

<u>Beneficiary</u>	<u>Share</u>
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

#### Section B. Distribution to our Beneficiaries

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share set aside for CANDACE LOUISE CURTIS shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CANDACE LOUISE CURTIS, free of the trust.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share set aside for CAROL ANN BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CAROL ANN BRUNSTING, free of the trust.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share set aside for CARL HENRY BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CARL HENRY BRUNSTING, free of the trust.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, the trust share set aside for CARL HENRY BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share set aside for AMY RUTH TSCHIRHART shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to AMY RUTH TSCHIRHART, free of the trust.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living



descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share set aside for ANITA KAY RILEY shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to ANITA KAY RILEY, free of the trust.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

**Section C. Administration of the Share of a Decedent of a Deceased Beneficiary**

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be held in trust if the descendant of the deceased beneficiary is under 21 years of age, or is disabled or incapacitated.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section D. Subsequent Children**

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section E. Guidelines for Discretionary Distributions**

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

**Section F. Guidelines for All Distributions**

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

**Section G. Ultimate Distribution**

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

<u>Beneficiary</u>	<u>Share%</u>
CENTRAL COLLEGE OF IOWA Pella, Iowa	100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

## **Article XI**

### **Protection of Beneficial Interests**

#### **Section A. Protection of the Interests of Our Beneficiaries**

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

#### **Section B. Unproductive or Underproductive Assets**

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

#### **Section C. No Contest of Our Trust**

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any

amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

#### **Section D. Our Trustee's Authority to Keep Property in Trust**

Unless this trust declaration provided otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

##### **1. Distributions of Trust Income and Principal**

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

##### **2. Methods of Distribution**

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

- (a) Directly to such beneficiary;
- (b) To his or her parent, guardian or legal representative;
- (c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

- (d) To any person with whom he or she is residing;
- (e) To some near relative or close friend; or
- (f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;
- (g) To persons, corporations or other entities for the use and benefit of the beneficiary;
- (h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or
- (i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the

parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

**3. Termination and Ultimate Distribution**

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

## **Article XII**

### **Our Trustees' Powers and Authority**

#### **Section A. Applicability of Texas Trust Code and Other Statutes**

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

#### **Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries**

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

#### **Section C. General Investment and Management Powers**

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

### **Originally Contributed Properties**

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

### **Additional Properties**

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

### **Securities Powers**

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

### **Investment of Cash Assets**

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

### **Unproductive or Wasting Assets**

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the



Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

### **Personal Residence and Furnishings of Personal Residence**

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

### **Mineral Properties**

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

#### **Power to Enter Into or Continue Business Activities**

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

#### **Banking Authority**

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

#### **Corporate Activities**

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

#### **Agricultural Powers**

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

### **Real Estate**

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

### **Authority to Sell or Lease and Other Dispositive Powers**

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

### **Warranties and Covenants**

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

### **Trustee's Compensation**

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

### **Employment and Delegation of Authority to Agents**

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

### **Power to Release or Abandon Property or Rights, and to Pursue Claims**

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when

the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

#### **Nominal Title and Use of Nominees**

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

#### **Power to Lend Money and Guarantee Obligations**

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

#### **Power to Borrow**

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

#### **Payment of Indebtedness and Settlement Costs**

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

#### **Transactions Between the Trustee and Our Personal Representatives**

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

#### **Commingling Trust Estates**

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

#### **Addition of Accumulated Income to Principal**

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

### **Distributions Not Treated as Advancements**

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

### **Tax Elections**

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

### **Transactions in Which the Trustee Has A Direct or Indirect Interest**

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.



No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

**Section D. Apportionment of Receipts and Expenses Between Income and Principal**

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

**Section E. Records, Books of Account and Reports**

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for the inspection or audit by the beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is or could be entitled to receive a present income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

#### **Section F. Trustee's Liability**

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

#### **Section G. Duty of Third Parties Dealing with Trustee**

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

#### **Section H. Division and Distribution of Trust Estate**

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when



the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

### **Section I. Life Insurance**

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

### **Section J. Insured Trustee's Authority**

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

#### **Section K. Estimated Income Tax Payment Allocation**

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

#### **Section L. Merger of Trusts**

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity

serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

**Section M. Termination and Distribution of Small Trust**

If, in the discretionary judgment of the person(s) or entity serving as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

**Section N. Elimination of Duty to Create Identical Trusts**

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

**Section O. Powers of Trustee Subsequent to an Event of Termination**

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

**Section P. Requesting Financial Information of Trust Beneficiaries**

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

## **Section Q. Retirement Plan Elections**

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

## **Section R. Qualification as a Qualified Subchapter S Trust**

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

### **1. A Sole Beneficiary**

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

### **2. Multiple Beneficiaries**

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

### **3. Outright Distribution**

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

## Article XIII

### Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

Any course of study or instruction at any institution for specialized, vocational or professional training.

Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

4. Founders. The term "Founders" means the "grantors", "trustors", "settlers" or any other name given to the makers of this trust either by law or by popular usage.
5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals,

other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.
8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.
9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.
10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

It must clearly evidence the interest of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.
12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.
13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.
14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.



## **Article XIV**

### **Miscellaneous Matters**

#### **Section A. Distribution of Personal Belongings by Memorandum**

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

#### **Section B. Special Bequests**

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.



**Section C. The Rule Against Perpetuities**

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

**Section D. Jurisdiction**

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

**Section E. Dissolution of Our Marriage**

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

**Section F. Maintaining Property in Trust**

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

**Section G. Survival**

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

**Section H. Simultaneous Death**

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

**Section I. Changing the Trust Situs**

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

**Section J. Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

**Section K. Headings of Articles, Sections and Paragraphs**

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

**Section L. Notices**

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section M. Delivery**

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section N. Duplicate Originals**

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

**Section O. Severability**

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

**Section P. Gender, Plural Usage**

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

**Section Q. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

**Section R. Generation Skipping Transfers**

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

**Section S. Elective Deductions**

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: October 10, 1996

\_\_\_\_\_  
ELMER H. BRUNSTING, Founder

\_\_\_\_\_  
NELVA E. BRUNSTING, Founder

\_\_\_\_\_  
ELMER H. BRUNSTING, Trustee

\_\_\_\_\_  
NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

COUNTY OF HARRIS

On October 10, 1996, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

\_\_\_\_\_  
Notary Public, State of Texas

**THE RESTATEMENT OF  
THE BRUNSTING FAMILY  
LIVING TRUST**

*Prepared By*

Albert E. Vacek, Jr.

The Vacek Law Firm, PLLC

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# THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

## Article I

### Our Family Living Trust

#### Section A. The Restatement of Our Trust

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

#### Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.

Our trust may also be known as:

ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

**Section C. Our Beneficiaries and Family**

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

<u>Name</u>	<u>Birth Date</u>
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust

during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

## **Article II**

### **Transfers of Assets to Our Trust**

#### **Section A. Our Initial Contribution**

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

#### **Section B. Additions to Our Trust**

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

#### **Section C. Our Separate and Community Accounts**

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

## Article III

### Our Right to Amend or Revoke This Trust

#### Section A. We May Revoke Our Trust

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

#### Section B. We May Amend Our Trust

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. **Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.**

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.

#### Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

## Article IV

### Our Trustees

#### Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

#### Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

**Section C. No Bond is Required of Our Trustees**

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

**Section D. Resignation or Removal of Our Trustees**

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

**Section E. Affidavit of Authority to Act**

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:



On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

\_\_\_\_\_  
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public - State of Texas

**Section F. Documentary Succession of Our Trustees**

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The affidavit may, at the Trustee’s discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence of a successor’s authority to serve and act as the Trustee of the trust.

**Section G. Our Trustees’ Compensation**

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney’s, accountant’s and other professional fees.

#### **Section H. Multiple Trustees**

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

#### **Section I. Delegation of Authority**

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

#### **Section J. Successor Corporate Trustees**

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

#### **Section K. Partial and Final Distributions**

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

**Section L. Court Supervision Not Required**

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

**Section M. Health Insurance Portability and Accountability Act (HIPAA) of 1996 Compliance**

In order to maintain the integrity of this trust declaration and to meet our estate planning desires and goals, our Trustees shall comply with the directive set forth in this Section to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

**1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information**

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and

deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

## **2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founders' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. Each of the Founders have separately signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

## **3. Determination of "Incompetence" or "Incapacity"**

For purposes of this Trust, and notwithstanding any other conflicting provisions contained in this Trust Declaration or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or

estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founders, the Founders hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founders' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or

such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event this Trust Declaration does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of this trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

Each of the Founders have separately signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of this trust agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the trust agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."



## Article V

### Insurance Policies and Retirement Plans

#### Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

##### 1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

##### 2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

## **Section B. Upon the Death of a Founder**

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

### **1. Collection of Non-Retirement Death Proceeds**

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

### **2. Retirement Plan Elections**

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

### **3. Collection Proceedings**

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee,



in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

#### **4. Payor's Liability**

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

### **Section C. Special Provisions Pertaining to Tax-Deferred Trust Assets**

Since the Founders anticipate that tax-deferred plans such as 401(k) plans, IRA's, SEP's and similar retirement plans and tax-deferred accounts might name this trust as the designated beneficiary in the event of the death of the Founders, the following provisions will hereby apply in all respects with regard to the assets and proceeds of such plans, notwithstanding that other provisions in this Agreement are in conflict with the following provisions:

#### **1. Minimum Distribution**

It is the purpose and intent of the Founders that this trust will qualify as a "designated beneficiary" pursuant to Section 401(a)(9) of the Internal Revenue Code and the term "Minimum Required Distribution" shall mean such mandatory distributions as are required to qualify this trust pursuant to the said Section 401(a)(9) of the Internal Revenue Code.

#### **2. Distribution Restrictions**

Notwithstanding any other provision in this trust declaration, and except as provided in this Article, the Trustee may not distribute to or for the benefit of the estate of either Founder, any charity or any other non-individual beneficiary, any benefits payable to this trust under any qualified retirement plan, individual retirement account or other retirement arrangement subject to the "Minimum Required Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code, or other comparable provisions of law. It is the intent

of the Founders that all such retirement benefits be distributed to or held only for individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. This paragraph shall not apply to any charitable bequest which is specifically directed to be funded with assets other than those encompassed by this provision.

**3. Exclusion of Older Adopted "Descendants"**

Notwithstanding any other provision hereof or state law, the class of the Founders' (or any other persons) "issue" or "descendants" shall not include an individual who is the Founders' (or such persons') "issue" or "descendants" by virtue of legal adoption if such individual (i) was so adopted after the Required Beginning Date of a Founder or a Founder's death, whichever occurs first, and (ii) is older than the oldest beneficiary of this trust who was a living member of said class on the earlier of said dates. The "Required Beginning Date," for purposes of this paragraph means April 1 of the year following the year in which the plan participant reaches 70½, or, if later, the date on which this trust is first named as a beneficiary of any retirement plan, benefit or arrangement subject to the "Minimum Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code. **The said Section 401(a)(9) of the Internal Revenue Code is incorporated by reference in this trust declaration for all purposes, together with applicable treasury regulations pertaining thereto.**

**4. Payment of Estate Taxes of Plan Participant**

Except as required by state law, the trustee shall not use any plan benefits to pay a plan participant's estate taxes.

**5. Delivery of Trust to Plan Administrator**

If the Founders have not previously done so, the Trustee shall deliver a copy of this trust declaration to any plan administrator within the time limits required by applicable statute, as well as final and proposed treasury regulations.

**6. Distribution to the Beneficiaries**

Notwithstanding any other provision contained in this trust declaration to the contrary, the Trustee shall withdraw from the individual retirement account or other retirement plan payable to the trust, and distribute directly to the beneficiaries named herein, each year, the Minimum Required Distribution for such year based on the oldest beneficiary's life expectancy. After the death

of a beneficiary, the Trustee shall pay income of the trust and such Minimum Required Distribution to the descendants of such deceased or remainder beneficiary, as specified in Article X of this trust declaration.

**7. Distribution of More Than the Minimum Distribution**

The Trustee is authorized in its sole and absolute discretion, to distribute to the beneficiary and contingent beneficiaries more than the Minimum Required Distribution if deemed necessary and appropriate prior to the mandatory distributions of trust assets provided in Article X of this trust declaration.

## Article VI

### For So Long As We Both Shall Live

#### Section A. Our Use of Income and Assets

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

#### Section B. If One or Both of Us Are Disabled

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

### **Section C. Income Tax Matters**

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

### **Section D. Residence Homestead**

Pursuant to Section 11.13 of the Texas Property Tax Code, a qualifying trust may claim the statutory homestead exemption provided by the said Texas Property Tax Code as well as other provisions of Texas law. In order to comply with the said Texas Property Tax Code provisions, the Founders hereby agree as follows:

1. Our residence shall be owned by us through a beneficial interest in this qualifying trust;
2. Our residence shall be designed or adapted for human residence;

3. Such property shall at all times be used as our residence;
4. Such property will be occupied by us as Founders or Trustors of this trust as a result of our beneficial interest in this qualifying trust;
5. By separate deed of our residential property, we have conveyed our interest in such real property to this qualifying trust and are therefore qualified as "Trustors" pursuant to the said Code;
6. This revocable intervivos trust is a "Qualifying Trust" in that we specifically provide that as Trustors of the trust we have the right to use and occupy as our principal residence the residential property rent free and without charge except for taxes and other costs and expenses which may be specified in this instrument. Such right to use and occupation shall be for life or until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and
7. This trust has acquired the property in an instrument of title that
  - a. describes the property with sufficient certainty to identify it and the interest acquired;
  - b. is recorded in the real property records of the county in which the property is located; and
  - c. is executed by one or both of us as Trustors or by our personal representatives.

## Article VII

### Upon the Death of One of Us

#### Section A. Settlement of Affairs

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

#### 1. Deceased Founder's Probate Estate

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. **However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.**

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

## **2. Exempt Property Excluded**

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

## **3. Apportionment of Payments**

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside



of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

## **Section B. Division and Distribution of Trust Property**

**Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.**

### **1. Creation of the Survivor's Trust**

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

#### **a. Numerator of the Fractional Share**

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

#### **b. Denominator of the Fractional Share**

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

## **2. Creation of the Decedent's Trust**

The Decedent's Trust shall consist of the balance of the trust property.

### **Section C. Valuation of Property Distributed to the Survivor's Trust**

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

### **Section D. Conversion of Nonproductive Property**

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

### **Section E. Survivor's Right to Refuse Property or Powers Granted**

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

## **Section F. Allocation of Trust Property**

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

## **Section G. Distributions from Retirement Plan to the Survivor's Trust**

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

### **1. Form of Distribution**

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

## **2. Income Requirement**

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

## **3. Retirement Plan Expenses**

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

## Article VIII

### Administration of the Survivor's Trust

#### Section A. Creation of Two Survivor's Shares

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

##### 1. Survivor's Share One

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

##### 2. Survivor's Share Two

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

#### Section B. Administration of Survivor's Share One

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

##### 1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

**2. The Surviving Founder's Right to Withdraw Principal**

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

**3. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

**4. The Surviving Founder's General Power of Appointment**

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

**Section C. Administration of Survivor's Share Two**

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

**1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

**2. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

**3. The Surviving Founder's Limited Testamentary Power of Appointment**

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

**Section D. Administration of Both Survivor's Shares at Surviving Founder's Death**

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

**1. The Surviving Founder's Final Expenses**

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.



The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

## **2. Redemption of Treasury Bonds**

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

## **3. Coordination with the Personal Representative**

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

### **a. Authorized Payments**

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

**b. Purchase of Assets and Loans**

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

**c. Distributions from the Personal Representative**

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

**4. Trustee's Authority to Make Tax Elections**

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

**a. Alternate Valuation Date**

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

**b. Deduction of Administration Expenses**

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

**c. Taxes and Returns**

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

**Section E. Subsequent Administration of the Survivor's Trust**

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

## Article IX

### Administration of the Decedent's Trust

#### Section A. Use of Income and Principal

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.
2. **PRINCIPAL**
  - a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed \$5,000.00.
  - b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.
  - c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

#### Section B. Guidelines for All Distributions

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

### **Section C. Guidelines for Discretionary Distributions**

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

### **Section D. Termination of the Decedent's Trust**

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only (but only to the extent such undistributed principal and income have not been transferred or assigned to the Decedent's Trust by virtue of a disclaimer executed by the surviving Founder). Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the

appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

## Article X

### Upon the Death of the Survivor of Us

#### Section A. Our Beneficiaries

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

<u>Beneficiary</u>	<u>Share</u>
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

#### Section B. Distribution to our Beneficiaries

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share created for CANDACE LOUISE CURTIS shall be held in trust and administered and distributed as follows:

- i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

iii. General Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CANDACE LOUISE CURTIS' share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CANDACE LOUISE CURTIS' death.

In exercising this general power of appointment, CANDACE LOUISE CURTIS shall specifically refer to this power.

CANDACE LOUISE CURTIS shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CANDACE LOUISE CURTIS the right to appointment of property to CANDACE LOUISE CURTIS' own estate. It also specifically grants to CANDACE LOUISE CURTIS the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CANDACE LOUISE CURTIS may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.



iv. Limited Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the limited testamentary power to appoint to or for the benefit of CANDACE LOUISE CURTIS' descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CANDACE LOUISE CURTIS' share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CANDACE LOUISE CURTIS' death.

CANDACE LOUISE CURTIS may make distributions among CANDACE LOUISE CURTIS' descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CANDACE LOUISE CURTIS shall determine.

This power shall not be exercised in favor of CANDACE LOUISE CURTIS' estate, the creditors of CANDACE LOUISE CURTIS' estate or in any manner which would result in any economic benefit to CANDACE LOUISE CURTIS.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share created for CAROL ANN BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

iii. General Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CAROL ANN BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CAROL ANN BRUNSTING's death.

In exercising this general power of appointment, CAROL ANN BRUNSTING shall specifically refer to this power.

CAROL ANN BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CAROL ANN BRUNSTING the right to appointment of property to CAROL ANN BRUNSTING's own estate. It also specifically grants to CAROL ANN BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CAROL ANN BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CAROL ANN BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CAROL ANN BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CAROL ANN BRUNSTING's death.

CAROL ANN BRUNSTING may make distributions among CAROL ANN BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CAROL ANN BRUNSTING shall determine.

This power shall not be exercised in favor of CAROL ANN BRUNSTING's estate, the creditors of CAROL ANN BRUNSTING's estate or in any manner which would result in any economic benefit to CAROL ANN BRUNSTING.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share created for CARL HENRY BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the net income from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the principal from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

iii. General Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CARL HENRY BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CARL HENRY BRUNSTING's death.

In exercising this general power of appointment, CARL HENRY BRUNSTING shall specifically refer to this power.

CARL HENRY BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CARL HENRY BRUNSTING the right to appointment of property to

CARL HENRY BRUNSTING's own estate. It also specifically grants to CARL HENRY BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CARL HENRY BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CARL HENRY BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CARL HENRY BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CARL HENRY BRUNSTING's death.

CARL HENRY BRUNSTING may make distributions among CARL HENRY BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CARL HENRY BRUNSTING shall determine.

This power shall not be exercised in favor of CARL HENRY BRUNSTING's estate, the creditors of CARL HENRY BRUNSTING's estate or in any manner which would result in any economic benefit to CARL HENRY BRUNSTING.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, and without exercising a power of appointment outlined above, the trust share set aside for CARL HENRY

BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share created for AMY RUTH TSCHIRHART shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

iii. General Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, AMY RUTH TSCHIRHART's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at AMY RUTH TSCHIRHART's death.

In exercising this general power of appointment, AMY RUTH TSCHIRHART shall specifically refer to this power.

AMY RUTH TSCHIRHART shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to AMY RUTH TSCHIRHART the right to appointment of property to AMY RUTH TSCHIRHART's own estate. It also specifically grants to AMY RUTH TSCHIRHART the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as AMY RUTH TSCHIRHART may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the limited testamentary power to appoint to or for the benefit of AMY RUTH TSCHIRHART's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of AMY RUTH TSCHIRHART's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at AMY RUTH TSCHIRHART's death.

AMY RUTH TSCHIRHART may make distributions among AMY RUTH TSCHIRHART's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as AMY RUTH TSCHIRHART shall determine.

This power shall not be exercised in favor of AMY RUTH TSCHIRHART's estate, the creditors of AMY RUTH



TSCHIRHART's estate or in any manner which would result in any economic benefit to AMY RUTH TSCHIRHART.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share created for ANITA KAY RILEY shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

iii. General Testamentary Power of Appointment

ANITA KAY RILEY shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last



will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, ANITA KAY RILEY's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at ANITA KAY RILEY's death.

In exercising this general power of appointment, ANITA KAY RILEY shall specifically refer to this power.

ANITA KAY RILEY shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to ANITA KAY RILEY the right to appointment of property to ANITA KAY RILEY's own estate. It also specifically grants to ANITA KAY RILEY the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as ANITA KAY RILEY may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

ANITA KAY RILEY shall have the limited testamentary power to appoint to or for the benefit of ANITA KAY RILEY's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of ANITA KAY RILEY's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at ANITA KAY RILEY's death.

ANITA KAY RILEY may make distributions among ANITA KAY RILEY's descendants in equal or unequal amounts, and on

such terms and conditions, either outright or in trust, as ANITA KAY RILEY shall determine.

This power shall not be exercised in favor of ANITA KAY RILEY's estate, the creditors of ANITA KAY RILEY's estate or in any manner which would result in any economic benefit to ANITA KAY RILEY.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

**Section C. Administration of the Share of a Descendant of a Deceased Beneficiary**

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be divided into as many shares as shall be necessary to create shares for each then living descendant of such deceased beneficiary on a per stirpes basis. For example, if a deceased beneficiary has a deceased child who leaves children, then the share that would have passed to such deceased child shall be shared equally among his or her living children on a per stirpes basis. Each such share shall be held in trust to be administered as follows:

1. Distribution of Trust Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the net income from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

2. Distribution of Trust Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the principal from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

When such descendant reaches the age of 30 or if, on the creation of his or her trust share, he or she has already attained the age of 30, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute an amount not greater than fifty percent of the accumulated net income and principal, as it is then constituted, free of trust. If more than one written request for distribution is made by such descendant, our Trustee shall not cumulatively distribute to such descendant, in response to all such requests, more than fifty percent of the accumulated income and principal of the trust as it existed on the date of the first request for a distribution made under this paragraph by such descendant or fifty percent of the total trust funds remaining at the date of any subsequent request, whichever is the lesser amount.

When such descendant reaches the age of 40 or if, on the creation of his or her trust share, he or she has already attained the age of 40, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute the balance of the accumulated net income and principal of such trust share, as it is then constituted to such descendant, free of trust. Undistributed funds shall continue to be held in trust.

If a descendant of a deceased beneficiary should die before the complete distribution of such trust share, the trust share shall terminate and our Trustee shall distribute the balance of the trust share to the surviving descendants of such descendant, share and share alike, per stirpes. If such descendant of a deceased beneficiary dies with no surviving descendants, then such share shall terminate and be distributed to the remaining descendants of the deceased beneficiary, share and share alike, per stirpes. If there are no descendants of such deceased beneficiary, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the accumulated income and principal of the trust share as provided in Section G of this Article.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section D. Subsequent Children**

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section E. Guidelines for Discretionary Distributions**

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

**Section F. Guidelines for All Distributions**

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

**Section G. Ultimate Distribution**

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

<u>Beneficiary</u>	<u>Share%</u>
CENTRAL COLLEGE OF IOWA Pella, Iowa	100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate, unmarried, owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate, unmarried, owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

## Article XI

### Protection of Beneficial Interests

#### Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

#### Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

#### Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

#### **Section D. Our Trustee's Authority to Keep Property in Trust**

Unless this trust declaration provides otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

##### **1. Distributions of Trust Income and Principal**

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.



## 2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

- (a) Directly to such beneficiary;
- (b) To his or her parent, guardian or legal representative;
- (c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;
- (d) To any person with whom he or she is residing;
- (e) To some near relative or close friend; or
- (f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;
- (g) To persons, corporations or other entities for the use and benefit of the beneficiary;
- (h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or
- (i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.



The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

### **3. Termination and Ultimate Distribution**

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

### **Section E. Application to Founders**

Notwithstanding anything in this agreement to the contrary, this Article shall not apply to, modify or affect the surviving Founder's right to receive the net income from the Survivor's Trust as set forth and provided for in this agreement.

## Article XII

### Our Trustees' Powers and Authority

#### Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

#### Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

#### Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

### **Originally Contributed Properties**

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

### **Additional Properties**

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

### **Securities Powers**

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

### **Investment of Cash Assets**

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In

determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

### **Unproductive or Wasting Assets**

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

### **Personal Residence and Furnishings of Personal Residence**

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

### **Mineral Properties**

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

#### **Power to Enter Into or Continue Business Activities**

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

#### **Banking Authority**

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

#### **Corporate Activities**

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and

liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

### **Agricultural Powers**

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

### **Real Estate**

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

### **Authority to Sell or Lease and Other Dispositive Powers**

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

### **Warranties and Covenants**

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

### **Trustee's Compensation**

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

### **Employment and Delegation of Authority to Agents**

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

### **Power to Release or Abandon Property or Rights, and to Pursue Claims**

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

### **Nominal Title and Use of Nominees**

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.



### **Power to Lend Money and Guarantee Obligations**

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

### **Power to Borrow**

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

### **Payment of Indebtedness and Settlement Costs**

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.



The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

### **Transactions Between the Trustee and Our Personal Representatives**

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

### **Commingling Trust Estates**

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

### **Addition of Accumulated Income to Principal**

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

### **Distributions Not Treated as Advancements**

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

### **Tax Elections**

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

### **Transactions in Which the Trustee Has A Direct or Indirect Interest**

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

#### **Section D. Apportionment of Receipts and Expenses Between Income and Principal**

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

#### **Section E. Records, Books of Account and Reports**

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

#### **Section F. Trustee's Liability**

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

### **Section G. Duty of Third Parties Dealing with Trustee**

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

### **Section H. Division and Distribution of Trust Estate**

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

### **Section I. Life Insurance**

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

#### **Section J. Insured Trustee's Authority**

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented



by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

**Section K. Estimated Income Tax Payment Allocation**

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

**Section L. Merger of Trusts**

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

**Section M. Termination and Distribution of Small Trust**

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

**Section N. Elimination of Duty to Create Identical Trusts**

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

**Section O. Powers of Trustee Subsequent to an Event of Termination**

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

**Section P. Requesting Financial Information of Trust Beneficiaries**

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.



### **Section Q. Retirement Plan Elections**

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

### **Section R. Qualification as a Qualified Subchapter S Trust**

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

#### **1. A Sole Beneficiary**

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

#### **2. Multiple Beneficiaries**

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

#### **3. Outright Distribution**

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the

newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

## Article XIII

### Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

Any course of study or instruction at any institution for specialized, vocational or professional training.

Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

4. Founders. The term "Founders" means the "grantors", "trustors", "settlor" or any other name given to the makers of this trust either by law or by popular usage.
5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals, other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.
6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.
8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.
9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.
12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.
13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.
14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

## **Article XIV**

### **Miscellaneous Matters**

#### **Section A. Distribution of Personal Belongings by Memorandum**

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

#### **Section B. Special Bequests**

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

### **Section C. The Rule Against Perpetuities**

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

### **Section D. Jurisdiction**

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

### **Section E. Dissolution of Our Marriage**

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

### **Section F. Maintaining Property in Trust**

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

### **Section G. Survival**

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

### **Section H. Simultaneous Death**

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

### **Section I. Changing the Trust Situs**

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

### **Section J. Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

### **Section K. Headings of Articles, Sections and Paragraphs**

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.



**Section L. Notices**

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section M. Delivery**

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section N. Duplicate Originals**

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

**Section O. Severability**

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

**Section P. Gender, Plural Usage**

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity

as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

#### **Section Q. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

#### **Section R. Generation Skipping Transfers**

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

**Section S. Elective Deductions**

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

  
ELMER H. BRUNSTING, Founder

  
NELVA E. BRUNSTING, Founder

  
ELMER H. BRUNSTING, Trustee

  
NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

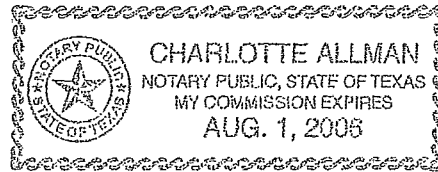
COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

*Charlotte Allman*

Notary Public, State of Texas



# Exhibit 8

The 2007 Amendment to the Brunsting Family Trust

FIRST AMENDMENT TO THE RESTATEMENT TO  
THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING and NELVA E. BRUNSTING, the Founders of the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, hereby amend the said Trust, as follows, to-wit:

1. The said trust entitled "The Brunsting Family Living Trust dated October 10, 1996" is hereby amended so that any and all references to "ANITA RILEY" shall be to "ANITA BRUNSTING". Said correction is incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996 for all purposes.

2. Article IV, Section B of the said Trust entitled "Our Successor Trustees" is hereby amended so that from henceforth Article IV, Section B is replaced in its entirety with the Article IV, Section B set forth in Exhibit "A" attached hereto and incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996, as restated on January 12, 2005, for all purposes.

3. All amendments set forth in this instrument are effective immediately upon execution of this document by the Founders.

4. All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

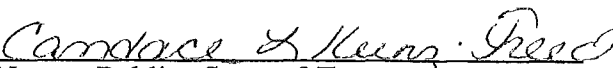
WITNESS OUR HANDS this the 6th day of September, 2007.

  
\_\_\_\_\_  
ELMER H. BRUNSTING,  
Founder and Trustee

  
\_\_\_\_\_  
NELVA E. BRUNSTING,  
Founder and Trustee

THE STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me on the 6th day of September, 2007, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

  
\_\_\_\_\_  
Notary Public, State of Texas

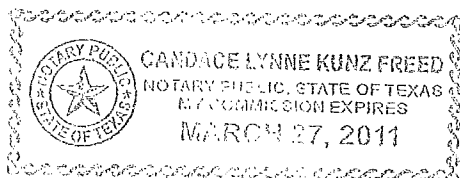


EXHIBIT "A"

**Article IV**

**Our Trustees**

**Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Co-Trustees:

**CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS**

**CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS** shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.



Cu'qh'Ugr vgo dgt'45.'4238'3-24'RO 'GF V

Curtis v. Brunsting

Wp'kgf "Ucv'gu'E'qwtv'qh'Cr r gcu'hqt"y' g'H'kt'y 'E'ktew'k

Lcpwct { "; . '4235.'H'kgf

P q034/42386

**Tgr qt vgt**

926'H'bf '628='4235'W'U'0'Cr r 0'NGZ'K'U'746='4235'Y'N'326; 3:

E'CP'F'CE'G'N'Q'W'K'U'G'E'W'T'V'K'U.'R'rc'k'p'k'h'Cr r g'm'p'v'x'0'CP'K'V'C'M'C'[ "D'T'W'P'U'V'K'P'I '=F'Q'G'U'  
3/322='CO [ 'T'W'J 'D'T'W'P'U'V'K'P'I . 'F'g'h'g'p'f'c'p'u/Cr r g'm'g'g'u

**Rt'k'qt "J'k'v'qt { '<'], , 3\_'Cr r g'cn' h'q'o " y' g" W'p'k'g'f " U'c'v'g'u' F'k'v'k'ev' E'q'w't'v' h'q't" y' g" U'q'w'j' g't'p"  
F'k'v'k'ev'q'h'V'g'z'c'u'0**

**E'q't'g'V'g't'o' u**

r' t'q'd'c'v'g.'h'g'f'g't'c'n'f'eq'w't'v.'"e'w'u'q'f' { ."y' g"y' k'n" f'g'eg'f'g'p'v'u.'"h'g'f'g't'c'n'f'k'v'k'ev'eq'w't'v.'"r' t'q'd'c'v'g'"eq'w't'v."  
u'c'v'g'"eq'w't'v.'"k'p'"t'g'o' 'l'w't'k'uf'k'ev'k'p.'"r' t'q'd'c'v'g'"r' t'q'eg'g'f'k'p'i . 'f'k'v'k'ev'eq'w't'v.'"u'w'd'l'g'e'v'o' c'w'g't

**E'c'ug'U'w'o' o' c't' {**

**R't'q'eg'f'w't'c'n'R'q'u'w't'g**

R'rc'k'p'k'h' "y' g" d'g'p'g'h'ek't' { "q'h'c" 't'w'u'v.'"u'w'g'f' "f'g'h'g'p'f'c'p'v'eq'/t'w'u'v'g'g'u"q'h' 'y' g' 't'w'u'v.'"h'q't' "d't'g'c'ej' "q'h'  
h'k'f'w'ek't' { "f'w'f' { ."g'z'v'k'p'ule' "h'c'w'f' ."e'q'p'u't'w'ek'x'g' "h'c'w'f' ."c'p'f' "k'p'v'g'p'v'k'p'c'n'k'p'h'k'ev'k'p'"q'h'go' q'v'k'p'c'n'  
f'k'v'k'ev'q'h'V'g'z'c'u'f'k'uo' k'u'g'f' "y' g" e'c'ug' "h'q't' "r'c'e'n'i'q'h' 'u'w'd'l'g'e'v'o' c'w'g't' "l'w't'k'uf'k'ev'k'p.'"e'q'p'e'n'w'f'k'p'i "y' c'v' 'y' g' "e'c'ug' "h'g'm' 'y' k'j' k'p' 'y' g' "r' t'q'd'c'v'g'"  
g'z'eg'r' v'k'p' 'v'q' 'h'g'f'g't'c'n'f'k'x'g't'uk'v' 'l'w't'k'uf'k'ev'k'p'0'V'j' g' d'g'p'g'h'ek't' { "c'r' r' g'c'g'f' 0

**Q'x'g't'x'l'g'y**

V'j' g' "e'q'w't'v' 'h'q'w'p'f' "y' c'v' 'y' g' "e'c'ug' 'y' c'u' 'q'w'u'k'f' g' "y' g' "u'eq'r' g' "q'h' 'y' g' "r' t'q'd'c'v'g'"g'z'eg'r' v'k'p' "w'p'f' g't' "y' g' "h'k't' u'v'  
u'v'g'r' "q'h' 'y' g' "k'p's' w'k't' { "d'g'ec'w'ug'"y' g' "t'w'u'v' 'y' c'u' "p'q'v' 'r' t'q'r' g't'v'f' "y' k'j' k'p' "y' g' "e'w'u'q'f' { "q'h' 'y' g' "r' t'q'd'c'v'g'"  
e'q'w't'v'0'D'g'ec'w'ug'"y' g' "c'u'g'u' 'k'p' "c' "r'k'k'k'p'i "q't' "k'p'v'g't' "x'k'x'q'u' "t'w'u'v' 'y' g't'g' "p'q'v' 'r' t'q'r' g't'v'f' "q'h' 'y' g' "g'u'c'v'g'"c'v'  
y' g' "v'o' g' "q'h'f' g'eg'f'g'p'v'u'f'g'c'v'j' . "j' c'x'k'p'i "d'g'g'p' "t'c'p'u'lg't't'g'f' "v'q' 'y' g' "t'w'u'v' { "g'c't'u' "d'g'h'q't'g' . "y' g' "t'w'u'v' 'y' c'u'  
p'q'v' 'k'p' "y' g' "e'w'u'q'f' { "q'h' 'y' g' "r' t'q'd'c'v'g'"e'q'w't'v'c'p'f' "c'u' "u'w'ej' "y' g' "r' t'q'd'c'v'g'"g'z'eg'r' v'k'p' "y' c'u' "k'p'c'r' r' "k'ec'd'ng'"  
v'q' "f'k'ur' w'g'u' "e'q'p'eg't'p'k'p'i "c'f' o' k'p'k'v'c'k'p' "q'h' 'y' g' "t'w'u'v'0'V'j' g' "t'g'e'q't'f' "c'n'u'q' "k'p'f'k'ec'v'g'f' "y' c'v' 'y' g't'g'  
y' q'w'f' "d'g' "p'q' "r' t'q'd'c'v'g'"q'h' 'y' g' "t'w'u'v' "c'u'g'u' "w'r' q'p' "y' g' "f'g'c'v'j' "q'h' 'y' g' "u'w't'x'k'k'p'i "u'r' q'w'ug'0'H'k'p'f'k'p'i "p'q'"  
g'x'k'f'g'p'eg' "y' c'v' 'y' g' "t'w'u'v' 'y' c'u' "u'w'd'l'g'e'v'v'q' "y' g' "q'p'i' q'k'p'i "r' t'q'd'c'v'g'"r' t'q'eg'g'f'k'p'i u. "y' g' "e'c'ug' "h'g'm' 'q'w'u'k'f' g'  
y' g' "u'eq'r' g' "q'h' 'y' g' "r' t'q'd'c'v'g'"g'z'eg'r' v'k'p'0'V'j' g' "f'k'v'k'ev'eq'w't'v' "d'g'm'y' "g't't'g'f' "k'p' "f'k'uo' k'u'k'p'i "y' g' "e'c'ug' "h'q't'  
r'c'e'n'i'q'h' 'u'w'd'l'g'e'v'o' c'w'g't' "l'w't'k'uf'k'ev'k'p'0



**Qweqo g**

Vj g"f kurtlev"eqwt v\i" f kuo kuacn'qh"vj g"ecug"y cu"tgxgtugf."cpf "vj g"ecug"y cu"tgo cpf gf "hqt" hwtvj gt'r tqeggf kpi u0

**Ngzkp gzku' J gcf pqvgu**

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Ekxk'Rtqegf wtg"@00"@Uwdlgev'O cwtg'Lwtkuf levkqp"@Lwtkuf levkqp"Qxgt'Cevkqpu"@Nko kgf "Lwtkuf levkqp

Ekxk'Rtqegf wtg"@00"@Tgur qpugu"@F ghgpugu.'F go wttgtu(' 'Qdlgev'kqpu"@O qv'kqpu"v'F kuo kuu

Ekxk'Rtqegf wtg"@Crr gcm"@Ucpf ctf u'qh'Tgxkgy "@F g'P qxq'Tgxkgy

**HN1** Crr gmcvg"eqwt u'tgxkgy "f g'pqxq"cf kurtlev"eqwt v\i" f kuo kuacn'hqt"rcen'qh'uwdlgev/o cwtg" lwtkuf levkqp0

Gucvg.'I kv(' "Vtwv'Ncy "@00"@Rtqdcvg"Rtqeggf kpi u"@Lwtkuf levkqp"@F kxgtukv' "Lwtkuf levkqp" Gzegr vkqpu

**HN2** Cnj qwi j "c'hgf gtcn'eqwt v'j cu'pq"lwtkuf levkqp"v'q'r tqdcvg"cy km'qt"cf o kpkvgt"cp"gucvg." vj g'r tqdcvg"gzegr vkqp"fqgu"pqv'dct" c"hgf gtcn'eqwt v'htqo "gzgtekukpi "lwtkuf levkqp"qxgt"cm' enko u'tgrcvf "v'uwej "c'r tqeggf kpi 0'Hgf gtcn'eqwt u'qh"gs vkv' "j cxg"lwtkuf levkqp"v'gpvgt v'kp" uwku'kp'hcxqt"qh'etgf kqtu."ngi cvggu"cpf "j gktu"cpf "qvj gt'erko cpw'ci ckpuv'c"fggf gpv'u"gucvg" v'gucdkuj "vj gk"erko u"uq"mipi "cu"vj g'hgf gtcn'eqwt v'f qgu"pqv'kpvgt hgtg"y kj "vj g'r tqdcvg" r tqeggf kpi u"qt"cuwo g"i gpgtcn'lwtkuf levkqp"qxgt"vj g'r tqdcvg"qt"eqpvqn'qh"vj g'r tqr gtv' "kp" vj g" ewuqf { "qh" vj g" ucvg" eqwt v' Uko krcn' " y j kg" c" hgf gtcn' eqwt v' o c { " pqv' gzgtekug" ku" lwtkuf levkqp"v'f kuwd"qt"chgev'vj g'r quuguukqp"qh'r tqr gtv' "kp"vj g"ewuqf { "qh" c"ucvg"eqwt v.'kv" o c { "gzgtekug"ku"lwtkuf levkqp"v'cf lwf kecvg"tki j w'kp"uwej "r tqr gtv' "y j gtg"vj g'hkpcn'lwf i o gpv' f qgu"pqv'w'pf gtvcng"v'kpvgt hgtg"y kj "vj g"ucvg"eqwt v\i" r quuguukqp"ucxg"v'vj g"gzv'p'vj cv'vj g" ucvg"eqwt v'ku'dqwpf "d { "vj g'lwf i o gpv'v'q'tgeqi pk g'vj g'tki j v'cf lwf kecvgf "d { "vj g'hgf gtcn'eqwt v'0

Gucvg.'I kv(' "Vtwv'Ncy "@00"@Rtqdcvg"Rtqeggf kpi u"@Lwtkuf levkqp"@F kxgtukv' "Lwtkuf levkqp" Gzegr vkqpu

**HN3** Vj g"WUO'Uwr tgo g"Eqwt v'j cu'erctk'kgf "vj g"\$f kurtlev" rko kgf "ueqr g\$"qh"vj g'r tqdcvg" gzegr vkqp."gZR r'kp'kp' <"y j gp"qp"eqwt v'ku"gzgtekukpi "kp'tgo "lwtkuf levkqp"qxgt" c'tgu."c'ugeqpf " eqwt v'y km'pqv'cuwo g"kp"tgo "lwtkuf levkqp"qxgt"vj g"uco g"tgu'Vj wu."vj g'r tqdcvg"gzegr vkqp" tgugt'xgu"v'ucvg"r tqdcvg"eqwt v'vj g'r tqdcvg"qt"cppw'gpv'qh"cy km'cpf "vj g'cf o kpkv'cvkqp"qh" c"fggf gpv'u"gucvg=k'cnuq'r tgenw'gu'hgf gtcn'eqwt u'htqo "gpf gcxqtkpi "v'f kur qug"qh'r tqr gtv' " vj cv'ku"kp" vj g"ewuqf { "qh" c"ucvg"r tqdcvg" eqwt v'Dw"kv' f qgu"pqv'dct"hgf gtcn'eqwt u'htqo " cf lwf kecukpi "o cwtg"qwu'kf g"vj qug"eqph'kp"cpf "qvj gty kug"y kj kp"hgf gtcn'lwtkuf levkqp'0'Vj g" hgf gtcn'f kurtlev"eqwt v'j cf "uwdlgev'o cwtg"lwtkuf levkqp."cpf "vj g'r tqdcvg"gzegr vkqp" f kf "pqv' cr r n'."tgcup'kp' <"Vj g'erko cpv'uggm'cp"kp"r gtuqpc'o "lwf i o gpv'ci ckpuv'vj g'f ghgpf cpv."pqv'

926"Hdf"628.", 628=4235"WUOCrrONGZKU746.", , 3

vj g"r tqdcvg"qt"cppwno gpv"qh"cy km0P qt"fqgu"uj g"uggm"vq"tgcej "c"tgu"lp"ewuxf {"qh"cy"ucv" eqwv0 Vj g"r tqdcvg"gzegr vkqp"qpn{"dctu"cy"hgfgtcn"fkutlev"eqwv"htqo "3+"rtqdcvki "qt" cppvwnki "cy km"qt"\*4+"uggnki "vq"tgcej "c"tgu"lp"ewuxf {"qh"cy"ucv"eqwv"d {"gpf gcxqtkpi "vq" f kur qug"qh"uwej "r tqr gtv0

Gucvg."I km{" "Vt wuv"Ncy "@00"@Rtqdcvg"Rtqeggf kpi u"@Lwtkuf levkqp"@F kxgtukv{"Lwtkuf levkqp" Gzegr vkqpu

**HN4** Vq"fgvto kpg"y j gyj gt"vj g"r tqdcvg"gzegr vkqp"fg r tkxgu"cy"hgfgtcn"eqwv"qh"lwtkuf levkqp." r tgegf gpv"tgs wkt gu"cy"y q/uvr "kps wkt {"kpvq"\*3+"y j gyj gt"vj g"r tqr gtv{"kpf kur wg"ku" gucv" r tqr gtv{"y kj kp"vj g"ewuxf {"qh"cy"ucv"eqwv"cpf"\*4+"y j gyj gt"vj g"r rckpvh"u"ercko u" y qwf"tgs wkt g"vj g"hgfgtcn"eqwv"vq"cuuwo g"kp"tgo "lwtkuf levkqp"qxgt"vj cv"r tqr gtv0 O Kk"vj g" cpuy gt"vq"dqvj "kps wkt kgu"ku" {gu."vj gp"vj g"r tqdcvg"gzegr vkqp"r tgenmf gu"vj g"hgfgtcn"fkutlev" eqwv"htqo "gzgtekukpi "fkxgtukv{"lwtkuf levkqp0

Gucvg."I km{" "Vt wuv"Ncy "@00"@Rtqdcvg"Rtqeggf kpi u"@Lwtkuf levkqp"@F kxgtukv{"Lwtkuf levkqp" Gzegr vkqpu

**HN5** Cu"cy"vj tguj qrf "o cwtg."vj g"r tqdcvg"gzegr vkqp"qpn{"cr r rkgu"kh"vj g"fkur wg"eqpegt pu" r tqr gtv{"y kj kp"vj g"ewuxf {"qh"cy"ucv"eqwv0 Vj g"hgfgtcn"eqwv"ecppqv"gzgtekug"kp"tgo " lwtkuf levkqp"qxgt"cy"tgu"lp"vj g"ewuxf {"qh"cpvj gt"eqwv0

Gucvg."I km{" "Vt wuv"Ncy "@Gucvg"Cfo kpkutcvkqp"@P qpr tqdcvg"Vtcpuhtu"@Nkxkpi "Vt wuv" Guvcvg."I km{" "Vt wuv"Ncy "@00"@Rtqdcvg"Rtqeggf kpi u"@Lwtkuf levkqp"@F kxgtukv{"Lwtkuf levkqp" Gzegr vkqpu

**HN6** Cuugvu"r rnegf "kp"cp"kpvg"xlxqu"vt wuv"i gpgtcm{"cxqkf"rtqdcvg."ukpeg"uwej "cuugvu"ctg" qy pgf"d {"vj g"vt wuv"pqv"vj g"fggef gpv"cpf"vj gthgtg"ctg"pqv"r ctv"qh"vj g"fggef gpv"u" gucv"0 Kk" qvj gt"y qtf u."dgecwug"vj g"cuugvu"kp"cy"rckkpi "qt"kpvg"xlxqu"vt wuv"ctg"pqv"r tqr gtv{"qh"vj g" gucv" cv"vj g"vko g"qh"vj g"fggef gpv"u"fgvj . "j cxkpi "dggp"vtcpuhtgtg"vq"vj g"vt wuv" {gctu"dghgtg."vj g" vt wuv"ku"pqv"kp"vj g"ewuxf {"qh"cy"ucv"eqwv"cpf"cu"uwej "vj g"r tqdcvg"gzegr vkqp"ku" kpcr r rkecdng"vq"fkur wgu"eqpegtkpi "cfo kpkutcvkqp"qh"vj g"vt wuv0

Gucvg."I km{" "Vt wuv"Ncy "@Gucvg"Cfo kpkutcvkqp"@P qpr tqdcvg"Vtcpuhtu"@Nkxkpi "Vt wuv"

**HN7** Cp{"r tqr gtv{"j grf "kp"cy"tgxqecdn"rckkpi "vt wuv"ku"pqv"eqpukf gtgf "cy"rtqdcvg"cuugv0 Cxqkf cpeg"qh"rtqdcvg"r gtj cr u"ku"vj g"o quv"r wdrek gf "cf xcpwi g"qh"vj g"tgxqecdn"rckkpi " vt wuv0 Cuugvu"kp"cy"rckkpi "vt wuv"ctg"pqv"uwlgev"vq"rtqdcvg"cf o kpkutcvkqp0

**Eqwpugn**"ECP FCEG"NQWUG"EWTVKU."Rckpvh"/"Cr r gncpv."Rtq"ug."O ctvkgj ."EC0

Hqt"CP KVC"MC[ "DTWP UVPI ."CO [ "TWJ "DTWP UVPI ."F ghgpf cpwu"/"Cr r mggu<  
I gqti g"Y knko "Xkg."KKK"O kmu"Uj ktrg{ ."NONRO"J qwuvp."VZ="Dgtpctf "Nkug"O cyj gy u."KKK"  
I tggp"( "O cyj gy u."NONRO"J qwuvp."VZ 0

Lwf i gu'Dghqtg"J K I R DQVJ CO ."UO KVJ ."cpf "GNTQF ."Ektewk/Lwf i gu0

Qr kpkp'd{ <RCVTKEM'G0J K I R DQVJ CO

Qr kpkp

'J, 629\_'RCVTKEM'G0J K I R DQVJ CO ."Ektewk/Lwf i g<

Vj ku' cr r gcn' eqpegtpu" vj g" ueqr g" qh' vj g" r tqdcw" gzeqr vkp" vq" hgf gtcn' uwdlgeu cwgt"  
lwtkuf levkqp"kp"vj g"y cng"qh"vj g"Uwr tgo g"Eqwtvu" f gekukp"kp"Marshall v. Marshall0"Vj g"  
Rrckpwh'eqpvgpf u'vj cv."wvf gt"Marshall."j gt"erko u'hqt"dtgcej "qh'hkf vekct { "f w{ "ci ckpuv"vj g"  
eq/vt wvvggu"qh'cp"kpvt "xkxqu"vt wuv" f q"pqv"ko r rkcw"vj g"r tqdcw" gzeqr vkp0"Y g"ci tgg0

**K0**

Kp"3; ; 8."Gm gt"J 0'cpf "P grkc" G0'Dtwpukpi ."Vgzcu"tgukf gpw." guvdrkuj gf "vj g" Dtwpukpi "  
Hco kn{ "Nkxkpi "Vt wuv"\*\$j g" Vt wuv\$+"hqt" vj g" dgpghk' qh' vj gkt" qhhr tkpi 0' C v' vj g" vko g" qh' ku"  
etgcvkqp."vj g"Vt wuv"y cu"hwf gf "y kj "xctkqu"cuugw0Dqj "vj g"y kn'qh'O t0'Dtwpukpi "cpf "vj g"  
y kn'qh'O tu0'Dtwpukpi " \*eqmgevxgn{ "\$j g" Dtwpukpi u)"Y kmu\$+" cr r gct "vq" kpenf g" r qwt/qxgt "  
r tqxkukpu."r tqxkf kpi "], , 4\_ 'vj cv'mlr tqr gtv{ 'kp" gcej "guvcw"ku" f gxkugf "cpf "dgs wgcj gf "vq"vj g"  
Vt wuv0"Gm gt"J 0'Dtwpukpi "r cuugf "cy c{ "qp"Cr tk13."422; ."cpf "P grkc" G0'Dtwpukpi "r cuugf "  
cy c{ "qp" P qxgo dgt"33."42330"Vj g"ewttgpv'f kur wv"ctkugu"qw"qh"vj g"cf o kpkutcvkqp"qh"vj g"  
Vt wuv0

Ecpf ceg" Ewt ku." Cpkc" Dtwpukpi ." cpf " Co { " Dtwpukpi " ctg" ukdrki u0 Kp" Hgdwtct { " 4234."  
Ecpf ceg" Ewt ku" \*\$Ewt ku\$+" hkgf "c" eqo r rckpv'kp" hgf gtcn' f kut lev'eqwt v'ci ckpuv' Cpkc" Dtwpukpi "  
cpf "Co { "Dtwpukpi " \*eqmgevxgn{ "\$j g" F ghgpf cpwv\$+" dcugf "qp" f kxgtuk{ "], 62: \_" lwtkuf levkqp0"  
Kp" vj cv'eqo r rckpv."uj g" cngi gf "vj cv' Cpkc" cpf "Co { ." cvkpi "cu" eq/vt wvvggu"qh"vj g" Vt wuv." j cf "  
dtgcej gf " vj gkt" hkf vekct { " f wkgu" vq" Ewt ku." c" dgpghkect { " qh' vj g" Vt wuv0 Ur gekh'ecm{ ." uj g"  
cngi gf " vj cv' Cpkc" cpf "Co { " j cf " o kurr tqr tkvgf " Vt wuv" r tqr gtv{ ." hckrgf " vq" r tqxkf g" j gt "  
f qewo gpw" tgrvgf "vq" cf o kpkutcvkqp"qh"vj g" Vt wuv." cpf "hckrgf " vq" r tqxkf g" cp" ceewtcw" cpf "  
vko gn{ "ceeqwvki 0' Vj g" eqo r rckpv" cngi gf "erko u'hqt" dtgcej "qh'hkf vekct { " f w{ ." gztkpuk"  
htcwf ." eqputwvkg" htcwf ." cpf " kpvv'kpcn' kph'ekvq" qh' go qv'kpcn' ], , 5\_ 'f kut guu0 Ewt ku"  
uqwi j v'eqo r gpucvt { " f co ci gu." r wpkxg" f co ci gu." c" vgo r qtct { " tguv'ckkpi " qtf gt" ci ckpuv

<sup>3</sup>547 U.S. 293, 126 S. Ct. 1735, 164 L. Ed. 2d 480 (2006)0

<sup>4</sup>Vj g'uki pgf "eqr kgu"qh"vj g" Dtwpukpi u)"Y kmu"ctg"pqv'kpenf gf "kp"vj g"tgeqtf ."dw"Ewt ku"r tqxkf gf "wpuki pgf "eqr kgu."y j kej "y g'cuwo g'o cvej "vj g"  
uki pgf "xgtukpu"vj cv'j cxg'dggp'cf o kvgf "vq"r tqdcw0

\$y cukpi "y g" gucvg.\$" cpf "cp" kplwpevkqp" eqo r gmki "dqj" cp" ceeqwpvkpi "qh" Vtwuv" r tqr gtvl " cpf "cuugw"cu'y gm'cu'r tqf wevkqp"qh'f qewo gpw"cpf "ceeqwpvkpi "tgeqtf u0

Qp"O ctej "3."4234."y g'f kutlev'eqwtv'f gpkgf "Ewtku"u"cr r necvkqp" hqt" c" vgo r qtct { "t gutckkpi " qtf gt" cpf "kplwpevkqp" dgecwug" y g" F ghgpf cpw" j cf "pqv" dggp" ugtxgf "y kj " r tqegu0 Kp" y g" qtf gt. "y g'f kutlev'eqwtv' lwf i gf "pqvgf "y cv'k" \$cr r gctu" y cv' y g" eqwtv' r emu" uwdlgev' o cwgt" lwtkuf levkqp" qxgt" y g" emko \*u+ "cuugtvgf \$" Qp" O ctej "8."4234. "kp" t gur qpug" vq" y g" rku" r gpf gpu" Ewtku" j cf "hrgf " tgrcvgf "vq" r tqr gtvl "kp" Vgzcu" cpf "Kqy c." Cpkc" cpf "Co { "hrgf " cp" go gti gpe { " o qvkqp" vq" tgo qxg" y g" rku" r gpf gpu" Vj g" o qvkqp" pqvgf "y cv'k" y cu" uwdlgev' vq" y g" F ghgpf cpw" eqpvgpvkqp" y cv' y g" hgf gtcn' f kutlev' eqwtv' r emgf " uwdlgev' o cwgt" lwtkuf levkqp" wpf gt" y g" r tqdcvg" gzegr vkqp" vq" hgf gtcn' eqwtv' lwtkuf levkqp. "cp" kuwv" y cv' y g" F ghgpf cpw" uckf "y qwf "dg" tckugf " kp" c" ugr ctcvg" Twrg" 34\*d+ " o qvkqp" vq" f kuo ku0 Qp" O ctej " : . " 4234." hqmjy kpi " c" vgrgr j qpg" eqphgt gpeg" y kj " y g" r ctvku. "y g'f kutlev'eqwtv' lwf i g" gpvgtgf "c" sua sponte" qtf gt" f kuo ku0 kpi "y g" ecug" hqt" r em'qh" uwdlgev' o cwgt" lwtkuf levkqp0" ], , 6\_ Kp" f qkpi "uq. "j g" eqpenmf gf " y cv' y g" ecug" r em' y kj kp" y g' r tqdcvg" gzegr vkqp" vq" hgf gtcn' f kxgtukv { "lwtkuf levkqp0" Vj ku" cr r gcn' hqmjy gf 0

**KKO**

*HNI* Vj ku" Eqwtv' t gxlgy u" *de novo* " c" f kutlev' eqwtv" u" f kuo ku0 cn' hqt" r em'qh" uwdlgev' o cwgt" lwtkuf levkqp0

**KKK**

*HN2* Cnj qwi j " c" hgf gtcn' eqwtv' \$j cu" pq" lwtkuf levkqp" vq" r tqdcvg" c" y km' qt" cf o kpkugt" cp" gucvg.\$<sup>6</sup> "kp" *Markham v. Allen.* "y g" Uwr tgo g" Eqwtv' tgeqi pki gf "y cv' y g" r tqdcvg" gzegr vkqp" f qgu" pqv' dct" c" hgf gtcn' eqwtv' hqo "gzgtekukpi "lwtkuf levkqp" qxgt" cm' emko u" tgrcvgf "vq" uwej "c" r tqeggf kpi <

JH\_gf gtcn' eqwtv" qh" gs wkv { "j cxg" lwtkuf levkqp" vq" gpvgt vcp" uwku" kp" hcxqt" qh" etgf kqtu. " ngi cvgu" cpf "j gtu" cpf "qvj gt" emko cpw" ci ckpuv" c" f gegf gpv" gucvg" )q" gucdrikuj "y gk" emko u" uq" mqi "cu" y g" hgf gtcn' eqwtv' f qgu" pqv' kpvgt hgt" y kj "y g" r tqdcvg" r tqeggf kpi u" qt" cuwo g' i gpgtcn' lwtkuf levkqp" qxgt" y g' r tqdcvg" qt" eqpvtn' qh' y g' r tqr gtvl "kp" y g" ewuvf { "qh" y g" ucvg" eqwtv0

Uko krcn { "y j kg" c" hgf gtcn' eqwtv' o c { "pqv" gzgtekug" ku" lwtkuf levkqp" vq" f kuwtd" qt" chge' vj g" r quuguukqp" qh' r tqr gtvl "kp" y g" ewuvf { "qh" c" ucvg" eqwtv. "k' o c { "gzgtekug" ku" lwtkuf levkqp" vq" cf lwf kecvg" tki j u" kp" uwej "r tqr gtvl { "y j gtg" y g" hpcn' lwf i o gpv' f qgu" pqv' wpf gtvcng" ], , 7\_ vq"

<sup>5</sup>*Borden v. Allstate Ins. Co., 589 F.3d 168, 170 (5th Cir. 2009)*0

<sup>6</sup>*Markham v. Allen, 326 U.S. 490, 494, 66 S. Ct. 296, 90 L. Ed. 256 (1946)*0

kpvgthtg'y kj 'y g'ucvgeqwtv'u'r quuguukqp'ucxg'v'j g'gz vgp'v'j cv'j g'ucvgeqwtv'ku'dqwpf " d{'y g'lwf i o gpv'v'q'tgeqi pl' g'y g'tki j v'cf lwf kecvgf "d{'y g'hgf gtcn'eqwtv

'1, 62; \_'"Ukz v'{"{ gctu'ncvgt."kp"Marshall v. Marshall."y g"Uwr tgo g"Eqwtv'gzr tguugf "eqpegt p" y kj "ny gt "eqwtu)"kpvgtr tgvckqp"qh"Markham."pqv'kpi "y cv'\$]nqy gt "hgf gtcn'eqwtu"j cxg" r w| rnf "qxtg"y g"o gcpkpi "qh'y g"y qtf u")q"kpvgthtg'y kj "y g'r tqdcv"r tqeggf kpi u.)"cpf " uqo g"j cxg"tgcf "y qug"y qtf u"v"dmem'hgf gtcn'lwtkuf levkqp"qxtg" c"tcpi g"qh"o cvgtu"y gmi dg{ qpf "r tqdcv"qh'c'y km'qt"cf o kpkutcvkqp"qh'c'f gegf gpv'u'gucvgeqwtv"Vj wu."HN3 y g"Uwr tgo g" Eqwtv'entk'hgf "y g'\$f kpkutcvkqp"rko kqf "ueqr g\$"qh'y g'r tqdcv"gzegr v'kqp."gzr rckpki <

JY\_g'eqo r tgj gpf "y g"kpvgthtg'peg)'rcpi wci g'kp"Markham"cu"guugpv'kcm{"c'tgkgtcvkqp"qh' y j g'i w'k'kpi "r tkpek r'g'y cv."y j gp"qpg"eqwtv'ku"gz gtekukpi "in rem"lwtkuf levkqp"qxtg" c"res."c" ugeqpf "eqwtv'y km'pqv'cuwo g"in rem"lwtkuf levkqp"qxtg"y g"uco g"res"Vj wu."y g'r tqdcv" gzegr v'kqp"tgu'xgu"v"ucv"r tqdcv"eqwtu"y g'r tqdcv"qt"cppw'gpv'qh'c'y km'cpf "y g" cf o kpkutcvkqp"qh'c'f gegf gpv'u'gucvgeqwtv"kv'cnuq"r tgenw'gu'hgf gtcn'eqwtu"htqo "gpf gcxqt'kpi " v" f kur qug"qh"r tqr gtv' "y cv'ku"kp"y g"ewuxf {"qh'c"ucv"r tqdcv"eqwtv'Dw'k'f qgu" '1, , 8\_'pqv' dct "hgf gtcn' eqwtu" htqo " cf lwf kecvkpi " o cvgtu" qwukf g" y qug" eqphk'p'gu" cpf " qvj gty kug'y kj kp'hgf gtcn'lwtkuf levkqp

Vj g" Marshall" Eqwtv' eqpenw'gf " y cv' y g" hgf gtcn' f kwt'lev' eqwtv' j cf " uwdlgev'o cvgt" lwtkuf levkqp."cpf "y g'r tqdcv"gzegr v'kqp"fk' "pqv'cr r n{."tgcuaqkpi <\$]Vj g'enco cpv\_"uggm"cp" in personam"lwf i o gpv'ci ckpuv"]y g'F gh'gpf cpv\_."pqv'y g'r tqdcv"qt"cppw'gpv'qh'c'y km'P qt" f qgu"uj g"uggm'v"tgcej "c"res"kp"ewuxf {"qh'c"ucv"eqwtv"\$ "Ch'gt"Marshall."y g'r tqdcv" gzegr v'kqp"qpn' "dctu" c" hgf gtcn' f kwt'lev'eqwtv"htqo "\*3+"r tqdcv'kpi "qt"cppw'kpi "c"y km'qt"\*4+" \$uggm'kpi \_"v"tgcej "c"res"kp"ewuxf {"qh'c"ucv"eqwtv"\$d{"\$gpf gcxqt'kpi "v" f kur qug"qh"]uwej \_" r tqr gtv' \$<sup>32</sup>

Cu'y g"ugg'k."HN4 v" f gvto kpg'y j gyj gt "y g'r tqdcv"gzegr v'kqp" f gr tk'gu" c" hgf gtcn'eqwtv'qh' lwtkuf levkqp."Marshall"tgs wkt'gu" c"y q/uvgr "kps wkt {"kp'v"\*3+"y j gyj gt "y g'r tqr gtv' "kp" f kur w'g" ku" gucv"r tqr gtv' "y kj kp"y g"ewuxf {"qh'y g'r tqdcv"eqwtv'cpf "\*4+"y j gyj gt "y g'r rckp'k'hu" enco u'y qwf "tgs wkt'g"y g'hgf gtcn'eqwtv'v"cuwo g"in rem"lwtkuf levkqp"qxtg"y cv'r tqr gtv' O'k' y j g"'], , 9\_'cpuy gt "v"dqv' "kps wkt'ku"ku" { gu."y gp"y g'r tqdcv"gzegr v'kqp"r tgenw'gu"y g'hgf gtcn'

<sup>7</sup>Id.<sup>3</sup>kpvgtpcn'ekcvkqp'u'qo kwgf +0

<sup>8</sup>547 U.S. at 3110

<sup>9</sup>Id. at 3100

: "Id. at 311-120

: "Id. at 312"<sup>3</sup>kpvgtpcn'ekcvkqp'u'qo kwgf +0

<sup>32</sup>Id. at 312-130



f kntlev'eqwtv'htqo "gzgtekupi "f kxgtukv{ "lwtkuf levkqp0'J gtg."y g"hpv "vj g"ecug"qwuif g"vj g" ueqr g"qh'vj g'r tqdcvg"gzegr vkqp"wpf gt "vj g"htuv'uvgr "qh'vj g"lps vkt { "dgecwug"vj g"Vtwuv'ku"pqv' r tqr gtv{ 'y kj kp"vj g"ewuqf { "qh'vj g'r tqdcvg"eqwtv0

**HN5** Cu" c"vj tguj qnf "o cwtg."vj g'r tqdcvg"gzegr vkqp" qpn{ "cr r nku"kh"vj g" f kur wg"eqpegtpu" r tqr gtv{ "y kj kp"vj g"ewuqf { "qh" c" uvcg"eqwtv0'Vj g" hgf gtcn'eqwtv"ecppqv"gzgtekug" in rem" lwtkuf levkqp"qxgt" c"tgu"kp"vj g"ewuqf { "qh"cpqvj gt"eqwtv0'Dqvj "qh'vj g"Dtwpuvki u)"Y kmu"y gtg" cf o kwgf "vq"r tqdcvg"chngt"vj g" f kntlev'eqwtv'f kuo kuugf "vj g"ecug."cpf "r tqdcvg"r tqeggf kpi u'ctg" qpi qlpi 0<sup>3</sup>J qy gxgt."pqv kpi "uwi i guv"vj cv'vj g"Vgzcu'r tqdcvg"eqwtv'ewttgpw{ "j cu'ewuqf { "qt" in rem"lwtkuf levkqp"qxgt"vj g"Vtwuv'0'K'rkngr{ "f qgu"pqv0'**HN6** Cuugw"r ncegf "kp"cp"kpvg"xlkqu" vtwuv"i gpgtcm{ "cxqkf "r tqdcvg."ukpeg" ], **632**\_"uwej "cuugw"ctg"qy pgf "d { "vj g"v twuv."pqv"vj g" f gegf gpv."cpf "vj gtghqtg"ctg"pqv'r ctv'qh'vj g" f gegf gpv"u"guvcvg0<sup>4</sup>"kp"qvj gt "y qtf u."dgecwug"vj g" cuugw"kp" c" rlxkpi "qt"kpvg" xlkqu"v twuv"ctg"pqv'r tqr gtv{ "qh'vj g" guvcvg"cv'vj g" vko g"qh'vj g" f gegf gpv"u" f gcvj ."j cxkpi "dggp"vcpuhgttgf "vq"vj g"v twuv" { gctu"dghqtg."vj g"v twuv"ku"pqv"kp"vj g" ], , :\_ 'ewuqf { "qh'vj g'r tqdcvg"eqwtv'cpf "cu"uwej "vj g'r tqdcvg"gzegr vkqp"ku"kpccr r rkecdrg"vq" f kur wgu"eqpegtkpi "cf o kpkntcvkqp"qh'vj g"v twuv'0'Vj g"tgeqtf "cnuq"kp f kecvgu"vj cv'vj gtg"y qwf " dg"pq"r tqdcvg"qh'vj ku"Vtwuv"u"cuugw"wr qp"vj g" f gcvj "qh'vj g"uwxkxkpi "ur qwug0<sup>5</sup>"Hkpf kpi "pq" gxkf gpeg"vj cv'vj ku"Vtwuv"ku"uwlgev"vq"vj g"qpi qlpi "r tqdcvg"r tqeggf kpi u."y g"eqpenxf g"vj cv'vj g" ecug"hcmu"qwuif g"vj g"ueqr g"qh'vj g'r tqdcvg"gzegr vkqp0'Vj g" f kntlev'eqwtv' dgmqy "gttgf "kp" f kuo kuukpi "vj g"ecug"htq"rcem'qh'uwlgev/o cwtg"lwtkuf levkqp0

**KX0**

Hqt"vj g'tgcuqpu'ugv'htqy "cdqxcg."y g'TGXGTUG"vj g' f kntlev'eqwtv'f kuo kuucn'qh'vj g"ecug"cpf " TGO CPF "hqt"htvj gt'r tqeggf kpi u0'TGXGTUGF "CPF "TGO CPF GF 0

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End of Document

<sup>33</sup>Cv'vj g"vko g"vj g" f kntlev'eqwtv'f kuo kuugf "vj g"ecug."pq'r tqdcvg"r tqeggf kpi u'j cf "dggp"lpxkvcgf 0Cu'uwej ."vj gtg"y cu'pq'r quukkrk{ "vj cv'vj g"ecug" hgm'y kj kp"vj g'r tqdcvg"gzegr vkqp0P gxgt'vj gruu."y g'o wuv'eqpukf gt'y j gj gt."wr qp'tgo cpf ."vj g" hgf gtcn'f kntlev'eqwtv' y qwf "j cxg'uwlgev/o cwtg" lwtkuf levkqp"pqy "vj cv'r tqdcvg"r tqeggf kpi u'ctg"qpi qlpi 0

<sup>34</sup>See"5"Vgz0Rtce0l wfg"Y knu."Vtwuvu."CPF "Guv0Rncp 0E"32< 5"**HN7** \$Cp{ 'r tqr gtv{ "j grf "kp" c"tgxqecdr"rklpi "v twuv"ku"pqv'eqpukf gtgf "c" r tqdcvg"cuugv'0'0'0'0'0'4"Guv0Vcz" ("Rgtu0Hr0Rncp0'E"3; <37"\*\$Cxqkf cpeg"qh'r tqdcvg"r gtj cr u"ku"vj g"o quv'r wdrlk gf "cf xcpvc"i g"qh'vj g" tgxqecdr"rklpi "v twuv"0'0'0'0'0'3: "Guv0Rncp 0; : "\$Cuugw"kp" c"rklpi "v twuv"ctg"pqv'uwlgev"vq" ], , ;\_ 't tqdcvg"cf o kpkntcvkqp"0000\$+0

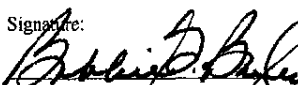
<sup>35</sup>Cp{ "cuugw"sr qwtgf "qxgt"htqo "vj g" f gegf gpv"u"guvcgu"kpqv"vj g"Vtwuv'y qwf "j cxg"vq"i q'vj tqwi j "r tqdcvg."dw'vj cv'f qgu"pqv'ej cpi g'vj g'hcev'vj cv' vj g"Vtwuv'r tqr gtv{ "qxgt"y j lej "vj g" f ghpfp cpw"j cxg"dggp"cev kpi "cu"Vtwuvgu"y qwf "pqv'dg"uwlgev"vq"r tqdcvg."j cxkpi "dggp"vcpuhgttgf "vq"vj g" Vtwuv'r tlqt"vq"vj g'r ctgpw) f gcvj u0

Filed 13 January 29 P12:34  
 Chris Daniel - District Clerk  
 Harris County  
 ED101J017296628  
 By: Nelson Cuero

**CIVIL CASE INFORMATION SHEET**  
**2013-05455 / Court: 164**

CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_ COURT (FOR CLERK USE ONLY): \_\_\_\_\_  
 Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting vs.  
 STYLED Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm  
 (e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

<b>1. Contact information for person completing case information sheet:</b>		<b>Names of parties in case:</b>	<b>Person or entity completing sheet is:</b>	
Name: Bobbie G. Bayless	Email: bayless@baylessstokes.com	Plaintiff(s)/Petitioner(s): Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting	<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
Address: 2931 Ferndale	Telephone: 713.522.2224	Defendant(s)/Respondent(s): Candace L. Kunz-Freed and Vacek & Freed, PLLC, f/k/a The Vacek Law Firm, PLLC	Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
City/State/Zip: Houston, TX 77098	Fax: 713.522.2218	[Attch additional page as necessary to list all parties]		
Signature: 	State Bar No: TX - 01940600			
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>				
<i>Civil</i>		<i>Family Law</i>		
<b>Contract</b>	<b>Injury or Damage</b>	<b>Real Property</b>	<b>Marriage Relationship</b>	<b>Post-judgment Actions (non-Title IV-D)</b>
<input checked="" type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input checked="" type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <b>Foreclosure</b> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <b>Malpractice</b> <input type="checkbox"/> Accounting <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability. <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <b>Product Liability</b> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <b>Divorce</b> <input type="checkbox"/> With Children <input type="checkbox"/> No Children <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocal (UIFSA) <input type="checkbox"/> Support Order <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
<b>Employment</b>	<b>Other Civil</b>			
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____		
<b>Tax</b>	<b>Probate &amp; Mental Health</b>			
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<b>Probate/Wills/Intestate Administration</b> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings	<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____		
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>				
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover		

NO. 2013-05455

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

IN THE DISTRICT COURT OF

vs.

HARRIS COUNTY, TEXAS

CANDACE L. KUNZ-FREED AND  
VACEK & FREED, PLLC f/k/a  
THE VACEK LAW FIRM, PLLC

164<sup>th</sup> JUDICIAL DISTRICT

WAIVER OF CITATION AND SERVICE OF PROCESS

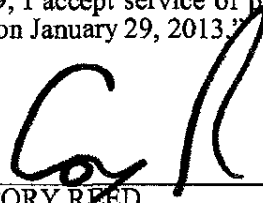
STATE OF TEXAS

COUNTY OF HARRIS

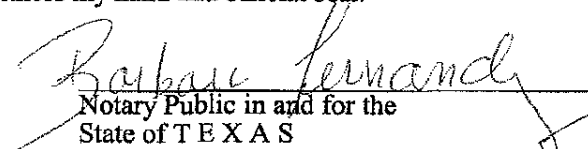
BEFORE ME, the undersigned Authority, on this day personally appeared CORY REED,  
known to me and who being by me duly sworn upon oath deposed and stated as follows:

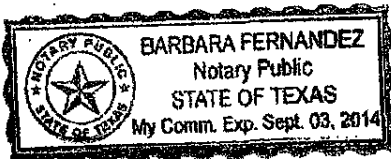
"My name is Cory Reed. I am an attorney at Thompson Coe Cousins & Irons, LLP,  
counsel for Vacek & Freed, PLLC. Plaintiff has forwarded to me a copy of the  
Original Petition and Request for Disclosures filed in this case. By authorization of  
my client and pursuant to Tex. R. Civ. P. 119, I accept service of process on its  
behalf, with such service considered effective on January 29, 2013."

Further affiant sayeth not.

  
CORY REED

SUBSCRIBED AND SWORN TO BEFORE ME on this the 30<sup>th</sup> day of  
January, 2013, to certify which witness my hand and official seal.

  
Notary Public in and for the  
State of TEXAS  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_





Filed 13 January 30 P12:04  
Chris Daniel - District Clerk  
Harris County  
ED101J017298842  
By: Wanda Chambers

NO. 2013-05455

<b>CARL HENRY BRUNSTING,</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>INDEPENDENT EXECUTOR OF THE</b>	§	
<b>ESTATES OF ELMER H. BRUNSTING</b>	§	
<b>AND NELVA E. BRUNSTING</b>	§	
	§	
<b>vs.</b>	§	<b>HARRIS COUNTY, T E X A S</b>
	§	
<b>CANDACE L. KUNZ-FREED AND</b>	§	
<b>VACEK &amp; FREED, PLLC f/k/a</b>	§	
<b>THE VACEK LAW FIRM, PLLC</b>	§	<b>164<sup>th</sup> JUDICIAL DISTRICT</b>

**PLAINTIFF’S FIRST AMENDED PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**COMES NOW Plaintiff, Carl Henry Brunsting, Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting and files this First Amended Petition against Defendants, Candace L. Kunz-Freed, Individually (“Freed”) and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC (the “Law Firm”) (collectively, the “Defendants”), and in support thereof would show the Court the following:**

**I.**

**DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

## II. PARTIES

2. Plaintiff is the duly appointed personal representative of the estates of both his father, Elmer H. Brunsting (“Elmer”),<sup>1</sup> and his mother, Nelva E. Brunsting (“Nelva”).<sup>2</sup>

3. Defendant Freed is an attorney licensed to practice law in the State of Texas who can be served at her principal place of business, 11777 Katy Freeway, Suite 300, Houston, Texas 77079.

4. Defendant Law Firm is a professional limited liability company formed under the laws of the State of Texas for the practice of law which can be served through its registered agent, Albert E. Vacek, Jr., at 11777 Katy Freeway, Suite 300, Houston, Texas 77079. Defendant Law Firm is believed to be the successor to the Law Offices of Albert E. Vacek, Jr., P.C.

5. Other parties and entities involved in the facts relevant to this petition but who are not named as defendants herein include the following:

- a. The Brunsting Family Living Trust was created in 1996 by Elmer and Nelva based on the advice of the Law Firm. The trust instrument was prepared by the Law Firm. The Brunsting Family Living Trust, any amendments thereto, and the trusts created pursuant to its terms are collectively referred to herein as the “Family Trust”. Plaintiff was to be the successor trustee of the Family Trust until that was changed through documents prepared by the Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it.
- b. Anita Kay Brunsting f/k/a/ Anita Kay Riley (“Anita”) is Plaintiff’s sister. Anita became trustee of the Family Trust through documents prepared by Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it. During that same period, Anita was named to act on Nelva’s behalf in a power of attorney prepared by Defendants.
- c. Amy Ruth Brunsting f/k/a/ Amy Ruth Tschirhart (“Amy”) is Plaintiff’s sister. Amy became trustee of the Family Trust through documents prepared by

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<sup>1</sup>Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

<sup>2</sup>Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.

Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it (Anita and Amy in their capacity as trustees of the Family Trust are sometimes collectively referred to herein as the “Current Trustees”).

- d. Carole Ann Brunsting (“Carole”) is Plaintiff’s sister, the party named in Nelva’s health care power of attorney prepared by Defendants, and the party made a joint signatory on a bank account which received significant transfers from the Family Trust after Anita became trustee of the Family Trust. According to Carole, that arrangement was Freed’s idea.
- e. Candace Louise Curtis (“Candy”) is Plaintiff’s sister. Candy and Carl were the only beneficiaries of the Family Trust whose rights were diminished by the changes implemented by the Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it.

### **III. JURISDICTION AND VENUE**

6. This Court has jurisdiction and venue over this case because all of the Defendants maintain their principal places of business in Harris County, Texas, and the acts and omissions giving rise to Plaintiff’s claims occurred in Harris County, Texas. The damages being sought by Plaintiff exceed the minimum jurisdictional limits of the court.

7. Venue is proper in this Court pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1), and (3) because all of the Defendants have their principal office in Harris County, Texas; Elmer and Nelva resided in Harris County, Texas; and all, or substantially all, of the acts and omissions giving rise to Plaintiff’s claims occurred in Harris County, Texas.

### **IV. FACTUAL BACKGROUND**

8. This is a case involving Defendants’ negligence, breach of fiduciary duty and other acts or omissions in their representation of Elmer and Nelva, both individually and in their capacities as trustees of the Family Trust. Defendants’ actions constitute negligent misrepresentation, negligence *per se*, deceptive trade practices, conversion, fraud, commercial bribery, breaches of their fiduciary duties, as well as aiding and abetting, assisting and encouraging repeated breaches of

fiduciary duty. Alternatively, a conspiracy existed between Defendants, and the Current Trustees for that unlawful purpose.

9. The Defendants assisted the Current Trustees 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 actions of the Defendants, the Current Trustees 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.

10. Despite the Law Firm's representations to Elmer and Nelva that the Family Trust would preserve their plans for their estate, Defendants took direction from the Current Trustees, while 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 the Current Trustees 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 the Current Trustees 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 facilitating the loss which actually occurred.

11. Moreover, it is believed that Defendants assisted the Current Trustees in various ways intended to prevent Nelva from even understanding that documents were being prepared by Defendants at the Current Trustee's request, why those documents were being prepared, and what

the impact of the documents would be. It is believed that in assisting the Current Trustees in obtaining their improper objectives, Defendants, among other things:

- a. failed to address Nelva's lack of capacity to make changes to the Family Trust and her power of attorney,
- b. failed to address the undue influence being exercised over Nelva by the Current Trustees,
- c. planned for and prepared documents without explaining the impact of those documents to Nelva and without obtaining reasonable input directly from Nelva,
- d. instead discussed changes to the terms of the Family Trust, and ultimately changes to Nelva's control over the Family Trust with the Current Trustees, with some, but not all, of Nelva's children, and to the exclusion of Nelva,
- e. facilitated signatures by Nelva in circumstances which allowed there to be confusion about what was being signed and which failed to insure that Nelva signed documents with consent, with proper capacity, and with knowledge and understanding of what she was signing,
- f. failed to properly advise Elmer and Nelva on the terms of the Family Trust and the proper administration of the Family Trust,
- g. failed to insure that documents being prepared and arrangements being made in cooperation with the Current Trustees were not being used to improperly remove assets to the improper benefit of Anita, Amy, and Carole,
- h. failed to protect Nelva's rights, both individually and as trustee of the Family Trust,
- i. preferred the rights of the Current Trustees to those of Nelva and it is believed even suggested methods of undermining Nelva's rights and wishes to the Current Trustees so as to accomplish the objectives of the Current Trustees,
- j. failed to refuse the representation of the Current Trustees so as to prevent a conflict of interest and failed to advise Nelva that Defendants' role in advising the Current Trustees was in direct conflict with Defendants' role as Nelva's counsel,
- k. failed to take steps to inform Nelva of the objectives of the Current Trustees or to otherwise prevent those objectives,

- l. failed to take steps to prevent the Current Trustees and Carole from converting assets belonging to Nelva, Elmer's estate, or the Family Trust, and even facilitated the conversion of assets, and
- m. failed to require the Current Trustees to administer the Family Trust properly, in keeping with the terms of the Family Trust, and in the best interests of the beneficiaries, including Nelva.

12. Defendants' knowledge of the Nelva's lack of consent to the actions taken by Defendants is evident from, among other things, the apparent existence of documents which were not signed in Freed's presence but were made to appear as if they were, Nelva's refusal to sign documents prepared at the request of the Current Trustees, and Defendants' involvement in arranging and participating in discussions behind Nelva's back.

13. 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 the Current Trustees 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, the Current Trustees and Carole were in a position 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 continued to claim to be representing the Current Trustees but 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.

#### **V. ATTORNEY-CLIENT RELATIONSHIP**

14. At all times material hereto, Freed was a partner, shareholder, representative, agent and/or associate attorney engaged in the practice of law at the Law Firm. All of the specific acts complained of herein are attributable to Freed's conduct while associated with the Law Firm as a

partner, agent, servant, representative and/or employee. Freed's liability and responsibility is vicarious and joint and several. Plaintiff further pleads the legal theory of *respondeat superior* as between Freed and the Law Firm.

15. Also, at all times material hereto, the Law Firm, whether acting directly, or indirectly or vicariously through its partners, agents, servants, representatives and/or employees, acted as legal counsel for Elmer and Nelva, both individually and as trustees of the Family Trust. Therefore, as the Law Firm's clients, Elmer and Nelva were entitled to absolute fidelity from all of the Defendants because of the fiduciary duty owed to them by Defendants. Plaintiff, as the personal representative of Elmer and Nelva's estates, is the successor to Elmer and Nelva's rights for purposes of establishing privity with Defendants.

## VI. CAUSES OF ACTION

### A. Negligence

16. Defendants' actions as described herein constitute negligence. Of course, nothing Elmer or Nelva did, or failed to do, caused or in any way contributed to cause the occurrences that resulted in the losses and damages complained about herein. To the extent Defendants did not properly, adequately, and/or timely understand the terms of the Family Trust or other documents Defendants themselves prepared or to the extent Defendants failed to apply the applicable Texas law as it related to their representation of and responsibilities to Elmer and Nelva, Defendants' acts or omissions set out herein constitute violations of the applicable standard of care for reasonably prudent and competent attorneys practicing law in Texas.

17. But for Defendants' actions as set forth herein, the damages complained of herein would not have been suffered. Thus, Defendants' conduct was a proximate and/or producing cause

of losses and damages suffered by Plaintiff. Those damages exceed the jurisdictional limits of this court.

**B. Negligence Per Se – Violation of Texas Penal Code § 32.43;  
Commercial Bribery**

18. Additionally, without waiving any of the foregoing, Defendants' acts are a violation of Penal Code Section 32.43. Specifically, that statute, in pertinent part, states:

- (b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, intentionally or knowingly solicits, accepts or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.
- (c) A person commits an offense if he offers, confers, or agrees to confer any benefit, the acceptance of which is an offense under Subsection (b).

19. Defendants' actions fall squarely within the statutory definition of commercial bribery set forth above. Defendants, while aware of their fiduciary duties to Nelva and with knowledge of applicable Texas law, violated subsection (b) above by accepting and/or agreeing to accept payments from the Current Trustees for changes made which directly impacted Nelva's rights, and by agreeing to continue to represent the Current Trustees after facilitating Nelva's removal as trustee of the Family Trust. This violation of this section of the Penal Code forms an additional basis for Plaintiff's assertion that such acts constitute negligence *per se*.

**C. Negligence Per Se – Violation of Texas Penal Code §7.02(a)(2) & (3); Criminal  
Responsibility for Conduct of Another**

20. The Current Trustees also violated Section 32.45 of the Texas Penal Code (misapplication of Fiduciary Property). Pursuant to section 32.45, a violation occurs when a trustee intentionally, knowingly or recklessly misapplies property he holds as a fiduciary in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the



Nelva. Those representations supplied false information for Elmer and Nelva's guidance. Defendants did not exercise reasonable care or competence in making the representations or in obtaining or communicating information described herein. Elmer and Nelva had no choice but to rely on the representations to their detriment, and Elmer and Nelva were in the identifiable class of people who would be expected to rely on such representations.

25. Specifically, Defendants represented, among other things, that Elmer and Nelva's plan for their estate would be protected, and Defendants negligently failed to disclose to Nelva that the Current Trustees were changing that plan in ways Nelva did not know, understand, or approve. Defendants also failed to disclose to Nelva that Defendants were representing the interests of the Current Trustees, rather than Nelva's interests. The circumstances described herein indicate Defendants knew their representations were false and that there were failures to properly disclose relevant information to Nelva. Representations to Elmer and Nelva to the contrary and the lack of disclosure to Nelva amount to misrepresentations of facts and law material to Defendants' representation of Elmer and Nelva.

26. But for Defendants' actions, the damages sought herein would not have been sustained. Those damages are in excess of the jurisdictional limits of this court.

#### **E. Breach of Fiduciary Duty**

27. Defendants, acting for the benefit of Elmer and Nelva, owed them duties to act with loyalty and utmost good faith, to act with perfect candor, to act with integrity of the strictest kind, to be fair and honest in dealing with them, to provide full disclosure to them of all circumstances concerning their representation of Elmer and Nelva's interests, and to act without concealment or deception—no matter how slight. Defendants breached these duties owed to Elmer and Nelva through, among other things, the actions described herein. Instead of protecting or benefitting their original

property is held. The Current Trustees' actions involved substantial risk of loss for Nelva and the Family Trust, and ultimately that risk became reality.

21. Defendants' actions violate Section 7.02(a)(2) & (3) of the Texas Penal Code in that they acted with the intent to assist the commission of the Current Trustees' violation of Section 32.45 of the Texas Penal Code and aided or attempted to aid in the Current Trustees' violation of that section. Additionally, the Defendants, having a legal duty to prevent the Current Trustees from violating Section 32.45 of the Texas Penal Code, acted instead with the intent to assist the Current Trustees in violating Section 32.45 of the Texas Penal Code and failed to make a reasonable effort to prevent the commission of the offense.

22. These statutes are designed to protect a class of persons to which Nelva, the Family Trust, and its beneficiaries, including Nelva, belong against the type of injury suffered. The language of the statutes set out a clear prohibition from dealing inappropriately with property held by a fiduciary or assisting another in doing so. The Defendants did just that in assisting or allowing the Current Trustees to improperly obtain control of and misuse assets owned by Nelva or the Family Trust. As a result, the statutes are of the type that impose tort liability because they codify the duties owed by parties such as Defendants when dealing with fiduciaries and fiduciaries' obligations.

23. The Defendants' violation of these statutes was without legal excuse as all attorneys are charged with knowledge of the law. The Defendants' breach of the duty imposed by these statutes proximately caused injury to Plaintiff because it resulted in the depletion of Nelva's assets or of the Family Trusts' assets. This conduct also amounts to negligence *per se*.

#### **D. Negligent Misrepresentation**

24. In the alternative and without waiving any of the foregoing, Defendants are liable for damages based on negligent misrepresentation. Defendants made representations to Elmer and

clients, Defendants took on the representation of the Current Trustees and made it possible for the Current Trustees to enrich themselves and Carole at Nelva's expense. In doing so, Defendants benefitted by being compensated for their actions and by taking up the representation of the Current Trustees which apparently continues to this day. Thus, both Defendants' interests and the interests of Defendants' new clients, the Current Trustees, were placed above Nelva's interests, resulting in a breach of Defendants' fiduciary duties.

**F. Aiding & Abetting Current Trustees' Breaches of Fiduciary Duty**

28. Alternatively, and without waiving any of the foregoing, Defendants are liable under all three doctrines of aiding and abetting a breach of fiduciary duty and the Current Trustees' violation of certain Penal Code statutes described herein by: (1) assisting and encouraging; (2) assisting and participating; and (3) concert of action. The Current Trustees and Anita acting under Nelva's power of attorney were the primary actors who committed torts and crimes which amount to breaches of fiduciary duties as described herein. Defendants had knowledge of the Current Trustees' tortious/criminal conduct and had the intent to assist them in committing those acts.

29. The Current Trustees' acts and omissions constitute breaches of fiduciary duty. A fiduciary relationship existed between the Current Trustees and the Family Trust and its beneficiaries, including Nelva. An additional fiduciary relationship was also created because of Anita's appointment in the power of attorney also prepared by Defendants for execution by Nelva. The Current Trustees, and Anita acting under Nelva's power of attorney, breached their fiduciary duties through, among other things, acts of self-dealing; concealing material facts about their disbursement of assets belonging to Nelva, Elmer's estate, and/or the Family Trust; and making unauthorized disbursements of such assets to or for the benefit of themselves and their children, to

Carole, and to Defendants, all to Plaintiff's financial detriment. Defendants assisted and/or participated in those breaches of fiduciary duty.

**a. Assisting & Encouraging**

30. Defendants gave the primary actors assistance and encouragement in committing the torts by, among other things, drafting the instruments which gave the Current Trustees and Anita control of the assets, drafting instruments which were used to improperly transfer those assets, assisting in obtaining Nelva's signature on documents and/or notarizing such documents, and advising the Current Trustees about such actions. This assistance and encouragement was a substantial factor in causing the breach of fiduciary duty because Defendants' voluntary assistance provided the very apparatus that allowed the Current Trustees and Anita to take unfair advantage of Nelva, Elmer's Estate, the Family Trust, and its beneficiaries, including Nelva.

**b. Assisting & Participating**

31. Defendants' actions alleged herein also constitute aiding and abetting the Current Trustees' and Anita's breaches of fiduciary duties by assisting and participating in those breach of trust and fiduciary duties. Defendants substantially assisted the Current Trustees and Anita in their actions to take control from Nelva and to then improperly disburse the assets over which the Current Trustees and Anita had assumed control from Nelva. Defendants' assistance and participation, separate from the Current Trustees' acts, breached Defendants' duties to Nelva. Defendants, by virtue of their purported representation of the Current Trustees and the other actions described herein, violated their duties as Nelva's legal counsel.

**c. Concert of Action**

32. Defendants are also liable for aiding and abetting the Current Trustees' and Anita's tortious conduct by their concert of action. Defendants' actions in helping the Current Trustees and

Anita obtain control was not only likely to cause damage, it did cause damage by resulting in changes to the terms of the Family Trust and Nelva's power of attorney without Nelva's effective consent and, thereafter, resulting in improper disbursements to or for the benefit of Amy, Anita, and Carole. Defendants' actions in assuming the Current Trustees' representation when it was in conflict with Nelva's representation was intentional and/or grossly negligent. Defendants' own acts, along with the Current Trustees' and Anita's acts, caused the damages sustained by Plaintiff which are in excess of the jurisdictional limits of this court.

### **G. Fraud**

33. In the alternative and without waiving any of the foregoing, Plaintiff will show that Defendants' acts and omissions constituted fraud in that Defendants made material misrepresentations or omissions which included, among others, that Elmer and Nelva's plan for their estate would be protected, as well as Defendants' failure to disclose to Nelva that the Current Trustees were changing that plan in ways Nelva did not know, understand, or approve. Defendants also failed to disclose to Nelva that Defendants were representing the interests of the Current Trustees, rather than Nelva's interests. The circumstances described herein indicate Defendants knew that the representations were false and that there were failures to properly disclose relevant information to Nelva. Representations to Elmer and Nelva to the contrary and the lack of disclosure to Nelva amount to misrepresentation of facts and law material to Defendants' representation of Elmer and Nelva. Defendants either made those misrepresentations or omissions with knowledge of their falsity or made them recklessly without any knowledge of the truth and as a positive assertion. The misrepresentations and omissions were made with the intention that they should be acted on by Elmer and Nelva, and, indeed, Elmer and Nelva were compelled to rely on the

misrepresentations or omissions. As a result, Elmer and Nelva suffered damages in excess of the jurisdictional limits of this court.

34. All of the foregoing acts or failures to disclose were a proximate cause of Plaintiff's damages which are in excess of the jurisdictional limits of this court.

#### **H. Conversion**

35. Defendants' actions constitute conversion of assets to which Elmer's estate and Nelva had a superior legal right. Those actions are the proximate cause of the damages specified herein which are in excess of the jurisdictional limits of this court.

#### **I. Conspiracy**

36. Defendants' actions further constitute conspiracy to commit fraud and/or breach of fiduciary duty. Defendants and the Current Trustees were a combination of two or more persons. The object of the combination was to accomplish an unlawful purpose. Specifically, the object of the combination was to commit the breaches of fiduciary duty described herein.

37. The Current Trustees, Anita, and the Defendants had a meeting of the minds and had knowledge of the object and purpose of the conspiracy. The Current Trustees and Anita committed unlawful, overt acts to further the conspiracy by breaching their fiduciary obligations to Nelva, the Family Trust, and the beneficiaries of the Family Trust, including Nelva. Defendants committed overt acts to further the conspiracy by taking the improper actions they took to place the Current Trustees and Anita in a position of control and then to assist in the improper transfer of assets to or for the benefit of Amy, Anita, and Carole. As a proximate result of the wrongful acts underlying the conspiracy, Plaintiff suffered damages in excess of the jurisdictional limits of this court.

**J. Deceptive Trade Practices**

38. Defendants are liable under the Texas Deceptive Trade and Practices Act (hereinafter “DTPA”) because (i) Elmer and Nelva were consumers, (ii) Defendants violated specific provisions of the DTPA, and (iii) the violations were a producing cause of Plaintiff’s damages.

39. 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 described herein while accepting representation of and payment from Elmer and Nelva and thereafter facilitating the Current Trustees’ improper actions.

40. 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 the Current Trustees, shows that Defendants’ conduct, described herein, was committed knowingly and intentionally as those terms are defined by TEX. BUS. & COM. CODE ANN. Section 17.46 *et seq.* Accordingly, Defendants are liable to Plaintiff for additional damages as provided by the DTPA, including treble damages and reasonable attorney’s fees necessary to bring this cause of action, all of which are being sought herein.

**VII. TOLLING, FRAUDULENT CONCEALMENT, AND DISCOVERY RULE**

41. Plaintiff would show that suit has been brought within the applicable statutory limitations periods. Such cause of action does not accrue until such time as there has been a legal injury and Plaintiff has brought suit within the applicable limitations of the time that Plaintiff suffered a legal injury, as that term is described in law.

42. Because Defendants fraudulently concealed information related to their involvement as described herein and/or failed to disclose same to Elmer, Nelva, or Plaintiff, this action has been

brought within the applicable period of limitations based upon when the injured parties learned, or in the exercise of reasonable diligence, could have learned of the actions.

43. To the extent any party pleads the statute of limitations as a defense, Plaintiff hereby asserts the discovery rule and would show that suit was filed within two years of Plaintiff's knowledge of such facts as would lead a reasonably prudent person to discover the Defendants' wrongful acts.

44. Further, Elmer's and Nelva's deaths resulted in a tolling of the statute of limitations, pursuant to Tex. Civ. Prac. & Rem. Code §16.062.

## **VIII. DAMAGES**

### **A. Actual Damages**

45. Regarding the causes of action and conduct alleged above, Plaintiff has sustained actual losses which were proximately caused by the joint conduct of Defendants. Plaintiff's damages exceed the minimum jurisdictional limits of this court. After completion of discovery, Plaintiff will amend the pleadings in order to indicate more specifically the type and amount of damages suffered.

### **B. Forfeiture of Fees**

46. Defendants' breaches of fiduciary duty and violations of the Texas Penal Code legally deprive them of any right to a fee. Nonetheless, Defendants received fees for their services. Therefore, as additional damages, Plaintiff is entitled to a return of all fees actually collected by Defendants in their representation of Elmer, Nelva, or the Family Trust.

### **C. Treble Damages**

47. As previously stated herein, Plaintiff seeks a money judgment as allowed by the DTPA, including treble damages.



**D. Punitive Damages**

48. Plaintiff seeks to recover punitive damages from Defendants, taking into consideration the nature of the wrong, the character of the conduct involved, the degree of Defendants' culpability, the situation and sensibilities of the parties concerned, the extent to which such conduct offends a public sense of justice and propriety, and Defendants' net worth. Additionally, Plaintiff will also show by clear and convincing evidence that Defendants acted with malice because their acts and omissions were either with a specific intent to substantially cause damage to Elmer and Nelva, or, when viewed objectively from the standpoint of Defendants at the time of the occurrences in question, involved an extreme degree of risk, considering the probability and magnitude of harm to Elmer and Nelva. Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Elmer and Nelva. Thus, Plaintiff requests that the fact finder determine an appropriate punitive damages award.

**E. Attorney's Fees**

49. Because of Defendants' violation of the DTPA, the Trusts are entitled to reasonable attorney's fees necessary to prosecute this action. A reasonable attorney's fee recovery, including appellate fees, should be assessed against the Defendants. Plaintiff is also entitled to recover attorney's fees against Defendants pursuant to Tex. Prop. Code Ann. §114.064.

**IX. INTEREST AND CONDITIONS**

50. Plaintiff is entitled to prejudgment interest.

51. All conditions precedent to Plaintiff's right to recover have been performed or have occurred. The 60 day pre-suit notice normally required by Tex. Bus. & Comm. Code §17.505(a) is

not required because it is impracticable in light of the potential argument that certain limitations periods are nearing expiration.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays that Defendants be cited to appear and answer herein and that, after a trial on the merits, the Court grant the relief sought herein and award such other and further relief, both legal and equitable, to which Plaintiff is entitled.

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless

*Bobbie G. Bayless*

State Bar No. 01940600

2931 Ferndale

Houston, Texas 77098

Telephone: (713) 522-2224

Telecopier: (713) 522-2218

bayless@baylessstokes.com

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to counsel of record via Telecopier on the 30<sup>th</sup> day of January, 2013, as follows:

Cory Reed  
Thompson Coe Cousins & Irons, LLP  
One Riverway, Suite 1600  
Houston, Texas 77056

/s/ Bobbie G. Bayless

BOBBIE G. BAYLESS

WP KVG "UVC VGU'F KVT E V'EQWTV"  
UQWJ GTP 'F KVT E V'QH'VGZ CU"  
J QWUVQP 'F KXKUKP "

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**K' DCEMI TQWPF "**

" **A. Procedural Background**"

" Vj g" rncpwhh" hkgf "j gt" qtki kpcn' r gvkkqp" qp" Hgdtwct { "49."4234."cmgi kpi "vj cv'vj g"  
f ghgpf cpw"j cf "dtgcej gf "vj gk" hkwekt { "qdrki cvkpu" wpf gt "vj g" Dtwpuvki "Hco knf "Nxxkpi "  
Vtwuv\*oy g" Vtwuvö-0" Cffkkqpcmf . "vj g" rncpwhh'ercko gf "gzvtpule" htcwf ."eqputwevkg" htcwf ."  
kpgpvkpcn' kphievqp" qh" go vqkpcn' f kwtguu." cpf " uqwi j v' cp" ceeqwpvki ." cu" y gm' cu" c"

tgeqxtg { "qh'ngi cni' hgg" cpf " f co ci gu0 " Vj g" Eqwtv' f gplgf " yj g" r nkpwhh" tgs wguv" hqt" c"  
vgo r qtct { "tgutcklpi " qtf gt" cpf " hqt" kplwpevxg" tgrgh0 " J qy gxgt." eqpewtgpv" y kj " yj g"  
Eqwtv' qtf gt' f gp { lpi " yj g' tgrgh' uqwi j v' d { " yj g' r nkpwhh " yj g' f ghgpf cpw' hkgf " cp' go gti gpe { "  
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Hgdwtct { "33."4234." r tkqt " v' hklpi " j gt' uwk0

" Vj g' f ghgpf cpw' uqwi j v' d { " yj gk" o qvqp. " v' j cxg" yj g' *lis pendens* " pqveg" tgo qxgf " kp"  
qtf gt' yj cv' yj g { . " cu' yj g' Vt wv' gg' u' qh' yj g' Vt wv' o ki j v' ugm' yj g' hco kn { " tgukf gpeg" cpf " kpxguv' yj g"  
ucng" r tqeggf u' kp" ceeqtf cpeg" y kj " Vt wv' kput wv' kpu0 " Chgt" c " vgrgr j qpg" eqphgtgpeg" cpf "  
eqpukf gtcvqp" qh' yj g' f ghgpf cpw' cti wo gpv' yj cv' yj g' Eqwtv' ncengf " lwtkuf levkqp. " yj g' Eqwtv'  
eqpenw' gf " yj cv' k' ncengf " lwtkuf levkqp. " ecpegmgf " yj g' *lis pendens* pqveg. " cpf " f kuo kuugf " yj g"  
r nkpwhh" ecug0

" Vj g' r nkpwhh" i cxg" pqveg" cpf " cr r gcmf " yj g' Eqwtv' f kuo kuucn' qtf gt0 " Vj g' Wpkgf "  
Ucvgu" Eqwtv' qh' " Cr r gcm" hqt" yj g' Hkhj " Ektewk" f gvgto kpgf " yj cv' yj g' Eqwtv' f kuo kuucn'  
eqpukwgf " gttqt0 " Vj g' ghgtg. " yj g' Hkhj " Ektewk" tngxgtugf " yj g' f kuo kuucn' cpf " tgo cpf gf " yj g"  
ecug" vq" yj ku" Eqwtv' hqt" hwt yj gt" r tqeggf lpi u0 " Vj ku" tngxgtucn' i cxg" tkug" vq" yj g' r nkpwhh"  
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" **B. Contentions of the Parties** "

" Vj g' r nkpwhh" eqpv' pf u' yj cv' yj g' ku' c' dgpghkct { "qh' yj g' Vt wv' yj cv' yj g' f ghgpf cpw. " j gt"  
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vj g" f ghgpf cpw" j cxg" hckrgf "vq" o ggv" vj gk" qdrki cvkqp" cpf "j cxg" y tqpi hwn{ "tgdwhhg" j gt" ghqtu"vq" qdvckp" vj g" kphqto cvkqp" tgs wguv" gf "cpf" vj cv" vj g" ku" gpvkrngf 0'

" Vj g" f ghgpf cpw" f gp{ "cp{ "y tqpi f qkpi "cpf" cuugt" vj cv" vj g" r rckpvhhu" tgs wguv" hqt" kplwpevkg" tgrgh" uj qwf "dg" f gpkrgf 0" Vj g" f ghgpf cpw" cf o k" vj cv" c" r tgrko kpc{ "kplwpevkg" o c{ "dg" gpvgtgf "d{ "vj g" Eqwtv"vq" r tqvgev" vj g" r rckpvhhu" hqo "ktgr ctdcrg" j cto "cpf" vq" r tguvgtxg" vj g" Eqwtv"vq" r qy gt "vq" tgpfgt "c" o gcpkpi hwn" f gekukqp" chvgt" c" vlcni" qp" vj g" o gtku0" See Canal Auth. of State of Fla. V. Calloway." 6: ; ." H04f "789." 794" \*7vj "Ek0'3; 96+0" Tcvj gt. " vj g" f ghgpf cpw" cti wv" vj cv" vj g" r rckpvhhu" j cf "pqv" o gv" j gt "dwtf gp0'

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**KK0' FHEWUKQP'CPF'CP CN[ UKU'**

" Vj g" gxkf gpeg" cpf " r rncf kpi u" dghqtg" vj g" Eqwtv" guvcdrikuj " vj cv" Gmo gt "J gpt{ "Dtwpvki " cpf "P grkc" Gtrggp" Dtwpvki " etgcvgf " vj g" Dtwpvki " Hco kn{ " Nkxkpi " Vtwuv" qp" Qevqdg" 32." 3; ; 80" Vj g" eqr { "qh" vj g" Vtwuv" r tguvpgf "vq" vj g" Eqwtv" cu" Gzj kdk' 3." j qy gxgt. " tghrgewu" cp" ghgevkxg" f cvg" qh" Lcpwct{ "34. "42270" Cu" y gm" vj g" Vtwuv" tgrxgcnu" c" vqcn' qh" 36" ctvkrngu. " { gv" Ctvrngu" 35" cpf " r ctv' qh" Ctvrngu" 36" ctg" o kuukpi " hqo " vj g" Vtwuv" f qewo gpv0" P gxgt vj grguu. " vj g" Eqwtv" y km' cuwo g. " hqt" r wtr qugu" qh" vj ku" O go qtcpf wo " cpf " Qtf gt. " vj cv" vj g" f qewo gpv"

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ukpeg"j gt"cr r qkpo gp0"O qtgqxtg."vj g"Eqwv"kp"u"vj cv"vj gtg"ctg"wpzr mlpkf "eqphkw"kp"  
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wvf gt"vj g"Vtwu."gxgp"vj qwi j "o qtg"vj cp"vy q" {gctu"j cu"gzr ktgf "ukpeg"j gt"cr r qkpo gp0'

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Vtwuvgg'vq'cev'lp'ceeqtf cpeg'y kj 'yj g'f wkgu'tgs vktgf "d{ 'yj g'Vtwuv.'yj g'Eqwtv'GPIQK U'  
yj g'Vtwuvgg'u+'cpf 'cm'cuuki pu'htqo 'f kudwtukpi "cp{ 'hwpf u'htqo "cp{ 'Vtwuv'ceeqwpw'y kj qw'  
r tkqt'r gto kuukqp'qh'yj g'Eqwtv'J qy gxgt."cp{ 'kpeqo g'tgegkxgf 'hqt'yj g'dgpghk'qh'yj g'Vtwuv'  
dgpghkct{ 'ku'vq'dg'f gr qukgf 'cr r tqr tkvgn{ 'lp'cp'ceeqwpv'J qy gxgt.'yj g'Vtwuvgg'uj cm'pqv'  
dqttqy "hwpf u." gpi ci g'lp"pgy "dwukpguu'xgpwtgu." qt"ugm'tgcn'r tqr gtv{ "qt"qyj gt"cuugu'  
y kj qw'yj g'r tkqt'cr r tqxcn'qh'yj g'Eqwtv'Kp"guugpeg."cm'vcpucev'kpu'qh'c'hkpcpeln'pcwtg'  
uj cm'tgs vktg'r tg/cr r tqxcn'qh'yj g'Eqwtv."r gpf lpi "c"tguqnvkqp'qh'f kur wgu'dgy ggp"yj g'  
r ctvku'lp'yj ku'ecug0

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tgeqtf u'qh'yj g'Vtwuv'u+'cpf "r tqxkf g'cp'ceeqwv'kpi "qh'yj g'kpeqo g'cpf "gZR gpugu'qh'yj g'  
Vtwuv'u+'ukpeg"F gego dgt"43."42320"Vj g'f ghgpf cpw'ctg'f ktgewf "vq"eqqr gtcv"y kj "yj g'  
ceeqwvcpv'lp'yj ku'r tqegu0

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*RM*

NO. 412.249-401

**PROBATE COURT 4**

04102013:0918:PO048

ESTATE OF § IN PROBATE COURT  
 NELVA E. BRUNSTING, § NUMBER FOUR (4) OF  
 DECEASED § HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, § IN PROBATE COURT  
 individually and as independent §  
 executor of the estates of Elmer H. §  
 Brunsting and Nelva E. Brunsting §

vs. §

ANITA KAY BRUNSTING f/k/a §  
 ANITA KAY RILEY, individually, §  
 as attorney-in-fact for Nelva E. Brunsting, §  
 and as Successor Trustee of the Brunsting § NUMBER FOUR (4) OF  
 Family Living Trust, the Elmer H. §  
 Brunsting Decedent's Trust, the §  
 Nelva E. Brunsting Survivor's Trust, §  
 the Carl Henry Brunsting Personal §  
 Asset Trust, and the Anita Kay Brunsting §  
 Personal Asset Trust; §  
 AMY RUTH BRUNSTING f/k/a §  
 AMY RUTH TSCHIRHART, §  
 individually and as Successor Trustee §  
 of the Brunsting Family Living Trust, §  
 the Elmer H. Brunsting Decedent's Trust, §  
 the Nelva E. Brunsting Survivor's Trust, §  
 the Carl Henry Brunsting Personal §  
 Asset Trust, and the Amy Ruth Tschirhart §  
 Personal Asset Trust; §  
 CAROLE ANN BRUNSTING, individually §  
 and as Trustee of the Carole Ann §  
 Brunsting Personal Asset Trust; and §  
 as a nominal defendant only, §  
 CANDACE LOUISE CURTIS § HARRIS COUNTY, TEXAS

*1 pers. in  
4/9/13*

**PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING,  
 FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR  
 INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES**

APR 10 2013 *ka*



04102013:0818:10049

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, CARL HENRY BRUNSTING, individually and as Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting, filing his Petition for Declaratory Judgment, for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, together with Request for Disclosures, and in support thereof would show the Court as follows:

**I.**

**Discovery Control Plan**

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

**II.**

**Parties**

2. Plaintiff is the duly appointed personal representative of the estates of both his father, Elmer H. Brunsting (“Elmer”),<sup>1</sup> and his mother, Nelva E. Brunsting (“Nelva”).<sup>2</sup> These estates are collectively referred to herein as the “Estates.” In his individual capacity, Plaintiff is referred to herein as “Carl.” Carl was previously a successor trustee of the Brunsting Family Living Trust created on October 10, 1996 and restated on January 12, 2005 (the “Family Trust”). Carl is a beneficiary of the Family Trust and the other trusts created by its terms. Elmer was a trustee and a beneficiary of the Family Trust, and Nelva was also a trustee and beneficiary of the Family Trust and its successor trusts. The successor trusts of the Family Trust resulted pursuant to the terms of the

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<sup>1</sup>Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

<sup>2</sup>Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.

04102013:0818:P0050

Family Trust upon Elmer's death. Those successor trusts are the Elmer H. Brunsting Decedent's Trust ("Elmer's Decedent's Trust") and the Nelva E. Brunsting Survivor's Trust ("Nelva's Survivor's Trust"). Those are sometimes collectively referred to herein as the "Successor Trusts." Carl is also the beneficiary, but not the trustee, of the Carl Henry Brunsting Personal Asset Trust ("Carl's Trust") which was created pursuant to the terms of the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment signed on 8/25/10 (the "8/25/10 QBD"). As will be further discussed herein, Plaintiff believes the 8/25/10 QBD was the result of undue influence, was done when Nelva lacked capacity and/or was created by deception so that Nelva did not understand or consent to the document. In fact, it is far from clear what documents Nelva even signed or knew existed.

3. Defendant Anita Kay Brunsting f/k/a/ Anita Kay Riley is Carl's sister. It is believed that Anita's counsel will accept service, but, if not, Anita can be served with process at her home at 203 Bloomingdale Circle, Victoria, Victoria County, Texas 77904. In her individual capacity and when acting pursuant to the power of attorney purportedly executed by Nelva on August 25, 2010 ("8/25/10 POA"), this Defendant will be referred to herein as "Anita." Anita was named as a successor trustee under the terms of the tainted 8/25/10 QBD. Pursuant to the terms of that document, upon Nelva's death, Anita was to become co-trustee of the Family Trust and the Successor Trusts. On December 21, 2010, however, Nelva purportedly signed a resignation of her position as trustee and appointed Anita to be her successor even before her death. From that point until her mother's death on November 11, 2011, Anita acted as the sole trustee of the Family Trust and the Successor Trusts. As will be discussed herein, Plaintiff believes Anita convinced Nelva to resign from her trustee position and to appoint Anita as her replacement through improper means and for improper purposes. The terms of the tainted 8/25/10 QBD made Anita co-trustee of Carl's Trust.

Anita is also beneficiary and trustee of the Anita Kay Brunsting Personal Asset Trust (“Anita’s Trust”).

4. Defendant Amy Ruth Brunsting f/k/a/ Amy Ruth Tschirhart (“Amy”) is Carl’s sister.

It is believed that Amy’s counsel will accept service, but, if not, Amy can be served with process at her home at 2582 Country Ledge, New Braunfels, Comal County, Texas 78132. Pursuant to the terms of the tainted 8/25/10 QBD, Amy became a co-trustee of the Family Trust and the Successor Trusts upon Nelva’s death. Anita and Amy in their capacity as trustees of the Family Trusts and the Successor Trusts are sometimes collectively referred to herein as the “Current Trustees”. Amy is also the beneficiary and the trustee of the Amy Ruth Brunsting Personal Asset Trust (“Amy’s Trust”). The terms of the tainted 8/25/10 QBD also made Amy co-trustee of Carl’s Trust.

5. Defendant Carole Ann Brunsting (“Carole”) is Carl’s sister. Carole may be served with process either at her home at 5822 Jason St., Houston, Harris County, Texas 77074 or at her place of employment at Cameron’s offices at 1333 West Loop South, Suite 1700, Houston, Texas 77027. Carole was named in Nelva’s health care power of attorney and was made a joint signatory on Nelva’s bank account when Anita took over as trustee. Carole is also the beneficiary and trustee of the Carole Ann Brunsting Personal Asset Trust (“Carole’s Trust”).

6. Candace Louise Curtis (“Candy”) is Carl’s sister. Candy is named in this action only because these claims impact her rights as a beneficiary of various trusts. Plaintiff does not seek to recover any damages from Candy, and it is anticipated that Candy will waive service of process. Candy and Carl were the only Brunsting siblings whose right to be trustees of their own trusts after Nelva died were extinguished by the changes implemented in the tainted 8/25/10 QBD. Candy is the beneficiary of the Candace Louise Curtis Personal Asset Trust (“Candy’s Trust”) of which Anita and Amy are the co-trustees.

III.

Jurisdiction

7. Plaintiff brings this cause of action pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code. More specifically, Plaintiff brings this proceeding to:

- (a) establish, construe the terms of, and determine the rights and liabilities of the parties under the Family Trust, the Successor Trusts, and the trusts purportedly created pursuant to the terms of the tainted 8/25/10 QBD;
- (b) require an accounting of all the trusts and other transactions resulting from Anita, Amy, and Carole's exercise of control over Elmer and Nelva's remaining assets, however held;
- (c) determine damages resulting from Anita, Amy, and Carole's wrongful acts, including, but not limited to, numerous breaches of fiduciary duties;
- (d) impose a constructive trust over assets wrongfully transferred, as well as anything of value obtained through the use of assets wrongfully transferred;
- (e) obtain injunctive relief to preserve Elmer and Nelva's assets, however held, until the records concerning the transfers of assets can be examined and appropriate remedies can be sought so that the improper transfers can be reversed and the assets can be properly allocated and distributed.

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CLERK OF DISTRICT COURT  
HARRIS COUNTY, TEXAS

IV.

Venue

8. Venue in this cause is in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1) because all, or substantially all, of the acts giving rise to Plaintiff's claims occurred in Harris County, Texas.

V.

Background Facts

9. On October 10, 1996, Elmer and Nelva established the Family Trust. The Family Trust was restated on January 12, 2005. The Family Trust was initially revocable, but only until the death of either Elmer or Nelva. Thus, when Elmer died on April 1, 2009, the Family Trust became irrevocable. At that point, the Family Trust's assets were to be divided between Elmer's Decedent's Trust and Nelva's Survivor's Trust pursuant to Article VII of the Family Trust.

10. At some point, Anita and Amy implemented a plan to take over their parents' remaining assets and divide the spoils. That plan was made feasible when Carl became seriously ill with encephalitis in July, 2010. Carl had been an obstacle to Anita and Amy's plans, so they seized the opportunity to become even more aggressive in controlling their mother's actions. Carole's initial resistance to Anita and Amy's scheme was apparently eliminated through transfers of assets to which she was not entitled.

11. Anita and Amy carried out their plan of replacing their mother's wishes with their own with the help of Nelva's own legal counsel. The result was the tainted 8/25/10 QBD. Through bullying and deception, that document was executed without regard to Nelva's capacity and notwithstanding Nelva's apparent lack of understanding, knowledge, or consent to what was occurring. The 8/25/10 QBD removed Carl from his successor trustee roles. At that time all prior



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powers of attorney were revoked and replaced with one giving Anita control of her mother's affairs. During the same period, Nelva's safe deposit box to which Carl had access was closed and a new one opened giving Anita access instead. Anita and Amy apparently determined which documents would be prepared, regardless of whether Nelva agreed with or even knew what they were doing. The only document which Anita and Amy wanted but seem to have been unsuccessful in implementing was a document intended to exclude Carl's daughter and granddaughter from inheriting through Nelva.

12. Perhaps because it became too difficult to even pretend to be obtaining Nelva's signature on documents needed to take all the steps Defendants wanted to take, or because Anita, Amy, and Carole did not want to wait for Nelva's death to begin using her assets for their own purposes, other steps were taken to obtain complete control of Nelva's assets, however held. Anita and Amy's continued efforts resulted in Nelva's purported resignation as trustee and purported appointment of Anita as substitute trustee of the Family Trust and the Successor Trusts on December 21, 2010. Thereafter, Anita used her position as trustee to repeatedly transfer assets for her own benefit and that of her children, for Amy's benefit and the benefit of Amy's children, and for Carole's benefit. Anita disregarded the terms of the Family Trust as she saw fit. For example, Anita began paying herself an exorbitant trustee's fee. Anita also began paying her own credit card bills, as well as other personal expenses, such as payments for her children's automobiles and educational expenses, from the Family Trust and Successor Trusts' accounts.

13. On December 31, 2010, an account was established, allegedly for Nelva's benefit to be used on day to day expenses but on which Carole was a signatory. Over the next year, more than \$150,000 was transferred from trust accounts by Anita and spent by Carole on what appears to be predominantly items for Carole's own benefit. At the same time, Anita was draining the other

accounts owned by Elmer's estate, Nelva, or the Successor Trusts, at least in part for her own purposes and/or other improper purposes.

14. On March 24, 2011, Anita divided the more than 4,000 shares of Exxon Mobile stock purportedly owned by the Family Trust between Elmer's Decedent's Trust and Nelva's Survivor's Trust. Then on May 9, 2011, Anita transferred 1,120 shares of that stock from Nelva's Survivor's Trust to Amy. On June 13, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to herself, and on June 15, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to Candy. An finally, on June 15, 2011, Anita transferred 1,325 shares from Elmer's Decedent's Trust to Carole. No shares were transferred to Carl, despite Anita's knowledge of Carl's serious health crisis and large medical expenses. In fact, Carl's family was not even informed of the transfers of stock and did not learn about them until after Nelva's death.

15. On June 14, 2011, Anita also transferred 135 shares of Chevron stock purportedly owned by Nelva's Survivor's Trust to each of her two children and to each of Amy's two children. No similar gift was made to either Carl's daughter or granddaughter or to Candy's two sons. Moreover, Carl's entire family was excluded from conversations addressing the status of the Brunsting estate, changes in the trusts, and Nelva's removal from involvement with and control over the trusts. Instead of assisting with Carl's medical bills, it is believed that trust assets were used to hire investigators to follow Carl's wife of 30 years and that a GPS tracking device was even placed on Carl's wife's car without her consent, at the apparent direction of Anita and Amy.

16. On Nelva's death on November 11, 2011, Amy joined Anita as co-trustee of the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust. Assets were to be divided equally into separate trusts for each of the Brunsting children upon Nelva's death. Until the tainted 8/25/10 QBD, each of the Brunsting children would have been trustee of their own trusts, but in the

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tainted 8/25/10 QBD, both Carl and Candy were removed as trustees of their own trusts. Instead, Anita and Amy were named co-trustees of both Carl's Trust and Candy's Trust.

17. Of course, by the time of Nelva's death, the remaining assets had already been plundered. Indeed, two days before Nelva died, Anita even closed the safe deposit box used by Nelva and no inventory of its contents have ever been provided although it had been where valuable items and documents had been kept. A number of valuable items remain unaccounted for after Nelva's death, such as a significant amount of savings bonds which it is believed either Anita, Amy, or Carole have not admitted they discovered and kept. Likewise, no effort was made to value, preserve, inventory, and properly divide personal property.

18. Of course, many things have not been accounted for or properly shared with Plaintiff. Plaintiff has not, for example, been provided with a copy of the lease of the most valuable asset his parents owned, a multimillion dollar farm in Iowa. To the extent information has been provided because Plaintiff has sought it and even filed a pre-suit discovery action to obtain it, that information has made it clear the plundering started long ago and only court intervention or complete dissipation of the assets will stop it. Apparently the Current Trustees believe the division of assets should be made based on the terms of the tainted 8/25/10 QBD, and without taking into consideration what Anita, Amy & Carole have already taken.

V.

**Construction of Trust and Suit for Declaratory Judgment**

19. The 8/25/10 QBD contains a broad *in terrorem* clause providing that a party forfeits their interest in the resulting trust if contesting its provisions. Plaintiff asserts that the *in terrorem* clause is overly broad and void as against public policy because it prohibits the trust beneficiaries



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from questioning any of the circumstances surrounding the Current Trustees' improper actions in this case, thereby preventing them from protecting their interests.

20. In addition, Plaintiff seeks declaratory relief construing the validity, terms, responsibilities, and obligations of the various documents signed or purportedly signed by Elmer and Nelva. In other words, Plaintiff also asks this Court to determine Plaintiff's rights and Defendants' responsibilities.

21. If the Court fails to find that the *in terrorem* clause is void as against public policy to the extent it prohibits beneficiaries from questioning the actions resulting in the QBDs and the actions supposedly taken under its terms, Plaintiff asks, in the alternative, that the Court construe the documents at issue herein and declare that Plaintiff's actions in filing and pursuing this action do not violate the *in terrorem* clause.

22. Plaintiff, in fact, seeks to determine and enforce his partents' intent and to further the purposes of that intent. In doing so, Plaintiff was required to bring this action requesting declaratory relief and an accounting. Such actions would not constitute a contest even if the provision were not void because it is against public policy.

23. Plaintiff further asserts that he had just cause to bring this lawsuit and that he has brought the action in good faith. Therefore, no forfeiture should result from the action.

## VI.

### Demand for Trust Accounting

24. Defendants have provided insufficient, conflicting, and unsupported information to Plaintiff accounting for the assets and transactions concerning the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust.

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25. The Texas Trust Code and the trust indentures require the Current Trustees to keep complete and accurate books of account with regard to the trusts, trust property and all transactions pertaining thereto and to provide the appropriate information to the beneficiaries, but they have failed to do so. Plaintiff, therefore, requests that this Court order Defendants to account for the administration of all the trusts.

**VII.**

**Breach of Fiduciary Duties**

26. Defendants have breached their duties as fiduciaries, both because of their formal positions as trustees of the various trusts, as agents for Nelva, and/or because of their family relationship to their parents and their brother. Carole also had fiduciary duties to Plaintiff, particularly after becoming a signatory on Nelva's account. Not only is the family relationship one involving a high degree of trust, influence, and confidence, but in this particular case, the fiduciary obligations were magnified because of the dominance on the part of the fiduciaries and the weakness and dependence on the part of the parties to whom Defendants owed fiduciary duties. They have breached their responsibilities by, among other things, transferring valuable property without receiving appropriate consideration and taking assets for their own benefit and use and in violation of their duties and the trust instruments themselves. Breaches of fiduciary duty by Defendants include, but are not limited to, the following:

- a. failing to keep and provide clear, regular, accurate, and complete accountings of assets;
- b. resisting accountings of property and transactions;
- c. failing to abide by the terms of the various trust instruments;
- d. failing to preserve property and to prevent losses of property;

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- e. conveying property in ways which were detrimental and in violation of their obligations;
- f. entering into transactions which were not in the best interests of persons and trusts to whom they owed fiduciary obligations;
- g. becoming involved in matters in which Anita, Amy, and Carole represented interests which conflicted with those of their parents, Carl, and the trusts and their beneficiaries, including Nelva;
- h. failing to be loyal to their family members and the trust beneficiaries and to take actions based upon the best interests of Nelva, Carl, and the trusts;
- i. failing to deal impartially, fairly, and equally with Nelva, Carl, and the trusts;
- j. failing to prevent transfers, gifts, or removal of assets;
- k. failing to make appropriate and equal distributions;
- l. failing to adequately inform the beneficiaries about assets and transactions and beneficiaries' rights;
- m. misrepresenting or allowing misrepresentations concerning assets and transactions and beneficiaries' rights;
- n. failing to prevent transactions which were detrimental to their family members and the trusts;
- o. allowing the payment of inappropriate amounts from assets they purportedly held as fiduciaries; and
- p. failing to follow and otherwise enforce the terms of the trust instruments.

27. In connection with actions by Defendants with regard to transactions involving self-dealing, Defendants, acting in a fiduciary capacity have the burden of establishing the propriety of

those transactions. Defendants must prove those transactions were fair and equitable to Plaintiff, and the transactions at issue in this case clearly were not.

28. As a result of Defendants' various actions described herein, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

29. Because Defendants' actions were committed willfully and maliciously, Plaintiff also requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

### VIII.

#### Conversion

30. Defendants' actions constitute conversion of property to which Plaintiff had a superior right, and as a result of such conversion, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

31. Because Defendants' conversion was committed willfully and maliciously, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

### IX.

#### Negligence

32. Defendants had a duty to Plaintiff to use reasonable care to protect his interests in the capacities specified herein. Defendants failed to exercise such reasonable care, in that they allowed assets rightfully belonging to Elmer's estate, Nelva, and the various trusts of which Plaintiff was a beneficiary to be wrongfully removed, thereby improperly taking them or preventing their distribution to Plaintiff. As a result of Defendants' negligence, Plaintiff has been damaged in amounts in excess of the minimum jurisdictional limits of this Court.

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33. Defendants' actions constituted gross negligence in that Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to Plaintiff's rights. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

**X.**

**Tortious Interference with Inheritance**

34. Defendants' actions constitute tortious interference with Carl's inheritance rights.

35. As a direct and proximate result of Defendants' tortious interference with Carl's inheritance rights, Carl has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

36. Defendants' various actions were committed willfully, maliciously, and with the intent to conceal the true nature of the estate and the trusts to Carl's detriment. Accordingly, Carl requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

**XI.**

**Constructive Trust**

37. Plaintiff seeks the imposition of a constructive trust over the assets to which he is entitled, including all property improperly transferred by Anita and Amy, including, but not limited to, the property received by Anita, Amy, Carole, and their insiders or related entities, as well as the profits Defendants received as a result of the transfer of those assets. Plaintiff also seeks the imposition of a constructive trust over the assets of Anita, Amy, and Carole's Trusts to the extent needed to reverse the improper transfers. Plaintiff thus requests a distribution of those assets in the



amount lawfully due the Plaintiff, together with all interest accrued from the time such distribution should have been made.

**XII.**

**Civil Conspiracy**

38. Defendants combined to accomplish the unlawful objectives of facilitating the breach of duties to Plaintiff, as well as the commission of fraud and fraudulent concealment. Such actions by Defendants amount to a civil conspiracy.

39. As a direct and proximate result of the civil conspiracy between the Defendants, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

40. Defendants' actions in furtherance of the civil conspiracy were taken willfully and maliciously, all to the detriment of Plaintiff. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of the Court.

**XIII.**

**Fraudulent Concealment**

41. Plaintiff was not aware of Defendants' wrongful actions. That is because Defendants took affirmative steps to deceive Nelva and Plaintiff and to conceal their wrongful actions from Nelva and Plaintiff. As a result of this affirmative deception by Defendants and Nelva and Plaintiff's reasonable reliance on that deception, Plaintiff did not know of these claims in this action until well after his mother's death on November 11, 2011, and, in fact, Plaintiff still does not know the full extent of his claims.

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**XIV.**

**Discovery Rule**

42. Plaintiff affirmatively pleads the discovery rule and asserts that his claims have been brought within the required periods from the date when he knew, or reasonably should have known, that his claims had accrued.

**XV.**

**Tolling of Limitations**

43. Tex. Civ. Prac. & Rem. Code Ann. §16.062 tolls the limitations period for Plaintiff because of Elmer and Nelva's deaths.

**XVI.**

**Conditions Precedent**

44. All conditions precedent to the recovery of the relief sought hereunder have occurred or have been performed. Plaintiff is prosecuting this action in good faith and with just cause for the purpose of determining and protecting the assets of the trusts.

**XVII.**

**Prejudgment Interest**

45. Plaintiff is also entitled to prejudgment interest on his claims.

**XVIII.**

**Request for Attorneys' Fees**

46. Plaintiff requests that he be allowed to recover his fees and expenses for this action pursuant to Tex. Civ. Prac. Rem. Code Ann. §37.009. Plaintiff further requests that this Court award Plaintiff his costs and reasonable and necessary attorney's fees which had to be incurred prior to and

in connection with this matter pursuant to Tex. Prop. Code Ann. §114.064. Plaintiff also seeks awards for any appellate fees that may be required in connection with this action.

**XIX.**

**Request for Injunctive Relief**

47. Plaintiff also seeks injunctive relief. The expedited consideration of this request is essential due to the need to preserve the information concerning these trusts and the assets in these trusts. Plaintiff asks for an Order preventing Defendants and their agents from destroying, hiding or transferring the records and assets of the Family Trust, the Successor Trusts, and any trust created pursuant to the terms of the 8/25/10 QBD, or taking any other steps normally afforded to parties in Defendants' purported positions with regard to such trusts or the property Defendants have received which would result in a loss or secretion of the property, which would remove property from this Court's jurisdiction or control, or which would frustrate this Court in its exercise of jurisdiction or control, or thwart the purposes of the trust instruments by depriving Plaintiff of his rights.

48. Plaintiff further requests the Court direct Defendants to refrain from conducting any business or entering into any transactions on behalf of the trusts without the prior written consent of Plaintiff during the pendency of this action.

49. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with the assets of the trust to which he is entitled, and that unless appropriate orders are issued by this Court, Defendants will make additional transfers to avoid Plaintiff's rights and this Court's authority. Plaintiff will suffer irreparable harm, damage, and injury unless Defendants, their relatives, partners, agents, servants, attorneys, accountants, employees, assigns, representatives and those persons in active concert or in participation with them are ordered by this Court to secure and preserve all documents and other information concerning the trusts wherever it



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may now be located. Plaintiff requests that Defendants be further ordered to refrain from taking any action with regard to the assets formerly or presently owned by Elmer, Nelva, or any of the trusts, moving or transferring any such assets, changing any positions of authority or exercising any powers or rights afforded to them as a result of the trusts, or applicable law. If orders are not entered as requested, Plaintiff will be irreparably harmed because assets can be further transferred, secreted or otherwise disbursed, and Defendants' prior actions while in control of these assets indicates they will indeed take those steps because they have already taken similar steps.

50. Plaintiff has no adequate remedy at law to preserve the assets at issue, and the loss of assets would be irreparable because if the assets are transferred or sold, the cash received in such a transaction could be even more easily be lost, hidden, or removed from this Court's control by Defendants, or if spent, will be lost to Plaintiff.

51. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with assets or income from the Trust, and Defendants and those acting in concert with them will continue to transfer assets in an attempt to avoid Plaintiff's rights. Unless appropriate orders are issued by this Court, nothing will prevent Defendants and those acting in concert with them will from continuing with their prior course of improper conduct. Therefore, Plaintiff will suffer irreparable harm, damage, and injury unless Defendants and their relatives, partners, agents, attorneys, employees, and those persons in active concert or in participation with them are ordered by this Court to cease all disbursements and transfers of assets from Elmer, Nelva, and the trusts, as well as from the assets they have already taken from Elmer, Nelva, and the trusts.

XXI.

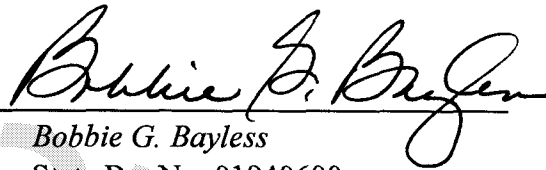
**Plaintiff's Requests for Disclosures to Defendants**

52. Pursuant to Rule 194, T.R.C.P., the Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a) - (l).

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the parties listed above be cited to appear and answer, and that on final hearing this Court declare the rights, duties and liabilities of the parties to the Trust and enter a judgment as sought by Plaintiff and for such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

BAYLESS & STOKES

By: 

*Bobbie G. Bayless*

State Bar No. 01940600

2931 Ferndale

Houston, Texas 77098

Telephone: (713) 522-2224

Telecopier: (713) 522-2218

bayless@baylessstokes.com

*Attorneys for Plaintiff*

VERIFICATION

STATE OF TEXAS §

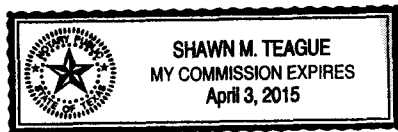
§

COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared CARL HENRY BRUNSTING, who, being by me duly sworn on oath deposed and said that he is the Plaintiff in this action; that he has read the foregoing pleading and that every statement contained in that document is within his knowledge and is true and correct.

*Carl Henry Brunsting*  
CARL HENRY BRUNSTING

SUBSCRIBED AND SWORN TO BEFORE ME on the 8<sup>th</sup> day of April, 2013, to certify which witness my hand and official seal.



*Shawn M. Teague*  
Notary Public in and for the  
State of T E X A S  
Printed Name: Shawn M. Teague  
My Commission Expires: 4-3-2015

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COPY  
ORIGINAL

**THE BRUNSTING FAMILY LIVING TRUST**  
 ELMER H. BRUNSTING      NELVA E. BRUNSTING  
 Co-Trustees

Period #1  
 Both Spouses  
 Living

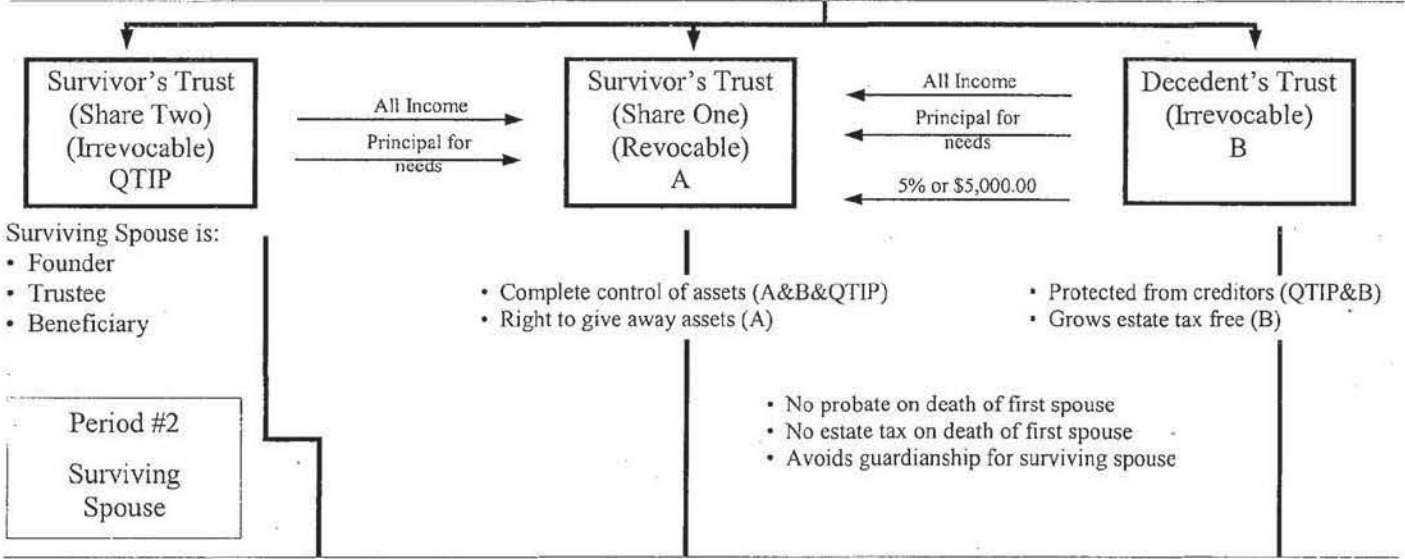
Husband & Wife are:

- Founders
- Trustees
- Beneficiaries

- Complete control of assets
- Avoids guardianship

- Can be amended or revoked
- No change in income taxes

**DEATH OF FIRST SPOUSE**

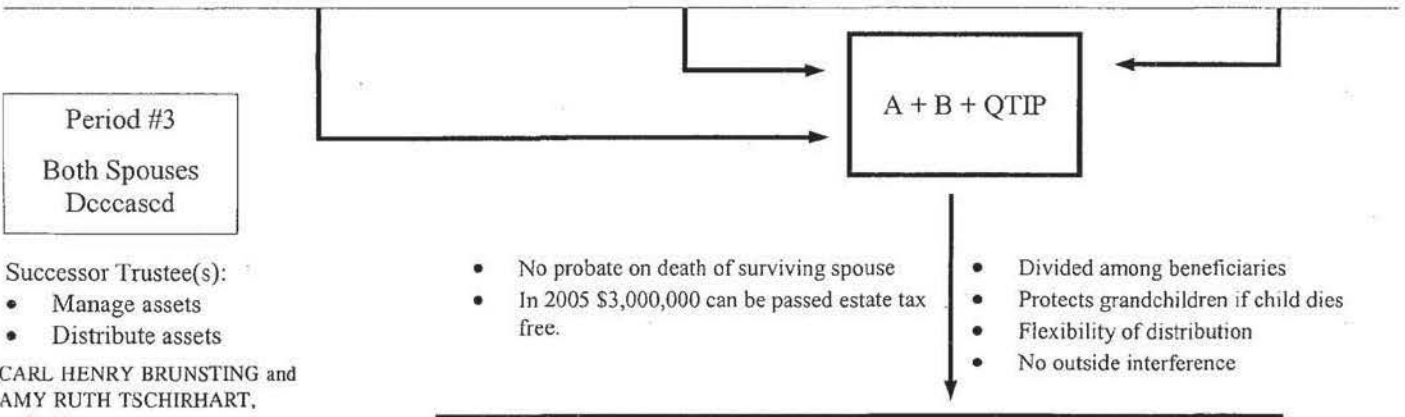


Surviving Spouse is:

- Founder
- Trustee
- Beneficiary

Period #2  
 Surviving  
 Spouse

**DEATH OF SURVIVING SPOUSE**



Period #3  
 Both Spouses  
 Deceased

Successor Trustee(s):

- Manage assets
- Distribute assets

CARL HENRY BRUNSTING and  
 AMY RUTH TSCHIRHART,  
 as Co-Trustees

CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

Beneficiaries

PROBATE COURT 4

DM

**DATA-ENTRY  
PICK UP THIS DATE**

CAUSE No. 412,249

IN RE: ESTATE OF

§  
§  
§  
§  
§

IN THE PROBATE COURT

NELVA E. BRUNSTING,

NUMBER FOUR (4) OF

DECEASED

HARRIS COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED PETITION

TO THE HONORABLE PROBATE COURT:

JURY FEE PAID

COMES NOW, Plaintiff, Candace Louis Curtis, and files this Second Amended Petition and for cause of action would show as follows:

I. PARTIES

Plaintiff, Candace Louis Curtis is a citizen of the State of California.

Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has made an appearance and can be served through her counsel of record.

Defendant Amy Ruth Brunsting is a citizen of the State of Texas, who has made an appearance and can be served through her counsel of record.

Defendant is Carole Ann Brunsting, is a citizen of the State of Texas who has made an appearance and can be served through her counsel of record.

Necessary Party is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas who has made an appearance and can be served through her counsel of record.

II. JURISDICTION AND VENUE

This Court had jurisdiction pursuant to Sections 32.002(c) and 32.005 of the Texas Estates Code, Chapter 37 of the Texas Civil Practice and Remedies Code, and Chapter 115 of the Texas Property Code. Venue is proper pursuant to Section 33.002.

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### III. BACKGROUND

Elmer and Nelva Brunsting created the Brunsting Family Trust, and placed essentially all of their assets into this Trust, of which they were the trustees. The Trust became irrevocable and not subject to amendment upon Elmer's death in 2009, at which time Nelva became the sole trustee of the two trusts into which the Family Trust was divided: the Decedent's Trust and the Survivor's Trust. She also became the sole beneficiary of the Survivor's Trust and the primary beneficiary of the Decedent's Trust.

In 2010, Defendants Anita and Amy began taking steps to control the Trust assets and garner a larger share than their siblings. To that end, they caused Nelva to execute a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment in June of 2010 in which she exercised her power of appointment over all the property held in the Nelva E. Brunsting Survivor's Trust as well as in the Elmer H. Brunsting Decedent's Trust. The June exercise of Power of Appointment went on to ratify and confirm all the other provisions of the Trust. Two months later, they caused Nelva to execute a second Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment, in which she attempted to exercise the very same power of appointment she had exercised in June without revoking the prior exercise – instead she ratified and confirmed the June 2010 Power of Appointment. This second Qualified Beneficiary Designation purports to remove Candy and Carl as the trustees of their own trusts, while not subjecting Amy and Anita to that same fate, and contains paragraphs of self-serving no-contest provisions.

Seemingly because the future power she had obtained for herself was insufficient, Anita had Nelva resign as Trustee in December of 2010, in Anita's favor. As Trustee, Anita made numerous transfers that far exceeded the scope of her powers. She conveyed to Carole 1,325 shares of Exxon stock out of the Decedent's Trust, and gave 1,120 shares of Exxon to Amy out of the Survivor's

Trust, plus 270 shares of Chevron stock (held in the names of Amy's children). To herself she transferred 160 shares of Exxon, plus 405 shares of Chevron (270 shares she placed in the name of her children). Anita also paid herself thousands of dollars in the form of gifts, fees and reimbursements, and did the same for both Amy and Carole.

Carole not only received hundreds of thousands dollars worth of stock and cash distributions, she also had access to a bank account that Anita funded with Trust monies and used that bank account for her own purposes. She routinely charged this Trust account for her personal groceries, gasoline, and other expenses despite not being a present income beneficiary of the Trust.

#### IV. CAUSES OF ACTION

Breach of Fiduciary Duty. Defendants Anita Brunsting and Amy Brunsting are Co-Trustees of the Trust and owed to Plaintiff a fiduciary duty, which includes : (1) a duty of loyalty and utmost good faith; (2) a duty of candor; (3) a duty to refrain from self-dealing; (4) a duty to act with integrity of the strictest kind; (5) a duty of fair, honest dealing; and (6) a duty of full disclosure. Defendants have violated this duty by engaging in self-dealing, by failing to disclose the existence of assets to Plaintiff, by failing to account to Plaintiffs for Trust assets and income, by failing to place Plaintiff's interests ahead of their own, and by making distributions that deviate from the strict language of the Trust. Defendants Anita breached this duty during Nelva's life by engaging in self-dealing and taking actions not permitted by the terms of the Trust, and thus is liable to the Estate and derivatively to Plaintiff for these breaches. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest and costs of court.

Fraud. Defendants Anita Brunsting and Amy Brunsting made misrepresentations of material facts with the intent that Plaintiff rely upon them, and Plaintiff did rely upon such misrepresentations to her detriment. Such misrepresentations included statements regarding the Trust, Trust assets, and

her right to receive both information and Trust assets. On information and belief, Defendants made fraudulent misrepresentations to Nelva Brunsting upon which she relied to her detriment and to the ultimate detriment of her Estate. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest both on behalf of herself, and on behalf of the Estate of Nelva Brunsting, Deceased.

Constructive Fraud. Constructive fraud exists when a breach of a legal or equitable duty occurs that has a tendency to deceive others and violate their confidence. As a result of Defendants' fiduciary relationship with Plaintiff and with Nelva Brunsting, Defendants owed Plaintiff and Nelva Brunsting legal duties. The breaches of the fiduciary duties discussed above and incorporated herein by reference constitute constructive fraud, which caused injury to both Nelva Brunsting's Estate and Plaintiff. Plaintiff seeks actual damages, as well as, punitive damages individually and on behalf of Nelva Brunsting's Estate.

Money Had and Received. Defendants Anita, Amy and Carole have taken money that belongs in equity and good conscience to the Trust and derivatively to Plaintiff, and have done so with malice and through fraud, in part by representing that transfers to them were valid reimbursements. Plaintiff seeks her actual damages, exemplary damages, pre- and post-judgment interest and court costs.

Conversion. Defendants Anita, Amy and Carole have converted assets that belong to Plaintiff as beneficiary of the Brunsting Family Trust, assets that belong to the Brunsting Family Trust, and assets that belonged to Nelva Brunsting and that should be a part of her Estate. Defendants have wrongfully and with malice exercised dominion and control over these assets, and has damaged Plaintiff, the Brunsting Family Trust, as well as the Estate of Nelva Brunsting by so doing. Plaintiff seeks actual damages, exemplary damages, pre- and post-judgment interest and court



costs, both individually and on behalf of the Decedent's Estate.

Tortious Interference with Inheritance Rights. A cause of action for tortious interference with inheritance rights exists when a defendant by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received. Defendants Amy, Anita, and Carole, herein breached their fiduciary duties and converted funds that would have passed to Plaintiff through the Brunsting Family Trust, and in doing so tortiously interfered with Plaintiff's inheritance rights. Plaintiff seeks actual damages as well as punitive damages.

Declaratory Judgment Action. The Brunsting Family Trust was created by Nelva and Elmer Brunsting, and became irrevocable upon the death of Elmer Brunsting. After his death, Nelva executed both the June and August Qualified Beneficiary Designations and Exercises of Testamentary Power of Appointment ("Modification Documents"), which attempted to change the terms of the then-irrevocable Trust. The Modification Documents fail because they attempted to change the terms of the Trust. Assuming without admitting that the June Modification Document is a valid Power of Appointment, then the August Modification Document fails because Nelva had already effectively appointed all of the Trust property in June; she never revoked that Power of Appointment, but actually affirmed it. Upon information and belief, Nelva did not understand what she was signing when she signed the Modification Documents, and signed them as a result of undue influence and/or duress. Plaintiff seeks a declaration that the Modification Documents are not valid, and further that the *in terrorem* clause contained therein is overly broad, against public policy and not capable of enforcement. Plaintiff further seeks a declaration as to her rights under the Brunsting Family Trust. Plaintiff contends and will show that she has brought her action in good faith.

Declaratory Judgment Action. The Family Trust Agreement governed all of the rights and

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powers that Anita held as Trustee. Those rights and powers did not allow her to transfer out the shares of Exxon and Chevron stock. Her duties as a Trustee prevented her from distributing Trust Assets to some beneficiaries to the detriment and for the purpose of harming other beneficiaries. Plaintiff seeks a declaration that the distributions of Chevron Stock and Exxon Stock to Amy, Anita and Carole are void because Anita as Trustee exceeded the scope of her power in making those gifts.

Unjust Enrichment. Defendants Amy, Anita and Carole have all been unjustly enriched by their receipt of Chevron Stock, Exxon Stock, and cash from the Trust. None were entitled to the distributions of stock, and a majority of the cash transfers were for purposes not authorized under the scope of the Trust Agreement nor of the purposes they alleged to be for. Plaintiff seeks a declaration that the Defendants were unjustly enriched, and seeks the imposition of a constructive trust on the remaining Chevron Stock and Exxon Stock that remains in their possession, as well as on any cash or proceeds from the sale of said stock and on any cash distributions from the Trust.

Conspiracy. Upon information and belief, Defendants Anita, Amy and Carole all conspired to make improper withdrawals and distributions from the Trust, to decrease Plaintiff's inheritance and interest in the Trust, to enrich themselves at the expense of the Trust and other beneficiaries, and to conceal the impropriety of their actions. They should be found jointly and severally liable for the decrease in the Trust, and should be required to disgorge their ill-gotten gains.

Demand for Accounting. Plaintiff seeks a formal accounting from Defendants in compliance with the Texas Property Code.

#### V. JURY DEMAND

Plaintiff hereby makes her demand for a jury trial in this matter.

02132015:1439:P0044

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial in this matter, she will take judgment for her actual and exemplary damages, actual and exemplary damages will be awarded to her and to the Estate of Nelva Brunsting, that pre- and post-judgment interest and costs of court will be assessed against the Defendants, and that she be granted such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

ostrommorris, PLLC

BY: 

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(TBA #24032879)

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6363 Woodway, Suite 300

Houston, Texas 77057

713.863.8891

713.863.1051 (Facsimile)

Attorneys for Plaintiff

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Texas Rule of Civil Procedure 21a on the following on the 11<sup>th</sup> day of February, 2015:

Ms. Bobbie Bayless  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224  
713.522.2218 (Facsimile)

Ms. Darlene Payne Smith  
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713.752.8640  
713.425.7945 (Facsimile)

Mr. Bradley Featherston  
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281.759.3214 (Facsimile)

Mr. Neal Spielman  
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Houston, Texas 77079  
281.870.1124  
281.870.1647 (Facsimile)



Jason B. Ostrom/  
R. Keith Morris, III

021320111499110045



DATA ENTRY  
PICK UP THIS DATE

PROBATE COURT 4

CAUSE NO. 412,249 - 401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

\*\*\*\*\*

CAUSE NO. 412,249 - 402

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

AGREED ORDER TO CONSOLIDATE CASES

On this day came to be considered the oral Motion to Consolidate Cases seeking to have the pleadings assigned to Cause Number 412,249-402 consolidated into Cause Number 412,249-401. The Court finds that the actions involve the same parties and substantially similar facts, and that they should be consolidated and prosecuted under Cause Number 412,249-401. It is, therefore,

ORDERED that Cause Number 412,249-402 is hereby consolidated into Cause Number 412,249-401. It is further,

ORDERED that all pleadings filed under or assigned to Cause Number 412,249-402 be moved into Cause Number 412,249-401.

SIGNED on this 16 day of March, 2015.

Clemetine Buter  
JUDGE PRESIDING


03092015:0815:P0002



03092015:0815:P0003

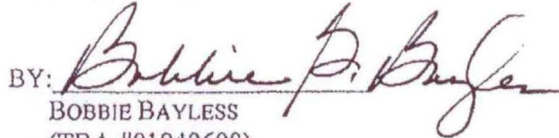
APPROVED AS TO FORM:

ostrommorris, PLLC

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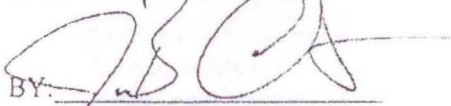
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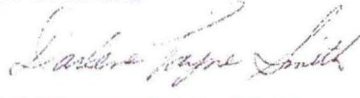


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03092015:0815:P0004



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Attorney for Amy Brunsting

03092015:0815:P0005



PROBATE COURT 4

No. 412,249-401

ESTATE OF

Nelva E. Brunsting,Deceased§  
§  
§  
§  
§

PROBATE COURT

NUMBER FOUR (4) OF

HARRIS COUNTY, TEXAS

**AGREED DOCKET CONTROL ORDER**

The following docket control order shall apply to this case unless modified by the Court. If no date is given below, the item is governed by the Texas Rules of Civil Procedure.

1. N/A **JOINDER.** All parties must be added and served, whether by amendment or third party practice, by this date. THE PARTY CAUSING THE JOINDER SHALL PROVIDE A COPY OF THE SCHEDULING ORDER AT THE TIME OF SERVICE
2. ↓ **EXPERT WITNESS DESIGNATION.** Expert witness designations are required and must be served by the following dates. The designation must include the information listed in Rule 194.2(f). Failure to timely respond will be governed by Rule 193.6:
  - (a) 7/1/15 Experts for parties seeking affirmative relief.
  - (b) 8/1/15 All other experts.
3. **DISCOVERY LIMITATIONS.** The discovery limitations of Rule 190.2, if applicable, or otherwise, of Rule 190.3, apply, unless changed below:
  - (a) By Rules Total hours per side for oral depositions.
  - (b) By Rules Number of interrogatories that may be served by each party on any other party.
4. **ALTERNATIVE DISPUTE RESOLUTION.** ADR conducted pursuant to the agreement of the parties must be completed by this date. **If the parties do not agree on a date and/or facilitator for ADR, the Court may sign an order compelling ADR and appointing a mediator for same.**
5. 8/4/15 **DISCOVERY PERIOD ENDS.** All discovery must be completed before the end of the discovery period. Parties seeking discovery must serve requests sufficiently far in advance of the end of the discovery period that the deadline for responding will be within the discovery period. Counsel may conduct discovery beyond this deadline by agreement. Incomplete discovery will not delay the trial.
6. **DISPOSITIVE MOTIONS AND PLEAS.** Must be heard as follows:
  - (a) 8/3/15 Dispositive motions or pleas subject to an interlocutory appeal must be heard by this date.
  - (b) 8/3/15 Summary Judgment motions not subject to an interlocutory appeal must be heard by this date.
  - (c) 6/1/15 Rule 166a(i) motions may not be filed before this date.
7. 9/1/15 **CHALLENGES TO EXPERT TESTIMONY.** All motions to exclude expert testimony and evidentiary challenges to expert testimony must be filed by this date, unless extended by leave of court.
8. 8/4/15 **PLEADINGS.** All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleadings.

02202015:1134:P0007

02202015:1134:PO008

9. Sept. 4, 2015 Noon JOINT PRETRIAL ORDER. Parties shall provide to the Court, by fax, email, or delivery to our offices, a copy of the signed Joint Pretrial Order by this date. Parties shall bring the original Agreed Joint Pretrial Order to the Pretrial Conference.

10. Sept. 11, 2015 10:00 AM PRETRIAL CONFERENCE. Parties shall be prepared to discuss all aspects of trial with the Court at this time. Parties shall file and exchange (if jury trial) proposed jury charge questions, instructions and definitions at this conference. Parties should be prepared to mark exhibits. Failure to appear will be grounds for dismissal for want of prosecution.

11. Sept. 14-18, 2015 TRIAL.

Signed this 19 day of February, 2015.

C. Auld  
Judge Presiding

Stan Stewart  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

2015 FEB 20 AM 8:49

FILED

Party: Carole Brunsting Party: Andy Brunsting

Counsel Name: Darlene Payne Smith Counsel Name: Jason B. Ostrom  
SBN: 18643525 SBN: 24027710

Counsel Signature: [Signature] Counsel Signature: [Signature]  
Firm: Crain, Cator, Jones Firm: Ostrom Morris, PLLC  
Address: 1401 McKinney Address: 6363 Woodway Dr., Suite 300  
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Phone: 713-752-8640 Phone: 713-863-8891  
Fax: 713-658-1921 Fax: 713-863-1051  
Email: dsmith@craincator.com Email: jason@ostromorris.com

Party: Amy Brunsting Party: Carl Brunsting

Counsel Name: Neal Spielman Counsel Name: Bobbie G. Bayless  
SBN: 00794678 SBN: 01940600

Counsel Signature: [Signature] Counsel Signature: [Signature]  
Firm: Griffin & Matthews S. Firm: Bayless + Stokes  
Address: 1155 Dairy Ashford, Suite 300 Address: 2931 Ferndale  
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PARTY: Anita Brunsting  
COUNSEL: Brad Featherston (24038892) 37  
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United States District Court  
Southern District of Texas  
FILED

SEP 21 2016

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

David J. Bradley, Clerk of Court

CANDACE LOUISE CURTIS &  
RIK WAYNE MUNSON

§  
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VS.

CIVIL ACTION NO. 4:16-cv-01969  
(Alfred H. Bennett)

CANDACE KUNZ-FREED,  
ALBERT VACEK, JR, ET AL

**Defendant Amy Brunsting’s Rule 12(b)(6)  
Motion to Dismiss for Plaintiff’s Failure to State a Claim**

Plaintiffs sued me, defendant, Amy Brunsting, along with two state judges, a court reporter, and eleven attorneys for alleged RICO violations. The complaint should be dismissed because the plaintiffs fail to state a claim upon which relief can be granted.

Plaintiffs allege that I am involved in a racketeering enterprise in a probate case pending in Harris County Probate Court No. 4, under C. A. No. 412,249-401, *Estate of Nelva Brunsting, Deceased*. Nelva Brunsting was my mother. Plaintiffs allege that I conspired with two state judges, a court reporter, numerous attorneys (including attorney Jason Ostrom who was hired by the plaintiff Candace Brunsting) in a “secret society” to engage in illegal wiretapping, theft, extortion, forgery, wire fraud, and fraudulent transfer of securities as part of a racketeering group they refer to as “Harris County Tomb Raiders” and “the Probate Mafia”. Plaintiffs claim that they were harmed by this alleged conspiracy. I know of no conspiracy, nor have I ever conspired with anyone regarding any of these matters. Plaintiffs have provided no facts to support their complaints.

Plaintiffs claim that I intercepted, recorded, possessed, concealed, manipulated, and disseminated illegal wiretap recordings of conversations made on my mother’s telephone line. I

have been told that these are recorded phone messages that were found on my mother's answering machine. It is my understanding that these recordings were made while my mother was alive. I have never heard any of these recordings and my mother never discussed them with me. I have never possessed any of these recordings. Plaintiffs fail to provide facts to show that I possessed or in any way handled these recordings.

Plaintiffs claim that my answers to Plaintiff Curtis' interrogatories posed in her lawsuit against me in the Harris County Probate Court contained extortion threats. I have no idea what she is referring to. I made no threats against Plaintiff Curtis or anyone else in my replies to her questions.

Plaintiffs refer to a "heinous extortion instrument", but I believe they are referring to the qualified beneficiary trust (QBT) agreement that was executed by my mother, not by me. This document was executed before I became a trustee. I did not become a trustee until after the death of my mother, and I had no involvement with or authority over my mother's financial or trust matters while she was living. I had no involvement in the preparation of the QBT. After reading the QBT, I could not find any language in the document that could be used to extort the plaintiffs. There are no facts to show that I took or extorted anything from the plaintiffs.

Plaintiffs allege that attorney Bernard Matthews and I filed a false affidavit in a suit that Candace Curtis filed against me and others (Candace Louise Curtis v. Anita Brunsting et al., No. 4:12-cv-00592). The suit was a *lis pendens* filed by Plaintiff Curtis to prevent the sale of our mother's home. Mother passed away on November 11, 2011. After her death, her home was appraised and put up for sale. In 2012 a buyer offered us more than the appraised value, so we accepted the offer. The transaction was handled by a reputable title company. I did not file any

false affidavits during this proceeding or any other proceeding. Plaintiffs provide no information of the document in question, and they provide no facts regarding this claim.

Finally, I have never met nor spoken to one of the plaintiffs, Rik Munson. I have never corresponded with him prior to the filing of this suit. I have no business or personal contracts with or obligations to Rik Munson. Said plaintiff has not provided an explanation of how I caused him any harm.

Plaintiffs' claims are vague, conclusory, and based entirely on inference and speculation.

Prayer

I pray that the Court grant my motion to dismiss for plaintiffs' failure to state a claim and for such other and further relief, general and specific, legal and equitable, to which I may be entitled to receive.

Respectfully submitted,

//s// Amy Brunsting

---

Amy Brunsting  
2582 Country Ledge Drive  
New Braunfels, Texas 78132  
Pro Se Defendant

## Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following persons via first class mail:

- |  |                   |
|--|-------------------|
| 1. Candace L. Curtis<br>218 Landana Street<br>American Canyon, CA 94503<br>925-759-9020  | Plaintiff, Pro Se |
| 2. Rik Wayne Munson<br>218 Landana Street<br>American Canyon, CA 94503<br>925-349-8348   | Plaintiff, Pro Se |
| 3. Candace Kunz-Freed<br>c/o Cory S. Reed<br>Thompson, Coe, Cousins & Irons, L.L.P.<br>One Riverway, Suite 1400<br>Houston, TX 77056 | Defendant         |
| 4. Albert Vacek, Jr.<br>c/o Cory S. Reed<br>Thompson, Coe, Cousins & Irons, L.L.P.<br>One Riverway, Suite 1400<br>Houston, TX 77056  | Defendant         |
| 5. Bernard Lyle Matthews III<br>11777 Katy Freeway, Suite 300 South<br>Houston, TX 77079   | Defendant         |
| 6. Anita Kay Brunsting<br>203 Bloomingdale Circle<br>Victoria, TX 77904  | Defendant         |
| 7. Neal E. Spielman<br>Griffin & Matthews<br>1155 Dairy Ashford, Suite 300<br>Houston, TX 77079                                      | Defendant         |
| 8. Bradley Featherston<br>Featherston Tran PLLC<br>20333 State Highway 249, Suite 200<br>Houston, TX 77070                           | Defendant         |



9. Stephen A. Mendel Defendant  
The Mendel Law Firm, L. P.  
1155 Dairy Ashford, Suite 104  
Houston, TX 77079
  
10. Darlene Payne Smith Defendant  
Crain, Caton & James  
Five Houston Center, 17<sup>th</sup> Floor  
1401 McKinney, Suite 1700  
Houston, TX 77010
  
11. Jason B. Ostrom Defendant  
Ostrom Morris, P. L. L. C.  
6363 Woodway, Suite 300  
Houston, TX 77056
  
12. Gregory Lester Defendant  
955 N. Dairy Ashford, Suite 220  
Houston, TX 77079
  
13. Jill Willard Young Defendant  
MacIntyre, McCulloch, Stanfield  
and Young, L. L. P.  
2900 Wesleyan, Suite 150  
Houston, TX 77027
  
14. Bobbie Bayless Defendant  
Bayless & Stokes  
2931 Ferndale  
Houston, TX 77098
  
15. Christine Riddle Butts Defendant  
Harris County Civil Courthouse  
201 Caroline, 7<sup>th</sup> floor  
Houston, TX 77002
  
16. Clarinda Comstock Defendant  
Harris County Civil Courthouse  
201 Caroline, 7<sup>th</sup> floor  
Houston, TX 77002

17. Toni Biamonte  
Office of the Court Reporter  
Harris County Civil Courthouse  
201 Caroline, 7<sup>th</sup> floor  
Houston, TX 77002

Defendant

on this 19<sup>th</sup> day of September 2016.

*//s// Amy Brunsting*

---

Amy Brunsting

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS &  
RIK WAYNE MUNSON

§  
§  
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VS.

CIVIL ACTION NO. 4:16-cv-01969  
(Alfred H. Bennett)

CANDACE KUNZ-FREED,  
ALBERT VACEK, JR, ET AL

**Order Granting Defendant Amy Brunsting's  
Rule 12(b)(6) Motion to Dismiss for Plaintiffs' Failure to State a Claim**

The Court considered defendant Amy Brunsting's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' Failure to State a Claim.

Finding that the plaintiffs' failed to state a claim for which relief may be granted, the defendant's motion is GRANTED and the plaintiffs' suit is dismissed.

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS &  
RIK WAYNE MUNSON

§  
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§

VS.

CIVIL ACTION NO. 4:16-CV-01969

CANDACE KUNZ-FREED,  
ALBERT VACEK, JR., ET AL

**Defendants Mendel’s & Featherston’s Rule 12(b)(6)  
Motion to Dismiss for Plaintiffs’ Failure to State a Claim**

**I. Summary of the Argument**

1.1. The Texas doctrine of attorney immunity bars plaintiffs’ claims. It is undisputed that defendants Mendel and Featherston have: (a) never had an attorney/client relationship with either of the plaintiffs; and (b) only served as attorneys in the defense of co-trustee Anita Brunsting. *See Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 348 (5<sup>TH</sup> Cir. 2016).

1.2. The complaint does not provide defendants with fair notice of plaintiffs’ claims. Plaintiffs allege that defendants were part of an entity that violated the RICO statute and enumerate several predicate acts allegedly engaged in by defendants, but do so through inference, speculation, and conclusive statements. Such vague statements fail to place defendants on notice of how the entity is alleged to have operated, how the predicate acts furthered the larger conspiracy, or how the defendants knew that these acts would further any conspiracy. By way of example and not as a limitation, Mr. Featherston is alleged to have engaged in illegal wiretapping, the occurrence of which was inferred by the plaintiffs based on the production of voicemail recordings and nothing more. One problem, among others, is that Mr. Featherston’s alleged wiretaps predate his involvement with the case.

**II. Nature of the Case**

2.1. The pro se plaintiffs are Candace Louise Curtis and Rik Wayne Munson. Defendants are Stephen A. Mendel and Bradley E. Featherston, among others. Messrs. Mendel and Featherston are attorneys licensed by the State Bar of Texas. Mr. Mendel is current counsel for Co-Trustee Anita

Brunsting. Mr. Featherston is a former associate attorney of Mr. Mendel, and previously assisted Mr. Mendel with the defense of Co-Trustee Anita Brunsting.

2.2. In addition to suing Messrs. Mendel and Featherston, plaintiffs sued nine (9) other attorneys, two (2) probate judges, and a court reporter for violations of the Racketeer Influenced Corrupt Organization Act (RICO).

2.3. Plaintiffs alleged that all of the defendants were part of a conspiracy in which several Houston area law firms and Harris County Probate Court No. 4 worked in concert to defraud heirs of their inheritances in order to enrich themselves. Plaintiffs' dubbed this alleged entity as the "Harris County Tomb Raiders, a/k/a the Probate Mafia."

2.4. Plaintiffs allege that they were harmed by the Tomb Raiders through its involvement in a related probate case pending in Harris County Probate Court No. 4, under C.A. No. 412249-401, *Estate of Nelva Brunsting, Deceased*. In particular, Mr. Featherston allegedly committed acts of illegal wiretapping and extortion in furtherance of the conspiracy. Both Messrs. Mendel and Featherston were allegedly involved in a conspiracy within the larger conspiracy to induce plaintiff Curtis to sign away valuable trust interests through extortion by way of a "sham mediation."

2.5. For the Court's benefit, plaintiff Curtis and her siblings participated in a mediation in August 2014. No other mediation has occurred. Since Messrs. Mendel and Featherston did not make an appearance as counsel of record until November 2014, it is impossible for them to be involved in a "sham mediation."

2.6. In Spring 2016, the Probate Court ordered a mediation among the parties, and that mediation was scheduled for July 2016, but the mediation never occurred. As such, assuming arguendo that a mediation is a course of conduct not protected by the Texas attorney immunity

doctrine, it is impossible for Messrs. Mendel and Featherston to participate in a sham mediation that never occurred.

### **III. Argument**

3.1. A court has the authority to dismiss a suit for failure to state a claim upon which relief can be granted if the complaint does not provide fair notice of the claim and does not state factual allegations showing the right to relief is plausible. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Alt. Corp. v. Twombly*, 550 U.S. 544, 555-56 & n.3 (2007).

3.2. A careful reading of the plaintiffs claims against Messrs. Mendel and Featherston show that those claims are all related to their roles as attorneys in the defense of Co-Trustee Anita Brunsting. As such, the claims are barred as a matter of law by the Texas attorney immunity doctrine. *Troice*, 816 F.3d at 348. The Texas attorney immunity doctrine provides true immunity from suit and is not merely an affirmative defense. *Id.* at 346. Dismissal is, therefore, warranted regardless of the merits of the alleged conduct. *Id.* at 348-49.

3.3. More specifically, the plaintiffs' allege that Mr. Featherston engaged in wiretapping and theft/extortion, and that both Messrs. Mendel and Featherston were involved in a conspiracy to commit theft/extortion, all of which were done in furtherance of the larger RICO conspiracy. However, the actions underlying these claims are: (1) arguing in the probate court or through judicially filed instruments for the admissibility of voicemail recordings, which is alleged as "wiretapping;" (2) arguing in the probate court or through judicially filed instruments that claims for trust distributions violated the no-contest clause of the Qualified Beneficiary Trust ("QBT"), which is alleged as "theft/extortion;" and (3) arguing in the probate court or through judicially filed instruments that the parties should mediate, which is the "conspiracy to commit theft/extortion."

3.4. Each alleged act as to Messrs. Mendel and Featherston is the kind of conduct that an attorney normally engages and is expected to engage when representing a client and is entirely covered by attorney immunity. *See Troice*, 816 F.3d at 348 (the defendant attorney sent letters to the SEC regarding jurisdiction, communicated with the SEC about document discovery and the legitimacy of his client's business, stated that certain witnesses would provide more relevant testimony than others in a deposition, and represented one of his client's executives in a deposition). Because all of the plaintiffs' claims derive from conduct covered by attorney immunity, the complaint fails to state a claim for which relief may be granted and should be dismissed for this reason alone.

3.5. Yet, the plaintiffs' claims can be dismissed for a second reason, which is that the claims fail to provide Messrs. Mendel and Featherston with fair notice of what they allegedly did wrong. *Ruvio v. Wells Fargo Bank N.A.*, 766 F.3d 87, 90-91 (1<sup>ST</sup> Cir. 2014); *Brooks v. Ross*, 578 F.3d 574, 581-82 (7<sup>TH</sup> Cir. 2009). A complaint that provides only labels and conclusions or formulaic recitation of the elements of a cause of action is insufficient to show grounds for the plaintiff to be entitled to relief. *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555 & n.3; *Brooks*, 578 F.3d at 581.

3.6. In addressing their claim that a broad RICO type conspiracy exists between the defendant law firms and the probate court, the plaintiffs describe the alleged "entity" as "a secret society . . . associated together for the purpose of carrying out an ongoing criminal theft enterprise . . . through a multi-faceted campaign of lies, fraud, threats, and official corruption in furtherance of a conspiracy involving a pattern of racketeering activity . . ." This description is repeated with slight variations throughout the complaint and appears to have been crafted by combining several definitions taken from 18 U.S.C. § 1961, and a vague list of types of alleged actions taken by those

involved in the conspiracy in furtherance of the same. There is not a single fact of what Messrs. Mendel and Featherston said that were lies or threats, no facts to show fraud, nor any factual explanation as to how Messrs. Mendel and Featherston could commit official corruption when neither is a government official.

3.7. Likewise, the plaintiffs cannot describe a single fact as to how Messrs. Mendel and Featherston used the “entity” to syphon “off the assets of our elders . . . through . . . schemes and artifices” as part of a plan which they refer to as “Involuntary Redistribution of Assets.” There are no facts to show how this alleged scheme works, whom are the elders, the types of assets that are being syphoned off, the value of the assets allegedly being syphoned, nor how much Messrs. Mendel and Featherston wrongfully received.

3.8. The plaintiffs admit that “the specific quid pro quo profit sharing is unknown” to them, but insist that proof of “a reciprocal stream-of-benefits necessarily flows from the fact of the in-concert activities of the co-conspirators.” Nebulous rhetoric, conclusory statements, and unsupported presumptions do not constitute facts and, therefore, are insufficient to sustain a claim against Messrs. Mendel and Featherston.

3.9. When plaintiffs attempt to describe overt acts in furtherance of the conspiracy by particular defendants they are similarly vague and conclusory. As previously indicated, the plaintiffs claim that Mr. Featherston engaged in illegal wiretapping in furtherance of the conspiracy. The basis for this claim is that Mr. Featherston argued in court or through judicial instruments for the admissibility of recordings of telephone conversations between Curtis’ brother, Carl Brunsting and their mother, Nelva Brunsting.

3.10. The plaintiffs’ main argument that these recordings were obtained via an illegal



wiretapping device seems to be the existence of the recordings of private conversations that, they believe, could only be obtained by wiretapping Carl's telephone. However, in reality, the recordings are nothing more than recorded messages from Nelva Brunsting's answering machine that were produced during discovery in the underlying probate case. Producing 2011 recordings made by others as required the Texas Rules of Civil Procedure does not mean the attorney producing the recordings in 2014 or thereafter engaged in wiretapping.

3.11. Plaintiffs further allege that Mr. Featherston, along with other defendant attorneys, provided evidence that such wiretapping occurred by arguing that the recordings were admissible. Plaintiffs argue that Mr. Featherston implied that he knew the nature of the "device," its ability to record accurately, and the qualifications of its operator by arguing for the recordings' admissibility. What the plaintiffs fail to explain is why any "device" attached to Carl Brunsting's telephone would be necessary when the recordings were available from the decedent's answering machine, or how Mr. Featherston was involved with the use of such a device.

3.12. Plaintiffs also fail to account for the fact that the recordings in question were made in Spring 2011, more than three (3) years before Mr. Featherston was even involved with the probate case. Absent any facts, much less specific facts, the plaintiffs' claims are based entirely on speculation and inference and do not state a claim to which the defendants may or should have to respond.

3.13. Plaintiffs also claim that Mr. Featherston engaged in state law theft and/or federal law extortion by asserting that plaintiff Curtis' and Carl Brunsting's applications for interim distributions violated the no-contest clause of the QBT. The QBT was prepared by defendant Alfred Vacek, Jr. in August 2010 at the request of his now deceased client, Nelva Brunsting. Neither Mr. Featherston,

nor Mr. Mendel, nor their client, Co-Trustee Anita Brunsting, were involved with the drafting of the QBT in any way. As such, unless a court of competent jurisdiction declares the QBT invalid, Messrs. Mendel and Featherston and their client have the right to make any argument they so desire with regard to the enforceability of the provisions of the QBT, and such arguments cannot, as a matter of law, constitute predicate RICO acts.

3.14. Notwithstanding the fact that the plaintiffs lack a judicial determination that the no-contest clause is not enforceable, the plaintiffs claim the QBT is an “extortion instrument” being used to “instill fear of economic harm” in plaintiff Curtis and Carl Brunsting. Plaintiffs’ description of both the purpose of the “extortion instrument” and its alleged use to harm plaintiffs is vague and conclusory in that it does not explain how or when any threats were made, the nature of the threats, which specific defendants made the threats, or give any indication as to how Mr. Featherston was supposed to have known of the threats so that his objection would become part of a wider conspiracy to extort anything from plaintiffs. Without such additional information, the complaint fails to state a claim to which the defendant can provide an answer.

3.15. Finally, plaintiffs’ allege that Messrs. Mendel and Featherston, along with several other attorneys, engaged in a conspiracy, in support of the larger conspiracy, to commit theft and extortion through a “sham mediation” in which plaintiff Curtis was coerced into signing away valuable inheritance rights. Leaving aside whether the mediation in question was or was not a “sham,” the plaintiffs only make a bare assertion that it was.

3.16. The larger problem with this claim is that there were two (2) mediations in the case in question. The plaintiffs argue that the first mediation was tainted by threats, intimidation, and a “thug mediator,” but never explain how the first mediation was a “sham mediation.” Furthermore,

the plaintiffs fail to explain how a second mediation that never occurred was a sham mediation, or how there can be liability for something that never occurred.

#### **IV. Prayer**

Defendants Mendel and Featherston pray that the Court grant their motion to dismiss for plaintiffs' failure to state a claim and for such other and further relief, general and special, legal and equitable, to which it may be entitled to receive.

Respectfully Submitted,

// s // Stephen A. Mendel

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Attorney for Defendants Mendel & Featherston

## **Certificate of Service**

I certify that a true and correct copy of the foregoing instrument was served on the following persons via e-service, email, or first class mail:

- |  |                   |
|--|-------------------|
| 1. Candace L. Curtis<br>218 Landana Street<br>American Canyon, CA 94503<br>925-759-9020  | Plaintiff, Pro Se |
| 2. Rik Wayne Munson<br>218 Landana Street<br>American Canyon, CA 94503<br>925-349-8348   | Plaintiff, Pro Se |
| 3. Anita Brunsting<br>203 Bloomingdale Circle<br>Victoria, Texas 77904   | Defendant, Pro Se |
| 4. Candace Kuntz-Freed<br>c/o Cory S. Reed<br>Thompson, Coe, Cousins & Irons, L.L.P.<br>One Riverway, Suite 1400<br>Houston, Texas 77056 | Defendant         |
| 5. Bernard Lyle Matthews III<br>11777 Katy Freeway, Suite 300 South<br>Houston, Texas 77079  | Defendant         |
| 6. Albert Vacek, Jr.<br>c/o Cory S. Reed<br>Thompson, Coe, Cousins & Irons, L.L.P.<br>One Riverway, Suite 1400<br>Houston, Texas 77056   | Defendant         |
| 7. Amy Ruth Brunsting<br>2582 Country Ledge<br>New Braunfels, Texas 78132  | Defendant         |
| 8. Neal E. Spielman<br>Griffin & Matthews<br>1155 Dairy Ashford, Suite 300<br>Houston, Texas 77079                                       | Defendant         |

9. Bradley Featherston  
Featherston Tran P.L.L.C.  
20333 State Highway 249, Suite 200  
Houston, Texas 77070  
Defendant
10. Darlene Payne Smith  
Crain, Caton & James  
Five Houston Center, 17<sup>th</sup> Floor  
1401 McKinney, Suite 1700  
Houston, Texas 77010  
Defendant
11. Jason B. Ostrom  
Ostrom Morris, P.L.L.C.  
6363 Woodway, Suite 300  
Houston, Texas 77056  
713-863-8891  
Defendant
12. Gregory Lester  
955 N. Dairy Ashford, Suite 220  
Houston, Texas 77079  
Defendant
13. Jill Willard Young  
MacIntyre, McCulloch, Stanfield  
and Young, L.L.P.  
2900 Wesleyan, Suite 150  
Houston, Texas 77027  
Defendant
14. Bobbie Bayless  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098  
Defendant
15. Christine Riddle Butts  
Harris County Civil Courthouse  
201 Caroline, 7<sup>TH</sup> floor  
Houston, Texas 77002  
Defendant
16. Clarinda Comstock  
Harris County Civil Courthouse  
201 Caroline, 7<sup>TH</sup> floor  
Houston, Texas 77002  
Defendant

17. Toni Biamonte  
Office of the Court Reporter  
Harris County Civil Courthouse  
201 Caroline, 7<sup>TH</sup> floor  
Houston, Texas 77002

Defendant

on this September 30, 2016.

// s // Stephen A. Mendel

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Stephen A. Mendel

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS §  
& §  
RIK WAYNE MUNSON §  
§  
VS. §  
§  
CANDACE KUNZ-FREED, et al. §

CIVIL ACTION NO. 4:16-cv-01969

**Defendants Mendel’s & Featherston’s**  
**Certificate of Interested Parties**

Defendants, Stephen A. Mendel and Bradley E. Featherston, file this certificate of interested parties pursuant to the Court’s July 6, 2016 Order, ¶ 2 [Dkt. No. 3]. Persons or entities with an interest in the outcome of this case are as follows:

1. Plaintiffs:

- A. Candace Louise Curtis
- B. Rik Munson

2. Defendants:

- A. Candace Kunz-Freed
- B. Albert Vacek, Jr.
- C. Bernard Lyle Matthews
- D. Anita Brunsting
- E. Amy Brunsting
- F. Neal Spielman
- G. Bradley Featherston
- H. Stephen A. Mendel
- I. Darlene Payne Smith
- J. Jason Ostrom
- K. Gregory Lester
- L. Jill Willard Young
- M. Bobbie Bayless
- N. Christine Riddle Butts
- O. Clarinda Comstock
- P. Toni Biamonte

## Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following persons via e-service, email, or first class mail:

- |   |                   |
|---|-------------------|
| 1. Candace L. Curtis<br>218 Landana Street<br>American Canyon, CA 94503<br>925-759-9020   | Plaintiff, Pro Se |
| 2. Rik Wayne Munson<br>218 Landana Street<br>American Canyon, CA 94503<br>925-349-8348  | Plaintiff, Pro Se |
| 3. Anita Brunsting<br>203 Bloomingdale Circle<br>Victoria, Texas 77904  | Defendant, Pro Se |
| 4. Amy Ruth Brunsting<br>2582 Country Ledge<br>New Braunfels, Texas 78132   | Defendant, Pro Se |
| 5. Hon. Christine Riddle Butts<br>Harris County Civil Courthouse<br>201 Caroline, 7 <sup>TH</sup> floor<br>Houston, Texas 77002                   | Defendant         |
| 6. Hon. Clarinda Comstock<br>Harris County Civil Courthouse<br>201 Caroline, 7 <sup>TH</sup> floor<br>Houston, Texas 770002                       | Defendant         |
| 7. Toni Biamonte<br>Office of the Court Reporter<br>Harris County Civil Courthouse<br>201 Caroline, 7 <sup>TH</sup> floor<br>Houston, Texas 77002 | Defendant         |
| 8. Gregory Lester<br>Attorney at Law<br>955 N. Dairy Ashford, Suite 220<br>Houston, Texas 77079   | Defendant         |



9. Candace Kuntz-Freed Defendant  
c/o Cory S. Reed  
Thompson, Coe, Cousins & Irons, L.L.P.  
One Riverway, Suite 1400  
Houston, Texas 77056
10. Albert Vacek, Jr. Defendant  
c/o Cory S. Reed  
Thompson, Coe, Cousins & Irons, L.L.P.  
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1155 Dairy Ashford, Suite 300  
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14. Darlene Payne Smith Defendant  
Crain, Caton & James  
Five Houston Center, 17<sup>th</sup> Floor  
1401 McKinney, Suite 1700  
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15. Jill Willard Young Defendant  
MacIntyre, McCulloch, Stanfield  
and Young, L.L.P.  
2900 Wesleyan, Suite 150  
Houston, Texas 77027
16. Jason B. Ostrom Defendant  
Ostrom Morris, P.L.L.C.  
6363 Woodway, Suite 300  
Houston, Texas 77056  
713-863-8891

on this September 30, 2016.

// s // Stephen A. Mendel

---

Stephen A. Mendel

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

CANDACE LOUISE CURTIS, ET AL.,

Plaintiffs,

v.

CANDACE KUNZ-FREED, ET AL.,

Defendants.

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Civil Action No. 4:16-cv-01969

**DEFENDANT JILL WILLARD YOUNG’S MOTION TO STRIKE PLAINTIFFS’  
“ADDENDUM OF MEMORANDUM IN SUPPORT OF RICO COMPLAINT”**

On July 5, 2016, Plaintiffs filed a frivolous, 64-page “Verified Complaint” consisting of facially preposterous criminal accusations, blatant mischaracterizations of fact, and boilerplate recitations of law that are plainly insufficient to survive dismissal (the “Complaint”). On September 15, 2016, Defendant Jill Young filed her Motion to Dismiss. After the filing of Ms. Young’s Motion to Dismiss, Plaintiffs filed a thirty-one page long “Addendum of Memorandum in Support of Rico Complaint,” with more than 1,400 pages of attached “exhibits” (the “Addendum”). *See* DKT. 26.

Ms. Young now files this Motion to Strike the Addendum, because it has no legal effect. And even if it were effective, it does not change the merits of Ms. Young’s Motion to Dismiss, which should be granted.

**I. The “Addendum” has no Legal Effect.**

The Addendum—filed *after* Ms. Young was served with the Original Complaint and *after* she filed her 12(b)(6) Motion to Dismiss—has no legal effect. It is not a “pleading” under the Federal Rules of Civil Procedure. Specifically, Federal Rule of Civil Procedure 7(a) says:

Only these pleadings are allowed:

- (1) a complaint;
- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) if the court orders one, a reply to an answer.

*See* Fed. R. Civ. P. 7(a). And although a party can amend its complaint as a matter of course after the filing of a responsive pleading, the Addendum cannot be an amended complaint, because it alleges no causes of action against Ms. Young.

Because the Addendum is not a complaint, it is not a valid pleading under the Federal Rules of Civil Procedure, and it should be struck.

**II. The “Addendum” does not change the merits of Ms. Young’s Motion to Dismiss.**

Even if the Addendum were treated as Plaintiffs’ Complaint (or some portion of Plaintiffs’ Complaint), it does not change the merits of Ms. Young’s Motion to Dismiss. The Addendum only refers to Ms. Young in four places, in paragraphs 96, 97, 99, and 107. *See* Addendum, at ¶¶ 96, 97, 99, and 107. In full, those paragraphs state:

96. The only matter properly before the court on September 10, 2015 was whether or not Mr. Lester should have the authority to retain Jill Willard Young to assist him in his administration obligations to the estate.

97. Neither individual Plaintiff Candace Curtis nor individual Plaintiff Carl Brunsting was in attendance September 10, 2015, as neither is party to the estate litigation and neither objected to Mr. Lester retaining Jill Young to assist with his fiduciary duty to evaluate the estate’s claims. That was the only issue properly before the Court on September 10, 2015 and did not include the matters Mr. Spielman states were discussed and where there was apparently an agreement made to treat the Gregory Lester report as if it were a jury verdict before it was even written.

\* \* \*

99. The inescapable conclusion here is that there were improper discussions outside of the presence of the Plaintiffs who were prejudiced by those discussions, involving matters not properly before the Court, wherein there were agreements made between the Court, Jill Willard Young, Neal Spielman, Bradley Featherston, Stephen Mendel and Gregory Lester to produce a fictitious report. They all apparently agreed to follow the as of yet unwritten report as if it were factual, that the false report would be used to further the extortion plot, that mediation would be forced upon Plaintiffs, that the costs of litigation for Plaintiff Curtis would be exacerbated, that there would be extended delay and, that another crony had been hand selected to act first as mediator and then as arbiter. First to “unentrench” Plaintiff Curtis from her stand upon rights and reliance upon the rule of law in the face of this all too obvious public corruption conspiracy and second, to deprive Plaintiff of substantive due process and access to the Court.

\* \* \*

107. Mr. Spielman confessed on March 9, 2016 that the attorneys conspired at the hearing on application to retain Jill Young, with the probate Court Judges, the Court’s crony administrator Gregory Lester, and Jill Young, entering into an illicit agreement to produce a fictitious “report” and to subsequently treat the fiction as if it were the equivalent of a jury verdict, and this all occurred before the “Report” was even written.

*Id.*

These “allegations” fail for three reasons. First, they are so implausible that they cannot form the basis for a valid complaint. Second, the assertions—even if somehow true—fail to raise a RICO claim. Third, the allegations are barred by Texas’s attorney immunity doctrine—which constitute an absolute bar on suits relating to actions taken in connection with representing a client in litigation.

A. **Plaintiffs’ Addendum, likes the Complaint, is too implausible to state a valid claim for relief.**

Plaintiffs’ Addendum, like the Complaint, fails to satisfy the plausibility requirements of Rule 12. It is also frivolous and delusional—a separate ground for dismissal.

1. Plaintiffs' Addendum fails to satisfy Rule 12.

Under Rule 12, to properly assert a well-pleaded complaint, Plaintiffs must plead enough facts “to state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). Plaintiffs’ claim is only “facially plausible” if they plead facts that allow the court to “draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Further, the Court is not bound to accept as true legal conclusions couched as factual allegations. *Id.* at 678–79 (holding that a complaint “does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions”). And “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.* at 679.

Here, Plaintiffs’ Addendum states only vague, speculative, and implausible allegations against Ms. Young that are insufficient to form the basis of a well-pleaded Complaint. Plaintiffs ask the Court to infer from the fact that Plaintiffs chose not to attend a hearing that the other attendees at the hearing conspired to fabricate the report of the temporary administrator.<sup>1</sup> The implausible leap that Plaintiffs ask this Court merely to assume is not permitted by Rule 12.

2. Plaintiffs' Addendum, like the Complaint, is frivolous and delusional.

As stated in Ms. Young’s Motion to Dismiss, this Court has “inherent authority to dismiss a *pro se* litigant's frivolous or malicious complaint . . . .” *See Campbell v. Brender*, 3:10-CV-325-B, 2010 WL 4363396, at \*4 (N.D. Tex. Oct. 25, 2010) (“District Courts have the

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<sup>1</sup> *See, e.g.*, Addendum, DKT. 26, at ¶ 99 (“The inescapable conclusion here is that there were improper discussions outside of the presence of the Plaintiffs . . . to produce a fictitious report. They all apparently agreed to follow the as of yet unwritten report as if it were factual, that the false report would be used to further the extortion plot, that mediation would be forced upon Plaintiffs, that the costs of litigation for Plaintiff Curtis would be exacerbated, that there would be extended delay and, that another crony had been hand selected to act first as mediator and then as arbiter.”).

inherent authority to dismiss a pro se litigant's frivolous or malicious complaint *sua sponte* even when the plaintiff has paid the requiring filing fee.”); *see also Neitzke v. Williams*, 490 U.S. 319, 325 & 328 (1989) (holding that a complaint is “frivolous” and should be dismissed when the factual allegations are “fanciful,” “fantastic,” or “delusional”). To determine “whether a plaintiff’s complaint is frivolous, district courts must determine whether the facts alleged are ‘clearly baseless,’ meaning that the allegations are ‘fanciful,’ ‘fantastic,’ or ‘delusional.’” *Campbell v. Brender*, 3:10-CV-325-B, 2010 WL 4363396, at \*5 (N.D. Tex. Oct. 25, 2010) (citing *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992)).

Like in their Complaint, Plaintiffs’ Addendum alleges a bizarre conspiracy theory where practicing litigants, attorneys, and judges plotted against Plaintiffs in open court, apparently making agreements designed to diminish the value of probate estates. Other courts in this Circuit have held that almost identical allegations made by pro se litigants should be dismissed *and* were sanctionable. *See, e.g., Whitehead v. White & Case, LLP*, 12-CV-0399, 2012 WL 1795151, at \*2 (W.D. La. Apr. 19, 2012), *report and recommendation adopted*, 12-CV-0399, 2012 WL 1795148 (W.D. La. May 16, 2012) (dismissing a pro se plaintiff’s conspiracy claims against judges, magistrate judges, attorneys and law firms, as “frivolous and vexatious” and sanctioning the pro se plaintiff). The Addendum does nothing to remedy the fanciful allegations contained in the Complaint; it merely compounds the impropriety of Plaintiffs’ delusions.

**B. Plaintiffs’ Addendum fails to state facts sufficient to assert a RICO claim against Ms. Young.**

None of Plaintiffs’ allegations against Ms. Young are sufficient to state a RICO claim.<sup>2</sup>

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<sup>2</sup> As shown in Ms. Young’s Motion to Dismiss, Plaintiffs have alleged numerous causes of action for which they have no private right of action. *See* Motion to Dismiss, DKT. 25, at pp. 13–15. The only cause of action they assert that they could actually pursue is their RICO claim.

First, none of the allegations actually assert that Ms. Young committed any wrongful act whatsoever. Instead, Plaintiffs complain of Ms. Young's retention as attorney for the temporary administrator. But the Plaintiffs have no right to dictate who the temporary administrator will retain as counsel.

And none of these allegations show that Plaintiffs have been injured by a violation of RICO. *See Allstate Ins. Co. v. Plambeck*, 802 F.3d 665, 676 (5th Cir. 2015) (holding that a RICO plaintiff must show he has standing to sue and that, to plead standing, a plaintiff "must show that the [RICO] violation was a but-for and proximate cause of the injury"); *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 459, 460 (2006) ("When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries.").

But most crucially, the Plaintiffs' Addendum still fails to assert the "pattern of racketeering activity," that is required to allege a RICO claim. *Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer*, 90 F.3d 118, 122 (5th Cir. 1996). The only assertion made in the Addendum against Ms. Young is that she somehow conspired *with the Probate Court itself* to act as attorney to a temporary administrator who submitted a false report. *See* Addendum, at ¶¶ 97, 99, and 107. This is not a "pattern of racketeering activity." *Abraham v. Singh*, 480 F.3d 351, 355 (5th Cir. 2007) (holding that racketeering activity must "consist[] of two or more predicate criminal acts" listed in 18 U.S.C. § 1961(1)).

And even if Plaintiffs' fallacious assertions were true, Plaintiffs allege nothing more than the "garden-variety tort" of common law fraud, which is insufficient to state a RICO claim. *See St. Germain v. Howard*, 556 F.3d 261, 263 (5th Cir. 2009) (holding plaintiffs pled facts showing nothing more than "violations of the rules of professional responsibility," not "the requisite



predicate *criminal* acts under RICO”); *Fleet Credit Corp. v. Sion*, 893 F.2d 441, 445 (1st Cir. 1990) (“[A]cts of common law fraud that do not implicate the mails (or the wires) do not constitute ‘racketeering activity’”).

**C. Plaintiffs’ Addendum cannot avoid Texas’s attorney immunity doctrine.**

Finally, Plaintiffs’ Addendum makes no difference because Plaintiffs still cannot avoid the effect of Texas’s attorney immunity doctrine. Under Texas law, “attorneys are immune from civil liability to non-clients ‘for actions taken in connection with representing a client in litigation.’” *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)).

Here, the only facts alleged by Plaintiffs relate to conduct Plaintiffs allege occurred when Ms. Young was acting as attorney for Temporary Administrator Lester. See Addendum, at ¶¶ 96, 97, 99, and 107. And “[e]ven conduct that is ‘wrongful in the context of the underlying suit’ is not actionable if it is ‘part of the discharge of the lawyer’s duties in representing his or her client.’” *Id.* (quoting *Toles v. Toles*, 113 S.W.3d 899, 910-11 (Tex. App.—Dallas 2003, no pet.)). And a plaintiff cannot evade attorney immunity by simply “labeling an attorney’s conduct ‘fraudulent.’” *Id.* at 483 (quoting *Alpert*, 178 S.W.3d at 406). Instead, the only exceptions to an attorney’s “true immunity from suit” are if an attorney engages in conduct that is “entirely foreign to the duties of an attorney,” or if the conduct “does not involve the provision of legal services and would thus fall outside the scope of client representation.” *Byrd*, 467 S.W.3d at 482 (quoting *Poole v. Hous. & T.C. Ry. Co.*, 58 Tex. 134, 137 (1882)).

Here, there are no allegations that Ms. Young engaged in any conduct that was “entirely foreign to the duties of an attorney.” *Id.* at 482. Nor do Plaintiffs allege Ms. Young was

engaging in conduct that did not involve the provision of legal services. *Id.* Thus, Plaintiffs' Addendum makes no difference, and this suit against Ms. Young should be dismissed.

**III. Conclusion**

For the reasons stated above, this Court should strike the Plaintiffs' Addendum. In the alternative, Plaintiffs' Addendum does not change the merits of Ms. Young's Motion to Dismiss, and the Court should dismiss Plaintiffs' claims against Ms. Young with prejudice.

Dated: October 3, 2016

Respectfully submitted,

*/s/ Robert S. Harrell*

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Telephone: (713) 651-5151  
Facsimile: (713) 651-5246

ATTORNEYS FOR DEFENDANT JILL  
WILLARD YOUNG

**CERTIFICATE OF CONFERENCE**

I certify that on October 3, 2016, I conferred with Plaintiffs about the relief requested in this Motion. Counsel for Plaintiffs declined to withdraw the Addendum, requiring the submission of this Motion to the Court.

*/s/ Robert S. Harrell*

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Robert S. Harrell

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above document has been served on October 3, 2016, in accordance with the Federal Rules of Civil Procedure.

*/s/ Robert S. Harrell*

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Robert S. Harrell

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

CANDACE LOUISE CURTIS, ET AL.,

Plaintiffs,

V.

CANDACE KUNZ-FREED, ET AL.,

Defendants.

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Civil Action No. 4:16-cv-01969

**DEFENDANT NEAL SPIELMAN’S MOTION TO DISMISS**

Defendant Neal Spielman (“Spielman”) files this Motion to Dismiss seeking the dismissal of all claims asserted by Plaintiffs against him. In support thereof, Defendant would respectfully show the Court the following:

**I.**

**SUMMARY OF THE ARGUMENT**

This case stems from “conspiracy” claims and other allegations against lawyers, judges, and court personnel involved in a bitterly contested probate matter in Harris County Probate Court No. 4. The Plaintiffs “claims,” which are nearly incomprehensible are nothing more than incredible conspiracy theories suggesting that the Harris County Probate Court is the home of a nefarious, shadowy syndicate with designs on stealing “familial wealth.” The Plaintiffs Original Complaint has alleged Spielman and other Defendants for (1) violations of the Racketeer Influence Corrupt Organization Act (“RICO”), 18 U.S.C. § 1962(c) and conspiracy to violate the same; (2) conspiracy to commit Honest Services Fraud, 18 U.S.C. § 1346; (3) conspiracy to commit Mail Fraud, 18 U.S.C. § 1341; (4) conspiracy to commit Wire Fraud, 18 U.S.C. § 1343; (5) Hobbes Act Extortion 15 U.S.C. §1951(b)(2); (6) conspiracy to obstruct justice, 18 U.S.C.

§371; and state law theft, Texas Penal Codes 31.02 & 31.03. Despite the litany of allegations, Plaintiffs have failed to plead any facts suggesting any wrongdoing by Spielman. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that a claim should be dismissed as implausible if it does not “plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged”). For this reason, Plaintiffs’ Original Complaint against Spielman should be dismissed with prejudice.

## **II.** **BACKGROUND**

Plaintiffs’ suit arises from a case pending in Harris County Probate Court Number 4, Cause No. 412.249-401, *Carl Henry Brunsting et al. v. Anita Kay Brunsting, et al.*, (“the Probate Matter”). The Probate Matter involves a dispute between the Brunsting siblings over the administration over their late parents’ estate. Rather than litigate their claims in the proper forum—Probate Court No. 4—Plaintiffs have filed this suit, naming every person remotely involved with the Probate Matter—including the judge, court personnel, Defendant Spielman, and “99 Jane and John Does”—in an apparent attempt to avoid participating in the court-ordered mediation in the Probate Matter.<sup>1</sup>

Spielman is attorney of record for Amy Brunsting in the Probate Matter. *See* Plaintiffs’ Verified Complaint for Damages. Plaintiffs appear to have asserted only one claim specifically against Spielman: that Spielman “obstructed justice” by assenting to the postponement of a summary judgment hearing, somehow depriving Curtis access to the courts and other due process rights. *See* Plaintiffs’ Verified Complaint for Damages ¶131. Besides this one specific act, the remainder of Plaintiffs’ allegations against Spielman consists of unintelligible and boilerplate criminal “conspiracy” claims and allegations against all Defendants. Without

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<sup>1</sup> In the Plaintiffs’ Verified Complaint for Damages, Plaintiff Curtis has characterized the pending mediation of the probate matter as “predetermined by the personal interests of enterprise acolytes and not by law.” *See* ¶¶ 113-115.



anything more, the Plaintiffs have not pleaded facts to support a claim for relief, nor can their claims be cured through a new pleading. Therefore, the Court should dismiss this claim with prejudice. *Carroll v. Fort James Corp.* 470 F.3d 1171, 1177 (5th Cir. 2006).

### III. ARGUMENTS AND AUTHORITIES

#### *A. Plaintiffs' Claims Are Barred by "Attorney Immunity" Doctrine.*

Plaintiffs' claims should be dismissed pursuant to the "Attorney Immunity Doctrine". *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) ("[A]ttorneys are immune from civil liability to non-clients for actions taken in connection with representing a client in litigation."). More so, in Texas, "attorney immunity is properly characterized as a true immunity from suit." *Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 346-48 (5th Cir. 2016). This immunity "not only insulates the [attorney] from liability, but also prevents the [attorney] from being exposed to discovery and/or trial." *Id.* At 346. The only exceptions to attorney immunity is if the attorney engages in conduct that is "entirely foreign to the duties of an attorney," or if the conduction "does not involve the provision of legal services and would thus fall outside the scope of client representation." *Byrd*, 467 S.W.3d at 482.

It is undisputed fact that Spielman was acting at all times as the attorney for Amy Brunsting. In Plaintiffs' Verified Complaint for Damages, they state "[d]efendant Amy Brunsting is proximately related to Harris County Probate Court . . . **through her attorney, Defendant Neal Spielman** and co-conspirator Defendant Candace Kuntz-Freed." *See* ¶ 27 (emphasis added). The facts the Plaintiffs allege as forming the basis of her claims against Spielman arise from the discharge of Spielman's duties in representing Amy Brunsting. There are no allegations in the Plaintiffs' pleadings that would suggest Spielman's conduct fell into any

exception to the attorney immunity doctrine. Thus, as Spielman's conduct is immune from suit, Plaintiffs' claims must be dismissed.<sup>2</sup>

***B. Plaintiffs' Claims Should be Dismissed Pursuant to Federal Rule 12(b)(6) for Failure to State a Claim.***

The remainder of Plaintiffs' claims against Spielman should be dismissed because the Complaint fails to allege facts supporting any valid claims for relief. Plaintiffs complaints are simply conclusory allegations of law, inferences unsupported by facts, or formulaic recitations of elements. These types of complaints are not sufficient to defeat a 12(b)(6) motion. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that a claim should be dismissed as implausible if it does not plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged").

In order to defeat a Rule 12(b)(6) motion, Plaintiffs must plead enough facts to "state a claim to relief that is **plausible on its face.**" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). A claim is "facially plausible" if the facts plead allow the court to draw reasonable inferences about the alleged liability of the defendants. *Id.* Here, the Plaintiffs' allegations facially fail to meet this standard. In the RICO complaint against Spielman, Plaintiffs allege simply:

**[Spielman and others] did at various times unlawfully, willfully and knowingly combine, conspire and agree with each other to violate 18 U.S.C. Section 1962(c), by participating, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity involving multiple predicate acts within the meaning of 18 U.S.C. §1961(1) in violation of 18 U.S.C. §1962(c) and (d) to wit[.]**

Plaintiffs' Verified Complaint for Damages, ¶59.

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<sup>2</sup> Alternatively, Plaintiffs' claims are barred by lack of attorney-client privity. *Barcelo v. Elliott*, 923 S.W.2d 575, 577 (Tex. 1996).



Each of the Plaintiffs claims against Spielman follow the same formulaic pattern. *See* ¶¶ 121, 122, 124, 131, 132, 139. As the Plaintiffs' claims have not met the "fair notice" pleading standards Rule 12(b)(6), these claims should be dismissed.

***C. Plaintiffs' Fail to Plead Particular Acts of Fraud.***

Federal Rule 9(b) requires a heightened pleading standard when the claims allege acts of fraud. *See* FRCP 9(b). The Federal Rules requires plaintiffs to plead allegations of fraud "with particularity." *ABC Arbitrage Plaintiffs Grp. V. Tchuruk*, 291 F.3d 336, 350 (5th Cir. 2002) (to satisfy the particularity standard, a party must "specific the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent") (internal quotations and citations omitted). The Plaintiffs plead, *inter alia*, that Spielman was part of an over-arching conspiracy, (referred to alternatively as "the Enterprise," the "Harris County Tomb Raiders," the "Probate Mafia", and the "Probate Cabal") whose purpose was to commit acts of fraud to "judicially kidnap and rob the elderly, our most vulnerable citizens of their freedom, dignity, fundamental human and civil rights and property accumulated throughout a lifetime, often also robbing heirs and beneficiaries of familiar relations and inheritance expectancies." *See* Plaintiffs' Verified Complaint for Damages ¶¶ 59-71. As these pleadings require the heightened standard, Plaintiff's allegations are facially insufficient and should be dismissed.

***D. Plaintiffs' Fail to Plead Particular Conduct of the Defendant.***

The pleading requirements under the Rule 9(b) also require that claimants allege specific and separate allegations against each defendant. *See Unimobil 84, Inc. v. Spurney*, 797 F.2d 214, 217 (5th Cir. 1986)(affirming dismissal of fraud claim for not stating with particularity "what representations each defendant made"). It is "impermissible to make general allegations that

lump all defendants together, rather, the complaint must segregate the alleged wrongdoing of No. 1 from another.”). *In re Parkcentral Glob. Litig.*, 884 F. Supp. 2d 464, 471 (N.D. Tex. 2012).

Here, Plaintiffs’ complaints consist of generalized allegations concerning “conspiracies” and “enterprises.” The claims do not differentiate between what acts each member committed nor what role each defendant played. Nothing in the pleadings is informative enough to prepare a proper defense. Without discernible, specific acts alleged against the Defendants, the Plaintiffs have failed to meet the pleading standards required by the Federal Rules.

***E. Plaintiffs Lack Privity With Defendant Spielman to Maintain a Suit.***

Plaintiff’s claims against Spielman arise from his role as an attorney for Amy Brunsting. Texas law dictates that an attorney only owes a duty of care to a person with whom the attorney has a professional attorney-client relationship. *Barcelo v. Elliott*, 923 S.W.2d 575, 577 (Tex. 1996). A non-client may not maintain a suit for the negligence of another’s attorney. *See Gillespie v. Scherr*, 987 S.W.2d 129 (Tex. App.—Houston [14th Dist.] 1998, pet. denied). Spielman and Plaintiffs have never had an attorney-client relationship; the Plaintiffs themselves do not dispute this fact. Without a relationship of “privity” between the attorney and the claimants, the claimant is not a proper party to sue. The rationale between the “privity” required to obtain standing is, that without it, attorneys would be subject to endless liability. *Barcelo*, 923 S.W.3d at 577. Texas has uniformly applied the doctrine of a “privity barrier” in estate planning contexts. *Id.* At 579.

Because Spielman and Plaintiffs never had an attorney-client relationship, nor do Plaintiffs allege an attorney-client relationship existed, they do not have standing to sue Spielman. Therefore, the Plaintiffs’ claims must be dismissed.

**IV.**  
**CONCLUSION**

For the reasons stated above, Defendant Neal Spielman requests that this Court grant Defendant's Motion to Dismiss on all claims with prejudice.

Respectfully submitted,

**WINGET, SPADAFORA, &  
SCHWARTZBERG, L.L.P.**

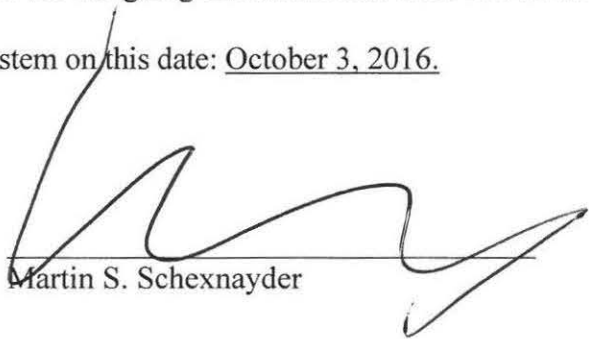
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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served on all counsel of record through the Court's CM/ECF system on this date: October 3, 2016.

  
\_\_\_\_\_  
Martin S. Schexnayder



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

CANDACE LOUISE CURTIS, ET AL.,

Plaintiffs,

V.

CANDACE KUNZ-FREED, ET AL.,

Defendants.

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Civil Action No. 4:16-cv-01969

**DEFENDANT NEAL SPIELMAN’S MOTION TO DISMISS BASED ON LACK OF  
SUBJECT MATTER JURISDICTION**

Defendant Neal Spielman (“Spielman”) files this Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(1) seeking the dismissal of all claims asserted by Plaintiffs against him. In support thereof, Defendant would respectfully show the Court the following:

**I.  
SUMMARY OF THE ARGUMENT**

This case stems from “conspiracy” claims and other allegations against lawyers, judges, and court personnel involved in a bitterly contested probate matter in Harris County Probate Court No. 4. The Plaintiffs’ “claims,” which are nearly incomprehensible are nothing more than incredible conspiracy theories suggesting that the Harris County Probate Court is the home of a nefarious, shadowy syndicate with designs on stealing “familial wealth.” The Plaintiffs’ Original Complaint has alleged Spielman and other Defendants for (1) violations of the Racketeer Influence Corrupt Organization Act (“RICO”), 18 U.S.C. § 1962(c) and conspiracy to violate the same; (2) conspiracy to commit Honest Services Fraud, 18 U.S.C. § 1346; (3) conspiracy to commit Mail Fraud, 18 U.S.C. § 1341; (4) conspiracy to commit Wire Fraud, 18 U.S.C. § 1343; (5) Hobbes Act Extortion 15 U.S.C. §1951(b)(2); (6) conspiracy to obstruct justice, 18 U.S.C.

§371; and state law theft, Texas Penal Codes 31.02 & 31.03. Despite the litany of allegations, Plaintiffs have failed to plead any facts which would impart standing upon the Plaintiffs. *See Lujan v. Defenders of Wildlife*, 504 U.S. 559 (1992) (holding that plaintiff lacked standing where the failed to allege “imminent” injury-in-fact). For this reason, Plaintiffs’ Original Complaint against Spielman should be dismissed with prejudice.

## **II.** **BACKGROUND**

Plaintiffs’ suit arises from a case pending in Harris County Probate Court Number 4, Cause No. 412.249-401, *Carl Henry Brunsting et al. v. Anita Kay Brunsting, et al.*, (“the Probate Matter”). The Probate Matter involves a dispute between the Brunsting siblings over the administration over their late parents’ estate. Rather than litigate their claims in the proper forum—Probate Court No. 4—Plaintiffs have filed this suit, naming every person remotely involved with the Probate Matter—including the judge, court personnel, Defendant Spielman, and “99 Jane and John Does”—in an apparent attempt to avoid participating in the court-ordered mediation in the Probate Matter.<sup>1</sup>

Prior to landing in Probate Court, Plaintiff Curtis first attempted to bring the claims that form this basis of the instant suit in federal court. In that suit, Cause No. 4:12-cv-00592, in the Southern District of Texas, Plaintiff made similar allegations as alleged in the present complaint, namely: conspiracy, fraud, elder abuse, undue influence, false instruments, breach of fiduciary duty, tortious interference with fiduciary obligations, among others. Ultimately, **at Plaintiff Curtis’ request** the case was remanded to the probate proceeding in Probate Court No. 4, where it remains pending. The claims pending in the Probate Matter contain substantially the same parties and issues.

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<sup>1</sup> In the Plaintiffs’ Verified Complaint for Damages, Plaintiff Curtis has characterized the pending mediation of the probate matter as “predetermined by the personal interests of enterprise acolytes and not by law.” *See* ¶¶ 113-115.

Spielman is attorney of record for Amy Brunsting in the Probate Matter. *See* Plaintiffs' Verified Complaint for Damages. Plaintiffs appear to have asserted only one claim specifically against Spielman: that Spielman "obstructed justice" by assenting to the postponement of a summary judgment hearing, somehow depriving Curtis access to the courts and other due process rights. *See* Plaintiffs' Verified Complaint for Damages ¶131. Besides this one specific act, the remainder of Plaintiffs' allegations against Spielman consists of unintelligible and boilerplate criminal "conspiracy" claims and allegations against all Defendants. Without anything more, the Plaintiffs have not pleaded facts to support a claim for relief or that they even have standing to assert claims against Spielman. Therefore, the Court should dismiss this claim with prejudice. *Carroll v. Fort James Corp.* 470 F.3d 1171, 1177 (5th Cir. 2006).

### **III.** **ARGUMENTS AND AUTHORITIES**

Defendant Spielman moves to dismiss this complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction. Plaintiffs have the burden of showing subject matter jurisdiction, and this Court must determine whether it has subject matter jurisdiction before addressing the merits of the complaint. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95, 104 (1998).

#### ***Plaintiffs Lack Proper Standing to Assert Their Claims.***

A plaintiff will have standing to file suit if it can demonstrate (1) an "injury in fact"—a harm that is concrete and actual, not merely conjectural or hypothetical;<sup>2</sup> (2) causation between the injury and defendant's conduct, and (3) redressability by a favorable decision of the court. *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). Because these are not merely pleading requirements, but rather an indispensable part of the plaintiff's case, **each** element must be

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<sup>2</sup> *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).



supported in the same way as any other matter in which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at that stage of litigation. *See Lujan v. National Wildlife Federation*, 497 U.S. 871, 883-889 (1990).

Here, the Plaintiffs cannot provide proof of any of the required elements of standing. Plaintiffs cannot show any injury-in-fact from the conduct alleged in their Complaint. Nor is there a showing of causation between Spielman's conduct and any injury alleged by Plaintiffs.

Plaintiff Curtis' claims suggest that as a result of some action of Spielman, she has been deprived of the "enjoyment of her beneficial interests" as a beneficiary of the Brunsting Family Trust. *See Plaintiffs Verified Complaint for Damages*, ¶ 213. Plaintiff has not pleaded any facts that can demonstrate how any action of Spielman has injured her status as a beneficiary of the Brunsting Family Trust. Spielman has had no involvement in the drafting of estate planning documents in this matter. In fact, Curtis is still entitled to collect her share of the inheritance of the Brunsting Family Trust. More so, Texas has never recognized tortious interference with inheritance as a cognizable cause of action. *See Anderson v. Archer*, 03-13-00790-CV, 2016 WL 589017 (Tex. App.—Austin Mar. 2, 2016, no pet. h.) ("In short, we agree with the Amarillo Court of Appeals that 'neither this Court, the courts in *Valdez*, *Clark*, and *Russell*, nor the trial court below can legitimately recognize, in the first instance, a cause of action for tortuously interfering with one's inheritance.' We also agree with the Amarillo court's assessment that neither the Legislature nor Texas Supreme Court has done so, or at least not yet. Absent legislative or supreme court recognition of the existence of a cause of action, we, as an intermediate appellate court, will not be the first to do so.).

Plaintiff Munson's "injuries" are facially conjectural and hypothetical. Munson, who is neither a party to any of the prior lawsuits nor a beneficiary under the Brunsting Family Trust,

alleges that he has been “diverted away from other productive pursuits.” *See* Plaintiffs Verified Complaint for Damages, ¶ 216. Without a demonstration of concrete, actual harm, his claims—like Curtis’s claims—must fail, and Plaintiffs’ claims should be dismissed.

**IV.**  
**CONCLUSION**

For the reasons stated above, Defendant Neal Spielman requests that this Court grant Defendant’s Motion to Dismiss on all claims with prejudice.

Respectfully submitted,

**WINGET, SPADAFORA, &  
SCHWARTZBERG, L.L.P.**

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served on all counsel of record through the Court’s CM/ECF system on this date: October 3, 2016.

  
\_\_\_\_\_  
Martin S. Schexnayder





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 DEFENDANT JILL WILLARD YOUNG'S MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(B)(6) AND 9(B)**

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**Introduction**

1. 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 at 18 U.S.C. §§1961-1968 and the right of claims provided at 18 U.S.C. §1964(c). (Dkt 1)

2. On September 14, 2016, Defendant Jill Willard Young filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). (Dkt 25)

3. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26)<sup>1</sup> as a factual supplement to the RICO complaint. (Dkt 1).

4. Plaintiffs move the Court to take judicial notice, pursuant to Federal Rule of Evidence 201, that the Addendum of Memorandum (Dkt 26) and the exhibits attached thereto and referred to therein, are docket entries 115 through 120 in closely related Case 4:12-cv-0592. (See NOTICE of Related Case this Court's Docket (Dkt 12))

5. Plaintiffs hereby incorporate by reference the "Standards of Review", "Contextual Summary", "History of the Controversy", and "History of the Litigation" (Dkt 33 sections I, II, III and IV) from Plaintiffs' response to the Motions to Dismiss filed by Defendants Vacek & Freed (Dkts 19 & 20) as if fully restated herein.

### **The Issues**

a. Defendant Jill Willard Young claims:

*Plaintiffs' allegations appear to relate to a probate matter in Harris County Probate Court, which the Plaintiffs call "Curtis v. Brunsting" (see Complaint ¶ 110), although no cause number is ever mentioned and no court is ever identified.*

b. Defendant claims:

Plaintiffs fail to plead facts sufficient to satisfy Rule 9(b)

c. Defendant Claims:

*In reality, their Complaint is a bizarre, conspiracy-theory-laden attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court.*

d. Defendant claims Plaintiffs' Complaint reads more like "an excerpt from the DaVinci Code, rattling off fantastical assertions with no connection to plausible facts or valid causes of action".

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<sup>1</sup> Case 4:12-cv-0592 Filed TXSD August 3, 2016 docket entry's 115, 117, 119, 120

e. Defendant takes exception to the descriptive labels acquired by plaintiffs as terms given to the complained of conduct by ordinary laypersons who have previously experienced the probate court version of the administration of justice.

f. Jill Willard Young claims that her only connection to Plaintiff Curtis involved the “estate of Nelva Brunsting”.

*The only matter in which Ms. Young was ever involved with Plaintiff Curtis was In re: Estate of Nelva E. Brunsting, No. 412.249 (Harris County Probate Court No. 4) (the “Brunsting matter”). In the Brunsting matter, Ms. Young was attorney for Greg Lester, who had been appointed by Probate Court No. 4 as temporary administrator, to assist Mr. Lester in preparing a written report to the Court.*

g. The Motion then says:

*All of the actions taken by Ms. Young in that matter were in her role as attorney to Mr. Lester. Ms. Young never had a fiduciary relationship with either Plaintiff, and she did not represent any other party in the Brunsting matter. Plaintiffs make no allegations to the contrary.*

h. Ms. Young then claims immunity.

*Plaintiffs’ claims should be dismissed with prejudice. First, Ms. Young, as attorney only for Mr. Lester, is entitled to immunity from suit under Texas law. See Cantey Hanger, LLP v. Byrd, 467 S.W.3d 477, 481 (Tex. 2015) (“[A]ttorneys are immune from civil liability to non-clients for actions taken in connection with representing a client in litigation.”) (emphasis added).*

i. Ms. Young attaches as her only exhibit (Dkt 25-A) a copy of the Order appointing Gregory Lester Temporary Administrator for the “estate of Nelva Brunsting No 412249”.

### **Plaintiffs' Argument**

6. Defendant's Rule 12(b)(6) Motion attempts to offer a set of facts inapposite to those of the complaint and although Defendant may offer a different view of the facts under Federal Rule of Civil Procedure 12(b)(1) by providing affidavits and other evidentiary support, Defendant has not done so and may not do so in a Rule12(b)(6) motion.

7. Ms. Young is charged with in-concert aiding and abetting for her role in manufacturing a vacuously fraudulent report as part of an extortion conspiracy with a primary objective of stealing assets from the Brunsting trusts under an estate litigation pretext.

8. The Privity and Texas Attorney Immunity Doctrines are regularly used as shields for the criminal racketeering alleged in the RICO complaint.

**Curtis v. Brunsting in the Southern District of Texas and the Fifth Circuit**

*Plaintiffs' allegations appear to relate to a probate matter in Harris County Probate Court, which the Plaintiffs call "Curtis v. Brunsting" (see Complaint ¶ 110), although no cause number is ever mentioned and no court is ever identified.*

9. Defendant Jill Willard Young, participated in the attempt to eliminate Curtis v Brunsting from the probate record. There is a reason for that. Plaintiffs' certificate of closely related case (Dkt 12) cites to the first filed lawsuit relating to the Brunsting trusts. Other than the case in point, 4:16-cv-01969, Curtis v Brunsting 4:12-cv-0592 is the only related lawsuit filed in a court of competent jurisdiction, as hereinafter more fully appears.

10. The events leading up to this RICO lawsuit are unique, in that the underlying unresolved federal lawsuit, Curtis v Brunsting 4:12-cv-592, is its own federal Fifth Circuit case law authority, *Curtis v Brunsting* 704 F.3d 406. The only real distinctions between Curtis v Brunsting 4:12-cv-592 and Curtis v Kunz-Freed et al., 4:16-cv-01969, are location in the chronology of events, the nature of the federal jurisdiction invoked, the number of actors involved, the volume of information available, and the remedies pursued.

11. Candace Louise Curtis v. Anita and Amy Brunsting 4:12-cv-592 was filed in the United States District Court for the Southern District of Texas on February 27, 2012, and dismissed sua sponte under the probate exception to federal diversity jurisdiction on March 8, 2012. Curtis filed a timely notice of appeal and the matter went to the Fifth Circuit for review.

12. On January 9, 2013, the Circuit Court issued a unanimous opinion with Order for Reverse and Remand, No. 12-20164, holding the probate exception to federal diversity jurisdiction does not apply to an inter vivos trust not in the custody of a state court, *Curtis V. Brunsting* 704 F.3d 406.

13. *On January 29, 2013*, Carl Brunsting, as Executor of the estate of Nelva Brunsting, filed suit against attorney Candace Kunz-Freed and Vacek & Freed P.L.L.C. in the Harris County District Court, raising claims exclusively related to the Brunsting trusts then in the custody of the federal court.<sup>2</sup>

14. Upon returned to the U.S. District Court Curtis immediately petitioned for a protective order. A hearing was held April 9, 2013 (Dkt 26-7 E289-E342) and an injunction was issued. (Dkt 26-2 E5-E9)

15. Also on April 9, 2013, after the federal injunction was issued, Defendant Bobbie Bayless filed suit in the Harris County Probate Court advancing Brunsting trust related claims similar to those already pending in the federal Court, styled “Carl Henry Brunsting individually and as Executor for the Estates of Elmer and Nelva Brunsting”. (Dkt 33-9 E188-E207)

16. The Probate cases are:

a. Harris County Probate Case 412248 Carl Henry Brunsting executor of the estate of Elmer H. Brunsting, vs Amy, Anita and Carole Brunsting, filed April 9, 2013.

b. Harris County Probate Case 412249 Carl Henry Brunsting executor of the estate of Nelva E. Brunsting, vs Amy, Anita and Carole Brunsting, filed April 9, 2013.

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<sup>2</sup> No. 2013-05455; *Carl Henry Brunsting v. Candace Freed & Vacek & Freed*; 164th Judicial District Court of Harris County, TX

c. Harris County Probate Case 412249-401 Carl Henry Brunsting Individually vs Amy, Anita and Carole Brunsting, filed April 9, 2013.

d. Harris County Probate No. 412249-402 on remand from the federal Court 4:12-cv-0592. The only docket entries in the probate court with the heading of Curtis v Brunsting are a notice of the original federal petition<sup>3</sup> and a notice of injunction and report of special master<sup>4</sup> and each is covered with a heading page of “Estate of Nelva Brunsting”.

### **The Losing End of Fully Litigated Determinations in Texas State Court**

17. Defendant alleges Plaintiffs' claims are:

*frivolous, delusional, and implausible”... bizarre, conspiracy-theory-laden attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court.*

18. Counsel violates ethics rules when he files a pleading making knowingly disingenuous claims regarding the record of state court proceedings. Defendants do not, because they cannot point to the record in any proceeding where Plaintiffs have been on the losing end of any fully litigated state court determinations, because no such events exist in the record. There is a plausible explanation for that.

19. The state probate court absolutely refused to resolve any substantive issues on the merits, due to their awareness of a well-known phenomenon called “Complete Absence of Jurisdiction”.

20. Defendant’s knowledge of that simple fact explains the entire in-concert attempt to avoid ruling on the merits of any pleading and the character of the Gregory Lester Report.

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<sup>3</sup> 2015-02-10 PBT-2015-47716

<sup>4</sup> 2015-02-06 PBT-2015-47630



21. Defendant would love to argue, as they do against all of the probate cabal's victims (Exhibit 1 attached), that Plaintiffs are disgruntled losers seeking vengeance, or that they are asking a federal court to review state court judgments when, in fact, no rulings were ever entered against Curtis because no state court has been invoked as a "Court of Competent Jurisdiction" and these defendant legal professionals all know it.

**The Vacuously Indefensible Report of Jill Willard Young and Gregory Lester**

**The Order Granting Authority to Retain Counsel**

22. The Order granting authority to retain Jill Young (Exhibit 2 attached) was for the sole purpose of performing the Duties defined in the Order appointing Gregory Lester Temporary Administrator. (Dkt 25-A)

*as Counsel for Applicant, to perform such legal services on behalf of the Estate as are necessary and reasonable, including assisting Applicant in carrying out his fiduciary responsibilities.*

23. The Report of Temporary Administrator, filed January 14, 2016, (Dkt 26-9) never mentions the Wills of Elmer or Nelva Brunsting, which is where one would logically think to begin an honest investigation into the veracity of claims brought in the name of a "decedent's estate". The Wills (Exhibits 3 and 4 attached) make clear that the only heir in fact to either estate is "the trust", a matter commented on in the Fifth Circuit Opinion. (Dkt 34-4)

24. The "Report" does not give a history of any litigation, does not mention the estate of Elmer Brunsting, Harris County Probate No. 412248 (Will filed April 2, 2012), does not mention the estate of Nelva Brunsting, Harris County Probate No. 412249 (Will filed April 2, 2012), even though the Report is filed under the 412249 case number and the Order (Dkt 25-A) specifically authorized investigation and reporting on the efficacy of the "estate" claims.

a. The “Report” also does not mention the Petition in Curtis v Brunsting 4:12-cv-00592, or Curtis v Brunsting 704 F.3d 406, or the 164<sup>th</sup> Judicial District Court of Harris County No. 2013-05455 “estate of Nelva Brunsting” v Candace Kunz-Freed and Vacek and Freed, or that Carl Brunsting brought his complaint individually and as executor of the estates of Elmer and Nelva Brunsting in the probate Court, nor that the estate claims are virtually identical to those that had been pending in the Southern District of Texas since February of 2012.

b. The “Report” does not mention the federal injunction, does not mention the gap in activity in the “estate cases between April 5, 2013’s “Drop Orders” (Exhibits 5 and 6), the Inventory (Exhibit 7 attached), or the federal remand of May 2014 (Dkt 33-7 and 33-8), or the applications for letters dated October 17, 2014 (Exhibit 8 attached).

c. The “Report” does refer to Jason Ostrom’s alleged “2nd Amended Complaint” filed in the probate court under the heading of “Estate of Nelva Brunsting”. (Dkt 34-9)

25. Plaintiffs would again ask the Court to review Dkt 34-10 which is credible evidence of “bizarre” that actually exists, although the signed version appears to have been replaced with the unsigned version in the public record.<sup>5</sup> (Exhibit A9 attached)

#### **Defendant’s Exhibit A**

26. Defendant's Exhibit A (Dkt 25-A) is the Order Appointing Temporary Administrator Gregory Lester. In the Order the Probate Court found that it had jurisdiction and venue over the Decedent’s Estate and authorized Mr. Lester to review the claims brought by the “estate” against 1) Candace Freed 2) Anita Kay Brunsting, 3) Amy Ruth Brunsting, and 4) Carole Ann Brunsting. The Order does not grant any authority to examine the claims brought by Plaintiff Carl Brunsting or Plaintiff Candace Curtis individually. None-the-less the report states:

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<sup>5</sup> Harris County Clerk public website case access

*Carl Henry Brunsting and Candace Louise Curtis have filed claims against Anita Kay Brunsting, Amy Ruth Brunsting (previously Tschirhart) and Carole Ann Brunsting in the Estate of Nelva E. Brunsting, Deceased, pending in Harris County Probate Court Number Four (4) under Cause Number 412,249 (hereinafter referred to as the "Probate Court Claims").*

27. While the "Report" specifically avoids any mention of the TXSD case of Curtis v Brunsting 4:12-cv-00592, it exhibits the Report of the Special Master with the federal case number listed across the top of every page referring to it thusly:

*"This **REPORT OF MASTER** that was prepared in the case filed in the Southern District of Texas federal court case has the details of the Trust's income, expenses and distributions of stock. A copy of this report is attached hereto as the sixth exhibit."*

28. The only exhibits in the "Report" are trust and not estate related instruments and there can be no plausible denial that the "Report" was nothing but a vehicle for threatening Plaintiff Curtis with injury to property rights if she did not agree to enter into a mediated settlement agreement. (See Dkt 26 pgs 3-31 and transcript of March 9, 2016 Dkt 26-16)

29. The Report exhibits include:

- a. The 2005 Restatement to the Brunsting Family inter vivos trust, Pg 11-97;
- b. The 2007 Amendment to the Brunsting Family inter vivos trust, Pg 98-99;
- c. The alleged December 21, 2010 appointment of successor trustees to the Brunsting Family inter vivos trusts, Pg 100-105;
- d. The June 2010 QBD to the Brunsting Family inter vivos trust, Pg 106-108;
- e. One of three versions of the 8/25/2010 QBD (extortion instrument) claiming to revoke the Brunsting Family inter vivos trust (see dkt 26-4)<sup>6</sup>, Pg 109-145 and;
- f. Report of Special Master regarding the Brunsting Family inter vivos trust, Pg 146-183.

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<sup>6</sup> Filed in the state probate court as an exhibit to Plaintiff Curtis July 13, 2015 Answer to Defendants 6/26/2015 No-evidence Motion and demand to produce evidence in 412249-401.

### **Probate Mafia and Harris County Tomb Raiders**

30. Plaintiff Curtis' original petition filed February 27, 2012, was dismissed under the probate exception and that is what sent Plaintiff on a journey to the Fifth Circuit. Anyone researching the Probate Exception will invariably be exposed to the "Probate Mafia". (Exhibit 10 attached)

31. Harris County Tomb Raiders is a term first observed by Plaintiffs in a recorded video of a hearing before the Texas Senate Committee on the Judiciary, October 11, 2006<sup>7</sup>, where one witness, a Robert Alpert<sup>8</sup>, gave an account of his experience in the Harris County Probate Court. His testimony contained remarkably similar descriptions of the means and methods complained of in the present complaint, a full ten full years later, and nothing appears to have changed. Where exactly Tomb Raiders was mentioned in the testimony Plaintiffs do not recall, as there are 12 recordings available and they cover a seven and one-half hour hearing session.

### **In Concert Aiding and Abetting**

32. As previously stated, Ms. Young is charged with in concert aiding and abetting a conspiracy to loot the Brunsting trusts, that is fully documented on the Public record. A particular participant's part in the conspiracy does not have to be of great magnitude, but only a manifest part of the symphony of sound produced by the other instruments in concert.

33. The elements of aiding and abetting are 1) that the accused had specific intent to facilitate the commission of a crime by another; 2) That the accused had the requisite intent of the

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<sup>7</sup> Audio Recordings are available online at the Texas Senate Library

<sup>8</sup> Beginning at 12 minutes of Recording: 791070a, 79th Senate Jurisprudence Committee E1.016 Tape 2 of 4 Side 1 & 2, 10/11/06 10:40am Recording: 791070b

underlying substantive offense; 3) That the accused assisted or participated in the commission of the underlying substantive offense; and 4) That someone committed the underlying offense.<sup>9</sup>

34. Defendant Jill Willard Young does not offer exhibits to support her proclaimed vision of the facts she proffers. She does not exhibit her motion for permission for Greg Lester to retain her law firm (Exhibit 11), nor the order appointing her to “assist” Mr. Lester (Exhibit 2) and definitely not the report she assisted Mr. Lester in producing (Dkt 26-9).

### **Prosecuting State and Local Corruption**

35. All of the states and most local governments have criminal statutes or codes which criminalize various aspects of corruption.

36. While there is no federal statute which is aimed specifically at state and local corruption, there are three statutes which have been generally utilized by federal prosecutors to prosecute state and local officials for acts of corruption. They are the mail and wire fraud statute, the Hobbs Act, and the Racketeer Influenced and Corrupt Organizations Act (“RICO”).

#### **Hobbs Act – 18 USC §1951**

37. The Hobbs Act, by its express language, makes it a crime to obstruct, delay, or affect commerce by robbery or extortion.

38. However, the statute, by a series of judicial decisions including a United States Supreme Court decision (*See, United States v. Evans*, 504 U.S. 255 [1992]), has been extended to cover practices best characterized as bribery. In that regard, all that has to be shown is that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts. This results in making the Hobbs Act similar to 18 USC

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<sup>9</sup> United States Attorney’s » Criminal Resource Manual » CRM 2000 - 2500 » Criminal Resource Manual 2401-2499 CRM 2474

§201, insofar as it covers bribery of a federal official. However, the statute would not cover mere receipt of gratuities, as under 18 USC §201, which is covered by the mail and wire fraud statutes.

39. While the Hobbs Act is limited to conduct that “obstructs, delays or affects interstate commerce [commerce between two or more states],” this requirement is hardly any requirement at all, since all that is needed is a small or practically negligible effect.

40. A Hobbs Act violation may serve as the foundation for RICO offenses.

**Mail and Wire Fraud – 18 USC §§1341 (Mail), 1343 (Wire)**

41. The mail and wire fraud statutes were enacted as anti-fraud statutes, designed to combat, as criminal, the common law crime of larceny by trick. Even though the statutes’ terms do not specifically embrace corruption, they are extensively used to prosecute acts of public corruption.

42. For mail fraud, the prosecutor must prove only (a) a scheme to defraud, and (b) the mailing of a letter for the purpose of executing the scheme; and for wire fraud, the prosecutor must prove only (a) a scheme to defraud, and (b) the use of interstate wire communications in furtherance of the scheme. For purposes of the statute, the requisite mailing can be done through the postal service or a private carrier, and the requisite wire communications include radio transmissions, telephone calls and e-mails. Significantly, the requisite mailing or wiring need not itself contain any fraudulent information and may be entirely innocent. However, they must be shown to be at least a “step” in the scheme. (*Schmuck v. United States*, 489 U.S. 705, 712 [1989]).

43. With respect to the statutes’ use in public corruption cases, a fraudulent scheme includes “a scheme . . . to deprive another of the intangible right of honest services.” (18 USC

§1346). It is this definition which makes the statutes a flexible tool for prosecutors to prosecute public corruption at the state or local level.

44. A typical “honest services” corruption case arises in two situations. First, “bribery” where the public official was paid for a particular decision or action, which includes a pattern of gratuities over a period of time to obtain favorable action. Secondly, “failure to disclose” a conflict of interest, resulting in personal enrichment, which encompasses circumstances where the official has an express or implied duty to inform others of the official’s personal relationship to the matter at hand, even though no public harm occurred or there was no misuse of office.

45. As to the “conflict of interest” situation, the basis for its condemnation is that “[w]hen an official fails to disclose a personal interest in a matter over which he has decision-making power, the public is deprived of its right either to disinterested decision making itself or, as the case may be, to full disclosure as to the official’s potential motivation behind an official act.” (*United States v. Sawyer*, 85 F3d 713, 724 [1<sup>st</sup> Cir. 1966]). Notably, a person who holds no public office but participates substantially in the operation of government, *e.g.*, a political party leader, may be subject to prosecution under an “honest services” theory. (*See, United States v. Margiotta*, 688 F.2d 108 [2d Cir. 1982]).

### **Federal Conspiracy Laws**

46. Federal conspiracy laws rest on the belief that criminal schemes are equally or more reprehensible than are the substantive offenses to which they are devoted. The Supreme Court has explained that a “collective criminal agreement—[a] partnership in crime—presents a greater potential threat to the public than individual delicts. Concerted action both increases the likelihood that the criminal object will be successfully attained and decreases the probability that

the individuals involved will depart from their path of criminality.”<sup>10</sup> Moreover, observed the Court, “[g]roup association for criminal purposes often, if not normally, makes possible the attainment of ends more complex than those which one criminal could accomplish. Nor is the danger of a conspiratorial group limited to the particular end toward which it has embarked.”<sup>11</sup> Finally, “[c]ombination in crime makes more likely the commission of crimes unrelated to the original purpose for which the group was formed.”<sup>12</sup> In sum, “the danger which a conspiracy generates is not confined to the substantive offense which is the immediate aim of the enterprise.”<sup>13</sup> Congress and the courts have fashioned federal conspiracy law accordingly.<sup>14</sup>

### Conclusion

47. Ms. Young drafted the motion asking to be appointed to “assist Mr. Lester in his fiduciary duties” (Exhibit 11 attached) and admits to participating in the production of the “Gregory Lester Report” (Dkt 26-9 E394-E403) but seeks to hide her participation in the conduct of the affairs of the enterprise as “attorney” conduct entitling Ms. Young to impunity.

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<sup>10</sup> *Iannelli v. United States*, 420 U.S. 770, 778 (1975), quoting *Callanan v. United States*, 364 U.S. 587, 593-94 (1961).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

There have long been contrary views, e.g., Sayre, *Criminal Conspiracy*, 35 HARVARD LAW REVIEW 393, 393 (1922) (“A doctrine so vague in its outlines and uncertain in its fundamental nature as criminal conspiracy lends no strength or glory to the law; it is a veritable quicksand of shifting opinion and ill-considered thought”); *Hyde v. United States*, 222 U.S. 347, 387 (1912) (Holmes, J, with Lurton, Hughes 7 Lamarr, JJ.) (dissenting) (“And as wherever two or more have united for the commission of a crime there is a conspiracy, the opening to oppression thus made is very wide indeed. It is even wider if success should be held not to merge the conspiracy in the crime intended and achieved”), both quoted in substantial part in Katyal, *Conspiracy Theory*, 112 YALE LAW JOURNAL 1307, 1310 n. 6 (2003)

<sup>14</sup> Federal prosecutors have used, and been encouraged to use, the law available to them, *Harrison v. United States*, 7 F.2d 259, 263 (2d Cir. 1925) (“[C]onspiracy, that darling of the modern prosecutor’s nursery”); *United States v. Reynolds*, 919 F.2d 435, 439 (7th Cir. 1990) (“[P]rosecutors seem to have conspiracy on their word processors as Count I”); Chesney, *Terrorism, Criminal Prosecution, and the Preventive Detention Debate*, 50 SOUTH TEXAS LAW REVIEW 669, 684 (2009) (“What options do prosecutors have in the terrorism-prevention scenario when [other charges] are unavailable for lack of evidence linking the suspect to a designated foreign terrorist organization? One possibility is conspiracy liability”).



48. It necessarily follows that an independent report on the efficacy of the estate claims would have revealed a complete absence of jurisdiction over the very things the report speaks to.

49. Where there is no court of competent jurisdiction, there is no judge and no litigation, and consequently Defendant's immunity claims collapse under the weight of the complete absence of jurisdiction in any state court. (See *Curtis v Brunsting* 704 F.3d 406, 409-410 and Lexis HN 6)

50. All of the Defendants are accused of violating 18 U.S.C. 1962(c), which prohibits participation in the conduct of the affairs of an enterprise through a pattern of racketeering activity affecting interstate commerce, and 18 U.S.C. 1962(d), conspiracy to violate 18 U.S.C. 1962(c).

51. Jill Willard Young's participation is directly related to the fraudulent report of Gregory Lester, used to promote their substantive resolution avoidance and mediated settlement diversion scheme, which can only be explained by these Defendants' knowledge of the Court's complete want of jurisdiction.

52. Defendant Jill Willard Young was present at the September 10, 2015 hearing, that plaintiffs have been unable to obtain a transcript of.

53. However, Defendant Neal Spielman's March 9, 2016 diatribe, (Dkt 26-16) referring to the September 10, 2015 hearing, evidences the "Report" to be the product of the Defendants' own dictation and, while the report admits "I was told" as a source for information, The report never mentions who told Lester what to write.

54. These lawyer Defendants, in concert, attempted to conceal *Curtis v. Brunsting* in the probate record as if it was the "estate of Nelva Brunsting" and then, knowing there was no authority to determine any matters related to the Brunsting trusts they all conspired together to avoid rulings on the merits and to attempt to intimidate the non-participant into attending a

“mediation” where she could be further impressed with the threat to her property interests if she did not rollover on her rights and surrender property by settlement agreement.

55. Defendant attempts to deceive this Court into believing the underlying matter is related to an inheritance or an expectancy, but Plaintiff Curtis is an equitable property owner whose property interest was fully vested at the creation of the family trusts in 1996 and the death of Elmer Brunsting and Nelva Brunsting elevated her to a property owner with a primary right of consideration under the undisturbed terms of the irrevocable trusts.

56. Plaintiff Curtis’ trust property has been withheld and that property continues to be illicitly held hostage to attorney fees and absolution ransoms Plaintiff does not owe.

57. Plaintiff Curtis and her domestic partner Plaintiff Munson have incurred substantial expense, expended efforts and suffered constant character attacks, been forced to divert quality time and capital assets away from local and domestic concerns in a productive life, to defend her property interests in Texas for more than 4 and one-half years, and the participants in the involuntary wealth redistribution scheme claim Plaintiffs have suffered no tangible injury.

58. Defendant also claims that some of the predicate acts do not provide a private right of claims, but that is not what 18 U.S.C. §1964(c) says about injury suffered as direct and proximate result of a pattern of racketeering activity involving such acts.

59. The only subject of the Jill Willard Young/Gregory Lester report is not the estate but the money cow trust, not properly in the custody of any state court.

60. There is not a single mention of the wills, the pour over provisions, the identity of the only heir, the inventory containing only an old car, or the “estate claims”, and it does not mention the drop orders or any other “estate” related matters, yet seeks to legitimize “estate claims” involving only the beneficiaries of the “heir-in-fact” trust.

61. Candace Curtis and her siblings are beneficiaries of “the trust” and, therefore, derivatively the only real parties in interest.

62. In essence, the “decendent’s estate” is suing “heirs in fact” (trust beneficiaries) in probate court, for trespasses committed against the “heir in fact” (trust) during the lifetime of the decedent.

63. Plaintiff Curtis’ federal petition was amended by Defendant Ostrom to join Plaintiff Carl Brunsting, to pollute diversity, in order to affect a remand to state court, where Plaintiff Curtis could be consolidated as a “defendant” in the “estate” lawsuit involving only the trust.

64. Any award from the estate lawsuits would belong to the “heir in fact” (trust), minus attorney and appointee fees from years of litigation involving an estate with no assets, in a court with no subject matter jurisdiction, whose judgments would all be void ab initio and would in any event guarantee a successful reversal on appeal by either party, with no resolution in sight forever and ever, while Anita, Amy, and their attorneys hold disposition of the trust hostage.

65. This is indeed a bazaar conspiracy theory but it is not a box office thriller. It is a reality embedded in the public record and one need look no further than the public record for the evidence that supports Plaintiffs’ claims.

*Wherefore*, Plaintiffs respectfully move this Honorable Court for an Order denying the Motion to Dismiss filed by Defendant Jill Willard Young August 14, 2016. (Dkt 25)

Respectfully submitted, October 2, 2016.

/s/Candace L. Curtis  
Candace L. Curtis

/s/Rik W. Munson  
Rik W. Munson

**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 October 2, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/Candace L. Curtis

Candace L. Curtis

/s/Rik W. Munson

Rik W. Munson

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Curtis, et al

Plaintiffs

v

Kunz-Freed, et al

Defendants

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§

Civil Action No. 4:16-cv-01969

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**ORDER**

Upon due consideration, the Rule 12(b)(6) Motion to Dismiss filed by Defendant Jill Young in the above styled cause on September 14, 2016 (Docket entry 25) should be Denied.

It is SO ORDERED

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Date

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The Honorable Alfred H Bennet  
United States District Judge

Exhibit List Jill Willard Young Rule 12 Motion

1-	Defendant Jill Willard Rule 11 Notice	E1-E8
2-	Order Granting Authority to retain Jill Young	E9-E10
3-	The Will of Nelva Brunsting	E11-E22
4-	The Will of Elmer Brunsting	E23-E34
5-	Drop Order 412249 April 4, 2013	E35
6-	Drop Order 412248 April 4, 2013	E36
7-	March 27, 2013 Inventory and April 4, 2013 Order Approving Inventory	E37-E44
8-	2013-10-17 Application for Letters Testamentary	E45
9-	Agreed Order to Consolidate “estate of Nelva Brunsting with “estate of Nelva Brunsting” (See Dkt 34-10)	E46-E49
10-	Fighting the Probate Mafia (2002)	E50-E119
11-	September 1, 2015 Application to Retain Jill Young	E120-E128

 **NORTON ROSE FULBRIGHT**

September 27, 2016

**Via Certified Mail  
Return Receipt Requested and  
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Re: Case No. 4:16-cv-01969, *Curtis, et al v. Kunz-Freed, et al.*

Dear Ms. Curtis and Mr. Munson:

Pursuant to Federal Rule of Civil Procedure 11(c)(2), we have enclosed a copy of a Motion for Sanctions by Defendant Jill Willard Young.

As set forth in the Motion for Sanctions, Ms. Young is seeking sanctions, including attorneys' fees, from you for the wrongful filing of the above action. We will file this Motion for Sanctions on Wednesday, October 19, 2016, unless your clients nonsuit their claims against Ms. Young with prejudice before that date.

Please let me know if you have any questions.

Very truly yours,



Robert S. Harrell

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

CANDACE LOUISE CURTIS, ET AL.,

Plaintiffs,

v.

CANDACE KUNZ-FREED, ET AL.,

Defendants.

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Civil Action No. 4:16-cv-01969

**DEFENDANT JILL WILLARD YOUNG’S MOTION FOR SANCTIONS**

On July 5, 2016, Plaintiffs filed a frivolous, 64-page “Verified Complaint” consisting of facially preposterous criminal accusations, blatant mischaracterizations of fact, and boilerplate recitations of law that are plainly insufficient to survive dismissal. On September 15, 2016, Defendant Young filed her Motion to Dismiss. And on September 27, 2016, Defendant Young sent Plaintiffs a letter, informing them that, in accordance with the safe-harbor procedure of Federal Rule of Civil Procedure 11, she would be filing this Motion for Sanctions on October 19, 2016, if Plaintiffs did not dismiss their Complaint against her with prejudice. But Plaintiffs have ignored Ms. Young’s letter and Motions.

Plaintiffs’ frivolous pleadings meaninglessly and wrongfully denigrate the reputation of Ms. Young, a prominent, hard-working Houston lawyer. Despite opportunities to nonsuit their meritless suit, Plaintiffs have refused to do so. Thus, Plaintiffs should be required to reimburse Ms. Young’s attorney’s fees pursuant to Federal Rule of Civil Procedure 11.

**ARGUMENT AND AUTHORITIES**

Filing a RICO action in federal court is not a proper substitute for appealing an unfavorable ruling, nor is it an appropriate means of seeking revenge against opposing and court-



appointed counsel. *See Chapman & Cole v. Itel Container Int'l B.V.*, 865 F.2d 676, 685 (5th Cir. 1989) (“[I]t should be noted that an attorney’s responsibility to conduct a reasonable pre-filing investigation is **particularly important in RICO claims.**”) (emphasis added). Because the claims asserted by Plaintiffs are both legally and factually frivolous, Ms. Young should be awarded attorneys’ fees and costs under Fed. R. Civ. P. 11.

**I. The Rule 11 Standard**

Under Fed. R. Civ. P. 11(b), by presenting the Court a signed pleading, an “unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances” that:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Fed. R. Civ. P. 11(b)(1)-(3). “Compliance with these affirmative duties is measured as of the time that the document is signed.” *Childs v. State Farm Mut. Auto. Ins. Co.*, 29 F.3d 1018, 1024 (5th Cir. 1994). And whether a pleading meets this requirements is measured “by an objective, not subjective, standard of reasonableness under the circumstances.” *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 873 (5th Cir. 1988).

“[I]f, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.” Fed. R. Civ. P. 11(c)(1); *see also* Fed. R. Civ. P. 11 Advisory Committee Notes (“Even though it is the attorney whose

signature violates the rule, it may be appropriate under the circumstances of the case to impose a sanction on the client.”).

**II. Plaintiffs have violated Fed. R. Civ. P. 11(b)(2) by filing legally frivolous claims.**

Plaintiffs have ignored longstanding attorney immunity doctrines, have alleged six causes of action for which they have no private cause of action, and failed to plead facts showing even the most basic elements of their RICO “claim.”

**A. *Plaintiffs ignore attorney immunity.***

Plaintiffs have ignored long-established immunity doctrines that protect attorneys from suit by opposing parties and non-clients. Indeed, the affirmative defense of immunity is apparent on the face of the Complaint.

Under Texas law, it is settled that “attorneys are immune from civil liability . . . ‘for actions taken in connection with representing a client in litigation.’” *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)). The only exceptions to this rule of immunity are if an attorney engages in conduct that is “entirely foreign to the duties of an attorney,” or if the conduct “does not involve the provision of legal services and would thus fall outside the scope of client representation.” *Id.* at 482 (quoting *Poole v. Hous. & T.C. Ry. Co.*, 58 Tex. 134, 137 (1882)). However, a plaintiff cannot evade attorney immunity by simply “labeling an attorney’s conduct ‘fraudulent.’” *Id.* at 483 (quoting *Alpert*, 178 S.W.3d at 406).

In this case, Plaintiffs have not pled any facts showing Ms. Young, who served as counsel for the Temporary Administrator in the underlying lawsuit, took any actions outside the normal discharge of her duties in representing her client. See *Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 348 (5th Cir. 2016) (attorney’s conduct in sending a letter, participating in discovery, and

communicating with SEC about client were “classic examples of an attorney’s conduct in representing his client”).

***B. Plaintiffs plead claims for which there exists no private right of action.***

Plaintiffs allege three causes of action for “honest services,” along with causes of action for wire fraud, fraud under 18 USC § 1001, and violation of the Hobbs Act. *See* Complaint, at ¶¶ 121–123. But those are criminal causes of action that cannot be pursued by a private plaintiff. *See* Motion to Dismiss [DKT. 25], at pp. 13–16.

***C. Plaintiffs’ accusations are baseless and delusional.***

Plaintiffs accuse Ms. Young of what can best be described as fictional acts--being a member of a secret society and “cabal” known as the “Harris County Tomb Raiders,” which Plaintiffs also call “The Probate Mafia.” *See, e.g.,* Complaint, at ¶¶ 57, 58, 89. Plaintiffs allege the members of this purported shadow organization engage in “Poser Advocacy,” supposedly an “exploitation opportunity” to “hijack” “familial wealth.” *Id.* at ¶¶ 95–99. Not surprisingly, Plaintiffs do not even try to accompany their made-up story with supporting facts. The reality is unavoidable—their complaint is a bizarre, sophomoric attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court.

Less fantastical efforts to concoct a federal claim against judges and opposing attorneys have been routinely dismissed. *See, e.g., Freeman v. Texas*, No. H-08-2050, 2008 WL 4155346, at \*2 (S.D. Tex. Sept. 2, 2008) (Rosenthal, J.) (dismissing RICO claims against probate judges, attorneys, and clerks for failure to plead a racketeering activity). And other courts in this Circuit have held that almost identical allegations made by pro se litigants should be dismissed *and* were sanctionable. *See Whitehead v. White & Case, LLP*, 12-CV-0399, 2012 WL 1795151, at \*2 (W.D. La. Apr. 19, 2012), *report and recommendation adopted*, 12-CV-0399, 2012 WL 1795148

(W.D. La. May 16, 2012) (dismissing a pro se plaintiff's conspiracy claims against judges, magistrate judges, attorneys and law firms, as "frivolous and vexatious" and sanctioning the pro se plaintiff).

Thus, Plaintiffs' allegations fail to satisfy Rule 11. Specifically, Plaintiffs' Complaint against Ms. Young—devoid of any allegation of actual wrongdoing—can only be brought for improper purposes, like harassment or to needlessly increase the cost of litigation. Plaintiffs' Complaint is in no way warranted by existing law, and Plaintiffs' contentions completely lack any sort of factual or evidentiary support. *See* Fed. R. Civ. P. 11(b)(1)-(3). Ms. Young has also specifically informed Plaintiffs multiple times of the legal defects in their Complaint and the authority showing Plaintiffs' arguments are meritless, both in Ms. Young's filing of her Motion to Dismiss and by serving this Motion for Sanctions on Plaintiffs twenty-one days before filing it with the Court. But Plaintiffs have refused to dismiss their Complaint against Ms. Young. This, too, means sanctions are necessary. *See also Taylor v. C.I.R.*, 350 Fed. Appx. 913, 915 (5th Cir. 2009) ("Sanctions on pro se litigants are appropriate if they were warned that their claims are frivolous and they were aware of 'ample legal authority holding squarely against them.'").

### **CONCLUSION**

Plaintiffs have filed a frivolous and facially-deficient lawsuit, and Ms. Young respectfully requests that the Court require Plaintiffs and their attorneys to pay her attorneys' fees in defending this suit and pursuing the relief requested herein. *See* Ex. A, Aff. of Robert S. Harrell.

Dated: September 27, 2016

Respectfully submitted,

*/s/ Robert S. Harrell*

---

Robert S. Harrell  
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OF COUNSEL:

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Facsimile: (713) 651-5246

ATTORNEYS FOR DEFENDANT JILL  
WILLARD YOUNG

**CERTIFICATE OF CONFERENCE**

I certify that on September 27, 2016, I conferred with counsel for Plaintiffs about the relief requested in this Motion. Counsel for Plaintiffs declined to dismiss the claims against Ms. Young, requiring the submission of this Motion to the Court.

*/s/ Robert S. Harrell*

---

Robert S. Harrell

**CERTIFICATE OF SERVICE**

I certify that on September 27, 2016, pursuant to Fed. R. Civ. 11(c)(2) and Fed. R. Civ. P. 5, I served copies of this Motion for Sanctions on Plaintiffs. I also certify that a true and correct copy of the above Motion for Sanctions has been served on October 19, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

*/s/ Robert S. Harrell*

---

Robert S. Harrell

DATA ENTRY  
PICK UP THIS DATE

NO. 412,249

ESTATE OF § IN THE PROBATE COURT  
NELVA E. BRUNSTING, §  
DECEASED § NUMBER FOUR (4) OF  
§ HARRIS COUNTY, TEXAS

ORDER GRANTING AUTHORITY TO RETAIN COUNSEL – MACINTYRE,  
MCCULLOCH, STANFIELD & YOUNG, LLP

BE IT REMEMBERED that on this day came on for consideration the Application of Gregory A. Lester, Temporary Administrator of the Estate of Nelva E. Brunsting, Deceased, in connection with the Application for Authority to Retain Counsel – MacIntyre, McCulloch, Stanfield & Young, LLP, and the Court finding that due and proper notice of the Application has been given, finds that the Application should in all respects be granted, it is accordingly,

ORDERED, ADJUDGED and DECREED by the Court that Gregory A. Lester, Temporary Administrator of the Estate of Nelva E. Brunsting, Deceased, be and is hereby granted authority to retain JILL W. YOUNG with the law firm of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP as Counsel for Applicant, to perform such legal services on behalf of the Estate as are necessary and reasonable, including assisting Applicant in carrying out his fiduciary responsibilities. *who agrees to adhere to the billing standards set out in the court's standards for Attorney Fees,*

IT IS FURTHER ORDERED by the Court that GREGORY A. LESTER, Administrator of the of the Estate of Nelva E. Brunsting, Deceased, be and is hereby granted authority to retain the law firm of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP pursuant to the Texas Estates Code and this Court's Order. *The fees payable to Jill Young shall be treated as expenses of the Temporary Administrator pending contest.*

SIGNED this 10 day of September, 2015.

*Cristine Bow*  
JUDGE PRESIDING

HARRIS COUNTY CLERK  
HARRIS COUNTY TEXAS

2015 SEP 11 AM 11:34

FILED

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APPROVED AS TO FORM:

MACINTYRE MCCULLOCH STANFIELD  
& YOUNG, LLP

By: 

JILL W YOUNG  
State Bar No. 00797670  
[Jill.Young@mmlawtexas.com](mailto:Jill.Young@mmlawtexas.com)  
2900 Wesleyan, Suite 150  
Houston, Texas 77027  
(713) 572-2900  
(713) 572-2902 (Fax)

ATTORNEYS FOR APPLICANT



**LAST WILL**

PROBATE COURT 4

**OF**

**NELVA E. BRUNSTING**

I, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, of Harris County, Texas, make this Will and revoke all of my prior wills and codicils.

**Article I**

**My Family**

I am married and my spouse's name is ELMER H. BRUNSTING.

All references to "my spouse" in my Will are to ELMER H. BRUNSTING.

The names and birth dates of my children are:

<u>Name</u>	<u>Birth Date</u>
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to my children in my will are to these children, as well as any children subsequently born to me, or legally adopted by me.

**Article II**

**Testamentary Gifts**

I give, devise and bequeath all of my property and estate, real, personal or mixed, wherever situated, to my revocable living trust; the name of my revocable living trust is:

**PURPORTED WILL**

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ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

All of such property and estate shall be held, managed, and distributed as directed in such trust. The exact terms of the BRUNSTING FAMILY LIVING TRUST will govern the administration of my estate and the distribution of income and principal during administration. It is my intent and purpose that the tax planning provisions of the BRUNSTING FAMILY LIVING TRUST apply, and that my estate pass for the benefit of my family with the least possible amount of death taxes.

If my revocable living trust is not in effect at my death for any reason whatsoever, then all of my property shall be disposed of under the terms of my revocable living trust as if it were in full force and effect on the date of my death, and such terms are hereby incorporated herein for all purposes.

**Article III**

**Appointment of Personal Representative**

I appoint ELMER H. BRUNSTING as my Personal Representative. In the event ELMER H. BRUNSTING fails or ceases to serve for any reason, I appoint the following individuals as my Personal Representative to serve in the following order:

First, CARL HENRY BRUNSTING

Second, AMY RUTH TSCHIRHART

Third, CANDACE LOUISE CURTIS

The term "Personal Representative" will mean and refer to the office of Independent Executor and Trustee collectively. Reference to Personal Representative in the singular will include the plural, the masculine will include the feminine, and the term is to be construed in context. A Personal Representative will not be required to furnish a fiduciary bond or other security. I direct that no action be required in the county or probate court in relation

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to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisal and list of claims as required by law.

#### Article IV

##### Payment of Debts, Taxes, Settlement Costs and Exercise of Elections

The following directions concern the payment of debts, taxes, estate settlement costs, and the exercise of any election permitted by Texas law or by the Internal Revenue Code. The Personal Representative of my estate and the Trustee of the BRUNSTING FAMILY LIVING TRUST may act jointly and may treat the property of my estate subject to probate and the property of the BRUNSTING FAMILY LIVING TRUST as one fund for the purpose of paying debts, taxes, estate settlement costs, and making of elections.

##### Section A. Payment of Indebtedness and Settlement Costs

The Personal Representative will have the discretionary authority to pay from my estate subject to probate the costs reasonably and lawfully required to settle my estate.

##### Section B. Special Bequests

If property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient. The obligation to be assumed shall be the principal balance of the indebtedness on date of death, and the Personal Representative shall be entitled to reimbursement or offset for principal and interest payments paid by my estate to date of distribution.

##### Section C. Estate, Generation Skipping, or Other Death Tax

Unless otherwise provided in this will or by the terms of the BRUNSTING FAMILY LIVING TRUST, estate, inheritance, succession, or other similar tax shall be charged to and apportioned among those whose gifts or distributive share generate a death tax liability by reason of my death or by reason of a taxable termination or a taxable distribution under the generation skipping provisions of the Internal Revenue Code. To the extent I may lawfully provide, the Personal Representative may pay and deduct from a beneficiary's distributive share (whether the distribution is to be paid outright or is to be continued in trust) the increment in taxes payable by reason of a required distribution or termination of interest



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(i.e., estate, gift, inheritance, or generation skipping taxes) to the extent that the total of such taxes payable by reason of a distribution or termination is greater than the tax which would have been imposed if the property or interest subject to the distribution or termination of interest has not been taken into account in determining the amount of such tax. To the extent a tax liability results from the distribution of property to a beneficiary other than under this will or under the BRUNSTING FAMILY LIVING TRUST, the Personal Representative will have the authority to reduce any distribution to the beneficiary from my estate by the amount of the tax liability apportioned to the beneficiary, or if the distribution is insufficient, the Personal Representative will have the authority to proceed against the beneficiary for his, her, or its share of the tax liability. In making an allocation, my Personal Representative may consider all property included in my gross estate for federal estate tax purposes, including all amounts paid or payable to another as the result of my death, including life insurance proceeds, proceeds from a qualified retirement plan or account, proceeds from a joint and survivorship account with a financial institution or brokerage company, proceeds from a buy-sell or redemption contract, and/or any other plan or policy which provides for a payment of death benefits. This provision further contemplates and includes any tax which results from the inclusion of a prior transfer in my federal gross estate even though possession of the property previously transferred is vested in someone other than my Personal Representative. This provision does not include a reduction in the unified credit by reason of taxable gifts made by me. If the Personal Representative determines that collection of an apportioned tax liability against another is not economically feasible or probable, the tax liability will be paid by my estate and will reduce the amount distributable to the residuary beneficiaries. The Personal Representative's judgment with regard to the feasibility of collection is to be conclusive.

#### **Section D. Election, Qualified Terminable Interest Property**

The Personal Representative may, without liability for doing so or the failure to do so, elect to treat all or a part of my estate which passes in trust for ELMER H. BRUNSTING under the BRUNSTING FAMILY LIVING TRUST, in which ELMER H. BRUNSTING has an income right for life, as Qualified Terminable Interest Property pursuant to the requirements of Section 2056(b)(7) of the Internal Revenue Code. To the extent that an election is made, and unless ELMER H. BRUNSTING shall issue a direction to the contrary, the Trustee of the BRUNSTING FAMILY LIVING TRUST will pay from the irrevocable share the entire increment in the taxes payable by reason of the death of ELMER H. BRUNSTING to the extent that the total of such taxes is greater than would have been imposed if the property treated as qualified terminable interest property has not been taken into account in determining such taxes. It is my intent and purpose to provide my Personal Representative with the greatest latitude in making this election so that the least amount of federal estate tax will be payable upon my death and upon the death of ELMER H. BRUNSTING, and this

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provision is to be applied and construed to accomplish this objective. The Personal Representative is to make distributions of income and principal to the Trustee of the BRUNSTING FAMILY LIVING TRUST until my total estate subject to probate and administration is distributed to the Trustee of the BRUNSTING FAMILY LIVING TRUST.

#### **Section E. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, my estate may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as Qualified Terminable Interest Property had not been made. Reference to the "Special Election For Qualified Terminable Interest Property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code. The term "GST Exemption" or "GST Exemption Amount" is the dollar amount of property which may pass as generation skipping transfers under Subtitle B, Chapter 13, of the Internal Revenue Code of 1986 (entitled "Tax on Generation Skipping Transfers") which is exempt from the generation-skipping tax.

#### **Section F. Elective Deductions**

The Personal Representative will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Personal Representative's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of my estate or the estate of a deceased beneficiary:

#### **Article V**

#### **Service of the Personal Representative**

A Personal Representative may exercise, without court supervision (or the least supervision permitted by law), all powers and authority given to executors and trustees by the laws of the State of Texas and by this will.

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**Section A. Possession, Assets, Records**

My Personal Representative will have the authority to take possession of the property of my estate and the right to obtain and possess as custodian any and all documents and records relating to the ownership of property.

**Section B. Retain Property in Form Received, Sale**

My Personal Representative will have authority to retain, without liability, any and all property in the form in which it is received by the Personal Representative without regard to its productivity or the proportion that any one asset or class of assets may bear to the whole. My Personal Representative will not have liability nor responsibility for loss of income from or depreciation in the value of property which was retained in the form which the Personal Representative received them. My Personal Representative will have the authority to acquire, hold, and sell undivided interests in property, both real and personal, including undivided interests in business or investment property.

**Section C. Investment Authority**

My Personal Representative will have discretionary investment authority, and will not be liable for loss of income or depreciation on the value of an investment if, at the time the investment was made and under the facts and circumstances then existing, the investment was reasonable.

**Section D. Power of Sale, Other Disposition**

My Personal Representative will have the authority at any time and from time to time to sell, exchange, lease and/or otherwise dispose of legal and equitable title to any property upon such terms and conditions, and for such consideration, as my representative will consider reasonable. The execution of any document of conveyance, or lease by the Personal Representative will be sufficient to transfer complete title to the interest conveyed without the joinder, ratification, or consent of any person beneficially interested in the property, the estate, or trust. No purchaser, tenant, transferee or obligor will have any obligation whatsoever to see to the application of payments made to my Personal Representative. My Personal Representative will also have the authority to borrow or lend money, secured or unsecured, upon such terms and conditions and for such reasons as may be perceived as reasonable at the time the loan was made or obtained.



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### **Section E. Partial, Final Distributions**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Personal Representative; a release from any loss, liability, claim or question concerning the exercise of due care, skill, and prudence of the Personal Representative in the management, investment, retention, and distribution of property during the representative's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Personal Representative, to include the payment of attorneys' fees, from any asserted claim of any taxing agency, governmental authority, or other claimant. Any beneficiary having a question or potential claim may require an audit of the estate or trust as an expense of administration. Failure to require the audit prior to written acceptance of the Personal Representative's report, or the acceptance of payment, will operate as a final release and discharge of the Personal Representative except as to any error or omission having basis in fraud or bad faith.

### **Section F. Partition, Undivided Interests**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will have the authority (1) to partition any asset or class of assets and deliver divided and segregated interests to beneficiaries; (2) to sell any asset or class of assets (whether or not susceptible to partition in kind), and deliver to the beneficiaries a divided interest in the proceeds of sale and/or a divided or undivided interest in any note and security arrangement taken as part of the purchase price; and/or (3) to deliver undivided interests in an asset or class of assets of the beneficiaries subject to any indebtedness which may be secured by the property.

### **Section G. Accounting**

My Personal Representative will render at least annually a statement of account showing receipts, disbursements, and distributions of both principal and income during the period of accounting and a statement of the invested and uninvested principal and the undistributed income at the time of such statement.

### **Section H. Protection of Beneficiaries**

No beneficiary will have the power to anticipate, encumber or transfer any interest in my estate. No part of my estate or any trust will be liable for or charged with any debts,

contracts, liabilities or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary.

#### **Section I. Consultants, Professional Assistance**

My Personal Representative will have the authority to employ such consultants and professional help as needed to assist with the prudent administration of the estate and any trust. Any representative, other than a corporate fiduciary, may delegate, by an agency agreement or otherwise, to any state or national banking corporation with trust powers any one or more of the following administrative functions: custody and safekeeping of assets; record keeping and accounting, including accounting reports to beneficiaries; and/or investment authority. The expense of the agency, or other arrangement, will be paid as an expense of administration.

#### **Section J. Compensation**

Any person who serves as Personal Representative may elect to receive a reasonable compensation, reasonable compensation to be measured by the time required in the administration of the estate or a trust and the responsibility assumed in the discharge of the duties of office. The fee schedules of area trust departments prescribing fees for the same or similar services may be used to establish reasonable compensation. A corporate or banking trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for estates or trusts of similar size and nature and additional compensation for extraordinary services performed by the corporate representative. My Personal Representative will be entitled to full reimbursement for expenses, costs, or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

#### **Section K. Documenting Succession**

A person serving as Personal Representative may fail or cease to serve by reason of death, resignation or legal disability. Succession may be documented by an affidavit of fact prepared by the successor, filed of record in the probate or deed records of the county in which this will is admitted to probate. The public and all persons interested in or dealing with my Personal Representative may rely upon the evidence of succession provided by a certified copy of the recorded affidavit, and I bind my estate and those who are its beneficial owners to indemnify and hold harmless any person, firm, or agency from any loss sustained in relying upon the recorded affidavit.

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Article VI

No-Contest Requirements

I vest in my Personal Representative the authority to construe this will and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my estate with the cost of a litigated proceeding to resolve questions of law or fact unless that proceeding is originated by my Personal Representative or with the Personal Representative's written permission. Any other person, agency or organization who originates (or who shall cause to be instituted) a judicial proceeding to construe or contest this will or to resolve any claim or controversy in the nature of reimbursement, constructive or resulting trust or other theory which, if assumed as true, would enlarge (or originate) the claimant's interest in my estate, will forfeit any amount to which that person, agency or organization is or may be entitled, and the interest of any such litigant or contestant will pass as if he or she or it had predeceased me.

These directions will apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause, and even though the proceeding may seek nothing more than to construe the application of this no-contest provision. However, the no-contest provision is to be limited in application as to any claim filed by ELMER H. BRUNSTING, to the exclusion thereof if necessary, to the extent it may deny my estate the benefit of the federal estate tax marital deduction.

THIS WILL is signed by me in the presence of two (2) witnesses, and signed by the witnesses in my presence on January 12, 2005.

Nelva E. Brunsting  
NELVA E. BRUNSTING

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The foregoing Will was, on the day and year written above, published and declared by NELVA E. BRUNSTING in our presence to be her Will. We, in her presence and at her request, and in the presence of each other, have attested the same and have signed our names as attesting witnesses.

We declare that at the time of our attestation of this Will, NELVA E. BRUNSTING was, according to our best knowledge and belief, of sound mind and memory and under no undue duress or constraint.

*Krysti Brull*  
\_\_\_\_\_  
WITNESS

**Krysti Brull**  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

*April Driskell*  
\_\_\_\_\_  
WITNESS

**April Driskell**  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

UNOFFICIAL COPY

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**SELF-PROVING AFFIDAVIT**

STATE OF TEXAS  
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared NELVA E. BRUNSTING, Kristi Brui and April Priskell, known to me to be the Testatrix and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said NELVA E. BRUNSTING, Testatrix, declared to me and to the said witnesses in my presence that said instrument is her Last Will and Testament, and that she had willingly made and executed it as her free act and deed; and the said witnesses, each on his or her oath stated to me, in the presence and hearing of the said Testatrix that the said Testatrix had declared to them that the said instrument is her Last Will and Testament, and that she executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testatrix and at her request; that she was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

Nelva E. Brunsting  
NELVA E. BRUNSTING

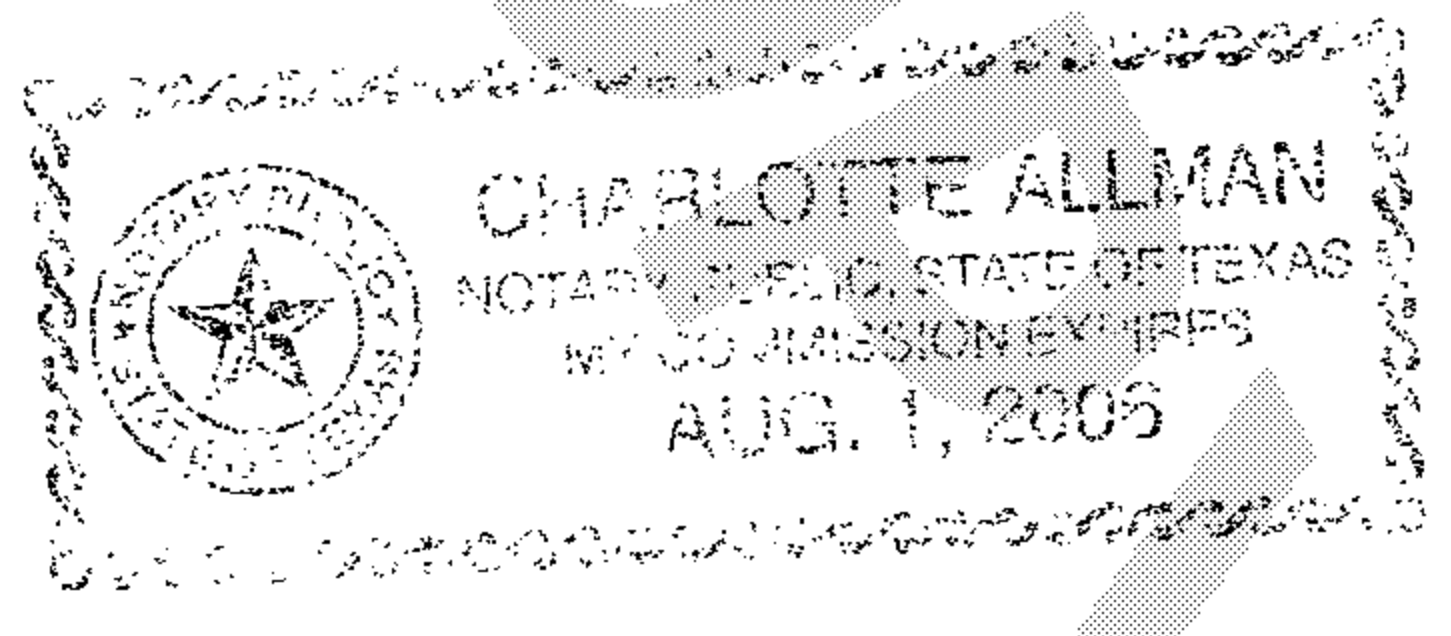
Kristi Brui  
WITNESS

April Priskell  
WITNESS

Subscribed and sworn to before me by the said NELVA E. BRUNSTING, the Testatrix, and by the said Kristi Brui and April Priskell, witnesses, on January 12, 2005.

Charlotte Allman  
Notary Public, State of Texas

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COUNTY CLERK  
HARRIS COUNTY, TEXAS



**PURPORTED WILL**

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The Vacek Law Firm, PLLC  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079  
(281) 531-5800

PURPORTED WILL

UNOFFICIAL COPY



LAST WILL

OF

PROBATE COURT 4

ELMER H. BRUNSTING

412218

I, ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, of Harris County, Texas, make this Will and revoke all of my prior wills and codicils.

Article I

My Family

I am married and my spouse's name is NELVA E. BRUNSTING.

All references to "my spouse" in my Will are to NELVA E. BRUNSTING.

The names and birth dates of my children are:

<u>Name</u>	<u>Birth Date</u>
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to my children in my will are to these children, as well as any children subsequently born to me, or legally adopted by me.

Article II

Testamentary Gifts

I give, devise and bequeath all of my property and estate, real, personal or mixed, wherever situated, to my revocable living trust; the name of my revocable living trust is:

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ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

All of such property and estate shall be held, managed, and distributed as directed in such trust. The exact terms of the BRUNSTING FAMILY LIVING TRUST will govern the administration of my estate and the distribution of income and principal during administration. It is my intent and purpose that the tax planning provisions of the BRUNSTING FAMILY LIVING TRUST apply, and that my estate pass for the benefit of my family with the least possible amount of death taxes.

If my revocable living trust is not in effect at my death for any reason whatsoever, then all of my property shall be disposed of under the terms of my revocable living trust as if it were in full force and effect on the date of my death, and such terms are hereby incorporated herein for all purposes.

**Article III**

**Appointment of Personal Representative**

I appoint NELVA E. BRUNSTING as my Personal Representative. In the event NELVA E. BRUNSTING fails or ceases to serve for any reason, I appoint the following individuals as my Personal Representative to serve in the following order:

First, CARL HENRY BRUNSTING

Second, AMY RUTH TSCHIRHART

Third, CANDACE LOUISE CURTIS

The term "Personal Representative" will mean and refer to the office of Independent Executor and Trustee collectively. Reference to Personal Representative in the singular will include the plural, the masculine will include the feminine, and the term is to be construed in context. A Personal Representative will not be required to furnish a fiduciary bond or other security. I direct that no action be required in the county or probate court in relation

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to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisal and list of claims as required by law.

#### Article IV

##### Payment of Debts, Taxes, Settlement Costs and Exercise of Elections

The following directions concern the payment of debts, taxes, estate settlement costs, and the exercise of any election permitted by Texas law or by the Internal Revenue Code. The Personal Representative of my estate and the Trustee of the BRUNSTING FAMILY LIVING TRUST may act jointly and may treat the property of my estate subject to probate and the property of the BRUNSTING FAMILY LIVING TRUST as one fund for the purpose of paying debts, taxes, estate settlement costs, and making of elections.

##### Section A. Payment of Indebtedness and Settlement Costs

The Personal Representative will have the discretionary authority to pay from my estate subject to probate the costs reasonably and lawfully required to settle my estate.

##### Section B. Special Bequests

If property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient. The obligation to be assumed shall be the principal balance of the indebtedness on date of death, and the Personal Representative shall be entitled to reimbursement or offset for principal and interest payments paid by my estate to date of distribution.

##### Section C. Estate, Generation Skipping, or Other Death Tax

Unless otherwise provided in this will or by the terms of the BRUNSTING FAMILY LIVING TRUST, estate, inheritance, succession, or other similar tax shall be charged to and apportioned among those whose gifts or distributive share generate a death tax liability by reason of my death or by reason of a taxable termination or a taxable distribution under the generation skipping provisions of the Internal Revenue Code. To the extent I may lawfully provide, the Personal Representative may pay and deduct from a beneficiary's distributive share (whether the distribution is to be paid outright or is to be continued in trust) the increment in taxes payable by reason of a required distribution or termination of interest

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(i.e., estate, gift, inheritance, or generation skipping taxes) to the extent that the total of such taxes payable by reason of a distribution or termination is greater than the tax which would have been imposed if the property or interest subject to the distribution or termination of interest has not been taken into account in determining the amount of such tax. To the extent a tax liability results from the distribution of property to a beneficiary other than under this will or under the BRUNSTING FAMILY LIVING TRUST, the Personal Representative will have the authority to reduce any distribution to the beneficiary from my estate by the amount of the tax liability apportioned to the beneficiary, or if the distribution is insufficient, the Personal Representative will have the authority to proceed against the beneficiary for his, her, or its share of the tax liability.. In making an allocation, my Personal Representative may consider all property included in my gross estate for federal estate tax purposes, including all amounts paid or payable to another as the result of my death, including life insurance proceeds, proceeds from a qualified retirement plan or account, proceeds from a joint and survivorship account with a financial institution or brokerage company, proceeds from a buy-sell or redemption contract, and/or any other plan or policy which provides for a payment of death benefits. This provision further contemplates and includes any tax which results from the inclusion of a prior transfer in my federal gross estate even though possession of the property previously transferred is vested in someone other than my Personal Representative. This provision does not include a reduction in the unified credit by reason of taxable gifts made by me. If the Personal Representative determines that collection of an apportioned tax liability against another is not economically feasible or probable, the tax liability will be paid by my estate and will reduce the amount distributable to the residuary beneficiaries. The Personal Representative's judgment with regard to the feasibility of collection is to be conclusive.

#### **Section D. Election, Qualified Terminable Interest Property**

The Personal Representative may, without liability for doing so or the failure to do so, elect to treat all or a part of my estate which passes in trust for NELVA E. BRUNSTING under the BRUNSTING FAMILY LIVING TRUST, in which NELVA E. BRUNSTING has an income right for life, as Qualified Terminable Interest Property pursuant to the requirements of Section 2056(b)(7) of the Internal Revenue Code. To the extent that an election is made, and unless NELVA E. BRUNSTING shall issue a direction to the contrary, the Trustee of the BRUNSTING FAMILY LIVING TRUST will pay from the irrevocable share the entire increment in the taxes payable by reason of the death of NELVA E. BRUNSTING to the extent that the total of such taxes is greater than would have been imposed if the property treated as qualified terminable interest property has not been taken into account in determining such taxes. It is my intent and purpose to provide my Personal Representative with the greatest latitude in making this election so that the least amount of federal estate tax will be payable upon my death and upon the death of NELVA E. BRUNSTING, and this



provision is to be applied and construed to accomplish this objective. The Personal Representative is to make distributions of income and principal to the Trustee of the BRUNSTING FAMILY LIVING TRUST until my total estate subject to probate and administration is distributed to the Trustee of the BRUNSTING FAMILY LIVING TRUST.

**Section E. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, my estate may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as Qualified Terminable Interest Property had not been made. Reference to the "Special Election For Qualified Terminable Interest Property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code. The term "GST Exemption" or "GST Exemption Amount" is the dollar amount of property which may pass as generation skipping transfers under Subtitle B, Chapter 13, of the Internal Revenue Code of 1986 (entitled "Tax on Generation Skipping Transfers") which is exempt from the generation-skipping tax.

**Section F. Elective Deductions**

The Personal Representative will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Personal Representative's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of my estate or the estate of a deceased beneficiary.

**Article V**

**Service of the Personal Representative**

A Personal Representative may exercise, without court supervision (or the least supervision permitted by law), all powers and authority given to executors and trustees by the laws of the State of Texas and by this will.

04032012:1010:80032

**Section A. Possession, Assets, Records**

My Personal Representative will have the authority to take possession of the property of my estate and the right to obtain and possess as custodian any and all documents and records relating to the ownership of property.

**Section B. Retain Property in Form Received, Sale**

My Personal Representative will have authority to retain, without liability, any and all property in the form in which it is received by the Personal Representative without regard to its productivity or the proportion that any one asset or class of assets may bear to the whole. My Personal Representative will not have liability nor responsibility for loss of income from or depreciation in the value of property which was retained in the form which the Personal Representative received them. My Personal Representative will have the authority to acquire, hold, and sell undivided interests in property, both real and personal, including undivided interests in business or investment property.

**Section C. Investment Authority**

My Personal Representative will have discretionary investment authority, and will not be liable for loss of income or depreciation on the value of an investment if, at the time the investment was made and under the facts and circumstances then existing, the investment was reasonable.

**Section D. Power of Sale, Other Disposition**

My Personal Representative will have the authority at any time and from time to time to sell, exchange, lease and/or otherwise dispose of legal and equitable title to any property upon such terms and conditions, and for such consideration, as my representative will consider reasonable. The execution of any document of conveyance, or lease by the Personal Representative will be sufficient to transfer complete title to the interest conveyed without the joinder, ratification, or consent of any person beneficially interested in the property, the estate, or trust. No purchaser, tenant, transferee or obligor will have any obligation whatsoever to see to the application of payments made to my Personal Representative. My Personal Representative will also have the authority to borrow or lend money, secured or unsecured, upon such terms and conditions and for such reasons as may be perceived as reasonable at the time the loan was made or obtained.

04032012:1010:60003

**Section E. Partial, Final Distributions**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Personal Representative; a release from any loss, liability, claim or question concerning the exercise of due care, skill, and prudence of the Personal Representative in the management, investment, retention, and distribution of property during the representative's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Personal Representative, to include the payment of attorneys' fees, from any asserted claim of any taxing agency, governmental authority, or other claimant. Any beneficiary having a question or potential claim may require an audit of the estate or trust as an expense of administration. Failure to require the audit prior to written acceptance of the Personal Representative's report, or the acceptance of payment, will operate as a final release and discharge of the Personal Representative except as to any error or omission having basis in fraud or bad faith.

**Section F. Partition, Undivided Interests**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will have the authority (1) to partition any asset or class of assets and deliver divided and segregated interests to beneficiaries; (2) to sell any asset or class of assets (whether or not susceptible to partition in kind), and deliver to the beneficiaries a divided interest in the proceeds of sale and/or a divided or undivided interest in any note and security arrangement taken as part of the purchase price; and/or (3) to deliver undivided interests in an asset or class of assets of the beneficiaries subject to any indebtedness which may be secured by the property.

**Section G. Accounting**

My Personal Representative will render at least annually a statement of account showing receipts, disbursements, and distributions of both principal and income during the period of accounting and a statement of the invested and uninvested principal and the undistributed income at the time of such statement.

**Section H. Protection of Beneficiaries**

No beneficiary will have the power to anticipate, encumber or transfer any interest in my estate. No part of my estate or any trust will be liable for or charged with any debts,



04032912:1010:60034

contracts, liabilities or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary.

### **Section I. Consultants, Professional Assistance**

My Personal Representative will have the authority to employ such consultants and professional help as needed to assist with the prudent administration of the estate and any trust. Any representative, other than a corporate fiduciary, may delegate, by an agency agreement or otherwise, to any state or national banking corporation with trust powers any one or more of the following administrative functions: custody and safekeeping of assets; record keeping and accounting, including accounting reports to beneficiaries; and/or investment authority. The expense of the agency, or other arrangement, will be paid as an expense of administration.

### **Section J. Compensation**

Any person who serves as Personal Representative may elect to receive a reasonable compensation, reasonable compensation to be measured by the time required in the administration of the estate or a trust and the responsibility assumed in the discharge of the duties of office. The fee schedules of area trust departments prescribing fees for the same or similar services may be used to establish reasonable compensation. A corporate or banking trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for estates or trusts of similar size and nature and additional compensation for extraordinary services performed by the corporate representative. My Personal Representative will be entitled to full reimbursement for expenses, costs, or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

### **Section K. Documenting Succession**

A person serving as Personal Representative may fail or cease to serve by reason of death, resignation or legal disability. Succession may be documented by an affidavit of fact prepared by the successor, filed of record in the probate or deed records of the county in which this will is admitted to probate. The public and all persons interested in or dealing with my Personal Representative may rely upon the evidence of succession provided by a certified copy of the recorded affidavit, and I bind my estate and those who are its beneficial owners to indemnify and hold harmless any person, firm, or agency from any loss sustained in relying upon the recorded affidavit.

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## Article VI

### No-Contest Requirements

I vest in my Personal Representative the authority to construe this will and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my estate with the cost of a litigated proceeding to resolve questions of law or fact unless that proceeding is originated by my Personal Representative or with the Personal Representative's written permission. Any other person, agency or organization who originates (or who shall cause to be instituted) a judicial proceeding to construe or contest this will or to resolve any claim or controversy in the nature of reimbursement, constructive or resulting trust or other theory which, if assumed as true, would enlarge (or originate) the claimant's interest in my estate, will forfeit any amount to which that person, agency or organization is or may be entitled, and the interest of any such litigant or contestant will pass as if he or she or it had predeceased me.

These directions will apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause, and even though the proceeding may seek nothing more than to construe the application of this no-contest provision. However, the no-contest provision is to be limited in application as to any claim filed by NELVA E. BRUNSTING, to the exclusion thereof if necessary, to the extent it may deny my estate the benefit of the federal estate tax marital deduction.

THIS WILL is signed by me in the presence of two (2) witnesses, and signed by the witnesses in my presence on January 12, 2005.

  
ELMER H. BRUNSTING

04032012:1010:60055

The foregoing Will was, on the day and year written above, published and declared by ELMER H. BRUNSTING in our presence to be his Will. We, in his presence and at his request, and in the presence of each other, have attested the same and have signed our names as attesting witnesses.

We declare that at the time of our attestation of this Will, ELMER H. BRUNSTING was, according to our best knowledge and belief, of sound mind and memory and under no undue duress or constraint.

**Krysti Brull**  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

*Krysti Brull*  
\_\_\_\_\_  
WITNESS

**April Driskell**  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

*April Driskell*  
\_\_\_\_\_  
WITNESS

FILED

2012 APR -2 PM 4:31

*Steph Starnett*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

UNOFFICIAL COPY



04032012:1010:60097

SELF-PROVING AFFIDAVIT

STATE OF TEXAS  
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared ELMER H. BRUNSTING, Kristi Brun and April Duskey, known to me to be the Testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said ELMER H. BRUNSTING, Testator, declared to me and to the said witnesses in my presence that said instrument is his Last Will and Testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his or her oath stated to me, in the presence and hearing of the said Testator that the said Testator had declared to them that the said instrument is his Last Will and Testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testator and at his request; that he was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

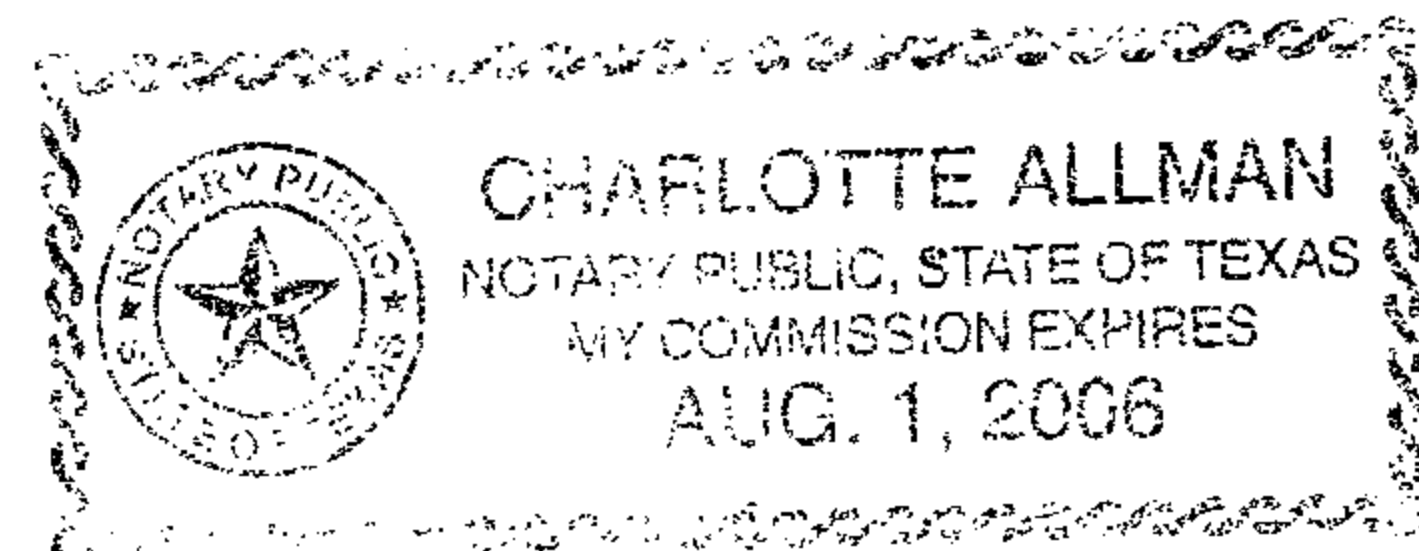
Elmer H Brunsting  
ELMER H. BRUNSTING

Kristi Brun  
WITNESS

April Duskey  
WITNESS

Subscribed and sworn to before me by the said ELMER H. BRUNSTING, the Testator, and by the said Kristi Brun and April Duskey, witnesses, on January 12, 2005.

Charlotte Allman  
Notary Public, State of Texas



**PURPORTED WILL**

04032012: 1010: 60038

412248

UNOFFICIAL

COPY

The Vacek Law Firm, PLLC  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079  
(281) 531-5800

PURPORTED WILL



04052013:1322: P0115

**DROP**

NO. 412.249

**PROBATE COURT 4**

IN THE ESTATE OF  
Nelva E. Brunsting  
DECEASED

§  
§  
§

IN THE PROBATE COURT  
NUMBER FOUR OF  
HARRIS COUNTY, TEXAS

**DROP ORDER**

On this day, it having been brought to the attention of this Court that the above entitled and numbered estate should be dropped,

**IT IS THEREFORE ORDERED** that the Clerk drop said estate from the Court's active docket.

**IT IS FURTHER ORDERED** that any costs incident to this order are hereby waived.

SIGNED this 4 day of April, 2013.

Christine Butts  
JUDGE CHRISTINE BUTTS  
PROBATE COURT NO. FOUR

COPY

FILED  
2013 APR -5 AM 10:01  
Sta. [Signature]  
COUNTY CLERK  
HARRIS COUNTY TEXAS

# DROP

NO. 412.248

PROBATE COURT 4

04052013:1514:P0008

IN THE ESTATE OF  
Elmer H. Brunsting  
DECEASED

§  
§  
§

IN THE PROBATE COURT  
NUMBER FOUR OF  
HARRIS COUNTY, TEXAS

## DROP ORDER

On this day, it having been brought to the attention of this Court that the above entitled and numbered estate should be dropped,

**IT IS THEREFORE ORDERED** that the Clerk drop said estate from the Court's active docket.

**IT IS FURTHER ORDERED** that any costs incident to this order are hereby waived.

SIGNED this 9 day of April, 2013.

Christine Butts  
JUDGE CHRISTINE BUTTS  
PROBATE COURT NO. FOUR

*Steph...*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

2013 APR -5 AM 10:01

FILED

UNOFFICIAL COPY



09272019:0821: P0099

ASSETS	VALUE	ESTATE INTEREST
--------	-------	-----------------

**6. Miscellaneous Property**

6a. See List of Claims

6b. One-half (1/2) interest in  
 2000 Buick LeSabre..... \$2,750.00  
 VIN--1G4HR54K3YU229418

**TOTAL VALUE OF ESTATE..... Yet to be determined**

03272013:0821: P0034

**LIST OF CLAIMS**

1. Based upon the information currently available to the personal representative of the estate, it is not possible to determine with certainty what assets were in the estate at the Decedent's death. That determination will have to be made the subject of further judicial proceedings. After that judicial determination is made, to the extent it becomes necessary, this Inventory, Appraisement and List of Claims will be amended to reflect the descriptions and values of assets later determined to have been estate assets at the time of Decedent's death.

2. The estate has asserted a claim against Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC relating to actions taken and omissions made in the course of their representation of decedent and her husband which may result in additional estate assets. That case is pending under Cause No. 2013-05455, styled *Carl Henry 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.

3. The Brunsting Family Living Trust was signed by Decedent and her husband on October 10, 1996 and was restated on January 12, 2005 (the "Family Trust"). The Family Trust purported by its terms to provide for the creation of successor and/or subsequent trusts. The Family Trust also described other documents which, if created in compliance with the terms of the Family Trust, could impact the assets and status of the Family Trust. Attempts were made by various parties to change the terms and control of the Family Trust through later instruments which have been or will be challenged. The estate also asserts claims against Anita Brunsting and Amy Brunsting, the current purported trustees of the successor trusts or trusts arising from the Family


09272013:0921:P0095

Trust or documents allegedly created pursuant to the terms of the Family Trust. Those claims will be the subject of separate proceedings and may result in additional estate assets.

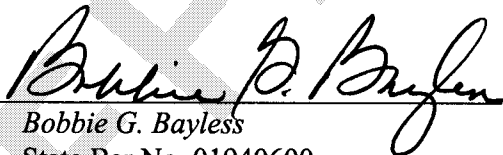
4. The estate also asserts a claim against Anita Brunsting, Amy Brunsting, and Carole Brunsting in their individual capacities for amounts paid and assets believed to also include, among other things, stocks and bonds which were removed from the Family Trust and/or the estate. This was accomplished either through the use of a power of attorney for Decedent, through their position as trustees, through their position as joint signatories on accounts and safe deposit boxes, or because they otherwise had access to the assets. Those claims will also be the subject of a separate proceeding and may result in additional estate assets.

There are no known claims due or owing to the Estate other than those shown on the foregoing Inventory and Appraisement.

The foregoing Inventory, Appraisement and List of Claims should be approved and ordered entered of record.

  
CARL HENRY BRUMSTING,  
*Independent Executor of the Estate of  
Nelva E. Brunsting*

BAYLESS & STOKES

By:   
*Bobbie G. Bayless*  
State Bar No. 01940600  
*Dalia B. Stokes*  
State Bar No. 19267900  
2931 Ferndale  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

*Attorneys for Independent Executor*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to the following interested parties as specified below on the 26<sup>th</sup> day of March, 2013, as follows:

Maureen Kuzik McCutchen  
Mills Shirley, LLP  
2228 Mechanic, Suite 400  
P.O. Box 1943  
Galveston, Texas 77553-1943  
Houston, Texas 77056  
*sent via Telecopier*

Candace Louise Curtis  
1215 Ulfian Way  
Martinez, California 94553  
*sent via U.S. First Class Mail*

Carole Ann Brunsting  
5822 Jason St.  
Houston, Texas 77074  
*sent via U.S. First Class Mail*

  
BOBBIE G. BAYLESS



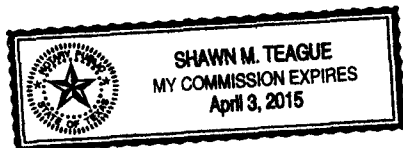
08272013:0821:P0087

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

I, CARL HENRY BRUNSTING, having been duly sworn, hereby state on oath that the foregoing Inventory, Appraisalment and List of Claims is a true and complete statement of all the property and claims of the Estate that have come to my knowledge.

*Carl Henry Brunsting*  
CARL HENRY BRUNSTING  
*Independent Executor of the Estate of  
Nelva E. Brunsting, Deceased*

SWORN TO and SUBSCRIBED BEFORE ME by the said CARL HENRY BRUNSTING,  
on this 26<sup>th</sup> day of March, 2013, to certify which witness my hand and seal of office.



*Shawn M. Teague*  
Notary Public in and for the  
State of T E X A S  
Printed Name: Shawn M. Teague  
My Commission Expires: 4-3-2015

COPY



03272013:0821:PO038

NO. 412.249

ESTATE OF	§	IN	PROBATE	COURT
NELVA E. BRUNSTING,	§	NUMBER	FOUR (4)	OF
DECEASED	§	HARRIS	COUNTY,	T E X A S

**ORDER APPROVING INVENTORY,  
APPRAISEMENT AND LIST OF CLAIMS**

The foregoing Inventory, Appraisement and List of Claims of the above Estate, having been filed and presented, and the Court, having considered and examined the same and being satisfied that it should be approved and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By: *Bobbie G. Bayless*

*Bobbie G. Bayless*  
State Bar No. 01940600  
*Dalia B. Stokes*  
State Bar No. 19267900  
2931 Ferndale  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

*Attorneys for Independent Executor*

04052013:1514:P0006

PROBATE COURT 4

NO. 412.248

ESTATE OF	§	IN	PROBATE	COURT
ELMER H. BRUNSTING,	§	NUMBER	FOUR (4)	OF
DECEASED	§	HARRIS COUNTY,	T E X A S	

ORDER APPROVING INVENTORY,  
APPRAISEMENT AND LIST OF CLAIMS

3930 (b)  
EFF 9-1-83

The foregoing Inventory, Appraisalment and List of Claims of the above Estate, having been filed and presented, and the Court, having considered and examined the same and being satisfied that it should be approved and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

SIGNED on this 4 day of April, 2013.

Cristine Bonin  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By: Bobbie G. Bayless

*Bobbie G. Bayless*  
State Bar No. 01940600  
*Dalia B. Stokes*  
State Bar No. 19267900  
2931 Ferndale  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

*Attorneys for Independent Executor*

FILED  
2013 APR -5 AM 10:01  
Star Stokes  
DEPUTY CLERK  
HARRIS COUNTY, TEXAS

APR 05 2013



STAN STANART  
COUNTY CLERK, HARRIS COUNTY, TEXAS  
PROBATE COURTS DEPARTMENT

PAID

10172014:1604:P0021

Court No. Probate Court No. Four (4)

Date: October 17, 2014

APPLICATION FOR LETTERS TESTAMENTARY  
(Testamentary, or of Guardianship, or of Administration)

PROBATE

DOCKET NO. 412248 STYLE OF DOCKET: ELMER H BRUNSTING, DECEASED

Name of Personal Representative: CARL HENRY BRUNSTING

Title of Personal Representative: INDEPENDENT EXECUTOR

Date Oath Filed: 08/28/2012

Order Date: 08/28/2012

Date Approved Bond Filed:

Amount Of Bond: \$ \_\_\_\_\_

LETTERS: To Be Picked Up  A. A.: \_\_\_\_\_

To Be Mailed (at purchaser's risk)  Phone No.: 713-522-2224

To: BAYLESS & STOKES

*Called 10/17/14 @ 11:07  
A. McKinley*

(Street or P.O. Box Address)

City

State

Zip Code

*Check 25677 \$20.00*

*Phone*

Signature of Person Requesting or Attorney of Record

RECEIPT FOR PAYMENT FOR LETTERS ABOVE DESCRIBED

Received of the person, whose signature appears hereinabove, the sum of \$10.00 for issuing the 5 Letters hereinabove described.

I authorize the County Clerk to mail this order to me by regular U.S. Mail and release the County Clerk of any and all responsibility of my failure to receive same.

STAN STANART,  
County Clerk and Clerk of Probate Courts  
Harris County, Texas

Akida McKinley

Deputy County Clerk

Received by: *[Signature]*

Date: 10-17-14

Clerk's Initials: ACH

P.O. Box 1525 • Houston, TX 77251-1525 • (713) 755-6425

www.cclerk.hctx.net

**DATA ENTRY**  
**PICK UP THIS DATE**

PROBATE COURT 4

CAUSE NO. 412,249 - 401

IN RE: ESTATE OF

NELVA E. BRUNSTING,

DECEASED

§  
§  
§  
§  
§

IN THE PROBATE COURT

NUMBER FOUR (4) OF

HARRIS COUNTY, TEXAS

\*\*\*\*\*

CAUSE NO. 412,249 - 402

IN RE: ESTATE OF

NELVA E. BRUNSTING,

DECEASED

§  
§  
§  
§  
§

IN THE PROBATE COURT

NUMBER FOUR (4) OF

HARRIS COUNTY, TEXAS

**AGREED ORDER TO CONSOLIDATE CASES**

On this day came to be considered the oral Motion to Consolidate Cases seeking to have the pleadings assigned to Cause Number 412,249-402 consolidated into Cause Number 412,249-401. The Court finds that the actions involve the same parties and substantially similar facts, and that they should be consolidated and prosecuted under Cause Number 412,249-401. It is, therefore,

ORDERED that Cause Number 412,249-402 is hereby consolidated into Cause Number 412,249-401. It is further,

ORDERED that all pleadings filed under or assigned to Cause Number 412,249-402 be moved into Cause Number 412,249-401.

SIGNED on this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JUDGE PRESIDING

20000:5180:51026060

COPY

03092015:0815:P0003

APPROVED AS TO FORM:

ostrommorris, PLLC

BY: 

JASON B. OSTROM  
(TBA #24027710)  
jason@ostrommorris.com  
R. KEITH MORRIS, III  
(TBA #24032879)  
keith@ostrommorris.com  
6363 Woodway, Suite 300  
Houston, Texas 77057  
713.863.8891  
713.863.1051 (Facsimile)

Attorneys for Candace Curtis

BY: 

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(TBA #01940600)  
bayless@baylessstokes.com  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224  
713.522.2218 (Facsimile)

Attorney for Drina Brunsting, Attorney in Fact  
for Carl Brunsting

BY: \_\_\_\_\_

DARLENE PAYNE SMITH  
(TBA #18643525)  
dsmith@craincaton.com  
1401 McKinney, 17<sup>th</sup> Floor  
Houston, Texas 77010  
713.752.8640  
713.425.7945 (Facsimile)

Attorney for Carole Brunsting

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APPROVED AS TO FORM:

ostrommorris, PLLC

BY: 

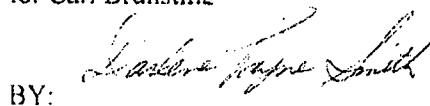
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# FIGHTING THE PROBATE MAFIA: A DISSECTION OF THE PROBATE EXCEPTION TO FEDERAL COURT JURISDICTION

RGVGT "P ÆQNCU\*

K"RP VTQF WE VIQP

Ko ci kpg"vj g"hmjy kpi <sup>3</sup>"O wurko "y qo cp"y kj "c"j kxqt {"qh"ej tqple o gpwn kmpguu"ko o ki tevgu"vq"vj g"Wpkgf "Ucvgu"ht qo "Kcp"cpf "ugwrgu"kp Eqmtef q"Ur tkpi u."Eqmtef q0" "Cv"ci g": 2."uj g"xluku"ect"fgcrgtuj kr "kp Eqmtef q"Ur tkpi u"qy pgf"d {"c"ugrh/f guetldgf "Ej tkukcp"r qnkkecn"cevkxku0 Vj g"y qo cpau" xwpgtcdkkrk {"ku"qdxkqu."cpf "kp"vj g"eqwtug"qh"ugmkpi "vj g y qo cp"ect."vj g"qy pgt"qh"vj g"ect"fgcrgtuj kr "f kueqxtu"vj cv"uj g"rxgu"d { j gtugrh"cpf "r quuguu"uki pkkecpv"cuugu0"Uj qtvn "chgt"ugmkpi "j gt"vj g"ect. vj g"qy pgt"qh"vj g"ect"fgcrgtuj kr ."kp"eqpegtv"y kj "uqo g"mqcn"rtqdcvg cwtppg{u."r gtuwf gu"vj g"O wurko "y qo cp"vq"gzgewg"cp"kpvt"xlkqu"vtwuv i kxkpi "vj g"qy pgt"qh"vj g"ect"fgcrgtuj kr "vj g"r qy gt"wr qp"vj g"y qo cpau"fgvj vq" wug"vj g"gpvtg"r tkpkr cn"qh"vj g"vtwuv"cv"j ku"uqrg"fkuegvkqp" hqt oEj tkukcp II grki kquu"r wtr qugu0" "Vj g"ect"fgcrgt"cpf "vj g"cwqtpg{u"cnq r gtuwf g"vj g"y qo cp"vq"gzgewg"fqewo gpwu"i kxkpi "vj go "vj g"r qy gt"vq"o cng

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30 Vj g"uegpctk"fguetldgf "ku"dcugf "qp"cmgi cvkpu"eqpvkpgf "kp"ceqo r nkpv"hgaf "lp"vj g"Wpkgf Ucvgu"F kntlev"Eqwtv"ht"vj g"F kntlev"qh"Eqmtef q0"See"Eqo r nkpvcpf "F go cpf "hqt"lwt {"Vtkrcv"6653. P leqrnu"x0Rgtmku"P q022"Ek03636"\*(Eqm0Hkgf "Lwn"36."4222-0"Vj g"cwj qt"ugtxgf "y kj qwr"ce {"cu vj g"cwqtpg{ "qh"teqtf "lp"vj g"o cvgt0"See id."cv530"ht"cf f kxkpcn"dceni tqwpf "kphqto cvkqp"qp"vj g"kuuvgu kpur tkpi "vj ku"j {r qvj gvleci"ugg" Ectc"F gi gvg."Perkins, Attorneys Accused of Wrongful Death and Fraud in Federal Court Case."EQNQ0URTR I U"K F GR0" Lwn"42."4222="Gtlp"Go gt {"Perkins Named in Suit over Estate, Family Claims \$2.5 Million Diverted."F GP XGT"RQUV."Lwn"42."4222."cvD7="F leni"Hjuvgt."Suit: 5 Defrauded Mentally Ill Woman, Car Dealer, Attorneys Deny Taking Control of Estate for Christian Religious Purposes.0F GP XGT" TQEM" O QWP VC RP 0P GY U."Lwn"46."4222."cv6C0



o gf lecn'f gekukqpu"qp"j gt"dgi crh0"Y j krg"vj g"y qo cp"ku"uvm'crkxg."vj g"ect f gcrgt"r gtuwcf gu"j gt"vq"y kj f tcy "rci g"uwo u"qh'o qpg{ "ht qo "vj g"v wuv'vq òkpxguö'kp"j ku"öd wukpguu'xgpwt guö

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Wnko cvgn{ . " vj g" y qo cp" f lgu0 " Uj qt vñ " vj gt gchgt . " qpg " qh " vj g " c w q t p g { u h k r g u " c " r g k k q p " k p " v j g " m e c n " r t q d c v g " e q w t v " u g g n k p i " c r r q k p v o g p v " c u " v j g r g t u a p c n t g r t g u g p v c k x g " q h " v j g " y q o c p a u " g u c v g " c u " y g m i " c u " c " o q v k p " u g g n k p i " c e q p u t w e v k p " q h " v j g " r k k k p i " v w u v f q e w o g p v " k p " c " o c p p g t " o q u v h c x q t c d r g " v q " v j g e c t " f g c r g t 0 " V j g u g " x c t k q w u " h k k p i u " o c n g " v j g k t " y c { " v q " q p g " q h " v j g " y q o c p a u f c w i j v g t u . " c " e k k g p " q h " P g y " [ q t n 0 " K p " v j g " e q w t u g " q h " v j g " q p i q k p i " r t q d c v g r t q e g g f k p i u . " v j g " y q o c p a u " f c w i j v g t " f l u e q x g t u " y j c v " v j g " e c t " f g c r g t " c p f " v j g c w q t p g { u " f k f " v q " j g t " o q v j g t 0 " Y j k r g " v j g " r t q d c v g " r t q e g g f k p i u " c t g " u k m r g p f k p i . " v j g " f c w i j v g t " h k r g u " u k v " c i c k p u v " v j g " e c t " f g c r g t " c p f " v j g " c w q t p g { u " k p h g f g t c n " f k u t l e v " e q w t v . " k p " r c t v " d g e c w u g " u j g " r g t e g k x g u " v j c v " v j g " r t q d c v g " e q w t v l w f i g a u " c e v k q p u " k p f l e c v g " q r g p " j q u w k k v { " v q y c t f " j g t . " c u " c " t g u k f g p v " q h " c p q v j g t u c v g . " c p f " v q y c t f " j g t " c w q t p g { u 0 " V j g " h g f g t c n " c e v k q p " k p e n m f g u " u c v g " e q o o q p n e y " e n c k o u " q h " y t q p i h w i f g c v j " c p f " e q p x g t u k q p . " c u " y g m i " c u " c " e n c k o " w p f g t " v j g h g f g t c n " T c e n g v g g t " k p h m g p e g f " c p f " E q t t w r v Q t i c p k k c v k q p u " U c w w g " \* 6 T K E Q o + 0 U j g " c n u q " u g g m i " c " f g e i n t c v q t { " l w f i o g p v " v j c v " v j g " k p v g t " x k x q u " v w u v " k u " k p x c r k f 0

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40 3: "WLUÉ0ÈÈ3; 8368: \*3; ; 640  
50 See, e.g., "Rqy gmi'x00 eEqto cem"5; 7"WLU6: 8.'734635"\*3; 8; +\*ucvki "vj cv'öc'hgf gtcn'f kntlev eqwt'v'icmi'lwtkuf levkqp'qxgt'vj g'uwdlgev'o cvgt'000h'vj g'ecwug'ku'pqv'qpg'f guetldgf'd{ 'cp{ 'lwtkuf levkqpcn ucwugö=Uj gnf qp'x0Ukm'6; "WLU": "J qy 0#663"\*3: 7240

j { r qvj gvlecl'vj gtg'ku'eqo r rny'f kxgtuk{<sup>6</sup>"i kxkpi "vj g"hgf gtcn'eqwtv'uwldgev o cwgt'lwtkuf levkqp'qxgt'vj g'ucv'eqo o qp'rcy "erlko u.'r tqxkf gf "vj g'co qwpv kp" eqpvtqxgtu{ "gzeggf u" &#97.2220'" Cf f kxkpcmf." ulpeg" vj g" TKEQ" erlko ctkgu" wpf gt "c"hgf gtcn'ucwag." vj gtg" y qwf "uggo "vq" dg" ucwagt { "hgf gtcn s wgvkqp'lwtkuf levkqp0'"Dgecwag'c'hgf gtcn'f kwt lev'eqwtv'y qwf "j cxg'f kxgtuk{ lwtkuf levkqp'qxgt'cp'cev'kqp"dtqwi j v'd{ "vj g"v'wv'gg'vq"gphteg'vj g'r wtr qt vgf v'wv'ci ckpu'vj g'r r'cl'p'v'hh'kp"vj g"hgf gtcn'cev'kqp." vj g"hgf gtcn'eqwtv'rkngy kug y qwf " j cxg" ucwagt { " uwldgev" o cwgt" lwtkuf levkqp" qxgt" vj g" f gerctcvqt { lwf i o gpv' cev'kqp0'" " Ugeqpf." vj g" eqwtv' y qwf " f gvgt o kpg" y j gvj gt" vj gvg ucwagt { " i tcvu" qh' uwldgev" o cwgt" lwtkuf levkqp" ctg" co qpi " vj g" r gto kvgf dcugu'qh'uwldgev'o cwgt'lwtkuf levkqp'r tqxkf gf "hqt" kp" Ct'v'eng"KKQh'vj g"Wpksgf Ucv'gu"Eqpukwv'kqp0'"Vj g"ucwagt { " i tcvu"qh'lwtkuf levkqp"kp'x'q'kf" j gtg0' f kxgtuk{ " cpf " hgf gtcn' s wgvkqp0' ctg" dqj " hto n' " tqv'gf " kp" Ct'v'eng" KKQ Vj kf." vj g'eqwtv'y qwf "f gvgt o kpg"y j gvj gt" vj g'cev'kqp"r t'gug'pu'c"lwtkuf levkqp ecug"qt" eqpvtqxgtu{="kp"qvj gt"y qtf u."y j gvj gt" vj g'cev'kqp"r t'gug'pu'cp'cewcn f kur wv' "v'wej kpi " qp" vj g" rgi cn' t'gr'v'k'pu" qh" r ct'v'gu" j cxkpi " cf xgtug" rgi cn kp'v'gt'guu" \*cu" eqpvtcv'gf " y kj " c" f kur wv' "qh" c" j { r qvj gvlecl' qt" cdut'cev ej ct'cev'gt+" cpf " y j gvj gt" vj gtg"ku" c" uwdu'cv'kcn' r'kng'kj qqf " vj cv' c" h'cx'q'ct'cdng

60 Vj g'ucwagt { " i tcv'qh'f kxgtuk{ 'lwtkuf levkqp' j cu'dggp'kp'v'gr t'v'gf "vq"t'gs wkt'g'v' cv'p'q' r'cl'p'v'hh'gd h'qo " vj g" uco g" ucw' cu' any" f gh'pf' cpv" cpf " vj cv' any" qxgtr' r' y km' f gh'cv' f kxgtuk{ " lwtkuf levkqp0'" See Utcy dtkf i g" x0' Ew'v'kuu." 9" WLU' \*5" Etcpej +489." 48968: " \*3: 28+" overruled on other grounds by Nq'v'k'x'ng. 'E0' "E0'F0'E0'x0'N'gv'up."65"WLU'4"J qy 0'6; 9\*3: 66-0

70 See'4: "WLU0E'3554'c-#3+'\*3; ; 6+'\*6Vj g'f kwt lev'eqwtv'uj cmj' cxg'q'tki kpcn'lwtkuf levkqp'qh'cm ekxk' cev'kpu" y j gtg" vj g" o cwgt" kp" eqpvtqxgtu{ "gzeggf u" vj g" uwo " qt" xcw'g' qh' &#97.222'0'0'0'cpf" ku d'gy ggp'0'0'0'ek'k' g'pu'qh'f h'ht'g'p'v'uc'v'gu0'-0

80 See'4: "WLU0E'3553'\*3; ; 6+'\*6Vj g'f kwt lev'eqwtv'uj cmj' cxg'q'tki kpcn'lwtkuf levkqp'qh'cm'ek'k' cev'kpu'ct'k'kpi " wpf gt" vj g" Eqpukwv'kqp."rcy u."qt"v'g'c'v'gu'qh'vj g"Wpksgf "Ucv'gu0'-0"O qt'g'q'xg." vj g" TKEQ ucwag'k'v'g'h'r tqxkf gu'cp'kp'gr g'p'gp'v' i tcv'qh'uwldgev'o cwgt'lwtkuf levkqp'v'q" vj g'hgf gtcn'eqwtv'0'"See'3: WLU0E'3; 86'c-+'\*3; ; 6+'\*6Vj g'f kwt lev'eqwtv'qh'vj g"Wpksgf "Ucv'gu'uj cmj' cxg'lwtkuf levkqp'v'q" r t'g'x'p'v'cpf t'g'w'c'kp'x'k'q'v'k'pu'qh'vj g" TKEQ" ucwag "d { "k'w'k'p' "c'r r t'q'r t'k'v'g'q'tf g'tu0'=#id."E'3; 86'c-+'\*6Cp { " r g'tu'q'p k'p'v'gf "kp" j ku'd'w'k'p'gu'qt" r t'q'r g't'v' { "d { "t'g'c'v'p'qh'c'x'k'q'v'k'pu'qh'vj g" TKEQ" ucwag\_0' c { "w'v'g' vj g't'g'ht'p' k'p'c'p { c'r r t'q'r t'k'v'g'Wpksgf "Ucv'gu'f kwt lev'eqwtv'0'-0

90 Vj g'F gerctcvqt { "lwf i o gpv'cev'4: "WLU0E'4423624'\*3; ; 6+'r tqxkf gu'c'ecwag'qh'cev'kqp'dw f qgu'not'g'zr cpf "hgf gtcn'eqwtv'uwldgev'o cwgt'lwtkuf levkqp0'"See'Ung'm { "Q'k'f'E'q'0'x'0'Rj k'k'r u'R'g'v'q'g'w' 'Eq0 55; "WLU0889.'893694'\*3; 72-0'k'p'q'tf g't'v'q'f gvgt o kpg'y j gvj gt" c'hgf gtcn'eqwtv' cu'ucwagt { "uwldgev'o cwgt lwtkuf levkqp'qxgt" c'f gerctcvqt { "lwf i o gpv'cev'kqp." vj g'eqwtv'o wv'f gvgt o kpg'y j gvj gt" cp'q'tf k'pct { "eq'g't'ek'g u'w'k' dtqwi j v'd { " q'p'g' qh' vj g' r ct'v'gu" y qwf "h'c'm' y kj kp" vj g" ucwagt { " uwldgev'o cwgt" lwtkuf levkqp' qh' vj g' hg'f gtcn'eqwtv'0'"See id.

: 0 See."e.g.."X'g't'p'f'gp"DOX0'x0'E'gp'v'c'f' D'cp'n'f'qh'P'k' g't'c."683" WLU'6: 2"\*3; ; 5+J qf i uq'p"x0 D'qy g't'c'p'm"; "WLU'7" Etcpej +525"\*3: 2; +\*3 q'f' k'p' i " vj cv'0'v' g" ucwag" ec'p'p'v' g'z'v'g'p'f " vj g" lwtkuf levkqp dg { q'p'f " vj g' h'o ku'qh'v'j g' eqpukwv'kqp0'-0

: 0 See WLU0E'Q'U'0'c't'0'KK'E'4."en'030'0'v'j g'lw'f'k'c'f'R'qy g't' vj cm'g'z'v'g'p'f "vq"cm'Ec'ugu'lp'N'cy' c'p'f Gs'v'k'f."c't'k'k'p' "w'p'f'gt'0'0'0'v'j g'N'cy' u'qh'v'j g'Wpksgf "Ucv'gu'0'0'0'c'p'f\_"vq"Eq'p't'q'x'g't'k'g'u'0'0'0'd'g'y g'p'p' "E'k'k' g'p'u qh'f h'ht'g'p'v'Ucv'gu0'0'0'Id." See also "D'c'p'ng't'u'v'v'w'v'Eq'0'x'0'V'z'g'0' ("R'ce'0'T { '0'E'q'0'463" WLU'4; 7"\*3; 38+ \*v'j q'f' k'p' i " eqpukwv'k'p'c'k'v' "qh'ucwagt { " i tcv'qh'f'hg'f gtcn'uwldgev'o cwgt'lwtkuf levkqp0'-0

36: 4

SOUTHERN CALIFORNIA LAW REVIEW

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hgf gtcn'eqwtv'f gekukqp'y kn'dtkpi "cdqwuqo g'ej cpi g"qt"j cxg"uqo g"ghgevf<sup>2</sup>  
 Vj g" hcew" qh" vj g" cdqxf/guetkdgf "uegpctkq" y qwf "uggo "vq" uc'vuh' "vj g  
 lwkckcdkklv" tgs vktgo gpv0" Hqwtvj . "dgecwug"vj gtg"ku"cp"ppi qlpi "kp"tgo<sup>33</sup>  
 r tqeggf kpi "kp"ucvg" r tqdcvg" eqwtv' kp" vj g" cdqxf/guetkdgf "uegpctkq." vj g  
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 legis."qt"r tkqt"gzenukxg"lwtkuf levkqp." y qwf "r tgxgpv'kv'ltqo "cf lwf levkpi "vj g  
 erko u" tclugf "kp" hgf gtcn'eqwtv<sup>4</sup>" Hkhj . "kh" vj g" eqwtv' j cu" uwdlgev" o cwgt  
 lwtkuf levkqp"cpf "c"lwkckdng"eqvtqxgtu{ . "cpf "vj g" f qewtkpg"qh'custodia legis  
 f qgu" pqv" dct" cf lwf levkqp" qh' vj g" erko u" tclugf "kp" vj g" hgf gtcn' eqwtv  
 r tqeggf kpi . "vj g" hgf gtcn' eqwtv' y qwf "pqpqv gruu" f gvgto kpg" y j gvj gt " kv  
 uj qwf "cdvckp" wpf gt "qpg"qh' vj g" o cp{ "tgeqi pk gf "f qewtkpgu"qh'r twf gpvkn  
 cdvckp<sup>5</sup>" Hkpcml . "vj g" f kvtkv'eqwtv' y qwf "tghgt"vq"vj g"rcy "qh'vj g"ucvg"kp  
 y j lej "kv'uksu"vq" f gvgto kpgu"vj g"gzknvpeg"cpf "ueqr"qh'cp{ "eqo o qp"rcy "vqtv  
 qt"eqvtcev'erko u<sup>6</sup>

[ gv."nwtkpi "kp" vj g"dceni tqwvf "qh"vj ku"j { r qvj gv'ecr'ku" vj g"or tqdcvg  
 gzeqr vkpö"vq" hgf gtcn'eqwtv'lwtkuf levkqp0"K'j cu"vj g"ghgevf'qh'gzenuf kpi "o quv  
 r tqdcvg"cpf "r tqdcvg/tgrvvgf "o cwgtu'ltqo "hgf gtcn'eqwtv'cpf "j cu"dgpp"cr vñ  
 f guetkdgf "cu"öqpg"qh'vj g" o quv"o { uvgtkwu"cpf "guvgtke"dtcpej gu"qh'vj g"rcy  
 qh' hgf gtcn' lwtkuf levkqp<sup>7</sup>" " Vj g" tvkqpcng" hqt " vj ku" lwf kckm/etgcvf<sup>8</sup>  
 gzeqr vkp"ku"o ktgf "kp"eqphwukp0"K'j cu"xctkwun{ "dggp"lwkhgf "kp"Uw tgo g  
 Eqwtv'cpf "rty gt"eqwtv'f gekukpu"qp"i tqwvf u'uko krcr"vq"vj qug"tqwkpgn{ "wugf  
 vq" gxcnvcv" hgf gtcn'lwtkuf levkqp" cu" f grkpgcvgf "cdqxf." kpenf kpi "cuvgtkpu  
 vj cv" vj g" ucwvwt { " i tcpv" qh' uwdlgev" o cwgt" lwtkuf levkqp" eqphgttgf "qp" vj g

320 See. e.g., "Xcmg{ "Hqti g" Ej tkvcp" Eqmgi g" x0'Co gtlecpu" Wpksf "hqt "Ugr ctvckp"qh' Ej wtej  
 ( "Ucvg. "Ipe0'676" WLU686" \*3; ; 4=Cgpc" Nktg" Ipu0Eq0x0J cy qtvj . "522" WLU449" \*3; 59-0)

330 C" r tqeggf kpi "kp"tgo "ku"qpg"lp" y j lej "c" f gvgto kpvkq"ku"o cf g"cu"vq"qy pgtvj kr "qh'c" vj kpi "qt  
 qdlgev'vj cv'ku'dkpf kpi "qp"vj g" y j qng" y qtrf "cpf "pqv'lwv'qp"vj g" r ctvku"vq"vj g" r tqeggf kpi 0" DNCEMU'NCY  
 FÆVIQPCIT[ '9; 5" \*8vj "gf 03; ; 3="lj gt gkpcngt" DNCEMU'NCY FÆVIQPCIT[ \_0

340 Rtlpegu" Nkf c" qh' Vj wtp" ( "Vczku" x0'Vj qo r uqp. "527" WLU678. "687689" \*3; 5; 40" Wpf gt" vj g  
 f qewtkpg"qh' custodia legis." y j gtg"kp"tgo "r tqeggf kpi u" lpxqkpi "vj g" uco g" res ctg" dtqvi j v'kp" o wkr ng  
 eqwtv. "vj g" hkw'eqwtv'v'cuwo g"lwtkuf levkqp"qxgt"vj g" res j cu"gzenukxg"lwtkuf levkqp"qxgt"ks0'Id. "cv'6890

350 E.g., "Y knqp" x0'Uxgp" Hcm'Eq0'737" WLU499" \*3; ; 7=F kv0qh'Eqnwo dlc"Eqwtv'qh'Cr r gcn'x0  
 Hgrf o cp. "682" WLU684" \*3; ; 5=E qmtef q" Tksgt" Y cvgt" Eqpugtxcv'kp" F kv0x0'Wpksf "Ucvgu. "646" WLU: 22  
 \*3; 98="I qvpi gt" x0J cttka. "623" WLU59" \*3; 93="Eqv'v' "qh' Cngi j gp{ "x0' Hcpni' O cuj v'f c" Eq0'582" WLU  
 3: 7" \*3; 7; ="Nqwkpc" Rqy gt" ( "Ni j v'Eq0'x0'Vj kdqf ewz. "582" WLU47" \*3; 7; ="Dwthqt" x0'Uwp" Qki'Eq0  
 53; "WLU537" \*3; 65="Dtknj ctv'x0'Gzegu" Ipu0Eq0'qh'Co 0'538" WLU6; 3" \*3; 64="Tcltqcf" Eqo o øp" qh  
 Vgz.0x0'Rvmo cp" Eq0'534" WLU6; 8" \*3; 63="Tqqngt" x0'Hf grks{ "Vtwv'Eq0'485" WLU635" \*3; 45-0

360 Gtlg" T0T0Eq0'x0'Vqo r nku. "526" WLU86" \*3; 5; -0" Vj ku" y qwf "kpenf g" vj g" ucvgu'ej qlvg/ qh'rcy  
 tvrgu" y j lej "o ki j v" kp" wtp. "tghgt" vj g" eqwtv'vq" vj g"rcy u'qh' { gv'cpqj gt" ucvg0" Mrczqp" x0'Ugqvqt" Grgevk  
 O hi 0'535" WLU6: 9. '6; 8" \*3; 63-0

370 F tci cp'x0O kngt. '89; Hkf'934. '935" \*9vj "Ek03; : 4-0

380 E.g., "I ggti gu" x0I rlem". 78' Hkf"; 93.; 95" \*9vj "Ek03; : : -0

hgf gtcn' eqwtu" d{ "Eqpi tguu" f qgu" pqv" gz vgpf " vq" r tqdcv" o cwgtu<sup>39</sup>" vj cv dgecvw"vj g'r tqdcv"qh'c'y kn'ku"r tqeggf kpi "kp'tgo ."c'hgf gtcn'eqwtv'ecppqv gzgtkug"lwtkuf levkqp"qxgt"cp" gucv"kh'v'j g"ucv"r tqdcv"eqwtv'j cu' crfgcf { vncgp"lwtkuf levkqp"qh'v'j g" gucv"KQ0"vj g" f qevtkpg"qh'custodia legis<sup>43</sup>:"vj cv r tqdcv" o cwgtu" ctg" pqv' lwtkcdng" oecugu" qt" eqvtxqgtukuo" y kj kp" vj g o gcplpi "qh'Ct veng"KK<sup>3</sup>:"cpf "vj g'r twf gpvkn'f gukg"vq"cxqkf "kpvthgtkpi "y kj qpi kpi "ucv"eqwtv'r tqeggf kpi u0<sup>2</sup>"kp"cf f kkp."eqwtu"j cxg"gzr rkpqgf "vj g dcuku"qh'v'j g'r tqdcv"gzegr vqp"d{ "pqvpi "vj cv'r tqdcv"o cwgtu"ctg"d{ "ucv" rny "eqo o kwgf "vq"vj g"gzenvkxg"lwtkuf levkqp"qh'v'j g"ucv"r tqdcv"eqwtu<sup>43</sup> vj cv'dgecvw"vj g"cwj qtkv"vq"o cng"y knu'ku'f gtxgf "htqo "vj g"ucv"u.cpf "vj g tgs vktgo gpv'qh'r tqdcv"ku'dw'c'tgi wv'vqp"vq"o cng"y kn'gh'gcvkxg."o cwgtu qh'outlev'r tqdcv"ctg"pqv'v'j kj kp"vj g"lwtkuf levkqp"qh'v'j g'hgf gtcn'eqwtu<sup>44</sup>"vj g pggf "hqt"rgi cni'egt vkv"cu"vq"vj g" f kur qukkqp"qh'v'j g" f gegcugf au' gucv<sup>45</sup>"vj g kpvgt guv'kp"lwf keln'geppqo {<sup>46</sup>cpf "vj g'tgr vxxg"gzr gt vug"qh'ucv"cpf "hgf gtcn eqwtu'y kj "tgr gev'vq'r tqdcv"o cwgtu<sup>47</sup>

Vj ku'eqphwukqp"qxgt"vj g'tcvkqpcng"htq"vj g"gzegr vqp"j cu'cnuq't guwngf "kp eqphwukqp"cu"vq"ku'ueqr g0" Hktuv"ku'k'c"rko kcvkqp"qp" hgf gtcn'eqwtv' uwdlgev o cwgt "lwtkuf levkqp."c" f kuetgvkqpc { "f qevtkpg"qh'cdungv'vqp."qt"dqj A"Ugeqpf . kn'k'ku"c"rko kcvkqp"qp" hgf gtcn' eqwtv' uwdlgev' o cwgt "lwtkuf levkqp." ku" vj ku rko kcvkqp"dcugf "qp"Eqpi tguu'ucvwwq { "i tcpv"qh'uwdlgev'o cwgt "lwtkuf levkqp vq" vj g" hgf gtcn' eqwtu"qt"ku"k'cp" Ct veng" KK rko kcvkqpA" Vj kf . " f qgu" vj g r tqdcv" gzegr vqp" cr r n{ " qpn{ " vq" vj g" hgf gtcn' eqwtu" i tcpv" qh' f kxgtukv{ lwtkuf levkqp."qt" f qgu"ku'cnuq"gzv'gpf "vq"qv'j gt"ucvwwq { "i tcpv"qh'lwtkuf levkqp. uvej "cu'hgf gtcn's wvukqp"lwtkuf levkqpA" Hqwtv . "y j lej "v' r gu'qh'cev'apu" hcm y kj kp"vj g"gzegr vqpô ku'k'rko kvgf "vq"vj g"cewcn'r tqdcv"qh'c'y kn"qt" f qgu'kv

390 E.g., O'ctnj co "x0Cnngp."548"WLU6; 2."6; 6"\*3; 68="In re"Dtqf gtlemt'Y km": "WLU\*43"Y cni 725.'72; \*3: 96-0

3: 0 E.g., "Uwvqp"x0Gpi rkj ."468"WLU3; ; ."427"\*3; 3: ="Y cvgtu cp"x0Epcn'Nqwkukpc" Dcpni( Vtwv'Eq0"437"WLU55."66"\*3; 2; +\*ekkpi "Httgm'x0Qdtkp."3; ; "WLU: ; \*3; 27="D{gtu"x0O eCwg{ . 36; "WLU82: ."839"\*3; ; 5-0See In re Broderick's Will.": "WLU\*43"Y cni"cv72; 0

3: 0 E.g., "I cngj gt"x0I tcpv"382"HUwr 0: ."; 6"\*P (F0k03; 7: 40

420 E.g., "Georges.": 78"Hdf"cv"; 96="Tleg"x0Tleg"Hqwpf cvkqp."832"Hdf"693."697"\*9j "Ek03; 9; + \*ekkpi "O ctnj co "x0Cnngp."548"WLU6; 2."6; 6"\*3; 68="J w'vqp"x0Cdgtetqo dkg."8: 4"HUwr 0'343: . 343; \*P (F0I c03; : 9-0

430 E.g., "Tgkpi ctf v'x0Mgmf ."386"Hdf"34; 8."3522"\*32j "Ek03; ; ; ="Dgf q"x0O eI vktg."989"Hdf 527."528"\*8j "Ek03; ; 7="Nco dgti "x0Ecmj cp."677"Hdf"3435."3438"\*4f "Ek03; 94="Hqwtg"x0Ectrkp. 422"Hdf"; 65.; 69"\*6j "Ek03; 75-0

440 Sutton."468"WLUcv427="Farrell."3; ; "WLUcv3320

450 F tci cp"x0O kngt."89; "Hdf"934."936"\*9j "Ek03; ; 4="Georges.". 78"Hdf"cv"; 95696="Egpngt"x0 Egpngt."882"HUwr 0'9; 5."9; 7"\*GF O'0 lej 0'3; : 9="Leenuqp"x0'WLU'P cvaf'Dcpm"375"HUwr 0'326. 332633"\*F O'Q03; 79-0

460 Dragan."89; "Hdf"cv936="Georges.". 78"Hdf"cv"; 96="Cenker."882"HUwr 0'cv9; 70

470 Dragan."89; "Hdf"cv936637="Georges.". 78"Hdf"cv"; 96="Cenker."882"HUwr 0'cv9; 70

36: 6

SOUTHERN CALIFORNIA LAW REVIEW

]Xqr096-369;

gzvopf "v"o cwtu"cpemct { "v"r tqdcvA""Kl'v' g"rcwt."y j cv'f qgu"öcpemct { ö o gcpA""Hk'v' . "ku'v' g'ueqr g"qh'v' g"gzegr vqp'hkzgf "cu"o cwt "qh'hgf gtcn'rcy . qt'f qgu'k'xct { "dcugf "qp"v' g"kpvtpcn'f kxkukqp"qh'r tqdcv"lwtkuf levkqp"y kj kp vj g"eqvtv'u{uigo u"qh'gcej "ucvA""Hkpcn'f . "ku'v' g"r tqdcv"gzegr vqp"rko ksf qpn' "v"u'wku'kpxqk'kpi "y kmu'r tqr gt . "qt'f qgu'k'gzvopf "v"u'wku'kpxqk'kpi "y km uwdukwgu."uwej "cu"kpvt "xkqu"v wuuA""Cnj qwi j "c"enug"cpn'f uku"qh'v' g Uwr tgo g'Eqtv'u'r tqdcv"gzegr vqp'r tgegf gpw'tgxcnu'v' cv'v' g"cr r rncdkk'f qh'v' g" f qv'kpg" wtpu"qp"v' g"qxgtcr r kpi "tguwu"qh'v' g"ukz" kpf gr gpf gpv kps vkt'gu" f gkpgcvf "cdqxcg.<sup>48</sup>"v' g"m'v' gt "hgf gtcn'eqwtu"j cxg"kpugcf "etgcvf cpf "cr r rkgf "eqo r gv'kpi . "ppg/ugr "hqt wrcg"ht "f gyto k'kpi "y j gv' gt "c"i kxgp uwk'hcmu"y kj kp"qt"y kj qw'v' g'r tqdcv"gzegr vqp0

F gur ksg" vj g" eqo r rgzk'f " cpf " eqphwukqp" uwtqwpf kpi " vj g" r tqdcv gzegr vqp"v" hgf gtcn'eqwtu' lwtkuf levkqp0 qt"r gtj cr u"dgecwug"qh' kô k'v' cu dggp"i kxgp"uecpv'cwgpv'kqp"kp"v' g'rkv'gtcwtg<sup>49</sup>"v' ku"Ct v'kerg"uggmu"v" hkn'v' g i cr 0"Rctv'Kk'qh'v' ku"Ct v'kerg"ugw'ht'v' "v' g'ewtgpv'cr r rncv'kqp"qh'v' g'r tqdcv gzegr vqp"kp"v' g"m'v' gt "hgf gtcn'eqwtu"0"Rctv'Kk'qh'v' ku"Ct v'kerg"gzco kpgu"v' g ucwwqt { " cpf " eqpukw'kqpcn' eqpuc'kpw"qp"v' g" hgf gtcn'eqwtu'0'gzgtekug"qh uwdlgev"o cwt "lwtkuf levkqp"qxgt "r tqdcv"cpf "r tqdcv"tgrcvf "o cwtu"0"Rctv Kk'eqpen'f gu"v' cv'v' g"r tqdcv"gzegr vqp"ku"o" gtg"i rnuu"qp"v' g"ucwwqt { i tcpu'qh'uwdlgev"o cwt "lwtkuf levkqp"v" hgf gtcn'eqwtu'cpf "v' cv'v' g"gzvopf qh' vj ku" rko kcv'kqp" ku" pqv' pgetn' " cu" i tgcv' cu" lwf kelen' f gekukpu" cpf eqo o gpvcvtu"j cxg'uw' i guv'f 0"Rctv'Kk'gzco kpgu"v' g'eqpuc'kpw'r rnegf "qp vj g'hgf gtcn'eqwtu'0'gzgtekug"qh'lwtkuf levkqp"qxgt "r tqdcv"cpf "r tqdcv/tgrcvf o cwtu"d { "v' g" f qv'kpg"qh' custodia legis."cpf "eqpen'f gu"v' cv'v' g" f qv'kpg r t'gxpw" hgf gtcn'eqwtu'ht'qo "gzgtekukpi "lwtkuf levkqp"qxgt"egt'v'k'p"r tqdcv/ tgrcvf " o cwtu" pqv' qv' gty kug" gzen'f gf " ht'qo " vj gk" lwtkuf levkqp" d { " vj g eqpxgpv'kqpcn' vpf gtucpf kpi " qh' vj g" ucwwqt { " i tcpu" qh' uwdlgev" o cwt lwtkuf levkqp"v" vj g" hgf gtcn'eqwtu"0"Rctv'X"gzco kpgu"v' g"tqrg"qh'r twf gpv'cn cdungp'v'k'p"y kj "t'gur gev'v' r tqdcv/tgrcvf "o cwtu'hcn'kpi "q'wuk'f g'v' g"ht'qo cn ueqr g"qh'v' g"r tqdcv"gzegr vqp."cpf "eqpen'f gu"v' cv'v' crnj qwi j "eqwtu"ecp r tqr gtn'f "kpxqng"cdungp'v'k'p"y kj "t'gi ctf "v"egt'v'k'p"r tqdcv/tgrcvf "er'cko u'pqv qv' gty kug" gzen'f gf "d { "v' g"rko ku"qh'v' g"ucwwqt { "i tcpu"qh'uwdlgev"o cwt lwtkuf levkqp"qt" d { "v' g" f qv'kpg"qh' custodia legis."uqo g"m'v' gt "eqwtu"ctg

480 See supra "gzv'ceeqo r cp{kpi 'pqvu"56360  
490 See, e.g., "GTY R" EJ GGT R UM ."HGF GTCN" LWTKUF HVRQP "E"76."cv'522623" \*5f"gf 0'3; ; ; + \*pqv'kpi "f qo gu'k' tgr'v'k'p"u"cpf "r tqdcv"gzegr v'k'p"u"v" hgf gtcn' lwtkuf levkqp"dw" h'ewulpi "r tlo ctk'f "qp ku'v'gu't'grcvf "v"v' g'f qo gu'k' tgr'v'k'p"u"gzegr v'k'p"0"See also "T'BJ CTF "J OHCNNQP."F CP KGN'LOO GNV GT. ( "F CXH"NO'U' CRITQ."J CTV"CPF"Y GEJ UNGT'U' VJ G'HGF GTCN"EQWTU"CPF"VJ G'HGF GTCN"U' UNGO 3555658" \*6v' "gf 0'3; ; 8=EJ CTNGU'CNCP"Y TH J V."CTVJ W"TOO KNGT."( "GFY CTF"J OEQQRGT."35D HGF GTCN"RTCEV'EG'CPF "RTQEGF WTG'E"5832" \*4f "gf 0'3; ; 6=I tgi qt { "E'ONwng"( "F cplgn'LOJ qh'v' glo gt. Federal Probate Jurisdiction: Examining the Exception to the Rule."5; "HGF ODOP GY U( "L079; \*3; ; 4-0



ko r tqr gtnf " cduvckpki " qp" i tqwpf u" pqv' lwukhkf " wpf gt" cp{ " tgeqi pk gf f qestkpg"qh'cdugpvkqp0"Rctv'XKf go qpuctvgu'yj cv'y j cv'j cu'dggp'f guetkdgf d{ "vj g"my gt" hgf gtcn'eqwtu" cu"vj g"or tqdcvg"gzegr vkpö"vq" hgf gtcn'eqwtv uwdlgev" o cvgt "lwtkuf kvkqp" ecppqv' dg" tgf wegf "vq"vj g"uko r rkuke" hqto wrcg cf qr vgf "d{ "xctkwu' hgf gtcn'cr r gcu'eqwtu0" kpuvgef . "vj g'r tqdcvg"gzegr vkp'ku tgcml "cp"co cni co "qh'hkxg" f kvkpev'twgu'yj cv'o wuv'dg'cr r rkf "kp"vcpf go "vq f gvto kpg'y j gyj gt" c"i kxgp"uwk'hcm"y kj kp"vj g'r tqdcvg"gzegr vkp-<\*3+"vj g Erie" f qestkpg=\*4+"vj g"ucwwqt { "cpf " eqpukwvkvpcn' rko kvkqpu" qp" hgf gtcn eqwtv' uwdlgev' o cvgt "lwtkuf kvkqp=\*5+"vj g" f qestkpg"qh' custodia legis=\*6+"vj g tgs vkt go gpv' qh' c" lwulekdrng" ecug" qt" eqpvtqxgtu{ = "cpf " \*7+" r twf gpvkn cdugpvkqp0" Vj ku' Ct veng" eqpenf gu'vj cv'eqwtu'uj qwf "eqputwg"vj g'r tqdcvg gzegr vkp" pcttqy n{ "vq" r txxgpv' r tglwf keg" ci ckpu' qw'qh'ucvng" erko cpw' cpf vq" gpwtg"vj cv' erko cpw' hgf gtcn' ucwwqt { "tki j wu" o c{ " dg" gphqtegf 0" kpf cf f kvkqp. " vj ku" Ct veng" tgeqo o gpf u" vj cv' Eqpi tguu" eqpukf gt" gpcevki " c ucwwqt { "qxgttkf g'qh'vj g'r tqdcvg"gzegr vkp0

KK'O QF GTP 'CRRNKE CVIQP 'QH'VJ G'RTQDCVG'GZEGRVIQP

CO"MARKHAM V. ALLEN<VJ G'UWRTGO G'EQWTVU'O QUV'TGEGP V'TWNR I QP 'VJ G'RTQDCVG'GZEGRVIQP

Vj g'Uwr tgo g'Eqwtv'ruv'cf f tguugf "vj g'r tqdcvg"gzegr vkp"kp"Markham v. Allen: ""Vj gtg. "vj g'y kn'qh'c"Ecrlhqtple"tgukf gpv'j cf "dggp"cf o kwgf "kpvq r tqdcvg"cpf "j cf "pco gf "cu'ngi cvvgu<sup>4</sup>; "egtckp"r gtuqpu'tgukf gpv'kp" I gto cp{ (0<sup>2</sup> Uk "WUOekkk gpuo j gktu'cv'ny <sup>53</sup>"qh'vj g'f gegf gpvö hkf "c"r gvkvqp"kp"ucvng eqwtv'cuugt vki "vj cv'wpf gt"ucvng"ny "vj g" I gto cp'ngi cvvgu'y gtg"kvgrki kdrng"cu dpgghekctkgu<sup>54</sup>" cpf " vj cv' vj g" WUO' j gktu" y gtg" vj wu" gpvkvngf " vq" kvj gtv' vj g f gegf gpv' g'ucvng<sup>55</sup>"Vj g" Cnkpg" Rtqr gtv{ "E wuvkf kcp."cevki " r wuvcpv"vq"vj g Vtcf kpi "y kj "vj g" Gpgo { "Cev" r wtr qtvgf "vq" xguv'j ko ugrh'cu" E wuvkf kcp" y kj cni' tki j v. "vkrng" cpf " kvvgt guv' qh' vj g" I gto cp'ngi cvvgu. "cpf " dtqwi j v' uwkv' kp hgf gtcn' f kvklev' eqwtv' ci ckpu' vj g' gzgewqt "qh' vj g" g'ucvng" cpf " vj g" ukz " WUO j gktu'cv'ny "hqt" c" f gvto kvkqp" vj cv' vj g" WUO'erko cpw' j cf "pq" kvvgt guv' kp

4: 0 548'WU'6; 2\*3; 68+0  
 4: 0 C" ngi cvvg" ku' qpg" y j q" ku' pco gf " kp" c" y kn' vq" veng" r gtuqpcn' r tqr gtv{ 0" DNCEM'U' NCV F ÆVIQPC T[ . 'supra' pqvg'33. 'cv: ; 96; : 0  
 520 Markham. '548'WU'ev'6; 40  
 530 Cp"öj gkt'cv'ny ö"ku" c" r gtuqp" y j q" kvj gtvk" c" f gegcugf " r gtuqpu' g'ucvng" wpf gt" ucvng" ucwvng" qh f guegp'vcpf " f kvkldwkvqp" kp" vj g' cdugpeg' qh' c' xcrkf " vguco gpvct { " f kvr qukvkqp0" DNCEM'U' NCV F ÆVIQPC T[ . 'supra' pqvg'33. 'cv9450  
 540 Vj g'ucvng" ny " cv'kuuvng" r wtr qtvgf " vq" rko k' kvj gtvkpeg" d{ " pqp' tguv' gpv' crkpu" vq" pevkvpcn' qh eqpvtkgu' vj cv' tcvp'gf ' tgekr tqecntki j w'qh' kvj gtvkpeg' vq' WUOekkk gpu0" Markham. '548'WU'ev'6; 4'p080  
 550 Id. 'cv6; 40

36: 8 SOUTHERN CALIFORNIA LAW REVIEW ]Xqr096-369;

vj g'gucv'cpf 'vj cv.'o qtgqxtg.'vj g'gpvtg'gucv'gdmppi gf "vq'vj g'Ewuvf kcp06 Vj g'f kntlev'eqwv'i tcvp'gf 'lwf i o gpv'ht'vj g'Crk'Rp'rtqr gtv' 'Ewuvf kcp.'57'dw vj g'Eqwv'qh'Cr r gcu'tgxtugf. 'j qrf kpi 'vj cv'vj g'uwk'hk'gf "kp'hgf gtcn'eqwv y cu'dcttgf 'd{ 'vj g'r tqdcv'gze'gr vkp08

Chgt'ucv'kpi 'vj g'i gpgtcn'twg'vj cv'vj g'hgf gtcn'eqwv'u'rcen'lwtkuf levk'p'vq r tqdcv'c'y kn't'q'v'cf o kpkngt'cp' gucv'g.'vj g'Uw tgo g'Eqwv'ucv'gf " { gv cpqy'gt.'i gpgtcn'twg<

]Hgf gtcn'eqwv'qh'gs wks' "j cxg'lwtkuf levk'p'vq'gpvt'v'k'uwk'u'k'p'hc'xqt'qh etgf kqtu.'ngi cv'ggu'cpf "j gktu'cpf "qy'gt' erko cpw'ci kpuv'c" f gegf gpv'u gucv'g'v'g'gucd'kuj "vj gkt'erko u'q'ngi "cu'vj g'hgf gtcn'eqwv'f qgu'pqv k'v'g'ht'g'y kj "vj g'r tqdcv'g'r tqeggf kpi u'qt'cuwo g'i gpgtcn'lwtkuf levk'p'vq h'vj g'r tqdcv'g'qt'eqp't'q'v'g'r tqr gtv' "kp'vj g'ewuvf { "qh'vj g'ucv'g'eqwv'09

Vj g'Eqwv'erc'h'gf "uqo gy j cv'vj g'o gcpkpi "qh'vj g'y qtf "0k'v'g'ht'g'0j' qrf kpi vj g'o g'g'hc'v'vj cv'vj g'ucv'g'r tqdcv'g'eqwv'0 y j gp'w'ko cv'ng' "f kntkdwk'pi "vj g'gucv'g'0 y qwf "dg'd'w'pf "vq'tgeqi pk'g'vj g'tki j w'cf l'w'k'ecv'gf "kp'vj g'hgf gtcn' eqwv' y qwf "pqv' eqpuk'w'g" cp' k'v'g'ht'g'peg" y kj "vj g' ucv'g" r tqdcv'g r tqeggf kpi u'0: ""Vj wu.'vj g'gh'ev'qh'vj g'f gerct'v'q' { "lwf i o gpv'uw'v'j v'd{ "vj g' Ewuvf kcp'kp'vj g'ecug'd'gh'q'g'vj g'Eqwv'y qwf "pqv'dg'cp'gz'g'ek'g'qh'r tqdcv'g lwtkuf levk'p'v'qt'cp'k'v'g'ht'g'peg"y kj "r tqr gtv' "kp'vj g'r qu'gu'k'p'v'qt'ewuvf { "qh' c'ucv'g'eqwv'0" k'v'g'cf. "k'y qwf "o g'g'ng' "f get'g'vj g'Ewuvf kcp'v'k'v'j v'kp'vj g r tqr gtv' "vq" dg" f kntkdw'gf "chgt" ku" cf o kpknt'v'k'p'v' d{ "vj g' ucv'g" r tqdcv'g eqwv'0:

560 *Id.*  
570 *See* 'Etqy ng{ 'x0Cmgp. '74'HLU'rr 0: 72'p'F 0Ecr03; 65-0  
580 *See* 'Cmgp'x0O ctnj co. '369'HL'f '358'\*, vj 'Ek03; 67+'rev'd.'548'WLU06; 2'3; 68-0  
590 *Markham.* '548'WLU0v'6; 6'ek'kpi "Y cv'gto cp'x0Ecp'n'N'q'w'k'c'p'c'Dcp'n'f( "Vt'w'v'Eq0'437'WLU 55.'65'3; 2; +0'*See also* 'Uw'q'p'x0G'p'i r'kuj. '468'WLU03; ;. '427'3; 3; +ucv'kpi "vj cv'os'w'g'v'k'p'u't'g'v'k'pi "vq vj g'lp'v'g'g'u'q'h'j gktu.'f g'x'k'g'g'u.'qt'ngi cv'ggu.'qt't'w'u'u'c'h'f'g'v'k'pi "u'w'j "lp'v'g'g'u.'y j lej "o c'f "dg'f g'v'gto k'p'gf y kj q'w'lp'v'g'ht'g'k'pi "y kj "r tqdcv'g'qt'cuwo kpi "i gpgtcn'cf o kpknt'v'k'p'v'."ctg'y kj kp'vj g'lwtkuf levk'p'v'qh'vj g' hgf gtcn'eqwv'y j g'g'f k'g'g'k'v'f "qh'ek'k' g'p'uj k'r "gz'k'u'c'p'f "vj g't'g'v'k'g'co q'w'p'v'k'u'lp'eq'p't'q'x'g'tu'f 0=J' gu'x0 T'g'f p'q'f u.'335'WLU095.'98699'3; : 7+'\* q'f kpi "vj cv'uw'k'u'd { "cp'gz'g'ew'q't'v'q'g'p'h'q'g'r c { o gp'v'q'h'f g'du qy g'f "vq'vj g'f gegf gp'v'cu'y g'm'cu'uw'k'u'ci k'p'u'v'vj g'gz'g'ew'q't'q'p'q'd'k'i c'v'k'p'u'eq'p't'c'v'g'f "d { "vj g'f gegf gp'v'hc'm y kj kp'vj g'hgf gtcn'eqwv'u'f t'c'p'v'q'h'f k'g'g'k'v'f "lwtkuf levk'p'v'Re { p'g'x0J' q'q'm'96'WLU09'Y c'n0'647.'64; 052 \*3: 8: + 'p'q'v'kpi "c'uw'k'u'd { "c'f kntkdw'g'g'ci k'p'u'v'vj g'cf o kpknt'v'k'p'v'qh'vj g'gucv'g'y cu'y kj kp'vj g'uw'd'g'ev o cv'g't'lw'kuf levk'p'v'qh'vj g'hgf gtcn'eqwv'u'0  
5: 0 *Markham.* "548'WLU0v'6; 60" Vj g'f g'd'v'vj wu'gucd'kuj gf. "j qy g'x'g't. "0o w'v'v'c'ng' "ku'r r'ceg"cp'f u'j ct'g'qh'vj g'gucv'g'cu'cf o k'p'k'ng'f "d { "vj g'r tqdcv'g'eqwv'v'c'p'f "k'v'ec'p'p'q'v'd'g'g'p'h'q'g'f "d { "r tq'eg'u'f k'g'ew'f ci k'p'u'v'vj g'r tqr gtv' "qh'vj g'f gegf gp'v'0'D { g'tu'x0O eC'w'g { .36; "WLU082: .842'3; ; 5-0'*Accord* "Waterman. 437'WLU0v'660  
5; 0 *Markham.* "548'WLU0v'6; 70

DO F GXGNQRO GP VQH'VJ G'RTQDCV GZEGRVKQP 'R'VJ G'NQY GT'EQWTVU

30'Nqy gt'Eqwtv'Vguu'hqt 'F gvgto klpki 'Y j cv'Hcmu'Y kj kp'vj g'Gzevr vkp

Vq'dg'uwg.'Markham'r tqxf gf "uqo g"i wlf cpeg"vq"vj g"ny gt'lgf gtcn eqwtu'cu'vq'vj g'ueqr g"qh'vj g'r tqdcvg"gzegr vkp0"kp'vj g'y cng'qh'Markham. vj g'ny gt'eqwtu'ctg'kp'ci tggg gpv'vj cv'vj g'lgf gtcn'eqwtu'rcenluwdlgev'o cwtg lwtkf levkp"qxgt"uq/ecngf "or vtgo'r tqdcvg"o cwtg.<sup>62</sup>"kpenf kpi "vj g'cewcn r tqdcvg'qh'c'y km<sup>63</sup>"\*vj g'or tqegf vtg'd{ "y j lej "c'y km'ku'r tqxgf "vq'dg'xcnkf "qt kpxcnf o+<sup>64</sup>"vj g'cf o kpkutcvkqp"qh'vj g'gucvq"\*vj g'r tqegu'qh'eqmgev'kpi "vj g'f gegf gpv'u' cuugv." nls wlf cvkpi " rcdkklgu." r c{ kpi " pgeguact { "vzgu." cpf f kwtkdw'kpi "r tqr gtv' "vq"j gktu+<sup>65</sup>"cu'y gni'cu'qdcv'kpi "cp'cee'qwp'kpi "qh'vj g uco <sup>66</sup>"cpf "cr r qkp'kpi "qt'tgo qxlpi "vj g'f gegcugf au'r gtuqpcn'tgr t gupvc'vkg qt" vj g' cvqtpg{ " tgr t gup'kpi " vj g' gucvq<sup>67</sup>" " O qtgqxt." vj g' ny gt' eqwtu i gpgtcm{ " ci tgg" vj cv' etgf kqtu." nri cvgu." j gktu." cpf "qvj gt' erko cpw" o c{ guvdrkuj "vj gkt'erko u'ci ckpu'vj g'gucvq'kp'lgf gtcn'eqwtv.'y kj "vj g'ecxgc'vj cv vj g'erko u'lu'guvdrkuj gf o y j gvj gt'd{ "y c{ "qh'c'f gerctvqt { "lwf i o gpv'lp'vj g ecug'qh'c'ngi cvgg'qt" j gkt'guvdrkuj kpi "j ku'qt" j gt'tki j v'vq'c'uj ctg'qh'vj g'gucvq. qt'kp'cp'cewcn'uwk'qp"vj g'o gtku'kp'vj g'ecug'qh'c'etgf kqt o wu'vj gp'cng vj gkt' r nceg"cpf "uj ctg"kp" vj g' gucvq"cu'r tqxf gf "hqt"kp" vj g'r tqdcvg"eqwtv r tqeggf kpi u<sup>68</sup>"[ gv."dg{ ppf "vj g'ug"i wlf gr quu'f gtxgf "htqo "vj g'Markham

620 I gqti gu'x0I nem": 78"Hdf"; 93.; 95"\*9j "Ek03; : : #0"See"J w'up'x0Cdgtdtqo dlg."8: 4"HO Uwr 0'343: ."343; : \*P (F 0'1 c03; : 9+\*ekpi "Markham."548"WLU'cv'6; 6=Gnu'x0F cxku "32; "WLU'6: 7 \*3: : 5+0

630 E.g.. "Georges.". 78"Hdf "cv"; 95=E'g'p'cpq'x0Hwgt."824"HO'Uwr 0'999."9: 26: 3"\*UF (P (I 0 3; : 7+0

640 DNCEMU'NCY 'F HVIQPC TI . "lwr tc'pqv'33.'cv34240 Vj g'o cwtg'cpf "vj kpi u'vq'dg'f gvgto kpgf "wr qp'vj g'r tqdcvg'qh'c'y km'ctg'vj g'o gpcn'ecr cek{ "qh vj g'gucvq."vj g'lcwo 'qh'vj g'o cnkpi "qh'vj g'y km'cpf "ku'f vg'gzgewkqp'ceeqtf kpi "vq'ry 0"Vj g s wukqp'qh'c'eqpwtw'kqp'qh'vj g'y km'qt'cp{ "enwug'vj g'gq'ku'p'g'xt'r tqr gtn' "d'g'htg'vj g'eqwtv kp'c'r tqeggf kpi "vq'guvdrkuj "vj g'kpu'wv gpv0

5"lqurj "UVQT [ ."EQO o GP VCTIGU'QP "GS WVI "LWTKRTWF GPEG'CU'F O R KVGTF "R" GPI NCPF "CPF COGTREC'E'3; : 2.'cv6; 2"\*36j "gf 03; 3: +]j g'g'p'chgt'5"UVQT [ ."EQO o GP VCTIGU\_0

650 E.g.. "Qrkxgt'x0Qrkxgt."P q0; : /3682."3; ; ; "WLU'Cr r 0'NGZ'KJ"; 569.'cv'. 56, 7"\*6j "Ek00 c{ "39. 3; ; ; +\*vpr vdrkuj gf "f gekukp=Vw'vq'x0Vwvq."866"Hdf "566."569"\*7j "Ek03; : 3=I crkqp "Kqp"Y qtmu ( "O hi 0'Eq0'x0T wuugm"389"HO'Uwr ."526."52: \*Y (F 0'Ctn03; 7: +\*q'dugt'xkpi "vj cv'o]k'v'ku'c'y gni'ugw'gf twrg" vj cv'lgf gtcn'eqwtu"o c{ "pqv' gpi ci g'kp" vj g'i gpgtcf' cf o kpkutcvkqp"qh'cp' gucvq"qt" f kwtkd" vj g r quguukqp'qh'r tqr gtv' "y kj kp'vj g'ewuqf { "qh'c'uevg'eqwtv o+0

660 E.g.. "Dqt'v' x0F gl qn'gt."; 26"HO'Uwr 0'8: 2.'8: 6"\*UF 0'Qj kq'3; ; 7=Ukuqp'x0Eco r dgni'Wpk0 kpe0'8: : "HO'Uwr 0'3286."328: \*GF (P E03; : : +0

670 E.g.. "lqpgu'x0J ctr gt."77"HO'Uwr 0'f "752."755"\*UF 0'Y 0'Xc03; ; ; +\*j qrf kpi "vj cv'o]j g'r tqdcvg gzegr vkp'r t'g'gpw"vj g'f kntlev'eqwtv."htqo "000tgo qxlpi "vj g'f g'p'p'cp'v'cpf "cr r qkp'kpi "vj g'r n'k'p'v'h'i'cu r gtuqpcn'tgr t gupvc'vkg o'd'gecvug'vj ku'y qwf "kp'g'htg'y kj "vj g'cf o kpkutcvkqp'qh'vj g'gucvq=0

680 E.g.. "O lej ki cp" Vgej 0'Hxp'f "x0'EGpwt "P cvaf' Dcpm"8: 2" Hdf "958."962"\*33j "Ek0'3; : 4+ \*j qrf kpi "vj cv'k'ku'r gto kuudrg'ht'c'lgf gtcn'eqwtv'vq'cf lwf kecv'c'dtgej "qh'ci tggg gpv'vq"o cng'c'o wwn y km' dgecvug' k'ku' cnkpi "vq" c' etgf kqt' uwkpi "hqt" dtgej "qh'eqpwtcv= Turton."866"Hdf "cv'566."569



36: : SOUTHERN CALIFORNIA LAW REVIEW ]Xqr096-369;

qr kpkqp"cu"vq"vj g"ueqr g"qh"vj g"r tqdcvg"gzegr vkqp."öyj g"eqpvqwtu"qh"vj g  
gzegr vkqp"ctg"xcv w"cpf "kpf kpkpev.ö<sup>69</sup>"etgcvkpi "uwducpvkcn'wpegt vckpv\ "cu"vq  
vj g"uqtu"qh'cevkvpu"vj cv'y qwf "ökpvgthgtgö"y kj "ucvg"r tqdcvg"r tqeggf kpi u0  
kpcp"cwgo r v"vq "hkm'vj g"i cr "rgm'd{ "vj g"Uwr tgo g"Eqwtv."vj g"ny gt"eqwtu  
j cxg" f gxgrgr gf "ugxgtcn'eqo r gvki "hqtö wrcg"ht" f gvto kpkpi "y j gvj gt" c  
ecwug"qh'cevkvpu" hcmu" y kj kp"vj g" r tqdcvg"gzegr vkqp."ögpfcxqt kpi \_" vq  
f kpkpi wkuj "dgy ggp" f ktgev' kpvgtgtpg" y kj "qt" eqpvqwtu"qh"vj g" res cpf  
cf lwf kcvkqp"qh"vj g" tki j w"qh' kpf kxf wcmu" y j q" j cxg" cp" kpvgtguv' kp"vj g  
tgu'000]c\_ikpg'qh'f kpkpevkvpu"]vj cv\_ku'pqv'cny c{ u'engctö<sup>6</sup>:

c0"Vj g'öP cwtg'qh'Ercko ö"Vguv

Qpg"ny gt"eqwtv'guv'ht" f gvto kpkpi "y j gvj gt" c"ercko "ku'uwthekgpv\  
tgrcvf"vq"r tqdcvg"uq"cu"vq" hcm'y kj kp"vj g" r tqdcvg"gzegr vkqp"gzco kpgu"vj g  
pcwtg'qh'vj g'r rckpvkthau'ercko .y kj "vj g'r rckpvkthau'r qukvkqp'xku'«/xku'vj g'y km  
dglpi "vj g" f kur qukvkxg" hcvqt0" "Wpf gt"vj g"öpcwtg"qh' ercko ö" vguv."kh'vj g  
r rckpvkthau'ercko "tguu"wr qp"cp"cuugt vkqp"vj cv'vj g"y kn'ku'kpxcrkf "uwej "cu  
y j gtg'vj g'r rckpvkth'uggmu"vq"xqkf "vj g"y kn'f wg'vq"wpf wg'kphwvpeg"qt"rcen'qh  
vguco gpvt{ "ecr cek\ +. "vj gp"vj g" ecug" hcmu" y kj kp"vj g" r tqdcvg"gzegr vkqp0  
Vj ku'ku'dgecvug"vj g" hgf gtcn'eqwtv'o wuv'twng"qp"vj g"xcrk kf "qh'vj g"y kn'kp  
qtf gt"vq"tguvkv"vj g"ercko ö c"twkpi "vj cv'y qwf "f ktgev\ "qxgtcr" cpf "vj wu  
ökpvgthgtgö"y kj "vj g'ucvg"eqwtv'u'r tqdcvg"r tqegu0"Qp"vj g'qvj gt"j cpf .kh'vj g  
r rckpvkth'cenpqy rgi i gu'vj g'xcrk kf "qh'vj g"y kn'cpf "o gtgn\ "cuugt v" c'tki j v'vq  
uj ctg"kp"vj g'f kwtkdwkqp"qh'vj g'gucvg"\*gkj gt"cu" c"o cwtg'qh'kpvgr tgvkqp"qh  
vj g"y kn'qt'kp'tgrkpep"qp'uqo g'ucvg"ny "hqtgef /uj ctg'r tqxkukqp+."vj g' hgf gtcn  
eqwtv'ku'htgg"vq"cf lwf kcvg"vj g"ercko ö:

\*gzr rckpki "vj cv'c"etgf kqt"ecp"qdvkpc" hgf gtcn'lwfi o gpv'vj cv'j g"j cu'c"xcrk "ercko "ht" c"i kxgp"co qwpv  
ci kpuv'vj g" gucvg."cpf "vj cv'vj g"lwfi o gpv'ecp"dg"cuugt v"cu"tgu'lwf kcv"kp"vj g"ucvg"r tqdcvg"eqwtv  
r tqeggf kpi u=J qn'x0Mpi .742'HÖf "893."897"\*32vj "Ek03; 79=J qn'x0Y gtdg."3; : "HÖf"; 32.; 37": vj  
Ek03; 74=O eEngpf qp'x0Utwc."3; 5'HÖf "7; 8.'7; : \*7vj "Ek03; 74+\*cuugt vki "vj cv'ö]lwtkuf kvkqp"qh'vj g  
]hgf gtcn'eqwtv'vq"cuugt v"cpf "f genctg"vj g'kpvgtguv'qh'vj g'r rckpvkth'kp"vj g'gucvg'000ku'engctn\ "gucdrkj gf  
d{ "c"iupi "kpg'qh'ecugö=O kco "x0Uqn'P gy o cp"Eq0"427"HÖUwr 086; .872."875676"\*P ÖF 0Cn03; 84+  
\*j qf kpi "vj cv'vj g' hgf gtcn'eqwtv'ecp"cf lwf kcvg"vq'v'cevkvpu"ci kpuv'gucvg'ht" kplv'ku'r rckpvkth'uwv'kpgf "kp  
cwq'ceekf gpv=Qf qo "x0Vtcxgrtu'kpu0Eq0"396"HÖUwr 0648."656"\*Y (F 0Ctn03; 7; +\*pqkpi "vj cv' hgf gtcn  
eqwtv'ecp"j gct"eqpv'qxgt v" s wvkvkqp"qh'f gdv'qt'pq'f gdv'cu'ci kpuv'vj g'gucvg=Galion Iron Works & Mfg.  
Co0"389"HÖUwr 0cv'52; 632"\*pqkpi "vj cv' hgf gtcn'eqwtv'ecp"gpv'v'kv'uwku'vq" gucdrkj "ercko u'ci kpuv'vj g  
gucvg."dw'vj qug"ercko u'o wuv'ucpf "kp"kp0"0" But cf. Y j kg"x0Y j kg."348"HÖUwr 0; 46.; 47648"\*UF 0  
Kcj q"3; 76+\*j qf kpi "vj g'ucvgo gpv'kp"Markham"vj cv'vj g' hgf gtcn'eqwtv'j cxg"lwtkuf kvkqp"vq"gpv'v'kv  
uwku'kp"hxqt"qh'etgf kqtu'cpf "ngi cvgu'f qgu'pqv'cr n\ "kp" f kxgtuk\ "cevkvpu."cpf "vj cv'vj g'eqwtv'o wuv'rqpm  
vq"y j gvj gt"wpf g"ucvg"ny . "vj g'ucvg"eqwtv'qh'i gpgtcn'lwtkuf kvkqp"y qwf "j cxg"lwtkuf kvkqp"qxgt"uwej  
uwku+0

690 Georges.: 78'HÖf "cv"; 950  
6: 0 Uctt"x0Twr r."643"HÖf"; ; . "3227"\*8vj "Ek03; 92+0"Accord"Dcuugt"x0Cttqy qf."722"HÖf  
35: .364": vj "Ek03; 96=O ctv'x0Dtcwp."488"HÖUwr 0356."35: \*GF 0Rc03; 89+0  
6: 0 E.g.."Vwtc"x0Vwtc."33: "HÖf "3228."322; \*6vj "Ek03; ; 9+\*pqkpi "vj cv'pq" hgf gtcn'eqwtv'j cu  
hwpf "vj cv'k"j cu'lwtkuf kvkqp"vq" kpxcrkf cvg" c"y kn' f vg"vq"rcen'qh'vguco gpvt{ "ecr cek\ "qt" wpf vg

d0"Vj g"oTqwgö"Vguv

C"lct"o qtg"eqo o qp"ny gt"eqwt'v'g'uzco kpgu'vj g"tqwg"vj cv'vj g'uwk y qwf "cng"j cf "k'dggp'dtqwi j v'lp'ucv'eqwt'v'Wpf gt'vj g"oTqwgö"v'g'uzco "h'vj g f kur wg"wpf gt'ucv'ny "eqwf "dg"cf lwf kecvgf "qpn' "lp"c"r tqdcvg"eqwt'v'vj gp vj gtg'ku'pq'hgf gtcn'eqwt'v'lwtkuf levkqp"Kk"j qy gxgt. "wpf gt'ucv'ny "vj g'ucv'eqwt'v'qh'i gpgtcn'lwtkuf levkqp"y qwf "j cxg'lwtkuf levkqp"qxgt"vj g'f kur wg."vj gp hgf gtcn'eqwt'v'lwtkuf levkqp"gzkuu"cuuwo kpi ."qh"eqwtug."vj cv'vj g"eqo r rvgv f kxgtukv "cpf "co qwp'lp"eqpvtqxgtu' "tgs vkt go gpu'ctg'ucv'kukgf +02""Wpf gt

lphwpege=Michigan Tech. Fund."8: 2"Hof"cv95; 662"vj qrf kpi "vj cv'ej cngpi g'v'c'y kma'xcrkf k' ku'pvy y kj lp"vj g'lgf gtcn'eqwt'v'udlge'vo cwtg'lwtkuf levkqp."dw'vj cv'cp'cev'kqp"uggnpi "cp"lpvtr'gvcv'kqp"qh'c y kn'ku'y kj lp"ku'lwtkuf levkqp=Drcnpgg' "x0Drcnpgg'."886"Hof"655."656"\*7j "Ek03; : 3+"kpf kpi "pq lwtkuf levkqp"y j gtg'vj gtg'ku'cp'cvcen'qp"vj g'f gegcugf au'gucvo gpvt {"ecr cels' "cu'vj cv'i qgu'vq"j g'y kma' xcrkf k'="Tleg'x0Tleg'Hqwpf 0'832"Hof"693."698"\*9j "Ek03; 9; +\*f guetkldpi "dw'pqv'cf qr v'kpi "twg'0"See also" I cp'v' x'0 I tcpf" Nqf i g."34" Hof"; ; ."3225626"\*32j "Ek0 3; ; 5+"pqv'kpi "hgf gtcn'eqwt'v'j cxg lwtkuf levkqp"v'eqpvtvg'y km-0"Y j kg"vj ku'crr tqcej "ku'qh'xgp'cwtkdwgf "v'c'k'p'qh'Hk'j "Ekewk'ecugv. e.g."Rice."832"Hof"cv698"eklpi "Cnlp'x0Nqwkulcpc'P cvni'Dcpm"544"Hof"96; .975676"\*7j "Ek03; 85+= O keij gni'x'0P lzqp."422"Hof"72."73674"\*7j "Ek03; 74="Michigan Tech Fund."8: 2"Hof"cv'95; "eklpi M'wuej "x0Hku'Y lej kc'P cvni'Dcpm"692"Hof"328; .3292"\*7j "Ek03; 94+=.c'equgt'gzco kpcv'kqp"qh'vj gug ecugu'tgxgen'vj cv'vj g'f "y gtg'crr n'k'kpi "vj g'oTqwgö"v'g'uzco f kuewugf "infra"Rctv'KDO80"See"Kausch."692 Hof"cv'328; 692"gzco kplpi "Vgzcu'ny =Akin."544"Hof"cv'975677"gzco kplpi "Nqwkulcpc"ny ."cpf f kpi kpi v'kij kpi "dgy ggp'uwku'vj cv'cvcen'vj g'xcrkf k' "qh'c'y kn'c'p'f "uwku'lp"y j kej "r ct'v'gu'f h'gt' "qpn' "cu'v'c c'y kma' gh'ge'v'qt"eqpvtv'kqp."cpf "gzg'ekulpi "lwtkuf levkqp"qxgt"uwk"v'q" f gerntg'r r'clp'v'k'ha'lp'v'gt'v'cu'c h'qtegf "j gk="Mitchell."422"Hof"cv'73674"gzco kplpi "C'ndco c'ny +0"See also" I kpgu'x0Ej gy."65"WLD \*4"J qy 0'83; .869672"\*3; 66+"vj qrf kpi "vj cv'cnj qwi j "vj g'eqwt'v'kngn' "rcengf "lwtkuf levkqp"lp'gs wv' "v'q'ugv cuk'g'c'y kn'f wg'v'q"ht'cw."vj g'j gk'eqwf "dtkpi "uwk'wpf gt'vj g'ucv'g'au'h'qtegf "j gktuj k' "ny u' "ulpeg'k'f'qgu pqv'tgs vkt g'vj g'eqwt'v'gk'j gt"v'q'r tqxg'qt"v'q'ug'v'cuk'g'vj g'y km="Tqdtg'uaq'x0Tqdtg'uaq." : 25"Hof"358. 35: 65; \*7j "Ek03; : 8+"crr n'k'kpi "C'tnc'pucu'ny ."cpf "eqpen'f kpi "vj gtg'ku'lgf gtcn'eqwt'v'lwtkuf levkqp"y j gtg xcrkf k' "qh'ij kn'ku'pq'v'eqp'v'gugf ."cpf "y j gtg'cni'vj cv'ku'lw'v'j v'ku'c'f gernt'cv'kqp" f gegf gpv'f k'f "c't'guk' gpv'qh Nqwkulcpc.'cpf "vj cv'vj g'r r'clp'v'k'ha'y cu'vj wu'gp'v'k'g'f "q'h'qtegf "j gktuj k' +0

720 See I tggp'x0F qnw'u."P q0; /9955."4222"WLUOCrr'ONGZ KU'445; .cv' ; 6; \*4f "Ek0'Hgd037. 4222+"wpr vdrkuj gf "f gelukqp+"vj qrf kpi "vj cv'vj g'r tqdcvg/gzegr v'kqp'ucpf ctf "ku'y j gj gt'wpf gt'ucv'ny .vj g'c'v'ko u'y kn'f dg'eqi pl'cdng'qpn' "lp"ucv'g'r tqdcvg"eqwt'v="Qrxgt'x0Qrxgt."P q0; /3682."3; ; "WLD Crr'ONGZ KU; 569."cv'; 6"\*6j "Ek00 c'f "39.3; ; +\*wpr vdrkuj gf "f gelukqp+"pqv'kpi "vj cv'lgf gtcn'eqwt'v'j cxg pq'udlge'vo cwtg'lwtkuf levkqp"qxgt"o cwtg'u'gzenu'k'gn' "y kj lp"vj g'lwtkuf levkqp"qh'ucv'g'r tqdcvg"eqwt'v=" Tgk'j ctf v'x0Mgm'f."386"Hof"34; 8."34; ; 63522"\*32j "Ek03; ; ; =O eMlddgp'x0Ej vdd." : 62"Hof"3747. 374; \*32j "Ek03; ; : +\*ucv'kpi "vj cv'k'c'ucv'g'x'g'uu'ku'eqwt'v'qh'gs wv' "y kj "lwtkuf levkqp"v'j gct'eqp'v'gugf y kn'uwku"vj g'lgf gtcn'eqwt'v'lp"vj g'ucv'g'o c'f "gph'qtegf"vj cv'tki j v="Dgf q'x0O eI vkt g."989"Hof"527."528 \*8j "Ek03; : 7+"vj qrf kpi "vj cv'vj g'lgf gtcn'eqwt'v'j cf "pq'lwtkuf levkqp"qxgt"dtgcej "qh'h'f w'ekt {"f w'f "cev'kqp d {"dgp'g'h'ek'ekt'g'u'qh'gucv'g'ci clp'u'v'z'gew'q't'dgec'wug'qpn' "vj g'r tqdcvg"eqwt'v'qh'ij g'ucv'g'j cxg'lwtkuf levkqp qxgt"uwej "f kur wgu="O qqtg'x0Nlpf ug {"884"Hof"576."583"\*7j "Ek03; : 3="Rice."832"Hof"cv'698 \*f guetkldpi "dw'pqv'cf qr v'kpi "twg="Bassler."722"Hof"cv'364" \*wi i g'v'kpi "vj cv'v'j j gtg'c' "en'ko "ku gph'qtegcdng'lp"c'ucv'g'eqwt'v'qh'i gpgtcn'lwtkuf levkqp."vj g'cti wo gpv'dgeqo gu'v' o qtg'r gt'ucv'k'g'vj cv'lgf gtcn f kxgtukv' "lwtkuf levkqp"vj qwf "dg'cuuwo gf o+"eklpi "Nco dgti "x0Ecm'j cp."677"Hof"3435."3438"\*3; 94+= J ctku'x0R'qmcem"6: 2"Hof"64."67668"\*32j "Ek03; 95="Lamberg."677"Hof"cv'3438"\*4f "Ek03; 94+ \*v'kpi "h'q'vj "vj g'ucv'p'ctf =Nqppg {"x0Ecr kcn'P cvni'Dcpm"457"Hof"658"\*7j "Ek03; 78+"vj qrf kpi "vj cv dgec'wug" c'f gernt'cv'qt {"lw'f i o gpv'cev'kqp"eqwf "dg'dtqwi j v'lp'ucv'g'eqwt'v'q"j cxg'c' "v'gucvo gpvt {"v'wuv f gernt'g'f "lp'xcrkf "dcugf "qp"vj g'v'w'g'ci clp'u'r gtr g'w'k'g'u."uwej "cp'cev'kqp"cn'q'eqwf "dg'o clp'v'k'p'g'f "lp"c hgf gtcn'eqwt'v="H'ug'v'x0E'ct'np."422"Hof"; 65.; 69"\*6j "Ek03; 75+"eklpi "f k'v'lev'eqwt'v'ecugu'j qrf kpi vj cv'vj j gj gt'cp'cev'kqp"eqwf "dg'o clp'v'k'p'g'f "lp"c'ucv'g'eqwt'v'qh'i gpgtcn'lwtkuf levkqp" f gv'gto kpgu'j y gj gt

36; 2

SOUTHERN CALIFORNIA LAW REVIEW

]Xqr096-369;

vj ku'ucpfc tf . "vj g'ueqr g'qh'vj g'r tqdcvg"gzegr vkqp"xctkgu"cetquu"vj g'hgf gtcn eqwtu'ceeqt f lpi "vq"vj g'kpvtgpcn'f kxkukqp"qh'lwtkuf levkqp"y kj kp"gecj "ucvg dgw ggp'ku'r tqdcvg"eqwtu'cpf 'ku'eqwtu'qh'i gpgtcn'lwtkuf levkqp0

e0"Vj g'dRtceveknö"Vguv

Lwf i g'Rqupgt 'f gxrqr gf "{ gv'c'vj kf 'vuv/hqt 'f gvgto lpkpi 'y j gvj gt 'c'uwkv y j krg'pqv'c'ör wtg'o cwtg'qh'r tqdcvg.ö'y cu'pqpvgj gruu'dctt gf 'd{ 'vj g'r tqdcvg gzegr vkqp"dgecwug"kv'y cu'öcpeknct { ö"vq"r tqdcvg0<sup>3</sup>""Wpf gt "Lwf i g'Rqupgtö ör tceveknö"vuv."vj g's wguvkqp"qh'y j gvj gt 'c'uwkv'ku'öcpeknct { ö"vq"r tqdcvgö cpf "vj wu'y kj kp"vj g'r tqdcvg"gzegr vkqp"vq"hgf gtcn'eqwtv'lwtkuf levkqpö wtpu qp"y j gvj gt'öcmqy lpi "kv'vq'dg'o ckpvcxpgf 'lp'hgf gtcn'eqwtv'y qwr'lo r ckt'vj g r qnlekgu"ugt xgf "d{ "vj g'r tqdcvg"gzegr vkqp0<sup>74</sup>""Lwf i g'Rqupgt"kf gpv'kkgf "c pwo dgt"qh'r tcevekn'r wtr qugu"vj cv'vj g'r tqdcvg"gzegr vkqp"y cu'f guki pgf "vq ugtxg<vj g'r tqo qv'kp"qh'ngi cne'egt v'cpv{ "d{ "j c'xkpi "cm'kuuwgu'tgi ctf lpi "vj g v'cpuhgt'qh'r tqr gtv' cv'f gc'vj "r'k'k'c'v'gf "kp"c'ukpi ng'ht wo =lwf lekcn'geappo { = cpf "vj g' tgr'v'xg" g'zr gt v'kug"qh' ucvg"r tqdcvg"eqwtv' lwf i gu' kp" cf lwf levk'v'pi r tqdcvg/tgr'v'gf "s wguvkpu."uwej "cu'v'guco g'pvt { "ecr cekv{ 0<sup>5</sup>""Lwf i g'Rqupgt

hgf gtcn'eqwtv'lwtkuf levkqp"gzkuu="Uwkv'x0'Vkr'g'l wctepvg"( "Vtww'Eq0'389'H0f"5; 5.5; 7"4f "Ek0 3; 6: +\*cuug'v'pi "vj cv'c'hgf gtcn'eqwtv'ecp"gz'g'ekug'lwtkuf levkqp"qpn' "kv'ucvg"eqwtv'qh'i gpgtcn'lwtkuf levkqp y qwr' "gz'g'ekug"lwtkuf levkqp="Eo v'0'kpu'Eq0'x0'Tqy g.": 7"HD'Uwr 04f": 22.": 27"UF'0'Qj kq"3; ; ; = Iqj puqp"x0'Rqt'gt."; 53"HD'Uwr 0983."984"FF'0Eqm03; ; 8+"ucv'pi "vj cv'vj g'kuuv'ku'y j gvj gt'wpf gt'ucvg rcy . 'uwkv'y qwr' 'dg'eqi pk c'ng'qpn' "lp"ucvg"r tqdcvg"eqwtv="Eg'g'p'v'p'q"x0'Hwt'gt."824"HD'Uwr 0999."99; \*UF'0'Q 03; ; 7+"ucv'pi "vj cv'vj g'ucp'f'ctf'ku'y j gvj gt'wpf gt'ucvg"rcy . "vj g'f'kr'wg'y qwr' 'dg'eqi pk c'ng' qpn' "lp"vj g'r tqdcvg"eqwtv="O czy gni'x0'Uqwj y guv'P'cvai'Dcpm"7; 5"HD'Uwr 0472."474"FF'0'Mep03; ; 6+ \*cuug'v'pi "vj cv'ö'vj g'eqwtv'o wu'f gvgto kpg'y j gvj gt'wpf gt'M'epu'u'rcy "vj g'enclo u'ctg'uwej "cu'y qwr' v'cf k'k'q'cm' "j cxg'dggp'eqi pk c'ng'qpn' "lp"c"r tqdcvg"eqwtv'qt'y j gvj gt'vj g'enclo u'ctg'uwej "cu'eqwr' 'dg cuug'v'gf "lp"c'eqwtv'qh'i gpgtcn'lwtkuf levkqpö="F'wpcy c{ "x0'En'rtm"758"HD'Uwr 0886."892"UF'0'1 c03; ; 4+ \*ucv'pi "vj cv'cp"özegr vkqp"vq"vj g'r tqdcvg"gzegr vkqp\_"ku'r t'g'p'v'y j g'g'c'ucvg"d{ "ucv'wg'qt'ewu'qo "i k'gu r ct'ku'c'k'i j v'q'dt'lp' "cp'ce'v'kp"lp"ucvg\_"eqwtv'qh'i gpgtcn'lwtkuf levkqpö="Ni j v'k'q'v'x0'J ctwo cp."4; 4"HD Uwr 0578."57967: "Y'0'0'0'0'3; 8: +\*w'v'pi "vj cv'vj g'hgf gtcn'eqwtv'j cu'pq"lwtkuf levkqp"dgecwug"wpf gt ucvg"rcy "vj g'enclo "ku'lp"gz'v'v'xg'lwtkuf levkqp"qh'ucvg"r tqdcvg"eqwtv="G{ dgt'x0'F'qo l'p'kp'P'cvai'Dcpm'qh Dtku'qni'Q'k'eg."46; "HD'Uwr 0753."754655"Y'0'X'c03; 88+"q'dug'x'k'pi "vj cv'vj g'ucvg'ngi kur'w'g'öj cu'pqv ej qugp'v'q'o cng'r tqdcvg"c'r ctv'qh'g'g'i gpgtcn'g'v'k'f "lwtkuf levkqp"qh'vj g'eqwtv'qh'X'k'i k'p'c."cpf "k'h'q'm'y u vj cv'c'hgf gtcn'eqwtv'v'ukv'pi "lp"vj g'ucvg'y k'ni'dg'ri k'gf "lp"vj g'ucv'o g'o c'p'p'gt'cu'vj g'Ucvg'Gs v'k'f "Eqwtvö=" Galion Iron Works & Mfg. Co.."389"HD'Uwr 0526."533634"Y'0'0'c'tn03; 7: +\*t'go c'tn'pi "vj cv'k'i'ucvg"rcy f'q'q'u'pqv' c'h'q'f'f" c" t'go gf { "lp" c" ucvg"eqwtv' qh'i gpgtcn' lwtkuf levkqp." hgf gtcn' eqwtv' ecppqv' cuwwo g lwtkuf levkqp="S w'p'nc'p"x0'Go r k'g'Vtww'Eq0'35; "HD'Uwr 038: ".38; 692"UF'0'Q 03; 78+"g'cu'q'p'pi "vj cv dgecwug'ucvg"eqwtv'qh'i gpgtcn'lwtkuf levkqp"ecp'f'g'ent'g't'w'w'u'cpf "y k'm'lp'x'c'rk'f'f'v'g'v'q'wpf'wg'lp'h'w'p'eg. It'cw'f."cpf "rcen'q'ht'o g'p'v'nc'r'cek'f."vj g'hgf gtcn'eqwtv'k'ng'y k'ug'j cxg'lwtkuf levkqp"v'q'f'q"uq="K'k'p'q'ku'Ucvg Vtww'Eq0'x0'E'q'p'ep'v'."326"HD'Uwr 094; ."953654"FF'0'003; 74-0

730 F tci cp"x0'O kngt."89; "H0f"934."937"9vj "Ek03; ; 4-0"Vj g'U'g'x'p'y "Ek'ev'k'j' cf "r t'g'x'k'w'w'f p'q'v'f "vj g'g'z'k'v'p'eg'qh'vj g'ö'p'c'w'g'ö'cpf "ö't'q'w'g'ö'v'gu'u'd'w'j' cf "f'g'erp'gf "v'q'cf'qr'v'g'k'j'gt "v'gu'0"See"Rice."832 H0f "cv'6980

740 Dragan,'89; "H0f "cv'9376380

750 Id."cv'9366370"Vcngp"v'q'ku'ngi lekcn'gz'v'go g'vj g'lp'v'gt'v'lp"lwf lekcn'geappo { "cpf "vj g' tgr'v'xg g'zr gt v'kug"qh'ucvg"eqwtv' lwf i gu'eq'p'v'k'p'gf "lp"lwf i g'Rqupgt'au'r tcevekn'v'gu'y qwr' 'r tq'x'k'f'g'cp'cti wo g'p'v'ht g'ctf'levk'v'pi "f'k'g'v'k'f' "lwtkuf levkqp"cn'q'i gvj gt'0'Hg'f gtcn'eqwtv' lwf i gu'ukv'pi "lp"v'k'g'v'k'f' "o wu'v'q'h'g'p'ut'w'i i ng

cvtkdwgf " vj g" rncuv' y gki j v' vq" vj g" rqrk { " qh" r tqo qvpi " rgi cni' egtvclpvf .  
 tgcuplpi " vj cv'k'ku'pgwtcrk gf "d { " vj g" r qrk { " qh'cxqkf lpi " r ctqej kn'dku'lp  
 hcxqt'qh'lp/ucv'rkki cpw'vj cv'wpf gtrku'vj g' hgf gtcn'eqwtv' tcv'qh'f kxgtukf  
 lwtkuf levkqp<sup>6</sup> " Wpf gt 'j ku'vuv' vj g' hqteg'qh'vj g' qvj gt 'y q' r qrkku'xctkgu' y kj  
 ucvg'rcy < hqt "gzco r rg. 'tgrvkg'g'zr gt vkg'ecttkgu' i tgcvt' hqteg'lp'ucvgu' vj cv  
 etgcvg'c'ur gekrk gf "ecf tg'qh'r tqdcvg' lwf i gu' vj cp'lp'ucvgu'lp' y j lej " r tqdcvg  
 o cvgtu' ctg' j gctf " lp' eqwtu' qh' i gpgtcn' lwtkuf levkqp' " Uko krcn' . " lwf lekcn  
 geqpqo { " ecttkgu' o qtg' y gki j v' lp' ucvgu' vj cv' tgu'lev' vj g' tclupi " qh' c  
 ej cmgpi g'v'v'gucv' g'pvt { " ecr cekf " vj " vj g' qtki kpcn' r tqdcvg' r tqeggf lpi " vj cp  
 lp'ucvgu'cmqy lpi " vj g'kuuv'v'q' dg' tclugf 'lp' ugr ctcvg' lwf lekcn' r tqeggf lpi u<sup>7</sup>

lp' *Dragan*. " lwf i g' Rqupgt ' cr r rkgf " j ku' r tcevecl' hcevqu' v' v' g' v' cpf " j g' r  
 vj gtg' y cu' pq' lwtkuf levkqp' qxgt " c' ukv' dtqwi j v' d { " vj g' j gktu' cv'rcy " qh' vj g  
 f gegf gpv' ci clpuv' vj g' dpgg' h'ektkgu' qh' vj g' f gegf gpv' y kn' hqt " v' t'v'v'v'v'  
 kv'gtht' gpeg' y kj " cp' g'zr gevcp { " qh' lpi g' t'k'c'peg<sup>8</sup> " Mg { " lp' lwf i g' Rqupgt u'  
 xkgv' y cu' vj g' kv'gt' gu' lp' lwf lekcn' geqpqo { 0 " Wpf gt " kv'p'ku'rcy . " c' ej cmgpi g  
 v' vj g' xcrk' kv' " qh' c' y kn' o y j g' vj gt " ej ctcev' t' gf " cu' c' o' y kn' eqpv' gu' o' qt " cu' c'  
 v' t' v' en' c' o' qh' kv' g' tht' gpeg' y kj " cp' g'zr gevcp { o' eqwf " dg' dtqwi j v' q' p' n' " lp' vj g  
 q' p' i q' lpi " r tqeggf lpi " v' r' tqdcvg' vj g' y kn' cpf " y kj lp' c' ur gek' h' gf " v' o' g' r' g' t' k' f' o'<sup>9</sup>  
 Hqt " c' " hgf gtcn' eqwtv' v' " g' z' g' t' e' k' u' g' lwtkuf levkqp' qxgt " vj g' v' t' v' c' v' k' p' " y q' w' f

v' f' g' v' t' o' l' p' g' v' j' g' o' g' e' p' l' p' i' " q' h' u' c' v' g' r' c' y . " c' p' f' " k' y' q' w' f' " e' g' t' v' c' l' p' n' " d' g' o' q' t' g' g' h' e' l' e' p' v' v' q' " g' r' i' o' l' p' c' v' g' f' k' x' g' t' u' k' f' l' w' t' k' u' f' l' e' v' k' q' p' g' p' w' t' g' n' l' " c' p' f' " j' c' x' g' u' c' v' g' r' c' y " f' g' e' k' f' g' f' " g' z' e' n' u' k' x' g' n' l' " l' p' u' c' v' g' e' q' w' t' v' d' { " l' w' f' i' g' u' o' q' t' g' h' c' o' k' r' c' t' y' k' j' u' c' v' g' r' c' y' 0' " l' g' v' " v' j' g' f' k' x' g' t' u' k' f' " u' c' w' v' g' c' u' f' t' c' h' g' f' " j' c' u' u' t' w' e' n' i' c' " d' e' n' c' e' p' e' g' " d' g' y' g' g' p' " v' j' g' l' p' v' g' t' g' u' v' l' p' l' w' f' l' e' k' e' c' n' g' e' q' p' q' o' { " c' p' f' " h' c' t' p' g' u' u' v' q' r' k' k' i' c' p' w' . " c' p' f' " k' y' k' u' v' u' v' w' u' f' h' h' e' w' n' v' q' u' g' g' y' j' { " r' t' q' d' c' v' g' t' g' r' v' g' f' " e' c' u' g' u' u' j' q' w' f' " d' g' v' g' c' v' g' f' " c' p' f' " f' i' h' g' t' g' p' v' l' " i' t' q' o' " q' v' j' g' t' " e' c' u' g' u' l' p' x' q' n' k' l' p' i' " k' u' u' g' u' q' h' u' c' v' g' r' c' y' 0' " U' d' u' g' s' w' e' p' v' e' c' u' g' u' q' h' g' p' o' c' n' g' o' g' p' v' k' p' " q' h' v' j' g' t' e' v' v' j' c' v' v' j' g' r' t' q' d' c' v' g' r' t' q' e' g' g' f' l' p' i' " j' c' u' e' n' q' u' g' f' . " s' e' e' " e' . g' . " N' q' { f' " x' 0' N' q' { f' . " 953 " H' d' f' " 5 ; 5 . " 5 ; 9 \* 9 v' j' " E' k' 03 ; : 6 = 0 e' E' n' k' p' x' 0' C' p' j' q' p' { . " P' q' 0 : " E' : 725 . " 3 ; ; " Y' N' 66529 . " c' v' , 4 \* P' ( F' 0' k' r' 0' C' r' t' 04 : " 3 ; ; + d' w' v' j' k' u' f' q' u' u' p' q' v' c' r' r' g' e' t' " v' q' d' g' c' " h' q' t' o' c' n' i' t' g' s' w' k' t' g' o' g' p' v' . " s' e' e' " e' . g' . " J' c' o' k' n' q' p' x' 0' P' k' e' n' g' p' . " 89 : " H' d' f' " 92 ; " 932 \* 9 v' j' " E' k' 03 ; : 4 - 0 " V' j' g' U' w' r' t' g' o' g' E' q' w' t' v' l' p' f' k' e' v' u' k' p' i' " v' j' g' c' p' c' n' j' q' w' i' g' z' e' g' r' v' k' p' v' q' h' g' f' g' t' c' n' e' q' w' t' v' l' w' t' k' u' f' l' e' v' k' q' p' h' q' t' f' q' o' g' u' l' e' t' g' r' v' k' p' u' o' c' v' g' t' u' l' p' " A' n' k' e' n' b' r' a' n' d' t' v' . R' i' c' h' a' r' d' s' . " l' p' f' l' e' c' v' g' f' " v' j' g' z' e' g' r' v' k' p' y' c' u' l' w' u' k' h' g' f' " d' { " v' j' g' l' p' v' g' t' g' u' u' l' p' l' w' f' l' e' k' e' c' n' g' e' q' p' q' o' { " c' p' f' " v' j' g' t' g' r' v' k' x' g' g' z' r' g' t' v' k' u' g' " q' h' u' c' v' g' r' c' o' k' n' l' " e' q' w' t' v' l' w' f' i' g' u' o' " 726 " W' L' O' 8 : ; . 925626 \* 83 ; ; 4 - 0

760 *Dragan*. '89; "Hd f" cv9380  
 770 *Id.* cv9370  
 780 *Id.* cv9386390  
 790 *Id.* " Wpf gt ' lwf i g' Rqupgt u' v' g' u' v' j' q' y' g' x' g' t' . " v' j' g' r' t' q' d' c' v' g' g' z' e' g' r' v' k' p' f' q' u' u' p' q' v' c' r' r' n' l' " y' j' g' t' g' v' j' g' u' c' v' g' t' g' r' i' g' r' t' q' d' c' v' g' o' c' v' g' t' u' l' p' k' u' e' q' w' t' v' q' h' i' g' p' g' t' c' n' l' w' t' k' u' f' l' e' v' k' q' p' t' e' v' j' g' t' v' j' c' p' v' q' u' r' g' e' k' r' k' g' f' r' t' q' d' c' v' g' e' q' w' t' v' . " q' t' r' t' q' x' k' f' g' u' v' j' c' v' v' j' g' u' r' g' e' k' h' e' e' n' c' l' o' " k' u' i' p' q' v' c' u' c' o' c' v' g' t' q' h' u' c' v' g' r' c' y . " r' c' t' v' q' h' v' j' g' y' k' n' l' e' q' p' v' g' u' v' c' p' f' " v' u' p' p' g' g' f' " p' q' v' d' g' " d' t' q' w' i' j' v' g' z' e' n' u' k' x' g' n' l' " l' p' v' j' g' q' p' i' q' l' p' i' " r' t' q' e' g' g' f' l' p' i' " v' q' r' t' q' d' c' v' g' v' j' g' y' k' n' o' " S' e' e' " L' o' y' d' . " 953 " H' d' f' " c' v' 5 ; 5 . 5 ; 86 ; 9 " \* r' t' q' r' g' t' " v' q' g' z' g' t' e' k' u' g' l' w' t' k' u' f' l' e' v' k' q' p' q' x' g' t' u' k' v' d' t' q' w' i' j' v' c' i' c' l' p' u' v' v' j' g' g' u' c' v' g' u' i' c' f' o' l' p' k' u' t' c' v' q' t' " d' { " v' j' g' f' g' e' g' f' g' p' v' u' i' y' k' f' q' y' " h' q' t' " h' c' w' f' " l' p' e' q' p' p' g' e' v' k' p' y' k' j' " v' j' g' u' c' v' g' r' q' h' e' g' t' v' c' l' p' t' g' c' n' l' r' t' q' r' g' t' v' l' " q' y' p' g' f' " d' { " v' j' g' g' u' c' v' g' . y' j' g' t' g' r' t' q' d' c' v' g' o' c' v' g' t' u' l' p' v' j' g' u' c' v' g' y' g' t' g' t' g' r' i' g' i' c' v' g' f' " v' q' v' j' g' e' q' w' t' v' q' h' i' g' p' g' t' c' n' l' w' t' k' u' f' l' e' v' k' q' p' c' p' f' " v' j' g' u' r' g' e' k' h' e' u' c' w' w' q' t' { " r' t' q' x' k' f' l' p' i' " h' q' t' e' q' p' v' g' u' k' p' i' " c' n' g' i' g' f' " h' c' w' f' u' y' c' u' p' q' v' i' h' o' k' s' g' f' " v' q' r' t' q' d' c' v' g' e' q' w' t' v' = I' g' q' t' i' g' u' x' 0' I' n' e' m' : " 78 " H' d' f' " ; 93 . " ; 94697 " \* 9 v' j' " E' k' 03 ; : : + \* h' p' f' l' p' i' " v' j' c' v' k' u' r' t' q' r' g' t' " v' q' g' z' g' t' e' k' u' g' l' w' t' k' u' f' l' e' v' k' q' p' q' x' g' t' e' n' c' l' o' u' q' h' i' r' g' i' c' n' i' o' c' i' r' r' t' e' v' l' e' g' " c' p' f' " d' t' g' e' j' " q' h' i' e' q' p' t' c' e' v' d' t' q' w' i' j' v' d' { " v' j' g' f' g' e' g' f' g' p' v' u' i' j' g' k' t' u' " c' i' c' l' p' u' v' v' j' g' f' g' e' g' f' g' p' v' u' i' c' v' a' q' t' p' g' f' " c' u' u' e' j' " e' n' c' l' o' u' c' t' g' e' p' q' v' c' u' c' o' c' v' g' t' q' h' u' c' v' g' r' c' y . " r' c' t' v' q' h' v' j' g' y' k' n' l' e' q' p' v' g' u' v' c' p' f' " p' g' g' f' " p' q' v' d' g' " d' t' q' w' i' j' v' g' z' e' n' u' k' x' g' n' l' " l' p' v' j' g' q' p' i' q' l' p' i' " r' t' q' e' g' g' f' l' p' i' " v' q' r' t' q' d' c' v' g' v' j' g' y' k' n' o

36; 4

SOUTHERN CALIFORNIA LAW REVIEW

]Xqr096-369;

wpf gto kpg'vj g'ucvga'f go qpwtcvgf 'kpvgtgav'lp'lwf lekcn'geqpqo { 0: "'Tgrv'kxg  
gxr gtv'kug' cnuq" y gli j gf "kp" hcxqt" qh" wukpi "vj g" r tqdcvg" gzeqr vkqp< wpf wg  
kphwvpeg'qxgt" c"v'gucvqt "ku"cp"kuuv"y kj "y j lej "kikpaku"ucv"lwf i gu'j cxg  
i tgcvgt'gxr gtv'kug0: "'Dw'wprkng'eqwtu'vj cv'hqmny "vj g"opcwtg'qh'vj g'enclo o  
vau." Lxf i g" Rqupgt " f kf " pqv' j qrf " vj cv' uwej " ej cngpi gu" ctg" ecvgi qtkecmf  
qwu'k' g'vj g' hgf gtcn'eqwtu'vj i tcpv'qh'f kxgtukf "lwtkuf levkqp0" kpuvcf. "j g'j grf  
vj cv'k'kikpaku"ucv"ry "cmny u'cp"cevkqp"ej cngpi kpi "vj g'xcnkf k' "qh'c'y kn'vq  
dg'dtqwi j v'cu" c"ugr ctcvg"qtv'cevkqp"dghtg" c" f khtgtpv'lwf i g'vj cp"vj g"qpq  
y j q'r tqdcvgf "vj g'y km"vj gp"vj g'r qike { "qh'lwf lekcn'geqpqo { "y qwf "ruq"ku  
hqtg0<sup>2</sup>

40"Cr r rkecvkqp'qh'vj g'Rtqdcvg'Gzeqr vkqp

c0"kvgt'Xkxqu'cpf "Vguco gpvct { "Vtwuu

Y j krg'c'i tgevf gcn'qh'r tqr gtv' "ku'tcpuhgtt'gf "cv'f gc'vj "d { "y c { "qh'f gxlugu  
kp'c'y km"cp'kpetgukpi "pwo dgt'qh'r gqr ng"t'cpuhgt'vj gk' r tqr gtv' "wukpi "oy km  
uudukwgu.o'kpenf kpi "t wuu0<sup>3</sup>"" k'c"t wuu." r tqr gtv' "ku"j grf "d { "c"t wuvgg"cv  
vj g"tgs wguv'qh'vj g"qy pgt'qh'vj g" r tqr gtv' "\*vj g"ugwqt+"hqt"vj g"dgpgk'qh'c  
vj kf "r ctv'f. "vj g"dgpgk'ekt { 0<sup>4</sup>"" k'c"t wuu'tgrvkpuj kr. "vj g"t wuvgg"j qrf u'ngi cn  
v'kng"vq"vj g" r tqr gtv'f. "dw'j cu'cp"gs wkcdrg'f w' "vq"j qrf "vj g" r tqr gtv' "hqt"vj g  
dgpgk'qh'vj g" dgpgk'ekt { 0<sup>5</sup>"" Vj gtg"ctg." dtqcf n' "ur gcnkpi. "y q" f khtgtpv'  
v' r gu'qh'v'wuu'kvgt'xkxqu'v'wuu'cpf "v'guco gpvct { "t wuu0"kvgt'xkxqu'v'wuu  
ctg" etgevgf " cpf " v'cng" gh'gev' f wtkpi " vj g" ugwqt'au' r h'vko g0<sup>6</sup>"" " Vj wu. " vj g

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7: 0 *Dragan*. '89; 'Hdf'cv9380  
7: 0 *Id.*  
820 *Id.*'cv9390"kv"Hamilton v. Nielsen.'89; 'Hdf'92; '\*9vj'Ek03; : 4+.'r wdkuj gf "lwuv'y q'y ggm  
r tkt'vq" *Dragan*. "Lxf i g" Rqupgt "h'wpf " vj cv'vj g' hgf gtcn'eqwtu'j cf "uwlgev'o cvgt "lwtkuf levkqp"qxgt" cp  
cevkqp"dtqwi j v'd { "c"dgpgk'ekt { "qh'c"v'guco gpvct { "t wuu'ci ckpuv'vj g"gzgewqtu'hqt"pgi rki gpv'dtgej "qh  
hf vekt { "f w'0" *Id.*'cv92; 6320" Lxf i g" Rqupgt "tgcupgf "vj cv'dgecwug'ouwej "ecugu'y j gp'dtqwi j v'lp'ucv  
eqwtu'lp'kikpaku'ctg'dtqwi j v'lp'ku'eqwtu'qh'i gpgtcn'lwtkuf levkqp'tcvj gt"vj cp'kp'eqwtu'y kj "c'ur geknkf gf  
r tqdcvg'lwtkuf levkqp'000'gvgv'kp'qh'hgf gtcn'f kxgtukf "lwtkuf levkqp'qxgt'uwej "ecugu'y kn'pqv'kvgt'htg'y kj  
c"ucvgr' r qke { "qh'ej cpgn'kpi "cn'r tqdcvg'tgrv'gf "o cvgtu'vq"ur geknkf gf "eqwtu0" *Id.*'cv9320"Vj g'eqwtv  
y gpv'qp'vq'j qrf. "j qy gxt. "vj cv'vj ku'y qwf "pqv'cmny "hgf gtcn'eqwtu'vq'r tqdcvg'y km"gxgp"vj qwi j "vj cv'ku  
f qp'kp'ucv'eqwtu'qh'i gpgtcn'lwtkuf levkqp."tgcupkpi "vj cv'0'r tqdcvg'tgo ckpu'c'r gewkctn' "tqecnl'pvevkp  
y j lej "hgf gtcn'eqwtu'ctg'kn'gs wkr gf "vq"r gthqto 0" *Id.*""Vj g'eqwtv'f k' "pqvg"vj cv'vj g'u'w'f k' "pqv'ugm'vq  
gplqkp"vj g" r tqdcvg'r tqeggf kpi u. "kpxqkxg"vj g'xcnkf k' "qt'eqwtu'cevkqp'qh'vj g"y km"qt"v { "v'ej cpi g"vj g  
f kn'kwkqp'qh'vj g'gucv'cuugu0" *Id.*  
830 *See* 'Iqj p'J ONcpi dglp."The Nonprobate Revolution and the Future of the Law of Succession.  
'9"J CTX0'NOTGX0'332: "3; : 6=P cvj cplgr'Y 0'Uej y kengtc'y. "Public Policy and the Probate Pariah:  
*Confusion in the Law of Will Substitutes.*"6: 'FTCMG'NOTGX0'98; : '992"4222-0  
840 DNCEMU'NCY 'F IEVQPC'CTI. "supra"pqvg'33.'cv372: 0  
850 TGUVCYGO GP V'UGEQPF +'QH'VTWUVU'E'4'eo v0j "3; 7; =DNCEMU'NCY 'F IEVQPC'CTI. "supra  
pqvg'33.'cv372: 0  
860 DNCEMU'NCY 'F IEVQPC'CTI. "supra"pqvg'33.'cv37330'C'ur geknk'kpf "qh'kvgt'xkxqu'v'wuu'ku'vj g  
or qw'qxgt"t wuu'c'k'ku'etgevgf "f wtkpi "vj g'ugwqt'au' r h'vko g. "dw'vj g'ugwqt'au'cuugu'ctg'pqv'ko o gf k'evn'



r tqr gtv\ "ku" vcpuhgtt gf "vq" yj g" vtwungg" y j krg" yj g" ugwrqt "ku" ukni' crkxg0 " Kp  
eqpvtuv."c"vugco gpvct { "v wuv'ku"etgcvgf "d { "c"y km'cpf "f qgu'pqv'vcng"ghgeev  
wpvni'yj g'ugwrqt "f kgu<sup>87</sup>

Ngi cni' f kur wgu" htgs wgpvni\ " ctlug" kp" eqppgevkqp" y kj " v wuu0 " Hqt  
gzco r rg."yj g"dgpghlektkgu"o ki j v'dtkpi "uwk'ci ckpuv'yj g"v twungg'htq"dtgcej "qh  
hkf wekt { "f wv\ "qt"eqpxgtukqp."f go cpf kpi "cp"ceeqwpvki . "tgo qxcn'qh" yj g  
v twungg."qt"dqy (8<sup>8</sup>""Cngtpcvkxgn\."j gktu'y j q"ctg"pqv'pco gf "cu"dgpghlektkgu  
kp" yj g" v wuv'kpvt wo gpv'o ki j v'dtkpi "c"uwk'ej cngpi kpi "yj g"xcnkf kv\ "qh" yj g  
v wuv'\*wuvcm\ "cngi kpi "rcni'qh'ecr cek\ "qt"wpf wg"lphmgpeg+<sup>89</sup>"cngi kpi "yj cv  
yj g"v wuv'kpvt wo gpv'hckrgf "vq"eqo r n\ "y kj "yj g"tgs vkt go gpv'qh'ucvg"mcy =:  
qt"cmgi kpi "yj cv'yj g'ugwrqt "j cf "tgxqngf "yj g"v wuv'f wtkpi "j gt "hkvko g<sup>8</sup>:

Vj g" r tqdcvg"gzegr vkqp"ku"htgs wgpvni\ " tclugf "cu" c" f ghgpug" y j gp" uwej  
cevkpu"ctg"hgkf "kp" hgf gtcni'eqwt u0"O quv'eqwt u'j cxg"t glgevgf "yj ku" f ghgpug.  
j qrf kpi " yj g" r tqdcvg" gzegr vkqp" f qgu" pqv' cr r n\ " vq" v wuu0<sup>2</sup>" " Qhgp" pq  
g zr rcpvkqp"ku"i kxgp"htq "yj ku" f kpkp vkqp."dw'c" hgy "eqwt u'j cxg"t grkgf "qp" yj g  
hcev'yj cv'v wuu."wprkng"y kmu."f kf "pqv'hcm'y kj kp" yj g"z enukxg"lwtkuf levkqp"qh  
yj g"geengukvkecn'eqwt u"kp" gli j vggpj /egpwt { "Gpi rcpf ."dw"kpugcf "y gtg  
y kj kp" yj g"lwtkuf levkqp"qh" yj g"J ki j "Eqwtv'qh'Ej cpegt { ."cpf "yj wu'hcm'y kj kp  
yj g"ucwwqt { "i tcpv'qh"gs vkv\ "lwtkuf levkqp"vq" WLU' hgf gtcni'eqwt u<sup>3</sup>""C" hgy

vcpuhgtt gf "vq" yj g"v twungg0" Tcvj gt. "wr qp" yj g'ugwrqt u'f gcvj . "yj g"v wuv'tgekvgu" r tqr gtv\ "d { "y c\ "qh" c' f gkxk  
htqo "yj g'ugwrqt u'f km" wuvcm\ "d { "y c\ "qh" yj g'ugkuf vcn'gucv0" Id. "cv37340

870 DNCEMUNCY "F ÆVQPCIT" . "supra" pqv"33"cv37350

880 See, e.g., "I gqti gu"x0I nem": 78" H4f"; 93.; 94695"9y "Ek03; : : =Uej qprpf "x0Uej qprpf .  
P q0Ek05; 9EX77: \*CJ P + "3; ; 9"Y N"8; 7739."cv", 3" \*F0Eapp0Qex045."3; ; 9"Y glpi ctvgp "x0Y cttgp.  
975" H0Uwr 06; 3. 6; 46; 5" \*UF P Q 03; ; 2" =Dctpgu"x0Dtcpf twr ."728" H0Uwr 05; 8. 5; 96; : " \*UF P Q 0  
3; ; 3" =Tquwgew"x0WLUVtwv'Eq0qhP Q 0"644" H0Uwr 0669."672673" \*UF P Q 03; 98+0

890 E.g., "Vwlc"x0Vwlc."33: "H5f"3228."322962: "6y "Ek03; ; 9" =Laj puqp"x0I quu "P q0; 7/84; 7.  
F(EOEKX; /6/3687/C."3; ; 9"Y N"44752."cv", 3" \*32y "Ek0Lcp044."3; ; 9" =wpr wdrikuj gf "f gekukp =F cxku"x0  
J wvgt."545" H0Uwr 0; 98.; 9969: " \*F0Eapp03; 92" =Lcemqp"x0WLU0P cvniDcpm"375" H0Uwr 0326."32:  
\*F0Qt03; 79+0

8: 0 E.g., "Ncpecvgt"x0O gtej cpw"P cvniDcpm"974" H0Uwr 0: : 8.; : 96; : " \*Y (F0Ctn03; ; 2" =rev'd.  
; 83" H4f "935" =y "Ek03; ; 4+0

8: 0 E.g., "Ukuqp"x0Eco r dgm'Wpkx0" Jpe0'8: : "H0Uwr 03286."3287" \*GF P (E03; : : +0

920 See "Schonland."3; ; 9"Y N"8; 7739."cv", 4" \*ucvki "yj cv'vj g'r tqdcvg"gzegr vkqp" f qgu'pqv'cr r n\ "vq  
v wuu0 = Weingarten." 975" H0 Uwr 0' cv' 6; 66; 7" \*ucvki " yj cv' dlvj g" r tqdcvg" gzegr vkqp" vq" f kxgtuls\  
lwtkuf levkqp" f qgu'pqv'cr r n\ "vq" v wuu0 = Lancaster."974" H0Uwr 0' cv' : : " \*j qrf kpi " yj g" r tqdcvg"gzegr vkqp  
f qgu'pqv'cr r n\ "vq" ej cngpi gu"vq" yj g'xcnkf kv\ "qh" c' v wuv = Barnes."728" H0Uwr 0' cv'5; ; " \*j qrf kpi " yj g" r tqdcvg  
gzegr vkqp" f qgu'pqv'cr r n\ "dgecvug" yj g" ecug" dlpvqkxgu" c" r tqdcvg" eqwt u' lwtkuf levkqp" qxgt" v wuu" pqv  
y km0-0" See also "Turja."33: "H5f" cv'322862; " \*ko r rlekn\ " f kvkpi wkuj kpi " dgy ggp" c" ej cngpi g" vq" yj g  
xcnkf kv\ "qh" c' y kn'cpf "c" ej cngpi g" vq" c" v wuv=0

930 See "Barnes."728" H0Uwr 0' cv'5; ; " \*Eapvtqxgtulgu"eqpegtlpi "v wuu" y gtg"pqv'lp"39: ; " r ctv'qh  
yj g'z enukxg"lwtkuf levkqp"qh" yj g"geengukvkecn'eqwt u0 = Mpqr "x0Cpf gtuqp."93" H0Uwr 0: : 54.; : 5965:  
\*F0'kqy c"3; 69+ " \*Cv' yj g'vko g'qh" yj g" cf qr vkqp"qh" yj g"Eqpukwkwqp"qh" yj g" Wpksgf "Ucvgu" yj g" Gpi rki j  
J ki j "Eqwtv'qh'Ej cpegt { "j cf "lwtkuf levkqp"cu"vq" yj g'gphqtego gpv'qh'v wuu0-0" Hqt" c' f gvckgf "f kuewukqp"qh

eqwtu"j cxg"cuq"uwi i guvgf "vj cv'ukpeg"cej cmgpi g"vq"vj g"xcrkf k{"qh"ctwuv  
j cu"vj g"ghgev"qh"cf f lpi "cuugu"vq"cj r tqdcvg"guvcg"cu"eqwtcuvgf "y kj "c  
ej cmgpi g"vq"vj g"xcrkf k{"qh"cy km"y j lej "j cu"vj g"ghgev"qh"vckpi "cuugu  
cy c{"htqo "vj g" r tqdcvg" guvcg+ "ej cmgpi gu" vq" kpvgt" xkxqu" vcpuhgtu" qh  
r tqr gtv{ "f q" pqv" j cxg" vj g" ghgev" qh" kpvgt hgtkpi " y kj " vj g" r tqdcvg" qh" vj g  
guvcg<sup>4</sup>

Cv'ngcu'qpg"eqwtv"j cu"gzr tguun{ "tglgev" vj ku" f kulkpevkp. "tgcupkpi  
vj cv"ctwuv"ku"rkwr"o qtg"vj cp"cy km"uwdukwvg"cpf "vj wu"qwi j v'pqv"vq"dg  
v gcvgf " f khtgtpv{<sup>5</sup> " Qvj gt" eqwtu. " y j kvg" pqv" f kgevn{ " tglgev" vj g  
f kulkpevkp. "j cxg" f ppg"uq"lo r rlekn{ "d{ "uwdlgev" "ej cmgpi gu"vq"v'wuv"vq"vj g  
uco g"vuv<sup>6</sup> "vj cv"vj g{ "go r nq{ "hqt" f vgt o kpkpi "y j gvj gt"cej cmgpi g"vq"cy km  
hmu" y kj kp" vj g" r tqdcvg" gzevr vkp<sup>7</sup> " " Ukm" qvj gt" eqwtu" lo r rlekn{ " j cxg  
f tcy p" c" rkg" dgw ggp" vguco gpvct{ " cpf " kpvgt" xkxqu" v'wuv. " cr r nq lpi " vj g  
r tqdcvg" gzevr vkp" vq" vj g" hqto gt" dw" pqv" vq" vj g" r wgt" y kj qw" r tqxk lpi  
lwukhcevkp" hqt" f tcy lpi " uvej " c" f kulkpevkp<sup>8</sup>

d0" " Uwku" Ctkulpi " Wpf gt" Hgf gtcn' Ncy " cpf " Ucvwqt{ " Kpvtr ngcf gt  
Cevkpu

Kp"vj g"v' r lecn' r tqdcvg/ tgvvgf " ecug. " vj g" dcuku" hqt" hgf gtcn' eqwtv' uwdlgev  
o cvgt " lwtkuf levkpv" y km' dg' f kxtukv{ " qh' ekkl gpuj k. <sup>99</sup> " cu" vj g" ecwug" qh' cevkv  
ku" wuvcn{ " gkj gt" c" dtgcej " qh' eqpvcev' encko <sup>9</sup>: " qt" c" i ctf gp/xctkgy " uvcg  
eqo o qp" ncy " encko o uvej " cu" hcvf. <sup>9</sup>: " dtgcej " qh' hkv wekt{ " f wv. <sup>2</sup>

vj g' tgvkvpij k' dgw ggp" WUO hgf gtcn' eqwtv' uwdlgev' o cvgt " lwtkuf levkpv" cpf " vj g' f kulkpevkp" qh' lwtkuf levkpv  
co qpi " Dtkuj " eqwtu" lpi " vj g' g' i j vggpj " egpwt{. " see infra " Rctv' KKC0  
940 See O eMddgp" x0Ej vdd. " 62" Hdf " 3747. " 3752653" \*32j " Ek03; : : =I gctj gctf " x0I gctj gctf.  
628" HUWr r 0926. " 927628" \*UF 00 ku03; 98+0  
950 See I gqti gu" x0I rlem": 78" Hdf " 93. " 96" p0" \*9j " Ek03; : : +0  
960 See supra " Rctv' KKD0  
970 Lqj puvqp" x0I quu " P q0; 7/84; 7. " F(0E0EK/; 6/3687/C. " 3; ; 9" Y N" 44752. " cv, 3" \*32j " Ek0Lcp0  
44. " 3; ; 9+ " vpr vdrkuj gf " f gekulqp+ " cr r nq lpi " otqwg0" vuv" lpi " ej cmgpi g" vq" xcrkf k{" qh' kpvgt" xkxqu" v'wuv=  
McKibben. " 62" Hdf " cv3752653" \*cr r nq lpi " otqwg0" vuv" lpi " ej cmgpi g" vq" xcrkf k{" qh' kpvgt" xkxqu" v'wuv" hgt " qh  
r tqr gtv{ =Icemuqp" x0WLOP cvni Dcpm " 375" HUWr r 0326" \*F 0Q03; 79+0  
980 See " Tquwgcw" x0Wpksf " Ucvgu" v'wuv" Eq0qhP Q 0" 644" HUWr r 0669. " 672682" \*UF 0P Q 03; 98+0  
See also " Jackson. " 375" HUWr r 0326" \*tgcvkpi " c" ej cmgpi g" vq" vj g" xcrkf k{" qh' c" vguco gpvct{ " v'wuv" cu" c  
ej cmgpi g" vq" vj g" xcrkf k{" qh' vj g' y km' kugr+0  
990 See, e.g. " Cuj vqp" x0Rcwn; 3: " Hdf " 3287. " 3294" \*4f " Ek03; ; 2+0  
9: 0 See, e.g. " Georges. " 78" Hdf " cv; 93. " 96697" \*cf lwf levkpi " dtgcej " qh' eqpvcev' encko u' ci kpv  
vj g" cvqtpg{ " y j q" f tchgf " y km' d{ " dgpghelctgu+ " O lej ki cp" Vgej 0' Hwpf " x0' Egpwt{ " P cvni' Depni' qh  
Dtqy ctf. " 8: 2" Hdf " 958. " 962" \*33j " Ek03; : 4+ " \*gxkgy lpi " encko " qh' dtgcej " qh' eqpvcev' vq" gzgewg" o wvcn  
y km+ " Neo dgti " x0Ecmj cp. " 677" Hdf " 3435. " 3436637" \*4f " Ek03; 94+0  
9: 0 See, e.g. " I tggp" x0F qwneu. " 4222" WUO " Crr 0' NGZ KU" 445; . " cv, 4" \*4f " Ek0' Hgd0' 37. " 4222+  
\*vpr vdrkuj gf " f gekulqp+ " P gy rpf " x0P gy rpf. " 4" Hdf " 55. " 55; " \*32j " Ek03; ; 8+ " Xk xct{ " x0' Xk pevk  
356" Hdf 04. " 4; " \*F 0T 003; ; 2+ " F lpi gt" x0I wlpq. " 883" HUWr r 065. " 665" \*GF 0P Q 03; ; 9+0

pgi rki gpeg:<sup>3</sup>"eqpxgtukqp:<sup>4</sup>"wplwuv'gptlej o gpv:<sup>5</sup>"vtvkqwu"kpvgthgtgpeg"y kj  
 gZR gevcpe{" qh" kpj gtkcpeg:<sup>6</sup>" qt" y tqpi hwn' fgcjy:<sup>7</sup>ô ci ckpuv" " vj g  
 cfo kpkutcvqt" \*gtuqpcmf" qt" kp" c" tgrtgugpvcxg" ecrcek{+ qt" vj g  
 dgpghlektkgu'pco gf 'kp'vj g'y km0'kpf gfg. 'vj g'r tqdcvg"gzegr vkqp'ku'htgs wgvnq  
 tghgtgf "vq'cu'vj g'r tqdcvg"gzegr vkqp"vq'hgf gtrneqwtv'diversity'lwtkuf levkqp:<sup>8</sup>  
 cpf "k'j' cu'qpn{ "dggp"kp"fkxgtukv{ "ecugu'vj cv'vj g'Uwr tgo g'Eqwtv'j' cu'cewcmf  
 cr r rkgf" vj g'r tqdcvg"gzegr vkqp"vq" f gp{ "uwlgev'o cwgt"lwtkuf levkqp"qxgt" c  
 uwk0<sup>9</sup>

Vj g'r tqdcvg"gzegr vkqp."j qy gxgt."ku"uqo gvk0 gu'tckugf "kp"ecugu'y j gtg  
 hgf gtrcnlwtkuf levkqp'ku'pqv'dcugf "qp"fkxgtukv{ 0"Markham."hqt"gzco r ng."y cu'c  
 hgf gtrcn's wgvkqp"ecugô cmj qwi j "pqvcdn{ "qpg"kp"y j lej "vj g'Eqwtv'tghwugf "vq  
 cr r n{ "vj g'r tqdcvg"gzegr vkqp0" "kp"cf f kxqp"vq"fkxgtukv{ "ecugu."vj gtg"ctg" c  
 j cpf hwn' qh' r tqdcvg/tgncvgf " uwku" vj cv' hcm' y kj kp" vj g" uwlgev' o cwgt  
 lwtkuf levkqp"qh'vj g'hgf gtrcn'eqwtu" gkj gt" dgecwug"vj g{ "ucvq" c"ercko "wpf gt  
 hgf gtrcn' ucwqwt{ "qt" eqpukwkqpcn' rcy : "qt" dgecwug" vj g{ "hcm' y kj kp" vj g  
 kpvgr rncf gt'lwtkuf levkqp: "qh'vj g'hgf gtrcn'eqwtu0

k0'Ucwwqt{ "Kpvtgr rncf gt' Cevkqpu

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: 20 See, e.g., "Green."4222"WLU0Crr0NGZ KU"445; . 'cv', 46, 5="Newland."3: 4"Hbf 'cv'55; . '989'Hbf  
 cv'528="Bortz."; 26"HUwr 0cv'8: 56: 6="Dinger."883"HUwr 0cv'665="Vctnqp"x0Vqy pugpf. '559"HUwr 0  
 : : . : ; 4"FOO ku03; 93="O ctv{ "x0Dtcvp."488"HUwr 0356."35: "GOF 0Rc03; 89-0  
 : 30 See, e.g., "Newland."; 4"Hbf 'cv'55; =Georges.". 78"Hbf 'cv'; 96697="Dinger."883"HUwr 0cv  
 6650  
 : 40 See, e.g., "Green."4222"WLU0Crr0NGZ KU"445; . 'cv', 4="Newland.". 4"Hbf "cv'55; =J ctf gt"x0  
 Tchgtv{ .92; "HUwr 03333."3335"O (F 0Hc03; : : ; 0  
 : 50 See, e.g., "Green."4222"WLU0Crr0NGZ KU"445; . 'cv', 40  
 : 60 See, e.g., "id."=Ugc{"x0F qfi g."P q0; 7"E'5865."3; ; 7"Y N779583."cv', 3.;, 7"MP (F 0G0Ugr'03: .  
 3; ; 7="Dgtgp"x0Tqr hqi gn'Eks0C0P q0; 3/4647/Q."3; ; 4"Y N'595; 57.'cv', 3"MF 0Mcp0P qx03: .3; ; 4-0  
 : 70 See, e.g., "Harder."92; "HUwr 0cv'33350  
 : 80 E.g., "O lej ki cp"Vgej 0Hwpf"x0Egpwt{ "P cwa'Dcpnl'qh'Dtqy ctf."8: 2"Hbf "958.'95; "33vj "Ekt0  
 3; ; 4-0  
 : 90 Uwwqp"x0Gpi rkuj ."468"WLU03; ; "3; 3; =Hcttgn'x0Q0Dtlgp."3; ; "WLU0: ; "3; 27="D{ gtu"x0  
 O eCwqf."36; "WLU082: "3; ; 5="Gnku"x0F cxku."32; "WLU06: 7"3: : 5="In re"Dtq gtlennu"Y km": "WLU  
 725"43"Y cni0"3; 96="L clpgu"x0Ej gy ."65"WLU04"J qy 0=83; "3; 66-0  
 : : 0 See"4: "WLU0E'3553"3; ; 6="ôVj g'f kntlev'eqwtu'uj cni'j cxg'qtki kpcn'lwtkuf levkqp'qh'cm'ekkn  
 cevqpu'ctkukpi "wpf gt"vj g'Eqpukwkqp."rcy u'qt"vgevgu'qh'vj g'Wpksf "Ucvgu00-0  
 : ; 0 Vj g'hgf gtrcn'lpvgr rncf gt"ucwqwt"r tqxkf gu'vj g'hgf gtrcn'eqwtu'y kj "uwlgev'o cwgt"lwtkuf levkqp  
 qxgt"kpvtgr rncf gt"cevqpu'hkfg "d{"cp{ qpg"kp"r quuguukqp'qh'o qpg{ "qt"r tqr gtv{ "gzeggf kpi "&722"kp"xcwv.  
 r tqxkf gf "vj cv'vy q"qt"o qtg'cf xgtug'enclo cpw'qh'f kxgtug'ekkl gpuj kr "enclo "qt"o c{ "enclo "vq"dg'gpvkrkf "vq  
 vj g'o qpg{ "qt"vj g'r tqr gtv{ "cpf"vj cv'vj g'uncngj qrf gt" f gr quku'vj g'o qpg{ "qt"r tqr gtv{ "y kj "vj g'eqwtv'wr qp  
 htkpi "uwk0"4: "WLU0E'3557"3; ; 6-0"Qpn{ "o kpo cni'fkxgtukv{ "ku'htgs wkgf <uq'iqpi "cu'cv'igcuv'vy q'qh'vj g  
 uncngj qrf gtv'ctg'qh'f khtgtpv'ekkl gpuj kr . 'k'f qgu'pqv'o cwgt"vj cv'vj gtg'ku'qxgtncr "kp"vj g'ekkl gpuj kr "qh'vj g  
 enclo cpw0'Ucvg'Het0 "Hktg"( "Ecu0Eq0x0Vcuj ktg.'5: 8"WLU0745."752"3; 89-0"Vj g'r vtr que'qh'vj g'hgf gtrcn  
 kpvtgr rncf gt"ucwqwt"ku'vq"ôr tqxkf g" c"htwo "kp"y j lej "c"j qrf gt"qh'o qpg{ "cf o kvgf n{ "qy kpi "vq"uqo gqpg  
 cpf" enclo gf "d{" ugxgtcn' r ctvku' o c{ "j cxg" vj g" s wgvkqp" qh' gpvkrqo gpv" vj "j g" hwpf" ugwgf "kp" qpg  
 r tqeggf kpi "cpf" dg'j lo ugrh'f kuej cti gf "htqo "cm'hw'vj gt'kcdkkl' cu'vq'vj g'hwpf 0"O cuw0O w0Nktg'kpu0Eq0  
 x0E gpvcn'Rgpp0P cwa'Dcpm'584"HUwr 035; : . "3623"GF 0Rc03; 95-0



C" r tqdcvg/tgrcvf" kpvtr rfcf gt" cevkqp" v r lecmf " ctkgu" y j gp" cp kpf kxf wcnqt "gpvxf "ku"lp"r quuguukqp"qh'egt vcp"cuugw"cpf "vj gt g"ku"r kur wg"cu vq"y j gvj gt "vj g"cuugw"gxgp"dgmpj "vq"vj g" f ggcugf au"guvcg0<sup>2</sup>" Cml'eqwt u eqpukf gtlpi "vj g"o cwtg"j cxg"tghwugf "vq"cr r nq "vj g"r tqdcvg"gzegr vkqp"lp"vj g eqpvz v'qh'hgf gtcn'ucwvwt { "kpvtr rfcf gt"cevkpu0<sup>3</sup>"Vj g"r tko ct { "tcvkpccg hqt"pqp/cr r rkecvkp"qh'vj g"r tqdcvg"gzegr vkqp"ku"vj cv'd { "f ghkpkkp"vj g"cevkqp ecppqv'ko r gto kuukdn { "okpvthgt g0'y kj "vj g"r tqdcvg"r tqeggf lpi u'dgecvug"vj g cuugw"cv'kuuwg"ct g"pqv" { gv'y kj lp"vj g"r quuguukqp"qh'vj g"ucv"r tqdcvg"eqwt = kpf ggf. "vj g"xgt { "r wtr qug"qh'vj g"cevkqp"ku"vq" f gvto kpg"y j gvj gt "qt"pqv"vj g cuugw"dgmpj "vq"vj g" guvcg0<sup>4</sup>" O qt gqxtg. "gxgp"kh"cp" kpvtr rfcf gt" cevkqp y qwf "okpvthgt g0'y kj "vj g"ucv"r tqdcvg"r tqeggf lpi u."uqo g"eqwt u"j qrf "vj cv Eqpi tguu0'g zr tguu'cwj qtkk cvkp"vq"vj g" hgf gtcn'eqwt u"vq"kuuwg"klwpevkpu"lp ckl "qh'hgf gtcn'kpvtr rfcf gt"cevkpu"ci ckpuv"r tqeggf lpi u"vq"cf lwf lecvg"tki j u vq"vj g"r tqg gt v { "lp"ucv"eqwt v' r tqeggf lpi u<sup>5</sup>"Iwukhku"cp { "uwej "kpvthgt gpeg0<sup>6</sup>

kk0"Uwku'Ctkulpi "Wpf gt'Hgf gtcn'Ncy

Uwku'i tqwpf gf "lp"vj g"TKEQ"ucwvg. <sup>7</sup>"vj g" Mw'Mwz'Mrcp"Cev"<sup>8</sup>"cpf "vj g Hqtgli p"Lwf lekcn'Cuukucpeg"Ucwwg;<sup>9</sup>"j cxg"lpxqkxgf "y j cv'o ki j v'dg" f ggo gf

; 20 *E.g., Ashton.*; 3: "H0f "3287"\*4f "3; ; 2- "cf lwf lecvpi "c"ecug"lp"y j lej "vj g"gzgeqwt"y cu"lp r quuguukqp"qh'cuugw"vj cv'r n'lp'khu"enlo gf "y gtg"r ctv'qh'vj g" guvcg = Wpkp" P cvaf' Dcpni'qh' Vgzcu"x0 I wkggtgl. "986"HDUwr 0667."667668"UF0Vgz03; ; 3+ "f gp { lpi "lwkuf levkp"qxgt"s wguukp"qh'y j gvj gt o qp { "lp"c"dcn'iceeqwv'y kj "c"or c { cdng"qp" f gvj o' f guki pcvkp"y cu'r ctv'qh'r tqdcvg" guvcg"qt"y cu"vj g r tqg gt v { "qh'vj g"or c { cdng"qp" f gvj o' f guki pgg-0

; 30 *Ashton.*; 3: "H0f "cv'3294"p08"0Y g"j cxg" hqwpf "pq"tgr qtvf "f gekulqp"lp"y j lej "vj g"r tqdcvg gzegr vkqp" j cu'hqt enqurf "c" hgf gtcn'eqwt v' h' qo "gzgtekulpi "kpvtr rfcf gt"lwtkuf levkp06+0

; 40 *Id. = Union National Bank of Texas.* "986"HDUwr 0cv'66766680"Vj ku"ku'cnkp"vq"vj g" Iwukhkecvkp hqt" gzenf lpi " ej cnngpi gu"vq" v'wuu" h' qo "vj g" r tqdcvg"gzegr vkqp" ukpeg" dqj " kpvtr rfcf gt" cevkpu" cpf ej cnngpi gu"vq" v'wuu" j cxg"vj g" ghgev'qh'cf f lpi "cuugw"vq"vj g"r tqdcvg" guvcg0" See *supra* "pqg"94" cpf ceeqo r cp { lpi "vgz0

; 50 *See* 4: "WUE0'E" 4583" \*3; ; 6+ "0f" cp { "ekln' cevkp"qh' kpvtr rfcf gt" qt" lp"vj g" pcwtg"qh kpvtr rfcf gt"wpf gt"ugevkp"3557"qh'vj ku"vkg. "c" f kntlev'eqwt v'o c { "kuuwg"ku"r tqegui'hqt"cm'enlo cpw'cpf gpvtr"ku"qt f gt"tgut cklpi "vj go "h'qo "lpukwvpi "qt"r tqegwvpi "cp { "r tqeggf lpi "lp"cp { "Ucvg"qt" Wpkgf Ucvu"eqwt v'chgevkpi "vj g"r tqg gt v { "lpwtwo gpv"qt"qdri cvkp"lpxqkxgf "lp"vj g" kpvtr rfcf gt"cevkp"wpvkn hvtj gt'qt f gt"qh'vj g'eqwt06-0

; 60 *Ashton.*; 3: "H0f "cv'3294"0f"vj g" hceg"qh'uwej "engct"ngi kucvkg" f kgevkp"qp"cp"kuuwg"qh hgf gtcn'ucv'eqo kf. "vj gt g"ku'hwug"tqo "hqt"eqwt u"vq"lp'ht"vj cv'vj g'o wtn { "r tqdcvg"gzegr vkqp"r tggp w'vj g kplwpevkp"lp"vj g"lpuncp'v'o cvgt "gxgp"cv'vj g'eqw'qh' h' wnt cvpi "vj g"ucwvwt { "r wtr qug06-0

; 70 3: "WUE0'E"3; 8368: 0\*3; ; 6+0

; 80 64"WUE0'E"3; ; 5\*3; ; 6+0

; 90 4: "WUE0'E"39: 4\*c+\*3; ; 6+ "0Vj g" f kntlev'eqwt v'qh'vj g" f kntlev'lp"y j lej "c"r gt uqp"t guk' gu"qt"ku hqwpf "o c { "qt f gt"j ko "vq"i kxg"j ku"vuko qp { "qt"ucvgo gpv'qt"vq"r tqf weg"e" f qewo gpv'qt"vq"j gt"vj lpi "hqt"wug lp"c"r tqeggf lpi "lp"c" hqtgli p"qt"lpvtpcvkpcn'vtdvpcn0""*Id.* ""C"uwk"j cu'cnq"ctkugp"wpf gt"vj g"Go r nq { gg Tgktgo gpv' l'peqo g" Ugewtkf "Cev"qh'3; 96"\*GT RUC+."4; "WUE0'E"3354" \*3; ; 6+."dw"lp"vj g" qpn { "ecug lpxqkxgf"uwej "cp"cevkp."vj g'eqwt v' hqwpf "vj cv'vj g'cevkp"cv'kuuwg" f k' "pqv' h' m'y kj lp"vj g" f ghkpkkp"qh'vj g y qtf "or tqdcvg0" hqt"r wtr qugu'qh'vj g'gzegr vkp0" See "Eo v'0fpu0Eq0x0Tqy g.". 7"HDUwr 04f": 22.". 27628 \*UF 0Qj kq"3; ; ; 0

vq'dg'r tqdcvg/tgrcvgf 'o cwgtu0"V{ r lecmf . 'vj g"THEQ"uwku'kpxqrxg'ercko u'vj cv uqo g'eqo dlpcvqpp'qh'vj g'cwqtpg{ u'y j q'f tchxgf 'vj g'y km'vj g'dgpghelektkgu'qh vj g'y km"cpf 'vj g'gzgewqt'qh'vj g'y km'eqpur k'gf "vq'f ghtcwf "vj g'f gegf gpv'qh j ku'qt'j gt'cuugvu'cpf "vq'ej gcv'vj g'f gegf gpvu'j gktu'qvw'qh'vj gkt'kpj gkscpeg0' k'p'eqpvtcu'vj g'E'3; : 5'ercko u'wuwcmf 'kpxqrxg'cngi cvkqpu'qh'y tqpi f qkpi 'd{ vj g"ucvqg'r tqdcvg"eqwt'v'lwf i g0; "" Vj g"Hqtgki p" Lxf lecn' Cuukcpeg" Ucvwvg uwku' kpxqrxg" tgs wguu' hqt " WUU' lwf lecn' cuukcpeg" kp" qdvcv'kp' " gxf gpeg rjecvqg' " kp" vj g" Wpksqf " Ucvgu' hqt" wug' kp" hqtgki p" r tqdcvg" r tqeggf kpi u0<sup>22</sup> Eqwtu'vj cv'j cxg'cf lwf lecvqf 'vj g'ug'vj tgg'nkpf u'qh'ercko u'j cxg'wpcplo qwanf j gnf 'vj cv'vj g'r tqdcvg'gzegr vqpp'f qgu'pqv'cr r n' "vq'uwku'ctkukpi 'wvf gt' hgf gtcn ucwngu.<sup>323</sup>cmj qwi j "pqpj" cu'r tqxkf gf "c'tcvkqpcng'hqt'f k'kukpi wkuj kpi "uwej ercko u'htqo 'vj qug'i tqwpf gf "kp'f kxgtukf 'lwtkuf lekvq0<sup>24</sup>

; : 0 See I ncmvqk'x0Uwp'Dcpm0 kco k"P C0; 44"H0f "888."88: "33vj "Ek03; ; 3+\*cngi kpi 'vj g f ghepf cpw' eqpur k'gf " vq' -r n'p'f g'vj g' cuugw' qh' j'vj g'f gegf gpv' " cpf " ej gcv' vj g' j' gktu' " qw' qh' vj gkt k'p' gkscpeg0=O czy gni'x0Uqwj y guv'P cvaf'Dcpm'7; 5"HUwr r 0472."474678" \*F 0Mcp03; : 6+\*cngi kpi vj g'f ghepf cpw' d'gpi ci gf "kp" c' r cvwgt' qh' tcevgv'g'kpi " cev'k'k'ku'000y j gtdg{ " f ghepf cpw' k'f g'p'wh' " cpf vcti g'v' g'f gtn " tlej " r gqr r'g' hqt' vj g' r wtr qug' qh' f ghtcwf kpi " vj go . " vj gkt' j' gktu' cpf " rgi cvgu' qw' qh' vj gkt gucvu0+0

; : 0 See Y knico u'x0Cf n'p'upq."9; 4"HUwr r 0977."979" \*O F 0Cnc03; ; 4+\*cngi kpi "ucvqg'r tqdcvg eqwt'v'lwf i g'f gplqf 'r n'p'v'w'hu' tki j' u'v'q' u'wdu'c'p'k'g'cpf 'r tqegf v'cn'f w'g' r tqegul'cpf "vq'gs wcn' r tqegv'k'p. cpf 'vj cv'vj g'ucvqg'eqwt'v'f gekukq'x'k'q'cv'gf 'vj g'Vcnkpi u'Erwug+0

3220 See 'In re' C'r r n'ecv'k'p' qh'j' qtrgt."9; ; "HUwr r 03679."367; \*UF P Q 03; ; 4+\*uggnkpi 'g'xf gpeg kp'ckf' qh'Uy ku'r tqdcvg'eqwt'v' tqeggf kpi u0

3230 Glickstein."; 44"H0f "cv'894" \*vj g'r tqdcvg'gzegr vqpp'ku'cp'gzegr vqpp'vq'f kxgtukf 'lwtkuf lekvq cpf "j' cu'pq' cr r n'ecv'k'p' vq' vj g' hgf gtcn' THEQ' ercko u0= Cmty. Ins. Co." : 7" HUwr r 04f "cv' : 28" \*vj j' g r tqdcvg'gzegr vqpp'j' cu'dggp' cr r n'eg' q'pn' "kp' vj g'eqpv'z'v'qh'f kxgtukf 'lwtkuf lekvq0" Vj g'Eqwtu'v' t'gugetej j' cu'f' hgf gf "pq' k'p'ucpegu'v' j' g'g'c' hgf gtcn'eqwt'v'j' cu'f' genk'p'gf "vq'gz'g'k'ek'g' u'w'd'ge'v'o cvwt' lwtkuf lekvq. 'wvf gt vj ku'f' q'v'k'p'g' y j' gp' d'cu'gf "qp' c' hgf gtcn' s' wgu'k'p'0= Williams."9; 4"HUwr r 0cv'983'p0 " \*vj j' g'g' cu'j' g'g' vj g'r n'p'v'w'hu'f' q'gu'pqv' r' g'f' lecvq' hgf gtcn' lwtkuf lekvq' qp' f' kxgtukf 'co qpi " vj g'r ct'v'ku' vj g'r tqdcvg'gzegr vqpp ku'p'qv' t'g'x'cp'v'0=Rqy gni'x0Co g'k'ecp' Dcpm'f " Vt'w'v'Eq0'862" HUwr r 0378: . "3796697" \*P 0 F 0k'p' 03; : 8+ \*j' q'f' kpi . 'kp'uwku'ctkukpi 'wvf gt' THEQ' cpf 'vj g' hgf gtcn' u'g'ew'k'k'ku' h'cy u' vj g' cv'vj g'r tqdcvg'gzegr vqpp' cr r n'egu vq'f kxgtukf 'lwtkuf lekvq= vj g'g' ku'p'q'v' kpi "vq' u'wi i guv' vj cv'c' hgf gtcn' eqwt'v' ecpp'q'v' cng' lwtkuf lekvq' q'x'gt' c' hgf gtcn' s' wgu'k'p' t'ck'gf " d{ " c" r n'p'v'w'hu' = Maxwell." 7; 5" HUwr r 0' cv' 474678" \*cr r n' kpi " vj g' r tqdcvg'gzegr vqpp' vq'ucvqg' h'cy "ercko u' d'w'p'q'v'v' c' hgf gtcn' THEQ' ercko +0

3240 K'p' vj g' c'p'c'ngi qwu' f' qo guke' t'g'rcv'k'p'u'gzegr vqpp' vq' hgf gtcn' eqwt'v' lwtkuf lekvq. "k' ku' cp" q' r gp s' wgu'k'p' y j' g'v' g' t' vj g'gzegr vqpp' ku' n'o k'gf "vq' f' kxgtukf "cev'k'p'u'qt' y j' g'v' g' t' k'v'gz'v'p'f u'vq' hgf gtcn' s' wgu'k'p' uwku' t'ck'ukpi " hgf gtcn' ucw'w'qt { "qt' eq'p'uk'w'k'q'pcn' s' wgu'k'p'u' Compare" Wpksqf "Ucvgu'x0'Dck'g{ ."337" H0f 3444."3453" \*vj "Ek03; ; 9+\*j' q'f' kpi " vj g'gzegr vqpp' cr r n'egu' q'pn' "kp' f' kxgtukf 'uwku: "and" Wpksqf "Ucvgu'x0 Iqj puq'p."336" H0f "698."6: 3" \*vj "Ek03; ; 9+ "and" H'q'q'f "x0'D'c'c'v'p."949" H0f "525."529" \*5f "Ek03; ; 6+ with" Vj qo r uq'p' x0'Vj qo r uq'p' .9; : "H0f "3769."377: "vj "Ek03; ; 8+\*j' q'f' kpi " vj g'gzegr vqpp' cr r n'egu' g'x'gp vq' hgf gtcn' s' wgu'k'p' ec'gu' k'i'k'v' y q'w'f "f' g'gr n' "k'p'x'q'rx'g' vj g' hgf gtcn' eqwt'v' k'p' cf lwf lecv'k'pi "f' qo guke' o' cwgtu+ and" R'g'v' tuq'p' x0'D'c'c'd'k'v."92: "H0f "687."688" \*; vj "Ek03; ; 5+\*cr r n' kpi " vj g'gzegr vqpp' y j' g'g'c' ucvqg' eqwtv cev'k'p' eq'peg' t'k'pi "uko k'ct' ku'w'gu' ku' r g'p'f' kpi +=J g't'p'uc'f' v'x0J g't'p'uc'f' v."595" H0f "538."53: " \*4f "Ek03; 89+ \*j' q'f' kpi " vj g'gzegr vqpp' cr r n'egu' y j' g'g' vj g' hgf gtcn' eqwt'v' y q'w'f "p'g'eg'uct' k'f' "d'ge'qo g'g'p'o g'uj' gf "kp' f' qo guke h'c'w'cn'f' ku' w'gu'+0

36; :

SOUTHERN CALIFORNIA LAW REVIEW

]Xqr096-369;

E0"UWO OCT[

Vj g"eqo r gvkpi "uj qtvy cpf "hqto wrcg" f gxnqr gf "d{ "vj g" nqy gt" hgf gtcn  
 eqwtu' hqt' f gvgto kpkpi "vj g' ueqr g' qh' vj g' r tqdcvg" gzeqr vkqp" ctg" qp" c" eqnkukqp  
 eqwtug" y kj " qpg" cpqy gt0" Uwr r qug" cp" j gk" dtkpi u" cp" cevkqp" vq" j cxg" c" y km  
 f gerctgf " kpxcrkf " hqt' rcm' qh' vguco gpvct { " ecr cekf " qt" wpf wg" kphwvpep0" Vj g  
 o'pcwtg" qh' ercko o' vgu' uwi i guu' vj cv' vj ku' hcm' y kj kp" vj g' r tqdcvg" gzeqr vkqp0  
 Dw' y j cv' kh' wpf gt" ucvg" rny " uwej " c" ej cmgpi g" eqwf " dg" dtqwi j v' kp" c" ucvg  
 eqwtv' qh' i gpgtcn' lwtkuf levkqpA" Vj g' o'pcwtg" qh' ercko o' vgu' y qwf " lwn' ercuukh{  
 uwej " c" ercko " cu' hcmkpi " y kj kp" vj g' r tqdcvg" gzeqr vkqp. " dw' dqy " vj g" ot' qwgö  
 vgu' cpf " vj g" or' tcevecrö" vgu' y qwf " tgej " vj g" qr r qukg" eqpenukqp0" Cp f " y j cv  
 tguwn' kh' vj g" ukv' kpxqrgf " pqv' c" ej cmgpi g" vq" vj g" xcrkf kv{ " qh' vj g" y km" dw  
 kpuv' cf " uqwi j v' c" f gerctevkqp" qh' vj g' r ct' vgu' tki j u' wpf gt" vj g' y kmA" J gtg. " vj g  
 o'pcwtg" qh' ercko o' vgu' y qwf " cmqy " c" hgf gtcn' eqwtv' vq" gztelug" f kxgtukf  
 lwtkuf levkqp" gxgp" kh' uwej " o' cwgtu" y gtg" d{ " ucvg" rny " eqo o' kvgf " vq" vj g  
 gzenukxg" lwtkuf levkqp" qh' ur' gekrkl gf " r tqdcvg" eqwtu. " dw' wpf gt" vj g" ot' qwg  
 vguöo' cpf " r tqdcn{ " vj g" or' tcevecrö" vgu' cu" y gmö uwej " f kur wgu" y qwf  
 rkngn{ " hcm' y kj kp" vj g' r tqdcvg" gzeqr vkqp0" O qt' gqxtg. " y j cv' tguwn' y j gtg" vj g  
 ukv' kpxqrgu" pqv' c" y km' dw' kpuv' cf " uqo g" uqtv' qh' y km' uwdukwv. " uwej " cu' cp  
 kpgt " xkqu" v' wuv. " qt" kh' vj g' ukv' ct' kugu" wpf gt" hgf gtcn' rny A" P qpg" qh' vj g" vguu  
 r tqxkf gu" cpuy gtu" vq" vj g" g" s wguv' kpu. " cpf " vj g" nqy gt" eqwtu" j cxg" tguv' krgf  
 vj g" s wguv' kpu" qp" cp" cf " j qe" dcuku' y kj qw' ugvkpi " hqt' vj " c" r tkpek' rnf " twrg" qh  
 f gekukqp0

Vj gug" f ghelgpeku" kp" vj g" nqy gt" eqwtv' hqto wrcg" o' cmg" vj go  
 wpceegr vdrng" uwdukwv" hqt" c" o' wnk' hcevgf " kps vkt { " kvq" vj g" ucwvqt { " cpf  
 Ct' veng" KKK rko kcvkpu" qp" hgf gtcn' eqwtv' uwdlgev" o' cwgt" lwtkuf levkqp. " vj g  
 gzkv' peg" qh' c" lwn' ekcdng" ecug" qt" eqpv' t' xgtu. " vj g" cr r r' ecdrk{ " qh' vj g  
 f qext' kpg" qh' custodia legis" qt" vj g" xct' kvu" f qext' kpgu" qh' r twf' gpv' kn' cdug' v' kqp.  
 cpf " vj g" eqpvt' kpu" r r' eegf " qp" hgf gtcn' eqwtu" d{ " vj g" Erie" f qext' kpg0  
 Ceeqt' kpi n{ . " vj ku' Ct' veng" pqy " wtpu" vq" uwej " c" o' wnk' hcevgf " kps vkt { 0

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A DISSECTION OF THE PROBATE EXCEPTION

36; ;

KKK"UE QRG'QH'HGF GTCN'EQWTV"UWDLGEV"O CVVGT
LWT KUF KE VKQP "QXGT"RTQDCVG
CP F "RTQDCVG/TGNC VGF "O CVVGTU

C0"Uvcvwwqt[ "Nko kvcvkqp u'qp "HGF GTCN'EQWTV
UWDLGEV"O CVVGT"LWT KUF KE VKQP

K'ku'y gm/guvcdrkuj gf "vj cv'hgf gtcn'eqwtu'ctg"eqwtu'qh'rko kgf "uwdlgev
o cvgt "lwtkuf levkqp."uwdlgev'pqv'qpn{"vq"vj g'eqpwtckpvu'ko r qugf "d{ "Ct vlerg
KKK<sup>325</sup>"dw'cnuq"rko kgf "vq"gzgtekukpi "uwdlgev'o cvgt "lwtkuf levkqp"qxgt"qpn{
vj qug" f kur wgu" hqt" y j lej " Eqpi tguu' j cu" r tqxkf gf " c" ucwvwt { " i tcpv' qh
cwj qtkv{<sup>326</sup>"[ gv'o cp{ 'rqi cr'uej qrtu.'rcy {gtu."cpf"rcy "uwx gpw'y qwr"dg
uwr tkugf "vq"rgctp"vj cv'hgf gtcn'eqwtu'r'em'uwdlgev'o cvgt "lwtkuf levkqp"qxgt
r tqdcvg'o cvgtu0'"Vj g"vgzv'qh'Ct vlerg"KKK'eqpvckpu'pq"gzr tguu'rko kcvkqp"qp
vj g'hgf gtcn'lvf lekcn' r qy gt<sup>327</sup>" " O qtgqxtg."pgkj gt" vj g" ucwvwt { " i tcpv' qh
hgf gtcn' s wgvkqp"lwtkuf levkqp<sup>328</sup>" pqt" vj g" i tcpv' qh' f kxgtukv{ "lwtkuf levkqp<sup>329</sup>
eqpvckpu' cp{ " uwej " rko kcvkqp0 " Vj wu." y j gtg" vj g" r ctvku" vq" c" ucvg" eqwtv
r tqdcvg" r tqeggf kpi " ctg" f kxgtug." cpf " vj g" xcnvg" qh" vj g" guvcvg" gzeggf u
&97.222." qpg" y qwr " gvr gev' vj g" ecug" eqwr " dg" hkrf " kp" hgf gtcn'eqwtv' qt
tgo qxgf "vq" hgf gtcn'eqwtv0

3250 J qfi uqp'x0Dqy gtdepm"; 'WLU\*7'Etepej +525\*3: 2; +0
3260 Rqy gni'x0O eEqto cem"5; 7"WLU06: 8.'734635"\*3; 8; +\*cuugtvpki "vj cv'oc'hgf gtcn'f kutlev'eqwtv
rcem'u'lvtkuf levkqp"qxgt" vj g" uwdlgev'o cvgt'000H' vj g" ecwug'ku'pqv'qpg" f guetkdf "d{ " cp{ "lwtkuf levkqpcn
ucwvwt0
3270 See"WLU EQP UV0ct0KK'E40
Vj g' lvf lekcn' Rqy gt" uj cni' gzv'pf " vq" cni' Ecugu." kp" Ncy " cpf " Gs wlv." ctkukpi " vpf gt" vj ku
Eqpvkvwkqp."vj g'Ncy u'qh'vj g'Wpkgf "Uvcgu'cpf"Vtgcvgu'o cf g.'qt'y j lej 'uj cni'dg'o cf g.'v'pf gt
vj gk"Cwj qtkv{-o vq'cni'Ecugu'chtgcvkpi "Co deucf qtu."qvj gt'r vdrke'O kpvktu'cpf "Eqpvuwr-o
vq'cni'Ecugu'qh'cf o kcnv{ "cpf" o ctkko g"lwtkuf levkqp-o vq'Eqpvtxgtukgu'vq'y j lej "vj g'Wpkgf
Uvcgu'uj cni'dg'c'Ret{-o vq'Eqpvtxgtukgu'dgy ggp'y q'qt'o qtg'Uvcgu-o dgy ggp'c"Uvcg'cpf
Ekk' gpu'qh'cpqvj gt"Uvcg-o dgy ggp'Ekk' gpu'qh'f khtg'gpv'Uvcgu-o dgy ggp'Ekk' gpu'qh'vj g
uco g'Uvcg'enko kpi "Ncpf u' vpf gt" I tcpv' qh' f khtg'gpv'Uvcgu."cpf " dgy ggp" c" Uvcg." qt" vj g
Ekk' gpu'vj gtgq' h'q'gki p'Uvcgu'Ekk' gpu'qt"Uvdgeu0
Id.""Cf."Cpngpdtcpf v'x0Tkej ctf u."726"WLU08: . "8; 7"\*3; ; 4-"\*pqvki "vj cv'kp"vj g'r ctcn'f'eqpvzv'qh'vj g
f qo guke'tgrv'kpu'gzegr v'kqp"vq" hgf gtcn'eqwtv'lwtkuf levkqp"vj g'r n'kp'rcpi wci g'qh'Ct vlerg"KKK'E'4"o'eqpvckpu
pq' rko kcvkqp"qp'uwdlgeu'qh'c'f qo guke'tgrv'kpu'pcwvwt g0
3280 See"4: "WLU0E'3553"\*3; ; 6+\*oVj g'f kutlev'eqwtv'uj cni'j cxg'qtki kpcn'lwtkuf levkqp'qh'cni'ekkn
cev'kpu'ctkukpi "v'pf gt" vj g'Eqpvkvwkqp."rcy u' qt"v'gcv'qh'vj g'Wpkgf "Uvcgu00
3290 See"4: "WLU0E'3554"\*e+\*3; ; 6+0
Vj g' f kutlev'eqwtv'uj cni'j cxg'qtki kpcn'lwtkuf levkqp"qh'cni'ekkn'cev'kpu"y j gtg"vj g" o cvgt"kp
eqpvtxgtu{ "gzeggf u' vj g' uwo "qt" xcnvg" qh' &97.222." gzenukxg" qh' kpvgt guv' cpi " equu." cpf " ku
dgy ggp0 \*3+ekkn' gpu'qh'f khtg'gpv'Uvcgu=\*4+ekkn' gpu'qh'c"Uvcg'cpf "ekkn' gpu'qt"uwdlgeu'qh'c
h'q'gki p'ucvg=\*5+ekkn' gpu'qh'f khtg'gpv'Uvcgu'cpf "kp" y j lej "ekkn' gpu'qt"uwdlgeu'qh'c' h'q'gki p'ucvg
ctg'cf f kkp'cn'r ctvku= cpf " \*6+ c" h'q'gki p' ucvg'000u" r n'kp'v'v' cpf " ekkn' gpu' qh' c" Uvcg' qt" qh
f khtg'gpv'Uvcgu0
Id.""Vj g' qpn{ " o kf " t'gutlevkqp"qp'uwdlgev'o cvgt "lwtkuf levkqp"qxgt" f kxgtukv{ " u'wku" vj cv' ctg' tgrv'gf " vj
r tqdcvg'o cvgtu'ku'eqpvckp'gf "kp"4: "WLU0E'3554"\*e+\*4+." y j lej "ucv'v'vj cv'o'vj g'rci cr'gr t'gug'v'kxg'qh'vj g
guvcvg'qh'c'f gegf gpv'vj cni'dg'f ggo gf "vq"dg'c'ekkn' gp'qpn{ 'qh'vj g' uco g'Uvcg'cu'vj g'f gegf gpv00

Vj g"i gpguku"qh"vj g"r tqdcvg"gzegr vkqp"tcegu"dceni"vq"vj g"i tcpvkpi "qh f kxgtukf "lwtkuf levkqp"vq"vj g"hgf gtcn"eqwtu"d{"vj g"Lwf lekct {"Cev"qh"39: ; \*639: ; "Cev0-0<sup>2</sup>: ""Vj g"39: ; "Cev"i cxg"vj g"mgy gt"hgf gtcn"eqwtu"lwtkuf levkqp qxgt "ocm"uwksu"qh"i"ekxkl"pcwtg"at common law or in equity."y j gtg"vj g o cvgt "kp" f kur wg"gzeggf u."gzenwukxg"qh"eqwu."vj g"uwo "qt"xcnwg"qh"hxg j wpf tgf "f qmctu."cpf "000"vj g"uwk"ku"dgwy ggp"i"ekxkl gp"qh"vj g"Ucvg"y j gtg"vj g uwk"ku"dtqwi j v"cpf "c"ekxkl gp"qh"cpqj gt"Ucvg0<sup>32</sup>: ""Eqwtu"j cxg"eqpwtwgf vj ku"ncpi wci g"cu"tko kkpj "vj g"i tcpv"qh"lwtkuf levkqp"vq"vj g"qug"uwksu"vj cv"y qwf j cxg"dgpp"y kj kp"vj g"lwtkuf levkqp"qh"vj g"Gpi rkuj "eqwtu"qh"eqo o qp"rcy \*ouwsu"000cv" eqo o qp"rcy o+"cpf "vj g"Gpi rkuj "J ki j "Eqwtv"qh" Ej cpegt { \*ouwsu"000kp"gs wksf o+"kp"39: ; 0<sup>32</sup>""O quv"eqwtu"j cxg"hwppf "vj cv"vj g"r tqdcvg qh"y kmu"cpf "vj g"cf o kpkntcvkqp"qh"guvcgu"y gtg"qwuksf g"vj g"lwtkuf levkqp"qh dqj "vj g"eqo o qp"rcy "eqwtu"cpf "vj g"J ki j "Eqwtv"qh"Ej cpegt {"kp"gli j vggvj / egpwt {"Gpi rcpf "cpf "kpuvcf "y gtg" xgugf "kp"Gpi rcpf au"geengukwlecn"qt tgrki kqwu."eqwtu"cpf "vj g"u"qwuksf g"vj g"ucwwqt {"i tcpv"qh"uwldgev"o cvgt lwtkuf levkqp"vq"WLU"hgf gtcn"eqwtu0<sup>33</sup>""Ceegr vkpi "hqt"vj g"o qo gpv"vj cv"vj g ueqr g"qh" f kxgtukf {"lwtkuf levkqp" wpf gt "vj g"39: ; "Cev"y cu"tko kkgf "kp"vj ku o cpgt."qpg"o ki j v"hpf "k"utcpj g"vj cv"ky"y qwf "dg"tgrxcpv"vq"vj g"o qf gtp f kxgtukf "ucwwg."ukpeg"vj g"o qf gtp"ucwwg"tgr rcegu"vj g"r j tcug"ocm"uwksu"qh"i ekxkl"pcwtg" cv" eqo o qp"rcy "qt" kp"gs wksf o" y kj "vj g"uggo kpi n{"o qtg gZR epukxg"r j tcug"ocm"ekxkl"cevkpu0<sup>34</sup>""Vj ku"ej cpi g."j qy gxgt."j cu"dgpp f guetkdgf "cu"i"o gtg"uko r"nklecvkqp"qh"vj g"qtki kpcn"ncpi wci g"kp"vj g"Hktuv Lwf lekct {"Cev"cpf "pqv"cp"gpnci go gpv"qh"vj g"lwtkuf levkqp"i tcpvgf "d{"vj g 39: ; "Cev0<sup>35</sup>"Uq"ky cu"vj cv"kp"Markham v. Allen<sup>36</sup>"vj g"Uwr tgo g"Eqwtv"ugv

32: 0 Ej 042."E"35."3"Ucv095"39: ; +0  
 32: 0 Id."E"33"3go r j cuku'cf gf +0  
 3320 See"Cuj vqp"x0'Rewf"Hjwpf 0"; 3:"H0f"cv3287."3293"4f"Ekt03; ; 2="I ggti gu"x0I ntem": 78 H0f"; 93.; 95"9j"Ekt03; ; : =F tci cp"x0'O kngt."89; "H0f"934."935"9j"Ekt03; ; 4="Tleg"x0Tleg Hjwpf 0"832"H0f"693."697"( "p0"9j"Ekt03; 9; =Ucct"x0Twr."643"H0f"; ; ; "3226"8j"Ekt03; 92=Cnkp"x0Nc0P cvnDcpm"544"H0f"96; .973"7j"Ekt03; 85=J wfuq"x0Cdgetqo dkg."8: 4"H0Uwr 0343: . 343; \*P 0I c03; ; 9=Dctpgu"x0Dtcpftwr."728"H0Uwr 05; 8."5; ; 6; ; \*UF 0Q 03; ; 3=O ctv "x0Dtcp. 488"H0Uwr 0'356."357"\*GF 0'Re03; 89+0"Cf"Nq{f "x0'Nqgthgt."8; 6"H0f"6: ; .6; 3"9j"Ekt03; ; 4+ \*ej tqplekpi "vj g"kuqtlecrldcuku"qh"vj g"Y qo guke'tgrvkpu'gzegr vkqp+0  
 3330 Ashton."; 3: "H0f"cv3293=Georges."; 78"H0f"cv; 95=Dragan."89; "H0f"cv935=Rice."832 H0f"cv697"p0=Starr."643"H0f"cv3226=Akin."544"H0f"cv973=Ugc{"x0F qf i g."P q0; 7"E"5865."3; ; 7 Y N"779583."cv, 6"p0"PF 0K0Ugr 03: .3; ; 7=Hudson."8: 4"H0Uwr 0cv343; =Barnes."728"H0Uwr 0cv 5; ; 6; ; =Martz."488"H0Uwr 0cv3570See also"Lloyd."8; 6"H0f"cv6; 3"j qf kpi "vj g"uco g'y kj "tgi ctf"vq vj g'f qo guke'tgrvkpu'gzegr vkqp+0  
 3340 See"4: "WUE0E'3554"3; ; 6+0  
 3350 See Lloyd."8; 6"H0f"cv6; 36; 4=Dragan."89; "H0f"cv935=Rice."832"H0f"cv697"p0=Icemqp x0'WLU'P cvn'Dcpm"375"H0Uwr 0'326."32962: "F 0'Qt03; 79+0"See also"Txkugt0i"P qv"vq"4: "WUE 0 E'3554"3; ; 6+pqvkpi "vj g"ej cpi g"y cu'o cf g"ht"vj g"r wtr qug"qh"eqphto kpi "y kj "vj g"vplklecvkqp"qh"rcy cpf "gs wksf "cu"r tqxkf gf "ht"kp"vj g"Hgf gtcn"Trgu"qh"Ekxkl"Rtqegf wtg+0"Vj g"ucwwqt {"i tcpv"qh"hgf gtcn s wgvkqp"lwtkuf levkqp"cnq" wugu"vj g"r j tcug"ocm"ekxkl"cevkpu.0"4: "WUE0E'3553"3; ; 6+cpf "y j kg"pq i tcpv"qh"hgf gtcn's wgvkqp"lwtkuf levkqp"y cu'eqvckpgf "kp"vj g"Lwf lekct {"Cev"qh"39: ; . "vj g"r tgf geguqtu"vq

hqtj "vj g"j kvqtlccn'dcuku<sup>337</sup>"hqt"vj g"gzegr vkqp."ucvki "kp"flvc."oc"hgf gtcn eqwtvj cu'pq'lwtkuf levkqp"q'r tqdcvg"cy kn'qt'cf o lpkngt'cp'gucvg."vj g'tgcuqp dglpi "vj cv"vj g"gs vki "lwtkuf levkqp" eqphgttgf "d{"vj g"lwf lctt{"Cev"qh 39: ;'000."y j lej "ku"vj cv'qh'vj g'Gpi rkuj "Eqwtv'qh'Ej cpegt {"kp"39: ; .f kf "pqv gzvpgf "q'r tqdcvg"o cwtu<sup>338</sup>

Y j gp"gzco kpgf "kp"rki j v'qh'qpg"qh'vj g"rtlpekr ngu"cpko cvki "Ct'keng Kku"i tcv'qh'f kxgtukv{"lwtkuf levkqp" r tqdcvg"qv'qh'ucvg"rski cpw"ltqo vj g"cewcn'qt"r gtekgf"r tglwf leg"qh'ucvg"eqwtv'lw i gu<sup>339</sup>o vj g"rtqdcvg gzeqr vkqp"ku"s wgvkqpcdn'gxp"kh'k'cr r rkgf "qpn{"q"vj g"rtqdcvg"qh"cy" km cpf "pqv'cuq"vq"o cwtu'cpekt {"q"r tqdcvg"0"Hqt"o]k'h'vj gtg"ku'f kxgtukv{"qh ekk'gpij k"co qpi "vj g'erclo cpw"vq"cp'gucvg."vj g'r quikdn'dku"vj cv"o"ucvg eqwtv"o ki j v'j cxg"kp"hxqt"qh'ekk'gpi"qh'ku"qy p"ucvg"o ki j v'ltwutcvg"vj g f gegf gpvu" kpgv'kpu="k'ku"lwu"uwej "dku."qh'eqwtug."vj cv"vj g"fkxgtukv{"lwtkuf levkqp"qh'vj g'hgf gtcn'eqwtu"y cu"kvpgf gf "v"eqwvgtce<sup>333</sup>: ""Hqt"vj g o quv'ctv"r tqdcvg'r tqeggf kpi u'cmg'r rceg"dghqtg'ur gekrk'gf "ucvg"eqwtu.<sup>333</sup> cpf "vj gtg"ku"pq'gxf gpeg"uw i gupki "vj cv"vj g"r qvkv'cn'hqt"dku"ci kpu'q/w'qh'ucvg"rski cpw"ku"cp{"nguu"vj cp"ku"kp"ucvg"eqwtu"qh'i gpgtcn'lwtkuf levkqp0 K'cp{"vj kpi . "vj g'uki pu'r qlpv'kp"vj g'qj gt"ftkewkqp<lw i gu'y j q'uk'kp"uqo g r tqdcvg"eqwtu"pggf "pqv'gxp"dg"ry {"gtu"qt"j cxg"ngi cn'vcklpi <sup>342</sup>"cpf r tqdcvg" eqwtu" j cxg" c" tgr wcvkqp" hqt" dku" cpf " eqttw vkp<sup>343</sup>" " Vj wu.

È3553"cuq'wuf"vj g'r j tcv'ocn'lwku'qh'c"ekkl'pcwtg."cv'eqo o qp'ry "qt'kp"gs vki (6)"See"Txkugtu'P qvq v4: "WUUE0È3553"3; ; 6+0

3360 548"WU'6; 2"3; 68+0  
3370 See"Georges.". 78"Hf"cv"; 950  
3380 Markham."548"WU'cv6; 60"See also"ln re Dtf gtleuu"Y km": "WU"43"Y cn0"725."72; 633  
3; 96+Rc{pg'x0J qam'96"WU"9"Y cn0"647."64; 652"3; 8: =I kpgu'x0Ej gy ."65"WU"4"J qy 0"83; . 867"3; 66+0

3390 See, e.g."Dcpni'qh'Wpkgf"Ucvgu'x0F gxcvz."; "WU"7"Etcepej +83.". 9"3; 2; +\*O ctuj cm"EU+ Cu'O ctuj cni'qduxtg <

J qy gxt "v'wg"vj g"hev"o c{"dg."vj cv"vj g"v'kdv'pnu"qh'vj g"ucv'u"y km'cf o lpkngt"lwneq"cu lo r ctv'cm{"cu"vj qug"qh'vj g"pcv'kqp."q"r ctv'gu'qh'gxt {"f guetk'vkp."k'ku"pqv'nguu"v'wg"vj cv"vj g eqpu'kswkqp" kugni' gk'j gt" gpgv'v'kpu" cr r t'g'g'puk'p" qp" vj ku" uwd'gev" qt" xkgy u' y kj" uwej kpf w' gpeg"vj g"r quikdn'g'g'ctu"cpf "cr r t'g'g'puk'p"qh'uwk'qtu."vj cv'k'j cu"guv'd'kuj gf "pcv'kpcn v'kdv'pnu"ht"vj g'f gekuk'p"qh'eqv'v'x'gtu'gu'd'gy ggp'c'k'p'p'cpf "c'ekkl'gp."qt'd'gy ggp'ekkl'gpi'qh f k'ht'g'p'v'ucv'u)

Id.  
33: 0 Dragan.'89; "Hf"cv'9360  
33: 0 See Ngy ku'O 0Uko gu{"Rcwi'G0Dcu{g."The Organization of the Probate Court in America: I. 64'O EAJ ONOTGX0; 87."; ; 56322: "3; 66+lj g'g'p'chgt'Uko gu{"Dcu{g."Probate Court I\_0  
3420 Ngy ku'O 0Uko gu{"Rcwi'G0Dcu{g."The Organization of the Probate Court in America: II."65 O EAJ ONOTGX0335."35: 662"3; 66+lj g'g'p'chgt'Uko gu{"Dcu{g."Probate Court II\_0  
3430 See"EJ CTNGU'TGO DCT."Vj g'Ncy 'QHVj g'NCP F<Vj G'GXQNWWIQP'QH'QWT'NGI CN'Uj UVGO'93 3; ; 2+\*pq'kpi "vj cv"vj g"p gy "[ qtn'r tqdcvg"eqwtu"j cxg"j"kvqt {"cu"oc'v'q'lg'u"qh'eqttw vkp<sup>342</sup>"Tqpcf Ej gungt."Less Law, but More Justice?: Jury Trials and Mediation As Means of Resolving Will Contests. 59'F vS ONOTGX0395."39: 6: 3"3; ; ; +\*f'qewo g'p'kpi "kpu'cpegu'qh'dku"0Cf. EJ GO GTR LM. "supra"pqv 49.'cv'4; 2"q'k'uewukpi "dku"eqpegt'p'kp"fkxgtukv{"lwtkuf levkqp"kp"i gpgtcn'cpf "ekkl'p"lgt {"I qrf o cp





Ct veng"gzco kpgu"eqmpkcn'r tceveg"cu"y gni'cu"Gpi rkuj "r tceveg"kp"y g"rcvg  
gki j vggpy "egpwt { 0

30"F kxkukqp"qh'lwtkuf levkqp"qxgt"Rtqdcvg/Tgrcvf "O cwgtu'kp"Dtkkuj "Eqwtu  
kp'yj g'Gki j vggpy 'Egpwt {

c0"Qxgtxlgv

Rtqdcvg/tgrcvf "o cwgtu"kp" gki j vggpy /egpwt { " Gpi rcpf " y gtg"pqv" cm  
tgrgi cvgf "vq"yj g"geengukulecn'eqwtu0"Tcvj gt. "yj g"eqo r rvg"cf o kpkwcvkqp  
qh'cp" gucvg" eqwrf " cpf " qhggp" f kf " tgs vktg" lwf lekcn' r tqeggf kpi u" kp" yj tgg  
f khtgtpv" eqwtu<sup>348</sup> " yj g" geengukulecn" eqo o qp/rcy . " cpf " ej cpegt { " \*qt  
gs wkv{ + " eqwtu<sup>349</sup> " " Y kj " t gur gev" vq" uqo g" r tqdcvg/tgrcvf " o cwgtu. " yj gug  
eqwtu"gz gtekugf "lwtkuf levkqp"gz enwukxgn{ "qh'apg"cpqj gt. "y j gtgcu'kp"uqo g  
uwej " o cwgtu" yj g{ " gz gtekugf " eqpewtgpv' lwtkuf levkqp<sup>04</sup>: " " Vj ku" ugevkqp  
gzco kpgu'yj g'lwtkuf levkqp"qh'yj gug'yj tgg'v{ r gu'qh'eqwtu'qxgt'r tqdcvg/tgrcvf  
o cwgtu0

d0"Rtqdcvg'qh'Y kmu

k0"Rgtuqpcn'cpf "Tgcn'Gucvg'F kxkpi wkuj gf

Kp" gzco kpkpi " yj g" r tqdcvg" lwtkuf levkqp" qh' Gpi rcpf au" geengukulecn  
eqwtu. "c" f kxkpevkqp"o wuv'dg" o cf g" dgy ggp" c" f gegf gpwau" t gcn' gucvg" cpf  
r gtuqpcn' gucvg0 " Vj g" geengukulecn' eqwtu" j cf " gz enwukxg" lwtkuf levkqp" vq  
r tqdcvg'y kmu'qh'r gtuqpcn'r tqr gtv{ .<sup>34</sup>: "dw'pq"lwtkuf levkqp"vq'r tqdcvg'y kmu'qh

yj g'i rquu"qp"yj g'f kxgtuks{ "ucwv0" Cpmpdtepf v'x0Tlej ctf u."726" WLU08: ; .8; ; 6922\*3; ; 4+0"Uko kret  
tgcupkpi " cr r ctgprv{ "lwtku" yj g" r tqdcvg" gzev vqpo " See Dragan." 89; " Hbf " cv' 935" \*pavpi " yj cv  
oEapi tguuu'hkwtg"q"tgr gcn'yj g" gzev vqpy j gp"tggpcevpi "h qo "vko g"vko g"y g" i tcv'qh'f kxgtuks{  
lwtkuf levkqp"vq"yj g' hgf gtr'eqwtu'lpf kecvu'eqpi t gukqpcn'ces vkguegpeg0+0

3480 Uko gu' ( "Dcu{g." Probate Court I."supra pqv'33; ."cv'; 990

3490 Id."cv'; 890

34: 0 Y j gtg"ej cpegt { "cpf"yj g"geengukulecn'eqwtu"j cf "eqpewtgpv'lwtkuf levkqp."qpeg"apg"qh'yj g  
eqwtu"j cf "cmgp"lwtkuf levkqp"qh'c"ecug."yj g"qj gt'y qwrf "pqv'kpvthtg'r tqxkf gf "yj cv'yj g"uco g"tgo gf lgu  
cpf "r tqgevku" yj g" cxckrdig0 4" LUGRI " UVQTI . "EQO O GP VCTIGU" QP" GS WMI " LWTKRTWF GP EG" CU  
F O R KNGTGF "R" GPI NCPF "CPF" COGTREC"E": 28."cv'3; 26; 3\*\*36j "gf 03; 3: +lj gtgkphgt"4"UVQTI .  
EQO O GP VCTIGU.0

34: 0 3"Y KNKCO "J QNFUY QTVJ ."C"J KMQTI [ "QH' GPI NKU " Ncy " 847" \*9j " gf 03; 78+ TQLEQG  
RQWPF. "QTI CPK CVKQP" QH'EQWTVU'9: ."358"\*3; 62+4" TLU'F QP P KQP "TQRGT" ( "J GPTI [ "J QRNGI  
Y J KVG."C"VTGCVRGQP"VJ G'NCY "QHNGI CEKGU, 39; 3\*\*4f "gf 03; 6: +5"UVQTI . "EQO O GP VCTIGU."supra  
pqv'64."E'3: : 9."cv'6; 7+Uko gu' ( "Dcu{g." Probate Court I."supra pqv'33; ."cv'; 8: 0"Y j kg"ej cpegt {  
y qwrf "i gpgtcm{ "pqv'cmv" c"uws'ci clpu'cp"gz gewqt" dghqtg"yj g'y km'y cu'r tqdcvgf "kp"yj g"geengukulecn  
eqwtu'kp"tctg'ekewo ucpegu."ctkupi "qww'qh'yj g"o kaeqpf wev'qh'yj g"gz gewqt"qt"ht"yj g"r tqgevku'qh'yj g  
r tqr gtv{ ."k'y qwrf "gz gtekug"lwtkuf levkqp"qxgt"uwsu'ci clpu' yj g"gz gewqt" d{ "kpvgtgugf "r ctvku'r tkqt"vq  
r tqdcvg0'Id."cv', 39; 80"Vj wu."y j gtg'yj g'y km'y cu'f gwtq{ gf "qt"eqpegcgf "d{ "yj g"gz gewqt"cpf "ur qrvkqp  
qt"lw' r tguikqp"y cu'r rclprf "r tqxgf . "ej cpegt { "o c{ 'j cxg'j cf "lwtkuf levkqp"qxgt" c' uws' dtqwi j vD{ "c"rqi cvgg0  
Id."cv', 39; 86; 90"O qtgqxgt. "y j gtg"yj g"gz gewqt" gpi ci gf "kp"o kaeqpf wev"o kucr r rkgf "yj g"cuugv"qt"y cu  
dcpntw v'qt "lpuukgpv."ej cpegt { "j cf "yj g"r qy gt"vq"cr r qlpv'c'tgegkxgt" chgt"r tqdcvg0'Id."cv', 39; 96; : 0"Kp



tgcnr' tqr gtv{ 0<sup>52</sup>"" kpf ggf. 'y kmu'qh'tgcnr' tqr gtv{ 'y gtg'qr gtcvkg'y kj qw'cp{ r tqdcvg'y j cwqgxt. 'y kj "krg'r cuukpi "v'vj g'f gxlugg<sup>353</sup>"ko o gf kvgn' "qp'vj g f gcvj "qh'vj g'vgucvt0<sup>54</sup>"" Cp{ "uwdugs wgpv'f kur wgu'y kj "tgi ctf "v'krg'hgm y kj kp'vj g'lwkuf kvkqp'qh'vj g'eqo o qp'rcy "eqwtu0<sup>55</sup>"" Y j gtg'c'y knf' kur qugf qh' dqj "r gtupcn' "cpf "tgcnr' "vj g" geengukvkecn' eqwtu' lwkuf kvkqp' y cu gh'gevkxg' qpn' "y kj "gur gev' v' "vj g" r gtupcn' gucvg0<sup>56</sup>"" Nkhg' gucvu' y gtg f ggo gf "v'dg'tgcnr' tqr gtv{. 'cpf "vj wu'y kj kp'vj g'lwkuf kvkqp'qh'vj g'eqo o qp rcy "eqwtu. 'dw'y j gtg'vj g'vgucvtu' kvgt gu'kp' tgcnr' tqr gtv{ 'y cu'rguu'vj cp htggj qf "uwej "cu'c'vgo "qh' { gctu: "k'y cu'f ggo gf "v'dg'r gtupcn' "cpf "vj wu y kj kp'vj g'lwkuf kvkqp'qh'vj g'geengukvkecn' eqwtu0<sup>57</sup>

e0'Ej cmgpi gu'v'vj g'Xcrkf kv' "qh'Y kmu

Cu'y kj "r tqdcvg. "c" f kvkqp' o wu' dg" o cf g' dgy ggp' ej cmgpi gu' v' y kmu' qh' r gtupcn' gucvg' cpf " ej cmgpi gu' v' y kmu' qh' tgcnr' gucvg0 " Vj g geengukvkecn' eqwtu' j cf "lwkuf kvkqp' v' ugv'cukf g'y kmu' qh' r gtupcn' gucvg' v' j cf "dggp" r tqdcvgf. "cpf "vj gk' lwkuf kvkqp' "kp' v' cv' tgi ctf "y cu' gzenukxg0<sup>58</sup> Vj gtg'y cu'pq' f k gev'o gvj qf "qh'ugv'kp' "cukf g'c'y kn'qh'rcpf. "j qy gxgt0" Vj wu. cp'j gk' qt' qvj gt "kvgt gu'f "r ctv' "y kj kp' "v' v' u' v' g' xcrkf kv' "qh'c" f gxlugg' qh rcpf "j cf "v' dtkpi "cp' cev'kp' v' "v' { "krgo uwej "cu' glgevo gpv' qt' "v' gur cuu0 ci ckpu' v' g' f gxlugg/kp/r quugukqp' "kp' c" eqo o qp' rcy "eqwtu0<sup>59</sup>"" Y j krg' v' g lwkuf kvkqp' qh' v' g' geengukvkecn' cpf "vj g' eqo o qp' rcy "eqwtu' y gtg' v' wu gzenukxg' "kp' v' gug' tgi ctf u. "ur gekn' ukv'kp' ctqug' "kp' y j lej "ej cpegt { "cv r'cu'kv' k' gev' "gzgtekugf "lwkuf kvkqp' qxgt' cev'kp' ej cmgpi kp' "y kmu' qh' dqj tgcnr' cpf "r gtupcn' tqr gtv{ 0

vj g'ecug'qh'htcvf. 'ej cpegt { 'eqwf "cr r qkv'c' tgegkgt' hqt' v' g' r wtr qug' qh' r t' g' x' gp' v' kp' "v' g' f' gu' v' kv' qp' qh' v' g' v' gu' cv' t' ai' r' t' q' r' g' x' g' p' y' j' k' g' v' j' g' r' k' k' c' v' k' p' q' x' g' t' v' j' g' r' t' q' d' c' v' g' q' h' v' j' g' y' k' n' y' c' u' r' g' p' f' k' p' i' "k' p' v' j' g' g' e' e' n' g' u' k' v' k' e' c' n' e' q' w' t' u' 0' Id.

3520 J QNFUY QTVI. "supra"pqvg'34; . "cv'847=TQRGT" ("Y J W.G."supra"pqvg'34; . "cv', 39; 3"0Vj g lwkuf kvkqp' qh' v' j' g' Geengukvkecn' Eqwtu' j' y' cu' "eqpl'kpgf "v' "vguco gpv' o' g' t' g' n' f. "qt' "kp' qj' g' t' y' q' t' f' u' v' f' kur quk'kp' qh' r' gtupcn' { "h' v' j' g' t' g' h' t' g' t' g' e' n' f' g' u' c' v' g' j' y' g' t' g' "v' g' u' d' l' g' e' v' q' h' c' f' g' x' l' u' g' v' q' d' g' u' q' r' f' h' q' t' r' c' { o' g' p' v' q' h' f' g' d' u' "q' t' r' q' t' v' k' p' u' v' j' g' u' g' "Eqwtu' j' e' q' w' f' "p' q' v' j' q' r' f' "r' r' g' c' "k' p' t' g' r' v' k' p' "v' u' e' j' "f' kur quk'kp' 0= Uko gu ( "Dcu{ g. "Probate Court II." supra"pqvg'342." cv' 3430" "Y j gtg'c" r ctv' "v' c" r tqeggf kp' "dgh'gt' cp geengukvkecn' eqwtu' d' g' n' g' x' g' f' "v' v' j' g' eqwtu' j' f' "gzeggf gf "ku' lwkuf kvkqp. "c" y' tk' qh' r' tqj' k' l' k' l' k' p' "eqwf' dg qd' v' k' p' g' f' "t' q' o' v' j' g' e' q' o' o' q' p' r' c' y' "eqwtu' 0" Uko gu' ( "Dcu{ g. "Probate Court I." cv'; 940

3530 C"of gxlugg0'ku'ppg'y j q'ku'pco gf "kp'c"y kn'v'kp' j' g' t' k' v' r' p' f' u' q' t' v' j' g' t' t' g' e' n' f' t' q' r' g' t' v' { 0" DNCEM0U NCY 'F H' V' K' P' C' T' I' . "supra"pqvg'33. "cv'6750

3540 Uko gu' ( "Dcu{ g. "Probate Court I." supra"pqvg'33; . "cv'; 930  
3550 RQWPF. "supra"pqvg'34; . "cv'9: 0" See also infra Rctv' H' K' C' 0 0 0  
3560 Uko gu' ( "Dcu{ g. "Probate Court I." supra"pqvg'33; . "cv'; 930  
3570 5"Y W' N' I' C' O' "DNCEMUVQPG. "EQO O GP VCTIGU' QP' VJ G' NCY U' QH' GP I' NCPF", ; 7"p042"3; ; : = TQRGT ("Y J W.G."supra"pqvg'34; . "cv', 39; 30  
3580 See TQRGT ("Y J W.G."supra"pqvg'34; . "cv', 39: 90  
3590 Uko gu' ( "Dcu{ g. "Probate Court I." supra"pqvg'33; . "cv'; 930

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A DISSECTION OF THE PROBATE EXCEPTION

3727

## K0'S wkvpi "Vkwg

Vj g'o gjv qf "hqt" r tqxkpi "cpf" ej cmgpi kpi "vj g'xcrkf kv" "qh'y kmu"qh'tgcn guvcv'kp"Gpi rcpf "r qugf" c'pwo dgt"qh'r tqdrgo u0"Hktuv."dgecvwv'pq"eqwtv'j cf lwtkuf levkqp"vq"cf o k'c'y km'qh'rcpf "kvq" r tqdcv'g."vj g'qpnf "o gcpu"qh'vkvpi vj g'xcrkf kv"qh'uwej" c'y km'y cu'd{"cp"glgevo gpv'qt"vtgur cuu'cev'kqp."{gv'kh'vj g f gxlugg" y cu" kp" r quugukqp." j g" eqwv" pqv' dtkpi " uwej" cp" cev'kqp" ci ckpuv j ko ugrh" dw' j cf " vq" kvugcf" cy ck' cp" cev'kqp" dtqwi j v' d{" cp" j gkt<sup>5</sup>: O qtgqxtg." f gxluggu"y gtg"uqo gvko gu'uwdlgev'vq" c"pgxgt/gpf kpi "uwtgco" qh glgevo gpv'cpf "vtgur cuu'cev'kqpu"dtqwi j v'd{" f khgtgpv'j gktu<sup>5</sup>:

Vj wu."k'y cu"r quukdr" hqt" vj g' f gxluggu"cpf" qvj gt"kvgt guvg" r ctvku"vq dtkpi "cp"cev'kqp"kp"ej cpegt {"vq"guvcdrkuj" vj g'xcrkf kv"qh'c'y km'qh'tgcn"guvcv'kp"qtf gt"vq"cxqkf"kvgt o kpcdr" hki cvkqp"cpf" vq" i kv'ugewkv"cpf" tgr qug"vq vkwg<sup>62</sup>"Y j gp"uwej" uwk'y cu"dtqwi j v"ej cpegt {"y qwv" f ktev'cp"kuuv"qh devisavit vel non<sup>63</sup>"vq"cuegtckp"vj g'xcrkf kv"qh'vj g"y km"cpf" y qwv" f ktev pgy "vtkn"vq"dg"j grf "kp" c'eqo o qp"rcy "eqwtv'wpkn'k'y cu'ucvukhgf" vj cv'vj gtg y cu"pq" tgcupcdng" i tqwv' hqt" f qwdv0 " Cv" vj cv' r kv'v' kv" y qwv" kuuv" c r gtr gwcn'kv'v'v'kqp"ci ckpuv"vj g"j gktu"cv'rcy "cpf" qvj gtu"tgutckpki" vj go htqo "eqpvkupi"ku'xcrkf kv"kp"vj g'hwwt g<sup>64</sup>

## K0'Guqr r gn

F wtkpi "vj g'eqwtug"qh'r tqeggf kpi u'kp"gvj gt"ej cpegt {"qt" c'eqo o qp"rcy eqwtv" c" r ctv {"o ki j v' gvj gt" cf o k' vj g'xcrkf kv"qh'c'y km'qt" cf o k'hcev o cvgtkn"vq"ku"xcrkf kv". dw' y qwv" uwdugs wgvn" cwgo r v' vq" eqpvuv" ku xcrkf kv"kp" r tqeggf kpi u" dghqtg" vj g" geengukv'ecni eqwtv<sup>65</sup>" " Wpf gt" uwej ektevo ucpegu."ej cpegt {"y qwv" j qv' vj g'r ctv {"vq"vj cv'cf o kuukqp."cpf" y qwv r gto cpgv'v' "gplqk"vj cv'r ctv {"htqo" r tqeggf kpi "vq"ej cmgpi g"vj g"y km'kp"vj g geengukv'ecni eqwtv<sup>66</sup>

35: 0 6"lQj P" P QT VQP" RQO GTQI . "C"VTGCVKUG"QP"GS WwI "LWTKRTWFGE"È"337: . "p08"87j "gf 0 3; 63+"lj gtg'pchtg"6"RQO GTQI \_0

35: 0 See"5"UVQTI . "EQO O GP VCTIGU"supra"pqv"64."È"3: . ; .cv'6: 80

3620 Id.

3630 Devisavit vel non"ku<

Vj g'pco g"qh'cp"kuuv"ugpv"qvw'qh'c"eqwtv'qh'ej cpegt {"qt" qvg" y j lej" gzgtelugu"ej cpegt {" lwtkuf levkqp."vq" c'eqwtv'qh'rcy . "vq"vt {"vj g'xcrkf kv"qh'c'r cr gt"cuugv'gf"cpf" f gplgf"vq"dg" c'y km"vq cuegtckp"y j gv'gt"pqv'vj g'guvcv'qt" f kv" f gxlug."qt"y j gv'gt"pqv'vj cv'r cr gt"y cu"j ku'y km0 DNCEMUNCY "F ÈVQPCTI . "supra"pqv"33."cv'6740

3640 5"UVQTI . "EQO O GP VCTIGU"supra"pqv"64."È"3: . ; .cv'6: 80

3650 See"TRGT"("Y J W.G."supra"pqv"34; .cv', 39: : ó; 3=5"UVQTI . "EQO O GP VCTIGU"supra"pqv 64."È"3: : 9."cv'6: 70

3660 See uqwtegu"ekgf"supra"pqv"3650

kk0'Hcwf

Cmj qwi j "ej cpegt {"rcengf "lwtkuf levkqp"vq"ugv'culk g" c"y km'qh'r gtuqpcn guncv"r tqdcvgf "kp"cp"geengukuclecn'eqwtv'y j gtg"vj g"i tcpv'qh'r tqdcvg"y cu qdvcvkpgf "f wg"vq"htcwf ."wpf gt "egtvcvkp"ektewo ucpegu"ej cpegt {"eqwrf "gkxj gt eqpxgtv'vj g'r gtuqp"y j q"eqo o kvxf "vj g'htcwf "kpvc"eqpuxwv'xg'tvuwg'y kj tgr gev'vq"uwej "r tqdcvg."qt"qdriki g"j ko "vq"eqpugpv'vq" c"tgr gcn'qt'tgxqecvkqp qh'vj g'r tqdcvg"kp"vj g"geengukuclecn'eqwtv'htqo "y j lej "r tqdcvg"y cu'i tcpv'g 0<sup>67</sup>

Intrinsic Fraud: Mgttlej "x0Dtcpud {

Kp" Kerrich v. Bransby." vj g" f gegf gpv' j cf " ngh' xktwcm {" cmi' qh' j ku r gtuqpcn'cpf "tgcn'guncv"vq"Mgttlej ."y j qo "j g"pco gf "cu"j ku"gzgewqt"d {"c y km' f cvgf " O ctej " 3: ." 3937<sup>68</sup>" "Mgttlej "uweeggf gf "kp" j cxkpi " vj g" y km cf o kvxf "kpvc"r tqdcvg"kp"vj g'Rtgtqi cv'xg'Eqwtv'qh'Ecpv'gtdwt {<sup>369</sup>"kp"eqo o qp hqto .<sup>36</sup>: "cpf "uudugs vgpv'v' ."kp" c"eqpv'g'v'xg"v'j g"xcrkf kv' "qh'vj g"kpuxwo gpv y kj "vj g'f gegf gpv'u'hc'vj gt"kp"vj cv'uc'o g'eqwtv'v'j g'y km'y cu'f gv'to kpgf "vq"dg xcrcf 0<sup>6</sup>: ""Vj gtgchgt ."vj g" f gegf gpv'u'hc'vj gt"htkrf "c"dkn'kp"ej cpegt {"ci ckpuv. kpv't"crk."Mgttlej ."kp"y j lej "j g"ugv'htv'j "y q"r t'gxkqun' "gzgewgf "y km'y cv j ku'uq"j cf "o cf g"kp"y j lej "j g'ng'h'j ku'gpv'k'g'tgcn'cpf "r gtuqpcn'guncv"vq"j ku hc'vj gt."emko gf "vj cv'vj g"O ctej "3: ."3937"y km'y cu'qdv'kpgf "d {"htcwf "qp"vj g f gegf gpv'cpf "cungf "ej cpegt {"vq"ugv'culk g"v'j cv'y km<sup>72</sup>"Qp"cr r gcn'v'j g"J ki j Eqwtv'qh'Rctrko gpv'j grf ."j qy gxgt ."vj cv'ej cpegt {"eqwrf "pqv'ugv'culk g" c"y km hqt"htcwf 0""Vj g"r qt'vkp"qh'vj g"y km'y cv'f gcn'y kj "r gtuqpcn'guncv"eqwrf "dg

3670 DNCEMUVQPG."supra"pqv'357."cv' ; 7'p042=TORGT(" Y J KVG."supra"pqv'34; ."cv', 39: : "Tqr gt cpf "Y j kv'pqv'vj cv'vj gtg'ku<

c"o cv'et'cl'f'k'ht'g'peg'dgw ggp"vj g"Eqwtv'qh'Ej cpegt {"cnkpi "wr qp"ku'gh'vq"ugv'culk g" c"y km'qh r gtuqpcn'guncv"qp"ceeqpv'qh'htcwf "qt"ht'gt {"kp"qdv'k'kpi "qt"o cnkpi "vj cv'y km'cpf "cnkpi htqo "vj g"r ctv' "vj g"dgpg'kh'qh'c"y km'guncd'kuj gf "kp"vj g"Geengukuclecn'Eqwtv'd {"j ku'htcwf ."pqv wr qp"vj g"v'guncv'q."dvw'vj g'r gtuqpcn'f'k'k'p'j gt'k'gf "vj gtgd {0

Id.

3680 9'Dtqy p'RE0659"3949-0

3690 Vj g" Rtgtqi cv'xg' Eqwtv' qh' Ecpv'gtdwt {" gztelugf " r tqdcvg" lwtkuf levkqp" qxgt " vj g" guncv'u' qh r gtuqpu'qy plpi "r tqr gtv' "nqecv'gf "kp"o qtg"vj cp"qpg'f'kqegug"y kj kp"vj g'r tqx'k'peg'qh'Ecpv'gtdwt {" .r gtuqpu qy plpi "r tqr gtv' "nqecv'gf "kp"dqj "vj g'Rtqx'k'pegu'qh'Ecpv'gtdwt {" cpf "l qtm'cpf "vj qug"y j q'f'k'gf "qxgtugcu0 DNCEMUVQPG." supra" pqv' 357." cv' 3298=" RGVGT" Y CNP.G." GPI NKU " Y KNUZ" RTQDCVG" TGEQTFU" R GPI NCPF"CPF"Y CNGUY KJ "C"DTK'GH'P QV'G'QP "UEQVVKU "CPF"K'K'U "Y KNU'3; 642"3; 86-0

36: 0 Y j gp'uqo gppg'f'k'gf "v'guncv."vj gtg'y gtg'y v'q'f'k'ht'g'gpv'r tqegf v'g'u'd {"y j lej "vj g'gzgewqt'eqwrf j cxg"vj g'y km'r tqdcvgf "<kp"eqo o qp"p'q'p'q'p'v'q'v'q'w'v'htqo ."qt"kp"u'q'ng'o p"p'q'p'v'q'v'q'w'v'htqo 0""Y j gp'c y km'y cu'r tqdcvgf "kp"eqo o qp'htqo ."pqv'eg"y cu'pqv'kuwgf "vq"vj g'j gktu'qt"vq"q'vj gt "kp'v'g'g'v'gf "r ctv'ku."cpf ce'w'cn'g'x'k'f'g'peg'qh'f'v'g'gzgewk'qp'qh'vj g'y km'y cu'pqv't'gs w'k'gf 0"Y kj kp"52" {" gctv'vj gtgchgt ."vj g'gzgewqt qt"cp {"q'vj gt "kp'v'g'g'v'gf "r gtuqpcn'eqwrf "uggn'vq"j cxg"vj g'y km'r tqdcvgf "kp"u'q'ng'o p"htqo ."y j lej "t'gs w'k'gf pqv'eg"vq"kp'v'g'g'v'gf "r ctv'ku"cu'y gmf'cu'v'gunko qp {"cu'vq"vj g'f'v'g'gzgewk'qp'qh'vj g'y km'0"Cp'q'v'gf "cf o kvkpi "c y km'vq"r tqdcvg"kp"vj g'u'q'ng'o p"htqo "y cu'd'lpf'kpi "qp"cm'r ctv'ku"y j q"cr r gctgf "kp"vj g'r tqeggf kpi "qt"y j q y gtg'i kv'gp'pqv'eg 0"Ulo gu' ("Dcu'g."Probate Court I."supra"pqv'33; ."cv'; 8; 0

36; 0 Id."cv'65965: 0

3720 Id."cv'65: 0

ugv'culf g'qpnf "kp"vj g"geengukulecneqwtv."y j krg"vj g'r qt vkpp"qh'kw'f gcrkpi "y kj tgcni'gucvg"eqwrf "dg"ugv'culf g'kp"ceqo o qp"rcy "eqwtv'd {"kuuvq"qh'devisavit vel non<sup>73</sup>

Extrinsic Fraud: Dctpgunf 'x0Rqy gn

Kp"Barnesly v. Powel.<sup>374</sup>"vj g"J ki j "Eqwtv'qh'Ej cpegt {"nlo krgf "vj g'tgcej qh"vj g" Kerrich f gekukpp0' " Kp" Barnesly." vj g" f ghgpf cpvu" j cf " hqti gf " vj g f gegf gpva"y kn'qh'j ku'tgcni'cpf "r gtupcni'gucvg."cpf "d {"o kutgr tguvpki "vq vj g" f gegf gpva" pgz'v' qh' nkp" vj cv' vj g" hqti gt {" y cu' kp" hcev' i gpwkp." j cf qdvkpgf "Itqo "vj g"pgz'v'qh'nkp"ce'f ggf "kp"y j lej "j g"eqpugpvgf "vq"vj g'r tqdcvg qh'uckf "y kn<sup>75</sup>" "Vj g" f ghgpf cpvu" r tguvpvf "vj g" f ggf "vq"vj g" geengukulecneqwtv."y j lej "cf o kvgf "vj g'y kn'kp"v' r tqdcvg"cu"vq"vj g'r gtupcni'gucvg<sup>76</sup>" "Kp" c uwdugs wgpv' r tqeggf kpi "vlgf "kp" c "eqwtv'qh'eqo o qp"rcy . "c"lwt {" f gyto kpgf vj cv'vj g'y kn'ly cu'c" hqti gt {" <sup>77</sup> "Kp" ej cpegt { . "y j krg"pqv'f kur wkpi "vj g"lwt {" au hkp' kpi "cu"vq"vj g'kt' kpgt'guf'kp" vj g' f gegf gpva" tgcni' gucvg." vj g' f ghgpf cpvu. ekkpi "Kerrich." r tqvugvf "vj cv'qpnf "vj g" geengukulecneqwtv' j cf "lwt'kuf levkpp vq"ugv'culf g'vj g'y kn'cu"vq"vj g' f gegf gpva" r gtupcni'gucvg<sup>78</sup>" "Vj g" J ki j "Eqwtv ci tggf "ej cpegt {"rcngf "vj g'r qy gt "vq"ugv'culf g"ce"y kn'qh'r gtupcni'gucvg" hqt htcwf. "vj cv'vj g'r qy gt "vq" f q"uq"y cu'hqi f gf "uqrgn" "kp"vj g" geengukulecneqwtv. cpf "vj cv'vj g' kpeqpukngpe {" dgvy ggp" c"lwt {" cv'eqo o qp"rcy "hkp' kpi "vj g'y kn'vq dg" kpxcirkf "cu"vq"vj g' tgcni'gucvg" cpf "vj g" geengukulecneqwtv' j cxkpi "hqw'pf "vj g y kn'vq" dg" xcirkf "cu"vq"vj g" r gtupcni' gucvg." cnj qwi j " wpu'gw'kpi . "y cu" qpg y j lej "vj g'rcy "vqngtcv'gf <sup>79</sup>

[ gv."vj g"eqwtv'f kpkpi wkuj gf "dgvy ggp" htcwf "qt" hqti gt {" kp" qdvkpkpi "c y kn'<sup>80</sup> kpt'kpule "htcwf + "cu"y cu' r tguvp'kp" dqj "Kerrich" cpf "Barnesly." cpf htcwf "kp" qdvkpkpi " probate" qh' c" y kn' <sup>80</sup> "gzv'kpule" htcwf + " y j lej " y cu r tguvp' qpnf {" kp" Barnesly<sup>81</sup>: " " Vj g" eqwtv' tgcuppgf " vj cv' y j krg" vj g geengukulecneqwtv' j cf "lwt'kuf levkpp"vq"ugv'culf g"ce"y kn'k/rcngf "lwt'kuf levkpp vq" f gyto kpg" vj g" xcirkf k' qh' c" f ggf " wpf gt" j cpf " cpf " ugcni' uwej " cu" vj cv qdvkpgf "Itqo "vj g"vgucvqt'au'pgz'v'qh'nkp<sup>82</sup>: ""J cxkpi "vj wu'f gyto kpgf "vj cv'vj g f ggf " y cu" htcwf wgpva" " qdvkpgf . " vj g" eqwtv' tgcuppgf " vj cv' dgecwug" gs wkv { eqwrf "cng"cy c {" dgpghku"vq"y j lej "c" r gtup' y cu' gp'kw'gf "kh"vj g' r gtup' y cu

3730 Id."cv659."6650"Accord 5"lqj P P QTVQP RQO GTQI . "C"VTGCVRG'QP "GS WM [ "LWTRRTWF GP EG È; 35."cv7: 56: 6"<sup>87</sup> vj "gf 03; 63-"j gtg'pchg'5"RQO GTQI \_0  
3740 3"Xgu0Ugp033; "396: +: 3"Xgu0Ugp04: 6"<sup>89</sup>6: +0  
3750 3"Xgu0Ugp033; .33; 642=3"Xgu0Ugp"4: 6."4: 6."4: 96: : 0  
3760 3"Xgu0Ugp04: 6."4: 6."4: 96: : 0  
3770 Id."cv4: 60  
3780 Id."cv"4: 76: 80  
3790 Id."cv"4: 90  
37: 0 Id."cv"4: 96: : 0  
37: 0 Id."cv"4: : 0

372: SOUTHERN CALIFORNIA LAW REVIEW ]Xqr096-369;

i wkx{ "qh'y tqpi f qkpi . "y g'eqwtv'eqwf "f gerntg"y g'f ghgpf cpw'eqputwekxg  
v wvvgu'hqt"y g'r rckpvh'hqt"cp"co qwpv'gs wcn'vq"y g'xcnwg"qh'y g'r gtuqpcn  
gucvq<sup>82</sup>"Dgecwug'y gtg'y gtg'lp'hcev'vq gt'r tkqt'y kmu."j qy gxgt."y g'xcnkf kv{  
qh'y j lej "j cf "pqv" {gv'dggp" f gvgto kpgf "kp" yj g"geengukucnecr'eqwtu." yj g  
ej cpegt{ " eqwtv' f getggf " yj cv' yj g" f ghgpf cpw' o wuv' eqpugpv' kp" yj g  
geengukucnecr'eqwtv'vq"ct'gxcqecvq"qh'y g'r tqdcvg"qh'y g'rcwgt'y km'dw'dg  
i kxgp'yj g'qr r qtwpk{ "v'r tqxg'yj cv'yj g'r tkqt'y kmu. y j lej "cnuq"i cxg'yj go "c  
ucng'lp"y g'f gegf gpw'u'gucvq. y gtg'xcnkf <sup>83</sup>

Vj wu."kp" f gvgto kpkpi "y j gyj gt"ej cpegt{ "y qwr "f gerntg"y g'dgpghekt {  
qh'c "h'cwf wgpv' y km'c "v wvvg" hqt" yj qug" y j q" j cxg" dgpp" f gh'cwf gf . " yj g  
gkij vggpj /egpwt{ " Dtkkuj " eqwtu" cr r gct "vq" j cxg" f tcy p" c" rkp" dgw ggp  
gzv'kpule" cpf "kpv'kpule" h'cwf < Qpn{ "kh" yj g' h'cwf "ku" gzv'kpule" \*QO" c" h'cwf  
r tcevegf "qp" c" r ctv{ "vq" r t'gxgpv' yj g' r t'gugpv'kp" qh' yj cv' r ctv{ au'ecug" lp" yj g  
r tqdcvg' r tqeggf kpi u' y km' t'gkgh' dg" i t'cpvgf =kpv'kpule" h'cwf . "uwej "cu" yj g' wug  
qh' r gtlwt gf "vuko qp{ "qt" c" h'cnug" y km'lp" yj g' r tqdcvg" r tqeggf kpi u. "y km'pqv  
uw' h'eg<sup>84</sup>

f0' " Crr qkpo gpv' cpf" Tgo qxcn' qh' Cfo kpkutcvqt IRgtuqpcn  
Tgr t'gugpv'kxg

Vj g" geengukucnecr' eqwtu" j cf " gzenwukxg" lwtkuf lev'kp" vq" cr r qkpv' cp  
cf o kpkutcvqt "qt" r gtuqpcn' tgr t'gugpv'kxg+ "hqt" yj g" gucvq" vq" f kur qug" qh' yj g  
f gegf gpw'u" r gtuqpcn' gucvq<sup>85</sup> " Cpf " y j kg" ej cpegt{ " j cf " yj g" r tko ct {

3820 *Id.*"cv"4: ; 0"Gs wks{ au'r qy gtu"lp"y j k' t'gi ctf "r t'guwo cduq" y qwr "cr r n' "y kj "gs wcn' h'qteg" vq" yj g  
t'gcn' gucvq" cu" y gm' dw' vj g "Barnesly" eqwtv' f k' "pqv' t'gcej "y ku' kuuwg" ukpeg" yj gtg' y cu' pq' rpi gt" c" f kur w  
dgw ggp" yj g' r ct' v' cu' vq" yj g' f kur quk'kp" qh' yj g' t'gcn' gucvq

3830 *Id.*"cv"4: ; 6; 20"kp" Gaines v. Chew. "y j g' Uwr tgo g' Eqwtv' t'gkrf "qp" Barnesly lp" c' u' wks' cngi kpi  
yj cv' yj g' g' zgewqtu" h'cwf wgpv' u' ug' vr " hqt" r tqdcvg" yj g' f gegf gpw'u' qrf gt" y km' cpf " uwr r t'guugf " yj g  
f gegf gpw'u' u' wdugs wgpv' u' g' zgewgf "y km' 65" WLU\*4" J qy 0'83; . '849" \*3: 66-40" Y j kg" j qf kpi " yj cv' c' h'gf g' t'cn  
eqwtv' ukv'pi "lp" gs wks{ "rcengf "y g' cwj qtk{ "vq" ug' vr "y g' u' wdugs wgpv' y km' cpf " ug' v' cu' f g' vj g' r tqdcvg" qh' yj g  
h'qto gt. " yj g' Uwr tgo g' Eqwtv' p' q' g' y g' g' u' u' q' t' f g' g' f ghgpf cpw' vq" t'gur qpf "vq" yj g' r rckpvh'h' lps v' k' l'gu  
cdqw' yj g' ekewo ucpegu' u' w' t' q' w' f kpi " yj g' y q' y km' 0" *Id.* " " Vj g' Eqwtv' u' i g' u' g' f " uwej " cpuy gtu' eqwf " dg  
wgf "cu" g' x' f g' p' eg' lp" yj g' r tqeggf kpi u' d' gh' t' g' yj g' u' c' v' g' r tqdcvg' eqwtv' vq" g' u' c' d' i' k' j " yj g' r' cwgt' y km' cpf " t' g' x' q' n' g  
y g' h'qto gt 0" *Id.* " " Vj g' Eqwtv' c' n' q' j g' f " yj cv' yj g' h'qy gt' h'gf g' t' c' n' l' eqwtv' eqwf " q' t' f g' yj g' r ct' v' g' u' v' i q' d' gh' t' g' yj g  
r tqdcvg' eqwtv' cpf " eqpugpv' vq" yj g' r tqdcvg' qh' yj g' r' cwgt' y km' cpf " t' g' x' q' c' v' k' p" qh' yj g' h'qto gt " p' q' g' . cpf  
u' i g' u' g' f " yj cv' yj g' l' p' j g' t' g' p' v' r qy gtu' q' h' c' h'gf g' t' c' n' g' wks{ " eqwtv' eqwf " go r qy g' t' k' v' r tqdcvg' yj g' r' cwgt' y km' 0  
*Id.* " cv' 8686690" See also "In re" D' t' q' f g' t' l' e' n' u' " Y km' " : " WLU \*43" Y c' n' 0' 725. " 73963; \*3: 96-4" u' i g' u' k' p' i " c  
h'gf g' t' c' n' l' eqwtv' u' k' v' k' p' i " lp" gs wks{ " eqwf " r t' q' x' k' f " g' c" t' go g' f { " lp" c" ecug" l' p' x' q' n' k' p' i " h'cwf " kh' yj g' v' o g' h'q  
ej c' n' g' p' i kpi " yj g' y km' lp" yj g' r tqdcvg' eqwtv' j cf " r cu' g' f " cpf " yj g' r rckpvh'h' eqwf " pqv' d { " yj cv' v' o g' j' cxg  
f l' u' e' q' x' g' t' g' f " yj g' h'cwf " yj k' j k' p' yj cv' v' o g-0

3840 5" RQO GTQI . "supra" pqv' 373. 'E'; 35. 'cv' 7: 56: 80" Cf. " I CTI " D' 0' D' QTP. " h' e' v' g' t' p' c' v' i' q' p' c' n' E' k' k' n  
N' k' k' C' v' i' q' p' " R' W' k' G' F " U' v' c' v' g' u' E' q' w' t' v' u' " ; : 76: 8" \*5f " g' f 0' 3; ; 8-4" \*p' q' v' p' i " yj cv' WLU' eqwtu' f k' u' p' i w' k' j  
dgw ggp' l' p' v' k' p' u' l' e' " c' p' f " g' z' v' k' p' u' l' e' " h'cwf " l' p' f' g' e' k' f' k' p' i " yj g' yj g' t' v' g' p' h' q' t' e' g' h' q' t' g' k' i p' l' w' i o g' p' w' 0

3850 J QNF UY QT VI . "supra" pqv' 34; "cv' 848649= RQWPF . "supra" pqv' 34; "cv' 3580" See "5" UVQTI .  
EQO O GP VCTIGU. "supra" pqv' 64. 'E' 3: ; 9. 'cv' 6: 7= Uko gu' ( " D' e' u' f' g. " Probate Court I. "supra" pqv' 33; . 'cv  
; 8: 0

4223\_ A DISSECTION OF THE PROBATE EXCEPTION 372;

cwj qtk{ " vq" cr r qkp{ i wctf kcpu" hqt" kpf kxf wcu" cpf " hqt" vj g" r tqr gtv{ " qh o kqqtu."vj g"geengukulecneqwtu"j cf "eqpewtgpv"lwtkuf levkqp"y kj "tgur gev"vq r gtuqpcn{ 0<sup>86</sup>

g0"Cf o kpkutcvkqp"qh"Guvcgu

Vj g"geengukulecneqwtu"hqto cm{ "j cf "lwtkuf levkqp"vq"ocf o kpkutgto"vj g gegcugf au"r gtuqpcn"guvcg.<sup>387</sup> dw" vj g{ " f kf" pqv" qtf gt" f kwtkdwkqp" qh" vj g guvcg0<sup>88</sup>" " Tcvj gt." vj g" r gtuqpcn" tgrtgugpvcxg" cr r qkpvgf" d{ " vj g geengukulecneqwtu"y qwr{ "r c{ "vj g"fdwu"qh"vj g"gegucgf "cpf"vj gp"fkwtkdwg vj g"tgukf wg"kp"ceeqtf cpeg"y kj "vj g"vgo u"qh"vj g"y km0<sup>89</sup>" " Cnj qwi j " vj g geengukulecneqwtu"j cf " r tgxkqum{ "cf o kpkutgto" guvcgu" vj go ugrxgu"cpf o cf g" vj g" f kwtkdwkqp." dgecvug" vj gkt" eqpf wev" kp" f qkpi " uq" j cf " dggp pgi rki gpv"cpf "kp"hev"htcwf wgpv0 ergti { "cu"gzgewqtu"cpf "cf o kpkutcvqtu eqpxgtvgf " i qqf u" vq" vj gkt" qy p" wug0 Rctrico gpv" rko kgf " vj gkt" r qy gtu" qh cf o kpkutcvkqp"vq"cr r qkp{ "cp"cf o kpkutcvqt"htqo "co qpi "vj g"tgrvckgu"qh vj g"gegucgf "cpf" f gngi cvkpi "r qy gtu"vq"vj cvr gtuqpcn0<sup>8</sup>:

Wprikng"vj g"r qy gt "vq"cf o k'y km"qh"r gtuqpcn"guvcg"kvq"r tqdcvg"cpf "vq cr r qkpvr gtuqpcn"tgrtgugpvcxgu."vj g"geengukulecneqwtu"lwtkuf levkqp"qxgt cf o kpkutcvkqp" y cu" pqv" gzenmukxg" dw" y cu" kpuvgcf " eqpewtgpv" y kj ej cpegt { 0<sup>8</sup>:" "Ej cpegt { au"lwtkuf levkqp"kp" vj ku"tgi ctf " y cu"kpqxngf" d{ " vj g htkpi "qh" c" dkm" d{ " c" etgf kqt" qt" c" f kwtkdwgg" uggkpi " vq" j cxg" vj g" guvcg cf o kpkutgto" kp" ej cpegt { 0<sup>92</sup>" " Ej cpegt { " y qwr" vj gp" kuug" pqvlegu" vq etgf kqtu."gplqk"cevku" d{ "etgf kqtu"kp"eqo o qp"rcy "eqwtu."cpf "dtkpi "kp cuugw"cpf "f kwtkdwg"vj go "vq"etgf kqtu"cpf "ngi cvggu"qt"pgez"vqh"nkp0<sup>93</sup>

Vj g"tcvkpcng" hqt"ej cpegt { au"lwtkuf levkqp"qxgt"cf o kpkutcvkqp"kp" c"i kxgp ecug"y cu"vy q/hqf 0 "Hktuv."vj g"cf o kpkutcvqt"qh"cp" guvcg"y cu"kp" ghhev" c eqputwekxg" v wugg" hqt" vj g" etgf kqtu." ngi cvggu" cpf " f kwtkdwggu" qh" vj g

3860 Uko gu{ "Dcu{g."Probate Court II"."supra"pqvg"342."cv"3520"Vj g"r qy gt"lp"i gpgtci"vq"cr r qkp i wctf kcpu" hqt" vj g"o gpvcn{ "km"j qy gxt."y cu"y kj kp"ej cpegt { au"lwtkuf levkqp0"Id. cv3540

3870 See"RQWPF."supra"pqvg"34; ."cv"9: 0

3880 See"Uko gu{ "Dcu{g."Probate Court I."supra"pqvg"33; ."cv"; 920

3890 Id.

38: 0 J QNFUY QTVI ."supra"pqvg"34; "cv"849="Y knko "Ugctng"J qrf uy qt vj ."The Ecclesiastical Courts and Their Jurisdiction."in"UGNGEV"GUUCI"UR"CPINQ/COGTRECP"NGI CNJ KVQT[ "477."526"Cuup"qh Co ONcy "Uej 0gf 0"3; 2: -0

38: 0 See"TORGT" ("Y J KVG."supra"pqvg"34; ."cv"; 39; 5="Uko gu{ "Dcu{g."Probate Court I."supra pqvg 33; ."cv"; 946950 "Y j kg" vj g"lwtkuf levkqp" y cu"eqpewtgpv"j qy gxt." ej cpegt { "kp"i gpgtci"y qwr" pqv kpgtftg"kh"vj g"geengukulecneqwtu"y cu"ctgcf { "gpi ci gf "kp"cf o kpkutcvkqp0"TORGT" ("Y J KVG."supra"pqvg 34; ."cv"; 39; 50

3920 Uko gu{ "Dcu{g."Probate Court I."supra pqvg"33; ."cv"; 940

3930 4"UQT[ . "EQO OGP VCTIGU."supra"pqvg"34; ."E"953."cv"356"p06" \*0Y j gtg"gs wks{ "j cu"vngp lwtkuf levkqp"qh"cp"cf o kpkutcvkqp."k" o c{ " r tqeggf " vq" f kwtkdwkqp" cpf " tgrgh"cu"kp" r tqdcvg0=" Uko gu ( "Dcu{g."Probate Court I."supra"pqvg"33; ."cv"; 950



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]Xqr096-369;

f gegcugf . "cpf "ej cpegt { . "cu"gzr rckpof "dgmj . <sup>394</sup> "j cf "lwkuf levkqp "vq" gphqteg  
v wuu0<sup>95</sup> "Ugeqpf . "vj gtg'y gtg'qhgp"ur gekn'ekewo ucpegu . "uwej "cu"vj g'pggf  
vq "cng"ceeqpwu"cpf "eqo r gn'f kueqxt { "qh"cuugu . <sup>396</sup> "qt "vq" r tqxkf g'c"uko r ng .  
cf gs wcvg . " cpf " eqo r ngvg" tgo gf { . " vj cv" y ctcpvgf " ej cpegt { " gzteklupi  
lwkuf levkqp<sup>97</sup> " k" cf f kkp" vq" ej cpegt { au"lwkuf levkqp" vq" cf o lpkugt" cpf  
ugwng"vj g'f gegf gpwu"guvcg . "k'j cf "vj g'r qy gt"vq" f gekf g'kpekf gpvci'n' wvukqpu  
tgrvki " vq" vj g" eqputwvqp" cpf " gphqtego gpv' qh" y kmu" qh" r gtuqpcn  
r tqr gtv 0<sup>98</sup>

Vj g'r tqegf vtgu"qh"ej cpegt { "y gtg"vj wu"y gm'uwkfg" vq" f gcn'y kj " vj g  
eqo r rdecvgf "gs wkkgu"vj cv'o ki j v'ctkug"kp"vj g'cf o lpkutcvkqp"qh"cp" guvcg . <sup>399</sup>  
cpf " uqqf " kp" uj ctr " eqputcu" vq" vj g" nko kgf " r tqegf vtgu" cxckrdng" kp" vj g  
geengukulecneqwtu<sup>99</sup>: "k"cf f kkp . "vj g'ukzvggpvj "cpf "ugxgpvggpvj "egpwtkgu  
y kpguugf "c"tr kf "f gec { "kp"vj g'lwkuf levkqp"qh"vj g"geengukulecneqwtu"cu"vj g  
eqo o qp"rxy "eqwt'lwvkgu . "y j q'y gtg"lgnqwu"qh"vj g"geengukulecneqwtu .  
ghgexkgn { "etkr r ngf "vj go "d { "y c { "qh"kuwki "y tku"qh'r tqj kdkkp<sup>99</sup>: ""Vj wu .  
y j kng"vj g"geengukulecneqwtu"kp"vj ggt { "tgvcpgf "eqpewtgpv'lwkuf levkqp  
qxgt" vj g" cf o lpkutcvkqp" qh" guvcgu . " y kj " vko g" vj gk" lwkuf levkqp" y cu . " kp  
r tceveg . "nko kgf "vq"vj g'i tcvkpi "qh'r tqdcvg"cpf "vq"vj g"kuwpeg"qh'ngwtu"qh

3940 See *infra* Retv'KCC00 0  
3950 See '6'RQO GTQI . "supra pqvg"35: . 'E'3349 . "cv'564=4"UVQTI . "EQO O GP VCTIGU"supra"pqvg"34: .  
E'94: 6953 . "cv'3546560  
3960 Y j kng" ej cpegt { " eqwf" pqv" cev" wrqp" c" vguco gpvt { " lputwo gpv' wvki" r tqxgp" kp" vj g  
geengukulecneqwtu . "k'eqwf" cev'qp" c" dkn'ht" f kueqxt { "qh"cuugu'dghqte'g'y g'y kn'y cu'r tqxgp"qt"y j kng'lv  
y cu'vj g'uvd'ge'v'qh'kiki cvkqp"kp"vj g'geengukulecneqwtu"TORGT" (" Y J KVG"supra pqvg"34: . 'cv' . 39; 40  
3970 4'UVQTI . "EQO O GP VCTIGU"supra"pqvg"34: . 'E'953 . "cv'3550"See '6'RQO GTQI . "supra pqvg"35: .  
E'3349 . "cv'564=Uko gu" (" Dcu { g . "Probate Court I ."supra"pqvg"33: . "cv' . 946950"kp"eqo o qp"rxy "eqwtu .  
pqvj kpi "o qte"eqwf "dg'f ppg"vj cp"vq" guvcdrkuj "vj g'f gdv'qh'vj g'etgf kqt"kh'vj gtg'y cu'cp { "eqputxgtu"cu"vq  
vj g'gzkngpeg"qh'vj g'cuugu"cpf "f kueqxt { "y cu'tgs wktgf . "qt"kh'vj g'cuugu'y gtg'pqv'qh'c'ngi cni'pcwtg . "qt"kh'c  
o ctuj cnpki "qh'vj g'cuugu'y cu'pgeguact { "vq"ghgexkgn"v'w' r c { o gpv'qh'vj g'etgf kqt'au'etko . "tguvtv'q'ej cpegt {  
y cu'pgeguact { 0"4" UVQTI . "EQO O GP VCTIGU" supra"pqvg"34: . "E'954 . "cv'3560" O qtgqxt . "y j kng" vj g  
geengukulecneqwtu"eqwf" eqo r gn'vj g'cf o lpkutcvkqp"vq" r tqxkf g'cp"ceeqpwvki . "k"nengf"vj g'r qy gt"vq  
tgs wkt"vj g'cf o lpkutcvkqp"vq" r tqxg'qt"uy gct"vq"vj g'v'wvj "qh'k0"Id . E'955 . "cv'3570  
3980 6'RQO GTQI . "supra pqvg"35: . 'E'3377 . "cv'6830"Eqwtu"qh'gs wks { "cnq"j cf "vj g'r qy gt"vq"eqputvg  
cpf "gphqteg'y kmu'qht'gericu'y gnicu'r gtuqpcnr tqr gtv "vq"vj g'gzv'pv'vj cv'vj g'f "etgcvf . "qt"vj gk't kur qukqpu  
kpxqngf "vj g'etgcvkqp"qh"v wuu= j qy gxt . "vj g'f j cf "pq"lwkuf levkqp"vq"kpvgtr tgv'y kmu'qht'gericr tqr gtv "vj cv  
dgs wcvj " r wgn" ngi cni' guvcg . "cu" vj cv' hgm' y kj kp" vj g' lwkuf levkqp" qh' vj g' eqo o qp" rxy " eqwtu" Id .  
Ej cpegt { au"lwkuf levkqp"vq"eqputvg'y kmu'y cu'lpekf gpv'vq"ksu'i gpgtcn'lwkuf levkqp"qxgt"v wuu . "cpf "k'y qwf  
pexgt"gpvgtvclp" c" unks' dtqwi j v' uqngn "ht" vj g' r wv que" qh' kpvgtr tgvkpi " vj g' r tqxkukqpu" qh' c" y kni' wvrguu  
hwtvj gt"gs wkcdng' tgrgh'y cu'cnq"uqwi j v' Id . E'3378 . "cv'6840  
3990 J QNFUY QTVJ . "supra"pqvg"34: . 'cv'84: 0  
39: 0 Hqt'gzco r ng . "qtf gtu"qh'vj g'geengukulecneqwtu'y gtg'pqto cm { "gphqtegf" d { "gzego o wplecvkqp=  
y j gtg'vj ku'r tqxgf "kpgghgexkng" cp'cwcej o gpv'eqwf "dg"uqwi j v'ltqo "ej cpegt { "lo r tkupkpi "vj g'r ctv' "wvkn  
vj g'geengukulecneqwtu"qt'gt" y cu'qdg { gf . "dw'k'y cu'qpn" vj tqwi j "ej cpegt { "vj cv'vj g'geengukulecneqwtu"eqwf  
uq'cev'Uko gu" (" Dcu { g . "Probate Court I ."supra"pqvg"33: . "cv' . 920  
39: 0 J QNFUY QTVJ . "supra"pqvg"34: . 'cv'84: 0

cf o kpkutcvkqp<sup>3:2</sup>ô vj g" cewcn' cf o kpkutcvkqp" qh' guvcvu" vqpm' rmcg" kp ej cpegt { 'y kj 'hct' i tgcvt 'htgs wgppe { 0: <sup>3</sup>

h0'Uwku'hqt'Ngi celgu'cpf 'F gdu

Cu" c" i gpgtci' twg." vj g" geengukucleci' eqwtv<sup>3:4</sup> cpf " ej cpegt { <sup>3:5</sup> gzgtekugf "eqpewt gpv'lwtkuf levkqp"qxgt "uwku'hqt'ngi celgu<sup>3:6</sup>"lp"cm'kpucpegu. cp { "ngi ce { "tgeqxtcdrg"lp"cp"geengukucleci'eqwtv'y cu'cnuq "tgeqxtcdrg"lp ej cpegt { 0: <sup>7</sup>"Egtvclp"v' r gu'qh'ngi celgu."j qy gxgt. "qpn' "eqwf "dg"uwgf "hqt"lp ej cpegt { 0:"Co qpi "vj gug"y gtg"uwku"qxgt"ngi celgu"qh'rcpf =cu"y kj "qy gt r tqdcv' tgrcv'g' o cwgtu."vj g"geengukucleci'eqwtv'lwtkuf levkqp"y cu'iko ksf "vq r gtuqpcn' { 0: <sup>8</sup> " Ej cpegt { " cnuq" gzgtekugf " lwtkuf levkqp" gzenwukxg" qh' vj g geengukucleci' eqwtv' qxgt" uwku" lp" y j lej " c" j wudcpf " uqwi j v' vq" qdvc'kp r c { o gpv'qh'j ku'y kha'ngi ce { "cpf "uwku"y j lej "kpxqrxgf "c"ngi ce { "vq" c"ej kf . hqt'qpn' "ej cpegt { "j cf "vj g'r qy gt "vq"gpwtg"vj cv'vj g'kpvtgusu'qh'vj g'y kha'cpf vj g" ej kf ." tgur gev'xgn' ." y gtg" cf gs wcvgn' " r tqv'ev'g' 0: <sup>9</sup> " Kp" cf f'kkqp. ej cpegt { au'lwtkuf levkqp"y cu'cnuq"gzewukxg"y j gtg'vj g"dgs wguv'qh'vj g'ngi ce {

3: 20 Id.

3: 30 Uo gu' ( "Dcu'g."Probate Court I."supra"pqv"33; ."cv"; 946950"Y j kg"vj g"lwtkuf levkqp"y cu eqpewt gpv"j qy gxgt."ej cpegt { "y qwf "pqv'kpvt'htg'g'h'vj g"geengukucleci'eqwtv'y cu'htu'r quauguf "qh'vj g cf o kpkutcvkqp" TQRGT' ( "Y J &G."supra"pqv"34; ."cv"; 39; 50

3: 40 Kp'vj qug'ecugu'y j gtg'vj g"geengukucleci'eqwtv'j cf "lwtkuf levkqp."cpf "c'eqo o qp'rcy "f'gh'pug'y cu tclugf "h'wej "cu'r c { o gpv'cu" c" f'gh'pug"lp" c"uwk'hqt" c"ngi ce { +."vj g"geengukucleci'eqwtv'y cu'tgs vktgf "vq r tqeggf "ceeq'at' lpi "vq"vj g'tw'gu'qh'vj g'eqo o qp'rcy "k'0"ppg"y kpguu'y qwf "uw'k'eg"kpugcf "qh'vj g'y q tgs vktgf "wpf gt"geengukucleci'r tce'v'eg+ "qt" c"r' tqj kdkkqp"eqwf "j cxg'dggp"dg'qdvc'kpgf "lp"vj g'eqo o qp'rcy eqwtv' TQRGT' ( "Y J &G."supra"pqv"34; ."cv"; 39; 40

3: 50 Y j gp'uwk'y cu'dtqwi j v'lp"ej cpegt { "vq"tgeqxt"qp" c"ngi ce { ."ej cpegt { "j cf "vj g'r qy gt" vq kpvt' tgv'vj g'rcpi wci g'gh'ev'kpi "vj g'i kh'lp" s'wukqp."cnj qwi j "htgs wgpv' "ej cpegt { "y qwf "ugpf "vj g'ecug qww'qh'ej cpegt { "hqt"cp"qr'kpkqp"qh'vj g'eqwtv'qh'eqo o qp'rcy "y j gtg" c" s'wukqp"qh'o gtg'rcy "ctqug."dw vj ku'y cu'y kj lp"vj g'f'k'uetg'v'kqp"qh'ej cpegt { "cpf "egt'v'clpn' "y cu'pqv'f'ppg'h'vj g'eqpwt'v'ekqp"y cu'er'egct 0" Id. cv'; 3: 256260

3: 60 DNC EMLVQP G."supra"pqv"357."cv' ; ; =4"UVQT [ ."EQO O GP VCTIGU."supra"pqv"34: ."E'9; 9."cv 3: 80

3: 70 TQRGT' ( "Y J &G."supra"pqv"34; ."cv"; 39; 5=4"UVQT [ ."EQO O GP VCTIGU."supra"pqv"34: . E': 22."cv' 3: 96: : 0' Vj g" uco g" tcv'kpc'rgu" vj cv' lw'k'k'kf " ej cpegt { au' gzgtekug" qh' lwtkuf levkqp" qxgt" vj g cf o kpkutcvkqp"qh'guvcvu"lw'k'h' "ej cpegt { au'gzgtekug"qh'lwtkuf levkqp"qxgt"uwku'd { "ngi cv'g'u" See supra vgzv'ceeqo r cp { lpi "pqv'u"3946970" See also"6"RQO GTQ [ ."supra"pqv"35: ."E"3349."cv"564=4"UVQT [ . EQO O GP VCTIGU."supra"pqv"34: ."E": 22."cv'3: : 0

3: 80 4"UVQT [ ."EQO O GP VCTIGU."supra"pqv"34: ."E": 2; ."cv'3; 30"Y j gtg" c" g'v'c'vt' f'gxkugf "vj cv'vj g gzgewqt"uj qwf "ugm'j ku'rcpf u'cpf "vj cv'vj g"ngi cv'gg"uj qwf "dg"i kxgp" c"r'qt'v'kqp"qh'vj g'r tqeggf u."cpf "vj g gzgewqt" h'ck'kf "vq" f'q"uq. "vj g"geengukucleci'eqwtv'rcengf "lwtkuf levkqp"qxgt" c"uwk'd { "vj g"ngi cv'gg" hqt r c { o gpv'qh'vj g'ngi ce { "cu'ku'y cu'eqp'kf gtgf "vq"dg"pqv'c"ngi ce { "guco g'pvt { "dw'vc'j gt"ppg"qww'qh'rcpf 0 TQRGT' ( "Y J &G."supra"pqv"34: ."cv"; 39; 30

3: 90 DNC EMLVQP G."supra"pqv"357."cv' ; ; 7"p042=6"RQO GTQ [ ."supra"pqv"35: ."E"334: ."cv"565= TQRGT' ( "Y J &G."supra"pqv"34: ."cv"; 39; 66; 7=4"UVQT [ ."EQO O GP VCTIGU."supra"pqv"34: ."E": 27: .29."cv'3; 26; 30



lpxqrkgf "y g"gzgewkqp"qh"gzr tguu"qt"ko r rkgf "tvuuu<sup>3</sup>: "kpenw fpi "ej ctkcdng tvuuu<sup>3</sup>: "y j gtg"y g"cuugv"y gtg"gs wkcdng."qt"y j gtg"y g"tgo gf {"eqwrf "qpnf dg"ghqtgfg"wpf gt"y g"r tgeguu"qh"ej cpegt {"uwej "cu"y j gtg"y g"hwmlf lueqxtg {"qh"cuugv"y cu"tgs wktgf <sup>2</sup>"k"cm"uwej "ecugu."ej cpegt {"j cf "y g"r qy gt"vq i tcvplwlvpevkqp"vq"r tqgev"ku"gzenukxg"lwtkuf levkp<sup>3</sup>

Wpf gt "egt vcp"ekewo ucpegu."c"ngi ce {"eqwrf "dg"uwgf "wr qp"lp"ceqwt"vqh eqo o qp"ncy 0 "Hkuv."kh"c"ngi cvgg"cnngt gf "y g"pcwtg"qh"j ku" f go cpf "d {"ej cpi lpi "k"lpvq"c" f gdv"qt" c" f wv "uwej "cu"d {"ceegr vki "c"dqpf "Itqo "y g gzgewqt"ht"r c {"o gpv"qh"y g"ngi ce {"+ "y g"ngi cvgg"j cf "y g"qr vkqp"vq"uwg"glkj gt lp"y g"geengukulecni"eqwt"vqp"y g"ngi ce {"qt"lp"ceqo o qp"ncy "eqwt"vqp"y g f gdv<sup>4</sup>: "Ugeqpf."cmj qwi j "c"ur gekhle"ngi ce {"<sup>3</sup>: "eqpvckpgf "lp"ce"y km"eqwrf pqto cm {"dg"uwgf "wr qp"qpn {"lp"y g"geengukulecni"eqwt"vqp"lp"ej cpegt {"<sup>3</sup>:<sup>6</sup> qpeg"y g"gzgewqt"öceegr vgf ö"y g"ngi ce {"d {"r gthqto lpi "uqo g"qxgt"vce<sup>7</sup>: kpf lecvkpi "y cv"y g"r tqr gtv {"y cu"ugv"culf g"ht"y g"ngi cvgg."ngi cn"vkr"Xgungf lp"y g"ngi cvgg"cv"ncy "ktgxqecdng."cpf "j"geqwr "dtkpi "c"tgr ngxlp"qt"vqxgt cevqk"lp"ceqo o qp"ncy "eqwt"vq"cuugt"v j ku"tki j w"vq"y g"r tqr gtv {"<sup>8</sup>: "Vj g

3: 0 6'RQO GTQI ."supra"pqvg"35: .E"334: .cv"565=TQRGT(" Y J W.G."supra pqvg"34: .cv", 39; 66; 7= 4"UVQT[ ."EQO O GP VCTIGU."supra"pqvg"34: .E": 24."cv"3: : 0"Ej cpegt {"ai"lwtkuf levkp"vq" gphqtg"y g gzgewkqp"qh"tvuuu"y cu"gzenukxg"pqv"qpn {"qh"y g"geengukulecni"eqwt"vqp"dw"cnx"qh"y g"eqo o qp"ncy eqwv"4"UVQT[ ."EQO O GP VCTIGU."supra"pqvg"34: .E": 24."cv"3: : ö; : 0

3: ; 0 TQRGT(" Y J W.G."supra pqvg"34: .cv", 39; 80

3: 20 6'RQO GTQI ."supra"pqvg"35: .E"334: .cv"565=TQRGT(" Y J W.G."supra pqvg"34: .cv", 39; 6=4 UVQT[ ."EQO O GP VCTIGU."supra"pqvg"34: .E": 2: .cv"3; 30

3: 30 TQRGT(" Y J W.G."supra pqvg"34: .cv", 39; 6=4"UVQT[ ."EQO O GP VCTIGU."supra"pqvg"34: .E": 25."cv"3: ; 0Ej cpegt {"y qwr."cu"i"gpgrcno cvgt."kuwg"cp"lplwpevkp"lp"cp {"ecug"lpxqrkpi "c"ngi ce {"lp y j lej "y g"geengukulecni"eqwt"vqp"pqv"gztekg"lwtkuf levkp"lp"ce"o cpgt"cf gs wcv"vq"r tqgev"y g"lwwv tki j w"qh"cm"y g"r ctvku"eqpegtpgf 0Id."E": 26."cv"3: ; ö; 20

3: 40 DNCEMUVQP G."supra"pqvg"357."cv", ; 7"p02=TQRGT(" Y J W.G."supra"pqvg"34: .cv", 39; ; "ucvki "y cv"öy g"qdrki gg"o ki j v"uwg"ht"y g"ngi ce {"lp"y g"Geengukulecni"Eqwt"vqp"cv"Eqo o qp"Ncy "wr qp y j"gdqpf "000y g"ceegr vpeg"qh"y g"dqpf "ht"r c {"o gpv"qh"y g"ngi ce {"j cf "pqv"vqcm {"fgvut {"gf "y g"pcwtg qh"kö-0

3: 50 C"ur gekhle"ngi ce {"ku< "ngi ce {"qt"i km"d {"y km"qh"c"r ctvkwrt"ur gekhgf "y lpi "0000k"ce"utlev"ugpug."c"ngi ce {"qh"ce r ctvkwrt"ej cvgn"y j lej "ku"ur gekhgf"cpf "Fkukpi wuj gf "Itqo "cm"qy gt"ej cvgn"qh"y g"ngucvqt"qh y j uco g"nkp "0000C"ngi ce {"ku"ur gekhle."y j gp"ku"ku"ho ksf "vq"ce"r ctvkwrt"y lpi ."uwldgev"qt ej qug"lp"cevqk."uq"kf gp"whgf"cu"vq"tgpf gt"y g"ngi ce {"y g"ngi cvgg"vq"r tqgev"vq"r r hcedng"vq"cp {"y j gt

DNCEMUVNcy "Fkvqpc"t[ ."supra"pqvg"33."cv": ; 40

3: 60 4"UVQT[ ."EQO O GP VCTIGU."supra"pqvg"34: .E"9: .cv"3: 80

3: 70 k"uqo g"lpucpegu."y g"ncy "y qwr"r tguwo g"cuugpv"d {"y g"gzgewqt"dcugf "qp"egt vcp"hcvu0"lp y j"ecug"qh"ce {"qh"tgen"r tqr gtv {"y j gtg"y g"gxkugg"j cf "r quugngf "ncpf"ht"5: {"getu"kv"y cu"r tguwo gf vq"dg"y kj "y g"cuugpv"qh"y g"gzgewqt."cpf "y w"ce"uwk"qxgt"y cv"ngi ce {"y cu"eqi plk cdng"lp"ce"eqwt"vqh eqo o qp"ncy 0"Id."E": 22."cv"3: 9"p00

3: 80 Uo gu ("Dcu {"g."Probate Court I."supra"pqvg"33: .cv"; 930"See" TQRGT(" Y J W.G."supra"pqvg 34: .cv", 39; ; ö, 3: 24=4"UVQT[ ."EQO O GP VCTIGU."supra"pqvg"34: .E"9: .cv"3: 86: 90"K"l"uwdugs wgvv" cr r gctgf "y cv"y j gtg"y cu"ce" f hkegpe {"lp"y g"cuugv"vq"r c {"y g"etgf kqtu."ej cpegt {"j cf "lwtkuf levkp"vq lpgt"htg"cpf "o cng"y g"ngi cvgg"tghmpf "lp"y g"r tqr qt vqp"tgs wktgf."y j gvj gt"y g"ngi cvgg"vq"y cu"tgen"qt

twg"y cu"qy gty kug"y j gtg"ci gpgtci'ngi ce{<sup>3:9</sup>"y cu'cv'kuwg."j qy gxtg."cpf tgo gf {" eqwf" qpn{ " dg" j cf " d {" y c {" qh" cp" cekqp" kp" ej cpegt {<sup>3:</sup> " qt" cp geengukucenleqwt

Hpcmf. "eqpvtcev'cekqpu"vj cv'uwtxkxgf "vj g'f gcvj "qh"vj g'f gegf gpv'eqwf dg"dtqwi j v'gkj gt"qp"dgj cih"qh"qt"ci clpuv"vj g'f gegf gpv'kp"ceqo o qp"rcy eqwtv"y kj "vj g'r gtuqpcn'tgr tguqpcv'xg"j cxkpi "vj g'ecr cek{ "v"uwg"cpf "dg uwgf "qp"vj g'f gegf gpv'dgj cih<sup>22</sup>

i 0"Vtwu

Kp" gki j vggpvj /egpwt {" Gpi rcpf. " vj g" gpvt g" u{ ugo " qh" twu<sup>423</sup>" y cu y kj kp"vj g'gzewukxg"lwtkuf levkqp"qh"ej cpegt { .<sup>424</sup>cpf "ej cpegt {"y qwf "vj wu

r gtuqpcn"See"TORGT(" Y J K&G."supra"pqv"34; .cv, 3: 23=4"UVQT{ .EQO O GP VCTIGU."supra"pqv"34; . E: 26.cv3; 20

3; 90 C"i gpgtci'ngi ce {"ku"r"or gewpct {"ngi ce {"y j lej "ku"r c {cdng"qwf"qh"i gpgtci'cuugv"qh"guvcg"qh vguvcvt."dglpi "dgs wguv"qh"o qpq {"qt"qy gt"vj kpi "kp"s wepks {"cpf "pqv'ugr ctcvgt "qt"fkukpi wkj gf "htgo qj gtu'qh"vj g'uco g'nhpf {DNCEMUNCY FAEVQPCIT{ .supra"pqv"33.cv: 40

3; : 0 Uo gu'(" Dcu{g."Probate Court I."supra pqv"33; .cv; 940

3; : 0 Id.""Ht"ce"wo g."k'y cu"vj qwi j v'vj cv'cp"cekqp"qh'cuwo r ukv'eqwf "dg"dtqwi j v'kp"ceqwtv'qh eqo o qp"rcy. "dw'k'y cu'rcvgt "f gvtgto kpgf "vj cv'uwej "cekqpu"eqwf "pqv'dg"o clpvclopf 0"Id.""See also"4 UVQT{ .EQO O GP VCTIGU."supra"pqv"34; .E:9; . .cv3: 9"pqv'pi "vj cv'vj qwi j "vj g {"j cxg"pqv'dggp"fkgevt qxgtwtpgf "kp"Gpi rcpf. "vj g {"j cxg'dggp"fqdwgf "cpf "f kucr r tqxgf "d {"lwf i gu'cu"y gni'cu'd {"gng gpvct {"y tkgtu-0"Cu'Dncemvqg"pqv" <

Ecugu" j cxg" qeewtgf "kp" y j lej "courts of common law" j cxg" cuwo gf "lwtkuf levkqp" qh vguco gpvt {"o cvgtu."cpf "r gto kvgf "cekqpu"vq"dg"kpukwgf "ht"vj g'tgeqxt {"qh"ngi ceku."wr qp r tqh'qh'cp"gzr tgu'assumpsit"qt"vpf gtvcnpi "d {"vj g'gzewqt"vq"rc {"vj go 0"Dw'k'uggo u'vq"dg vj g'qr kpkp"qh'o qf gtp"lwf i gu'vj cv'vj ku'lwtkuf levkqp"gzv'p'v'vq"ecugu'qh'specific"ngi ceku'qpnf = ht" y j gp"vj g'gzewqt"cuugpv"vq"vj que"dgs wguv."vj g'ngi cni'kvgtguv'xgu'kp"vj g'ngi cvggu."y j lej gpcdrig"vj go "vq" gphqteg"vj gkt"tki j u'cv'rcy 0"K'uggo u'vq"dg"vj g'dgwt"qr kpkp"vj cv'y j gp"vj g ngi ce {"ku"pqv'ur gekke."dw'o g'gnf "c"i km'qwf"qh"vj g"general"cuugv."cpf "r ctvewtng" y j gp" c married woman"ku'vj g'ngi cvgg."c'eqwv'qh'eqo o qp"rcy "y knipqv'gpvtv'kp"lwtkuf levkqp"vq"eqo r gn r c {"o gpv'qh'uwej "c"ngi ce {"wr qp"vj g"i tqwvf "vj cv'c'eqwtv'qh'eqo o qp"rcy "ku."htgo "ku'tvngu kpego r gvpv'vq"cf o kpkvgt "vj cv'eqo r ngv'lwukg"vq"vj g'r ctv'gu'y j lej "eqwtu'qh'g'wks {"j cxg"vj g r qy gt. "cpf "ctg"kp"vj g'eqpucpv'j cdks"qh'f qkpi 0

DNCEMUNQPG."supra"pqv"357."cv, ; 7"p42"ekcekqpu"qo kvgf +\*go r j cuku"kp"qtki kpcn0"Vj g"i gpgtci eqpegt"y kj "cmjy kpi "uwej "cekqpu"cv'rcy "cr r gctv"vq"j cxg'dggp"vj cv'eqo o qp"rcy "eqwtu'rcengf "vj g r qy gt"vj cv'ej cpegt {"j cf "vq"ko r que"vgtu u'qp"vj g'r ctv'gu."uwej "cu"kp"ce"uws'd {"c"j wudcpf "ht"ce"ngi ce {" i kxgp"vq"j ku'y kng."y j g'g'vj g'g'y cu'c'p'ggf "vq"gpvwtg"vj cv'j g'o cf g'r tqxkukpu"ht"j gt"cpf "j g'ro kq 0"See TORGT(" Y J K&G."supra"pqv"34; .cv, 39; 96; : 0

4220 Uo gu'(" Dcu{g."Probate Court I."supra pqv"33; .cv; 930

4230 C"twu'ku<

Cp"gs wscdrig"tki j v'v'ksrg."qt"kvgtguv'kp"r tqr gtv {"tgnf"qt"r gtuqpcn" f kunkpev"htgo "vj g"ngi cn qy pgtuj kr "vj g'g'qh'000vj g'ngi cni'qy pgt"j qrf u'vj g'f kgev"cpf "cduqmwg" f qo kpkp"qxgt"vj g r tqr gtv {"kp"vj g'xky "qh"vj g'rcy =dw'vj g'kpego g."r tqhku."qt'dgpg'khu"vj g'g'qh'kp"j ku'j cpf u'dg'g'p' y j qm'qt"kp"r ctv'vq"vj gtu'vj g'ngi cni'guvcg'kp"vj g'r tqr gtv {"ku'vj wu'o cf g'uwdugt'kxgp'vq"egt'v'kp wugu"dgpg'khu."qt"ej cti gu'kp"hxqt"qh"q'vj gtu=cpf "vj g'ug"vugu"dgpg'khu."qt"ej cti gu'eqpukwv wvuu'y j lej "Eqwtu'qh'Gs wks {"y knleqo r gni'vj g'ngi cni'qy pgt"cu'twungg"vq"r gthqto 'kp'hxqt'qh'vj g egu'wks vg'twuv'qt"dgpg'klect {0

4"UVQT{ .EQO O GP VCTIGU."supra"pqv"34; .E" 3526."cv 86: 66; 0" Kp"tgo cp"rcy. "twu"y g'g'pqv gphqtegdrig"cv'rcy. "dw'f gr gpf gf "uqngf"qp"vj g"j qvqt"qh"vj que"vq"y j qo "vj g {"y g'g'gp'v'wugf. "vj wu o cni'pi "ej cpegt {"vj g"cr r tqr tkvg'eqwtv'vq"gzg'ekug"lwtkuf levkqp"qxgt"vj gkt"gphqtego gpv0"Id."E"3527628. cv86; 0

pgxgt" tghwug" vq" cf lwf lecvg" o cwgtu" tgrv kpi " vq" v wuv<sup>25</sup>" " Kp" cf f kxqp" vq  
gzgtekulpi " lwtkuf levkqp" qxgt" gzt tguu" v wuv. " ej cpegt { " y qwr f { " ko r tguu" cpf  
gzgtekug" lwtkuf levkqp" qxgt" eqput wekxg" v wuv" kp" egt v kpi" ukwcvkqpu0

Kp" uqo g" kpuvpegu. " c" r gtuqp" y qwr f " f kg" kpvucvq" tgn kpi " qp" c" r tqo kug  
d { " cp" j gk" qt" pgzv" qh" nkp" vj cv" j g" y qwr f " j qrf " vj g" r tqr gt v { " f gxqmkpi " qp" j ko  
hqt" vj g" dgpghk" qh" c" vj kf " r gtuqp" qt" eqpxg { " k" vq" uvej " r gtuqp<sup>26</sup>" " Uko kctn { . " c  
r gtuqp" o ki j v' r tqewt g" hqo " vj g" vguvqt" c" f gxkug" qt" dgs wguv" vj tqwi j  
hcfw wgpv" tgr tguvpcvkqpu" vj cv" j g" y qwr f " ectt { " qw" vj g" v wgr" r wtr qug" qh" vj g  
vgucvqt" cpf " cr r n { " vj g" f gxkug" qt" dgs wguv" hqt" vj g" dgpghk" qh" c" vj kf " r gtuqp<sup>27</sup>  
Kp" uvej " kpuvpegu. " ej cpegt { " y qwr f " gphqteg" vj g" qdrki cvkqp" d { " ko r tguukpi " c  
eqput wekxg" v wuv" qp" vj g" r wtr qt vgf " dgpghkect { <sup>28</sup>

Ki" uqo gqpg" f kgf " kpvucvq. " vj g" geengukvkecn" eqwt v' j cf " vj g" r qy gt" vq  
eqo r gn' c" f kxkdwkqp<sup>29</sup>" " Dw" h' vj g" vguvqt" f tchgf " c" y km" { gv" o cf g" pq  
f kur qukxqp" qh" vj g" tgukf wg" qh" j ku' r gtuqpcn" guvq. " vj g" gzgewqt" y cu" gpvkwgf " cv  
rcy " vq" vj g" uwtr nuu" qh" vj g" r gtuqpcn" guvq<sup>30</sup>: " " Wpf gt" uvej " ektewo vcpogu. " kv  
y cu" ej cpegt { . " cpf " qpn { " ej cpegt { . " vj cv" eqwr f " f getgg" vj g" gzgewqt" vq" dg" vj g  
v wvgg" hqt" vj g" pgzv" qh" nkp" cpf " vq" f kxkdwg" vj g" tgukf wg" qh" vj g" guvq" co qpi  
vj go <sup>31</sup>:

40" Eqmpkcn" Rtcevleg

Gctn { " kp" vj g" eqmpkcn" r gtkqf . " k" y cu" pqv' wpego o qp" hqt" vj g" eqmpkcu" vq  
r tqdcvg" y kmu" cpf " cf o kpvgt" guvq" rgi kurvkggn { " tvj gt" vj cp" lwf lekcm { <sup>32</sup>  
Rtqdcvg" lwtkuf levkqp" y qwr f " qhgp" dg" xguv f " kp" vj g" eqmpkcn" i qxgtpqtu" cpf  
vj gk" eqvpeknu" qt" vj g" I gpctcn" Eqwtv. <sup>33</sup> y j lej " y qwr f " qhgp" cev' cu" vj g" j ki j guv  
vkdwpcn" hqt" r tqdcvg" o cwgtu. " cpf " vj g" i qxgtpqt" qh" vj g" eqmp { " y cu" qhgp" o cf g  
vj g" oqtf kpct { o" qt" ouw tgo g" qtf kpct { <sup>34</sup> " vj g" i qxgtpqt" cu" qtf kpct { " y qwr f  
uqo gvko gu" f gngi cvg" vj ku" cwj qtkv { " vq" f gr wkgu" qt" ouwtqi cvgu- <sup>35</sup> " uvej " y cu

4240 DNCEMUVQP G. "supra" pqvq" 357. "cv", 65; =3" LQI P" P QTVQP "RQO GTQI . "VTGCVKUG" QP "GS WMI  
LWTKRTWF GP EG" E" 373. "cv" 428" \*7j "gf 03; 63 =4" UVQTI . "EQO O GP VCTIGU. "supra" pqvq" 34: . "E" 953. "cv" 356=  
E" 3522625. "cv" 86966: 0

4250 DNCEMUVQP G. "supra" pqvq" 357. "cv", ; 70  
4260 6" RQO GTQI . "supra" pqvq" 35: . "E" 3276. "cv" 3440  
4270 Id.  
4280 See" id.  
4290 See TQRGT" ( "Y J K/G. "supra" pqvq" 34: . "cv", 39; 70  
42: 0 4" UVQTI . "EQO O GP VCTIGU. "supra" pqvq" 34: . "E": 25. "cv" 3: ; 0  
42: 0 See" TQRGT" ( "Y J K/G. "supra" pqvq" 34: . "cv", 39; 7 =4" UVQTI . "EQO O GP VCTIGU. "supra" pqvq" 34: .  
E": 25. "cv" 3: ; 0  
4320 RQWPF. "supra" pqvq" 34: . "cv" 9; 0  
4330 Uko gu" ( "Dcu" { g. "Probate Court I. "supra" pqvq" 33: . "cv": 990  
4340 RQWPF. "supra" pqvq" 34: . "cv" 9; =Uko gu" ( "Dcu" { g. "Probate Court I. "supra" pqvq" 33: . "cv": 990  
4350 Uko gu" ( "Dcu" { g. "Probate Court I. "supra" pqvq" 33: . "cv": 990

vj g" ecug" kp" P gy " J co r uj ktg.<sup>436</sup> O cuucej wugwu.<sup>437</sup> Oct { rcpf .<sup>438</sup> P gy  
Lgtug{ .<sup>439</sup> cpf "P gy "[ qtn0<sup>3</sup>: ""kp"Xki lpkc<sup>43</sup>: "cpf "Eqppgevw.<sup>442</sup> "vj g"r qy gt  
y cu"gz gtekgf "d{ "vj g"l gpgtciEqwv0"kp"tj qf g"Krcpf . "vj g"lwtkuf levkqp"y cu  
cnuq"gz gtekgf "ngi kurvkgngf . "dw" d{ "vj g"lpf kxkf wcn"qy p"eqwpeku"kpungcf "qh  
vj g"ucvg"ngi kurvkg"dqf { 0<sup>43</sup>""C" hgy "qh"vj g"eqmpkgu."j qy gxgt. "kpenwf lpi  
P qt vj "Ectqrkpc.<sup>444</sup> Uqwj "Ectqrkpc.<sup>445</sup> cpf "I gqti kc.<sup>446</sup> xgugf "r tqdcvg"cpf  
cf o lpkntcvkxg" cwj qtkx{ "kp" vj gkt" gucdrikj gf " uwr gkqt" qt " lphgtkqt" eqwtu.

4360 RQWPF. "supra"pqvg"34; .cv9; 0

4370 kp"38; 3. "vj g"tq{ cni'ej ctvgt"r wv"vj g"r qy gt"qxgt"r tqdcvg" cpf "cf o lpkntcvkqp"kp"vj g"eqmp{  
i qxgtqat"y j q"cr r qkqvgf "lwtqi cvgu"q"r gthqto "vj lu"hwpevkp0"See"Y crgu"x0Y kmtf .<sup>44</sup>0 cuu0342."346  
\*3: 28+\*Rctugpu."E000"See also"Ugcp"O 0F wo r j { .<sup>43</sup>O CUU0RtCE0RtQDCVGNcy "( "RtCEV8G'E'30B  
\*4f"gf 03; ; 9-0

4380 Wpf gt"vj g"u{ ugo "kp"r rceg"kp"O ct { rcpf "kp"vj g"gtcnf "gki j vggpy "egpwt { . "Eqo o kuikqpgtu"qt  
F grgi cvgu"qh"vj g"i qxgtqat"y gtg"tgr qpuikng"ht"cnkpi "r tqdcvg0"See"Cev"qh3937."ej 05; .EE"4."4; \*O f 0=  
Uo kj ai"Ngugge"x0Uggrg."3"J 0( "O eJ 063; \*O f 0Rtqx03993-0"See also"RQWPF. "supra"pqvg"34; .cv9; 0

4390 P gy "lgtug{ "j cf "c"Rtgtqi cvkxg"Eqwv"j grf "d{ "vj g"r tqxlpekn"i qxgtqat"cu" qtf lpcct{ "y kj  
uwtqi cvgu"cr r qkqvgf "vj tqwi j qw"vj g"ucvg0"RQWPF. "supra"pqvg"34; .cv9; 0

43: 0 Id. "cv: 20" P gy "[ qtnif cf "c"Rtgtqi cvkxg"Eqwv"j grf "d{ "vj g"i qxgtqat"cu"qtf lpcct{ "qt"q"l grgi cvgf  
uwtqi cvgu"See"ln re"Dtlemu"Gucvg."37"Cdd0Rt034"\*P l 0Uwr 03: 84+Y guvqp"x0Y guvqp."36"laj pu'64:  
\*P l 0Uwr 03: 39-0"ku"lwtkuf levkqp."j qy gxgt. "y cu"pqu'v'gpv'kgrf "gzenvkxg<Vj g"Eqwv"qh"Eqo o qp"Rrgcu"j cf  
lwtkuf levkqp"q"r tqdcvg"y km"cpf "i tcpv"hwgtu"qh"cf o lpkntcvkqp"lp"tgo qvg"ctgeu"qh"vj g"ucvg"cpf "y j gte"vj g  
uk g"qh"vj g"ucvg"y cu'o lpkc cr0"See"ln re"Dtlemu"Gucvg."37"Cdd0Rt0cv'34=RQWPF. "supra"pqvg"34; .cv  
: 20

43: 0 Xki lpkc"ucvvg"r tqxkf gf <

Vj cv"vj g"uckf "I gpgtciEqwv"vj g"cm'cng"eqi plucpeg"qh"cpf "ctg"j gtd{ "f gerctgf "vq"j cxg"r qy gt  
cpf "lwtkuf levkqp"q"j gct"cpf "f gcto lpg."cm'ecwgu"o cvgtu"cpf "vj lpi u'y j cvuqgxgt. "tgrv'kpi "vq  
qt"eqpegtkpi "cp{ "r gtuqp"qt"r gtuqpu."geengukulecni"qt"ekxn"qt"vq"cp{ "r gtuqpu"qt"vj lpi u'qh  
y j cv'pcwtg"uq"gxgt"vj g"uco g"uj cni'dg."y j gvj gt"dtqwi j v'dghqte"vj go "d{ "qtki lpcni"r tqeguu  
cr r gcnl"tqo "cp{ "lphgtkqt"eqwv"qt"l{ "cp{ "qy gt"y c{ u'qt"o gepu"y j cvuqgxgt0

Cev"qh"Cuugo dnf . "ej 08"\*Xc0396: #0"See"Deci y gni"x0Gnikv."45"Xc03; 2"\*3: 46+\*pqv'kpi "vj g"i gpgtciEqwv  
gz gtekgf "cni"lwtkuf levkqp."kpenwf lpi "geengukulecni"lwtkuf levkqp="I qf y kp"x0"Nwpcp."lghf0: 8"\*Xc0 gp0  
3993+\*j qf lpi "vj g"l gpgtciEqwv"qh"Xki lpkc"r quugugf "i gpgtci"geengukulecni"lwtkuf levkqp="Ur keg" x0  
Rqr g."lghf065"\*Xc0 gp03958+\*pqv'kpi "vj g"l gpgtciEqwv"j cu"oc"vj tgg"hrf "lwtkuf levkqp."cu"c"eqwv"qh  
gs wkf . "c"eqwv"qh"rcy . "cpf "k'j cu"cnq"lwtkuf levkqp"qh"vugco gpvct{ "o cvgtu0-0

4420 See" Uvcvg" QH"EQPPGEV8EW" LWF8EKN" DTCPEJ " Y GDURG." RTQDCVG" EQWTV" J RVQTI .  
available at"j wr dly y y 0wf 8ncvg@0ulr tqdcvg"j knqt{ 0 vo n' \*rcu" xkukgf "Ugr v0 46."4223+lj gteglpchtg  
RTQDCVG"EQWTV"J RVQTI \_0

4430 See"Y knico u"x0J gtlcm"47"C032; ; .3323"\*T003; ; 5+\*pqv'kpi "Mpi "Ej ctnguo"ej ctvgt"i cxg  
geej "vqy p"eqwpekt"vj g"r qy gt"ocu"lwf i gu"qh"r tqdcvg."vq"cnvg"vj g"r tqdcvg"qh"y km"cpf "vugco gpvu"cpf  
i tcpv'cf o lpkntcvkqp."cpf "cni"qy gt"o cvgtu"tgrv'kpi "vj gtevg0-0"See also"RQWPF. "supra"pqvg"34; .cv: 20

4440 RQWPF. "supra"pqvg"34; .cv9; 0"See"Uko gu{ "Dcu{ g."Probate Court I."supra"pqvg"33; .cv: 9: 0  
Vj g"lwtkuf levkqp"y cu"eqpewtgpv"y kj "vj g"lphgtkqt"Eqwv"qh"Rrgcu"cpf "vj g"l wctvgt"Uguukqpu"y kj "cr r gcn  
gkj gt"vq"j g"Eqwv"qh"Ej cpegt{ "qt"vq"vj g"Uwr gkqt"Eqwv"RQWPF. "supra"pqvg"34; .cv: 2( "p00

4450 RQWPF. "supra"pqvg"34; .cv9; 0"See"Uko gu{ "Dcu{ g."Probate Court I."supra"pqvg"33; .cv: 9: 0

4460 RQWPF. "supra"pqvg"34; .cv9; 0"See"Uko gu{ "Dcu{ g."Probate Court I."supra"pqvg"33; .cv: 9: 0  
See also Vj G HCF GTCNKUVP Q0: 5"\*ngzcpf gt"J co knqpp+\*pqv'kpi "I gati k'j cf "qpn{ "eqo o qp"rcy "eqwtu0

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SOUTHERN CALIFORNIA LAW REVIEW

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y j krg" Rgppuf kpcpk<sup>447</sup>" cpf " F grcy ctg<sup>448</sup>" etgcvgf " Qtr j cpuø" Eqwtu" xgugf y kj "r tqdcvg"lwtkuf levkqp0

Vqy ctf "vj g'gpf "qh'vj g'eqmpkcn'r gtrkf . "xkt wcmf "cm'qh'vj g'eqmpkcu'vj cv j cf "pqv'ctgcf { "f qpg"uq" xgugf "r tqdcvg"cpf "cf o lpkntcvkqp"lwtkuf levkqp"lp uqo g"uqtv'qh"ur gekrkf gf "eqwtv'ugr ctcvg"htqo "vj gk"eqwtu"qh"gs wkvf "cpf eqo o qp"rcy (49)"P gy "J co r uj ktg.<sup>44</sup>: "O cucej wugwu.<sup>44</sup>; "cpf "Eqppgevw<sup>452</sup> f gxgnr gf "ur gekrkf gf "r tqdcvg"eqwtu0""Vj g"u{ ugo "d{ "y j kej "vj g'i qxgtpqt cr r qlpvf "uwtqi cvgu"lp" P gy "[ qtn<sup>453</sup>"cpf "P gy "Lgtug{<sup>454</sup>"t guwngf "lp"vj g

4470 RQWPF."supra"pqv'34; .cv'9; =Uko gu("Dcu{g."Probate Court I."supra pqv'33; .cv'; 9: 69; = Cev'qh'3935'E'3."3'U0Ncy u"; : =I qqf"x0I qqf.'9"Y cwu03; 7"Rc03: 5: =Crr0x0Ftgludcej .4"Ty rg 4: 9"Rc03: 52=O eRj gtuqp'x0Ewprkth"33'Ugti 0k "Tcy rg'644"Rc03: 46-0

4480 RQWPF."supra"pqv'355.cv'9; =Uko gu("Dcu{g."Probate Court I."supra"pqv'33; .cv'; 9: 69; 0

4490 P qpgvj grgu."lp"o cp{"lpucpegu"vj g"i gpgtcl'eqwtu"eqpwpvgf "vq"gzgtelug"uqo g"r tqdcvg lwtkuf levkqp'gxgp'y j g'g'ugr ctcvg'eqwtu'y g'g'etgcvgf 0"Uko gu("Dcu{g."Probate Court I."supra pqv'33; .cv'; 990

44: 0 D{"cev'qh'vj g'ngi kurwtg."r tqdcvg"eqwtu'y g'g' i kgp"gzenukxg"lwtkuf levkqp"qxgt"r tqdcvg"lp 39; ; 0"See Cev'qh'Hgd05."39; ; .Ncy u'qh'P 0 0"lp'39; 5."vj g'ucvg'eqpukswkqp'y cu'co gpf gf "vq"uq"ucvg0 See"P 0 0EQPUM0ct0: 2"ucvpi "vj cv'0k\_m'0 cwgtu'tgcvkpi "vq"vj g'r tqdcvg'qh'y kmu."cpf "i tcvkpi "rgvgtu qh'cf o lpkntcvkqp."uj cm'dg"gzgtelugf"d{"vj g'lwf i gu'qh'r tqdcvg0""Hqny lpi "vj ku'gctn' r tceveg'qh'vj g i qxgtpqt"cr r qlpvkpi "eqo o kulqpgtu'vq'r tqdcvg'y kmu."r tqdcvg'lwf i gu'lp" P gy "J co r uj ktg'eqpwpvgf "vq'dg cr r qlpvf "d{"vj g'i qxgtpqt0"Uko gu("Dcu{g."Probate Court I."supra"pqv'33; .cv'; : 20

44: 0 RQWPF."supra"pqv'34; .cv'9; =I ggti g"NOJ cunlpu."The Beginnings of Partible Inheritance in the American Colonies."in"GUUCI U'RP"VJ G'J RVQTI "QH'GCTN "COGTRECP"Ncy "426."42; "F cxlf "J 0 Hcj gtvf "gf 03; 8; =Uko gu("Dcu{g."Probate Court I."supra pqv'33; .cv'32240""Crr gen'htqo "vj gug r tqdcvg" lwf i gu" j qy gxgt." y cu' ukm' vq" vj g" i qxgtpqt" cpf " eqwpek0 " 43" UGCP" O0' F WORJ [ . O CUCEJ WUGVVU'RTCEVGE'UGTKU."RTQDCVG'NCY "CPF"RTCEVGE'E'3."3"34f "gf 03; ; 9+0"lp'39: 6."lp tgnkpeg"qp"e"r tqxkukqp"lp"vj g'39: 2"Eqpukswkqp."vj g'ngi kurwtg"gpcevgf "c"ucwng"r tqxk lpi "hqt"vj g cr r qlpv gpv'qh'lwf i gu'qh'r tqdcvg'eqwtu'y kj "cr r gen'vq"vj g'Uwr tgo g'lwf lekcn'Eqwtu0"See O CUOEQPVU0 ct0X""gucndkuj lpi "r tqdcvg'eqwtu'cpf "r tqxk lpi "vj cv'0cni000cr r gen'htqo "vj g'lwf i gu'qh'r tqdcvg."uj cm dg"j gctf "f gvt o kpgf "d{"vj g' i qxgtpqt"cpf "eqwpek"wpv'vj g'ngi kurwtg"uj cm'd{"rcy "o cng'q'vj gt r tqxkukqp0="Rvgtu"x0Rvgtu."84"O cuu0\*: "Ewuj 0""74; ."763664"\*3: 73="F WORJ [ ."supra"pqv'44; .cv' E'3080

4520 Vj G'HcFGTCNRU" P Q0: 5"\*Crgzcpf gt"J co knqp="RQWPF."supra"pqv'34; .cv'9; 0"lp'3888 Eqppgevw'htqf i gf "vj g'r tqdcvg"r qy gt"lp"eqwv' "eqwtu."dw'etgcvgf "ugr ctcvg"r tqdcvg'eqwtu'y kj lp"geej eqwv' "lp" 38; : 0 " lp" vj g" gctn' " gk j vggvj " egpwt{." Eqppgevw' etgcvgf " ugr ctcvg" r tqdcvg" f kntleu vj tqw j qw'vj g'ucvg0"lwf i g'H0Rcwi'Mwto c{."Connecticut's Probate Courts."S W P RICE"RTQD0'NLI0 59; .59; 6: 2"\*3; ; ; 40"Crr gen'htqo "vj g'r tqdcvg" f kntleu'y g'g'o cf g'vq"vj g'Uwr gtlqt'eqwtu0"See RQWPF. supra"pqv'34; .cv'9; 0

4530 lp'399: .vj g'r qy gt "qxgt"r tqdcvgu'cpf "cf o lpkntcvkqp"y cu'xgugf "d{"vj g'ngi kurwtg"gzenukxg' lp"e"ukpi ng"lwf i g'qh'vj g'Eqwtv'qh"Rtqdcvg."gs wcn'vq"vj cv'qh'vj g'eqmpkcn' i qxgtpqt"cu'lwf i g'qh'vj g Rtgtqi cvkxg"Eqwtv'vpf gt"r tlqt"r tceveg."dw'y kj qw'vj g'r qy gt"vq"cr r qlpv'uwttqi cvgu0"Cev'qh'O ct038. 399: .ej 034."3"Ncy U'QHP GY "[ QTM\*3: : 8-0"See generally"ln re'Dtkenu'Gucvg."37"Cdd0Rt034"\*P 0 Uwr 0E03: 84="Y guqp'x0Y guqp."36"Lqj pu'64: \*P [ 0Uwr 0E03: 39="I qqf tlej "x0Rgpf rvgp."6"Lqj pu0 Ej 076; \*P 0 0Ej 03: 42-0"lp'39: 9."vj g'ngi kurwtg"r cuugf "cp'cev'r tqxk lpi "vj cv'vj g'i qxgtpqt."y kj "vj g eqpugpv'qh'eqwpek"eqwv' "eqo o kulqpc"uwttqi cvg'hqt"geej "eqwv' "y kj "vj g'r qy gt"qxgt"r tqdcvg"cpf cf o lpkntcvkqp."cpf "r tqxk lpi "vj cv' cr r gen' eqwv' "dg" dtqwi j v' htqo "vj g' uwttqi cvgu"vq"vj g'Eqwtv'qh Rtqdcvgu0"Cev'qh'Hgd042."39: 9'ej 05: .4"Ncy U'QHP Q 0\*3: : 8-0"See generally"Brick's Estate."37"Cdd0 Rt0cv34="Goodrich."6"Lqj pu0Ej 0cv'76; 0"lp"vj g'r qu'eqmpkcn'gtc."vj g'r tceveg'qh'cr r qlpvkpi "uwttqi cvgu



f g x g m r o g p v q h u w t t q i c v g u e q w t w l p d q v q h v j q u g u c v g u y k j P g y L g t u g { c n q e t g c v k p i c u g r c t c v g q t r j c p u e q w t v c p f P g y [ q t n l c u g r c t c v g e q w t v q h r t q d c v g O O c t { r p f 455 g u c d r k j g f c u u g o q h u g r c t c v g q t r j c p u e q w t w O X k i l p k c 456 c p f P q t v j E c t q r k p c 457 x g u g f v j g k t e q w p v e q w t w y k j l w k u f l e v k p q x g t r t q d c v g O U q w j E c t q r k p c 458 e t g c v g f u g r c t c v g e q w t w q h q t f l p c t { c p f x g u g f v j g o y k j r t q d c v g l w k u f l e v k p q x g p w c m f I g q t i k c 459 f k c u y g m c n j q w i j p q v w p k i 39 ; 0 T j q f g K u r p f . 45 : j q y g x g t . o c k p c l p g f

y c u t g r r e g f l p o q u v r r e g u y k j r q r w r t g r e v k p u l p g c e j e q w p v O U o g u ( D c u { g . P r o b a t e C o u r t I . s u p r a p q v g 33 ; . c v ; : 20

4540 V j g 3998 u c v g e q p u k s w l k p e q p u k s w g f v j g i q x g t p q t c u v j g Q t f l p c t { q t U w t t q i c v g i g p g t e r O P O E Q P U V O q h 3998 . E X K K C N H T G F E O E N C R R ( F Q T Q V I I O D N C E M 9 C P G Y L G T U G R T C E V E G . Y K N U C P F C F O R K U M T C V I Q P E 3 ; 37 \* T x 0 5 f g f 0 3 ; : 6 + j g t g p c h g t E N C R R \_ y j q e q p v l p w g f v q c r r q l p v f g w l g u q t u w t t q i c v g u w p k i 39 : 6 . y j g p c p c e v y c u r c u g f f k g e v k p i v j g i q x g t p q t c u q t f l p c t { v q c r r q l p v q p g u w t t q i c v g l p g c e j e q w p v . c p f i k o k l p i v j g c w j q t k l q h v j g u w t t q i c v g v q v j g e q w p v l p y j l e j v j g u w t t q i c v g y c u r r q l p v g f v q u g t x g O C e v q h F g e O 3 7 . 39 : 6 . e j 0 3 ; . E 3 7 . R e w O N e y u 3 5 7 . 3 5 ; E N C R R . s u p r a p q v g 4 5 4 . E 3 ; 3 7 0 V j g 39 : 6 C e v c m q e t g c v g f v j g u g r c t c v g Q t r j c p a u e q w t w c p f i k o k g f v j g u w t t q i c v g u q i t e p v k p i r t q d c v g q h y k m c p f c f o l p k u g t k p i g u c v g u y j g t g v j g t g y c u p q f k u r w g q p e g c f k u r w g c t q u g . q p n v j g Q t r j c p u e q w t w c f l w f l e c v g f v j g f k u r w g O C e v q h F g e O 3 7 . 39 : 6 . e j 0 3 ; . E 3 7 . R e w O N e y u 3 5 7 . 3 5 ; I n r e Y j k g j g e f a r G u c v g ; 6 C O 9 ; 8 . 9 ; 9 6 ; : \* P O R t g t q i O E v O 3 ; 3 7 I n r e E q w t u g p a u Y k m 6 P O O G s O 6 2 : . 6 3 4 6 3 7 \* P O R t g t q i O E v O 3 : 6 5 4 0 V j g Q t r j c p a u e q w t w y c u x g u g f y k j d q v e j c p e g t { c p f r t g t q i c v k g l w k u f l e v k p . c p f y c u e t g c v g f v q t g o g f { f g h g e u l p v j g r q y q t q h v j g R t g t i c v k g e q w t w v j k j t g u r g e v v q v j g c e e q p v p d k i k l q h g z g e w q t u c f o l p k u t c v q t u . c p f i w c t f l e p u O Y q q f x O V c m o c p a u G z a u . 3 P O N O 3 7 5 \* P O 3 9 ; 5 4 0 V j g Q t r j c p a u e q w t w c f l w k u f l e v k p q x g t c n i f k u r w g u t g n v k p i v q y k m c f o l p k u t c v k p . c e e q w p v k p i O I d . C e v q h F g e O 3 7 . 39 : 6 . e j 0 3 ; . E 3 7 . R e w O N e y u 3 5 7 . 3 5 ; O C r r g e n l t q o v j g Q t r j c p a u e q w t w y c u v q v j g i q x g t p q t c u q t f l p c t { y k j t g u r g e v v q g t t q t u q h l c e v l w f l e k i n t x k g y c u c x c h c d r g . j q y g x g t . c u v q s w g u k p u q h i r y O W o o d . 3 P O N O c v 3 7 5 0

4550 C e v O q h H e d 0 3 9 9 9 . e j 0 : . 3 N C Y U Q H O C T I N C P F \* 3 9 ; ; U o g u ( D c u { g . P r o b a t e C o u r t I . s u p r a p q v g 3 3 ; . c v ; 9 ; 0 K p k k m f v j g Q t r j c p a u e q w t w j c f v j g r q y g t v q f k g e v c p { f k u r w g f k u u w g v q d g v l g f l p c r r e p c t { r t q e g f l p i c p f v q e c n l c l w { v q c u k u v k l p f g y g t o l p k p i c p { k u u w O S e e C e v q h H e d 0 3 9 9 9 . e j 0 . E ; . 3 N C Y U Q H O C T I N C P F \* 3 9 ; ; 4 0 K p 3 9 ; : v j g n e y y c u t g x k u g f v q t g s w l g v j c v c v j g t g s w g u q h c p { r c t v d g h t g v j g Q t r j c p u e q w t w c p k u u w d g v l g f l p c e q w t v q h l e q o o q p r e y O S e e C e v q h 3 9 ; : . e j 0 3 2 3 . 4 N C Y U Q H O C T I N C P F \* 3 9 Y k r i k o M k n f g f 0 3 : 2 2 4 0

4560 C e v q h 3 8 8 3 . C e v 8 6 . 4 N C Y U Q H X k i R K C ; 2 \* Y k r i k o Y c n g t J g p k p i g f 0 3 : 4 5 C e v q h 3 8 6 7 . C e v ; . 3 N C Y U Q H X k i R K C 5 2 4 6 2 5 \* Y k r i k o Y c n g t J g p k p i g f 0 3 : 4 5 C e v q h 3 9 3 3 . e j 0 4 . 6 N C Y U Q H X k i R K C 3 4 . 3 4 6 3 5 \* Y k r i k o Y c n g t J g p k p i g f 0 3 : 3 6 4 0

4570 C e v q h 3 9 ; . e j 0 5 2 : . E 3 . 3 N C Y U Q H V i G U v c v g Q H P Q T W I E C T Q N E C 8 3 3 . 8 3 3 6 3 4 \* J g p O R q w g t . I N O V c { n t . ( D w t v l c p e g { g f u 0 3 : 4 3 Y k r i k o u x O D c n g t . 6 P E O 6 2 3 \* P E O 3 : 3 9 4 0 Y j k g v j g u w r g t k q t e q w t w h q t c d t l g h r g t k q f q h v o g j c f q t k l p c n l w k u f l e v k p q x g t r t q d c v g . U o g u ( D c u { g . P r o b a t e C o u r t I . s u p r a p q v g 3 3 ; . c v ; : 3 . d { v j g g p f q h v j g e q u p l e n r g t k q f k u l w k u f l e v k p q x g t r t q d c v g y c u u t l e w f c r r g n e v g O C e v q h 3 9 9 9 . e j 0 4 . E E 8 4 . 8 5 0

4580 \ { n u c x O E q t r O q h E j c t g u a p . 3 U E O N O 3 D c { + 5 : 4 \* U E O E v O E q o O R i O I g p O U g u 0 3 9 ; 6 4 0 K p 3 9 4 3 . d g h t g x g u k p i v j g r t q d c v g r q y g t l p v j g E q w t w q h Q t f l p c t { . U q w j E c t q r k p c e q p l g t g f r t q d c v g l w k u f l e v k p v r q p l s e q w p v c p f r t g e k p e v e q w t w O U o g u ( D c u { g . P r o b a t e C o u r t I . s u p r a p q v g 3 3 ; . c v ; : 3 0 C n j q w i j v j g r t q d c v g q h y k m c u v q r g t u p c m { y c u g z e n w u k s g n l p v j g e q w t w q h q t f l p c t { . y j k g x e r k k l c u v q n p f u y c u l p v j g e q o o q p r e y e q w t w v j g r c t v l g u e q w f c i t g g v q j c x g d q v s w g u k p u v l g f l p c e q o o q p r e y e q w t w g y c t f x O J c t f . 3 U E O N O 3 D c { + 5 5 7 \* U E O E v O E q o O R i O I g p O U g u 0 3 9 ; 6 4 0

4590 S e e I C O E Q P U V O q h 3 9 ; : . c t O K K E 8 J c t t g n i x O J c o k n a p . 8 T c 0 5 9 . 5 : \* I c 0 3 : 6 ; 4 0 K p 3 9 9 : I g q t i k e e q p l g t g f v j k i l w k u f l e v k p q p k u u w r g t k q t e q w t w . c n j q w i j r t q d c v g r q y g t u y g t g c n q x g u g f l p c t g i k n g t q h r t q d c v g h q t g c e j e q w p v l p 3 9 9 9 0 U o g u ( D c u { g . P r o b a t e C o u r t I . s u p r a p q v g 3 3 ; . c v ; : 3 0

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r tqdcvg"lwtkuf levkqp"kp"ku"vy p"eqwpekku."c"r tcevek"vj cv'eqpvkpwgu"vq"vj g r tguvpg<sup>5</sup>:

Vj g"lphwpeg"qh"Gpi rcpf "cpf"vj g"geengukulecni'eqwtu"qp"eqmpkcn r tcevek"ku" gxf gp0 " Vj g" xgt{ " pco gu" qh" vj g" xctkwu" eqmpkcn' eqwtu t gur qpukdr"ht"r tqdcvg0 r tgtqi cxxg."uwtqi cvg."cpf"qtf kpc{0 uj qy " vj g lphwpeg" qh" vj g" Ej wtej " qh" Gpi rcpf 0<sup>62</sup>" Kpf ggf."o cp{"qh" vj g" g" eqwtu tgi ctf gf "vj go ugxgu"cu"geengukulecni'eqwtu.<sup>463</sup>cpf"vj g{"i gpgtcm{"cr r rkgf geengukulecni' rcy " cpf" hmqy gf" geengukulecni' r tgegf wcn' twgu<sup>64</sup> O qtgqxt."cv'rgcu'lp"vj g"gtcn' "uci gu'qh'eqmpkcn'f gxrqr o gpv."vj g"eqmpkcn eqwtu'qh'r tqdcvg"y gtg"o gtgn' "i kxgp"vj g"r qy gt "vq"r tqdcvg"y kmu'cpf "i tcvp cf o kpkutvkqp." hmqy kpi " vj g" Gpi rkuj " r tcevek" y kj " t gur gev" vq" vj g geengukulecni'eqwtu0T guqt v'j cf "vq"dg"o cf g"vq"vj g"gs wkv{"qt"eqo o qp"rcy eqwtu" vq" ugn' rcpf " vq" r c{" f gdu." vq" r ctvkqp" rcpf " kp" eqppgevqp" y kj f kwtkdwkqp." vq" eqpvgu' qt" vq" eqpuwtg" y kmu." qt" vq" cf lwf kecvg" eqpvguvf enclo u'ci kpuv'cp"guvcvg<sup>65</sup>

[ gv."y j kg"vj g"Gpi rkuj " o qf gn'lphwpegf "vj g"gtcn' "f gxrqr o gpv'qh WUOr tqdcvg"eqwtu."o kzgf "y kj "vj g"lphwpegu"y gtg"cwgo r w"vq"guvdrkuj ukpi rg" eqwtu" vj cv' r quuguf " vj g" eqo dlpf " r qy gtu" qh" vj g" Gpi rkuj geengukulecni'eqo o qp"rcy ."cpf"ej cpegt {"eqwtu<sup>66</sup>""Qpg"uwej "gzco r rg"ku vj g"Eqphf gtcvg"Eqpi tguu'gpcevo gpv'qh"Vj g"P qt vj y guv'Qtf kpcpeg"qh"39: 9. y j lej "cmqy gf "ht"y kmu'qh'tgn'guvcvg"tqecvgf "kp"vj g"P qt vj y guv'Vgttkqt { .<sup>467</sup>

45: 0 See"Cev'qh"O ct07."3885."CEVUCPF"NCY UQHTJ QFG"KNCPF"7""Lco gu"HCpmkp"gf0"3952=Cev'qh"lwpq."398: ."CEVUCPF"NCY UQHTJ QFG"KNCPF": ""Umqo qp"Uqwj y keni'gf0"3994-0"Vj g"l'cnuq j cf "vj g"r qy gt"vq"cr r qpvi wctf lcpu"See"Vmkpi j cu'x0J qndtqam"9"TO0452."46: 672"3: 84+"kuewulpi vj g"3964"cev0

45: 0 Vqf c{"vj g"vy p"eqwpekku"j cxg"vj g"qr vkqp"qh"cr r qpvlpi "c"rcy {gt"vq"ugtxg"cu"c"lwf i g"qh r tqdcvg0T(KOI GP0NCY U'EE: 6; 640: 6; 66"3; 78=Uko gu'("Dcu{g."Probate Court I."supra"pqv"33; .cv ; : 20

4620 See, e.g.."In re"Trqj ai"Gucvg."74"C0f": 33.: 37"\*P l0Rtgi tqi 0E\03; 69+"pqvpi "vj g"vgo 0Rtqi cxxg"Eqwtu"y cu"vj g"vsg"qh'qpg"qh"vj g"eqwtu'qh"vj g"Ctej dluj qr "qh'Ecpvgtwt {"cpf"vj cv 0qtf kpc{0"tghgtu" vq" qpg" y j q" gzgekugf " geengukulecni' lwtkuf levkqp" kp" vj g" Ej wtej " qh" Gpi rcpf = DNCMUNQPG."supra"pqv"357."cv'3298=T GO DCT."supra"pqv"343."cv'93=Y CNP G."supra"pqv"369."cv'3; = Uko gu'("Dcu{g."Probate Court I."supra"pqv"33; .cv; 8: 0

4630 See"Mcq"x0J ukc."746"C0f"92."95"p0"0 f 03; : 9=In re"Trqj ai"Gucvg"74"C0f"cv": 370"See also"Vj G"HGFGTCNRU" PQ0: 5"\*Cngzcpf gt"J co knqp+"f guetkdlpi "vj g"r tqdcvg"eqwtu"lp"P gy "[ qtni'cu 0cpcni qvu'lp'egt vlp'o cwtu'vq"vj g"ur kkswrleqwtu'lp"Gpi rcpf 0=0

4640 E.g.."Hpej "x0Hpej ."36"l c0'584."58868: ""f c0'3: 75=Ngy ku'x0O ctku."3"F cni'049: ."49; 6: 2 \*Rc039: : 0

4650 Uko gu'("Dcu{g."Probate Court I."supra"pqv"33; .cv; 9: 69; 0"See, e.g.."Cev'qh"Qex039: 7."ej 0 83."E'33."34"NCY UQHXRTI R IC"362."364"Y knko "Y cngt"J gplpi "gf 0'3: 45+"r tqxkf lpi "vj g"xctkfw'qh'c y kni'cf o kvgf "vq"r tqdcvg"eqwf"dg"ej cngpi gf "lp"ej cpegt {"vr "vq"ugxgp" { gctu'rvgt=0

4660 Uko gu'("Dcu{g."Probate Court I."supra"pqv"33; .cv; 990

4670 Vj g"0P qt vj y guv'Vgttkqt {"0"tghgtf "vq"vj g"ctgc" f k gev' "pqt vj y guv'qh"vj g"Qj kq"Tkgt0"See QTF R CPEGQH39: 9<Vj GP QT Vj Y GUV'VGTTKQTICNI QXGTPO GP V."r tgeco drg"lwn' "35."39: 9=0

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## A DISSECTION OF THE PROBATE EXCEPTION

373;

y kj "y g" ecxgc' v' cv' ōuwej "y km' dg" f wñ "r tqxgf .ō<sup>468</sup>" c" tglgevkqp" qh' v' j g Gpi rñkj "f kvkpevkqp" dgy ggp" r gtuqpcn' cpf "tgcñ' r tqr gt v' "y kj "tgur gev' vq" v' j g tgs wkt go gpv' qh' r tqdcvg<sup>0</sup> "kpf ggf . "v' j g' r tceveg" i tqy kpi "qaw' qh' v' j g" P qt v' y guv Qtf kpcepg" i cxg" o wej "o qtg" y gli j v' vq" v' j g' r tqdcvg" r tqeguu" y kj "tgur gev' vq f gxkugu" qh' rcpf =<sup>469</sup>" cpf "vqf c{ . "xkt wcmf "cm' ucvgu" r tqxkf g" v' j cv' y km' qh' rcpf . cu' y gm' cu' r gtuqpcn' r tqr gt v' . "o wuv' dg" cf o kwgf "vq" r tqdcvg" y kj "v' j g' r tqdcvg eqwtu" pqv "j cxlpi "lwtkuf levkqp" qxgt "dqj "v' j g' f gegf gpvū" rcpf "cpf "r gtuqpcn guvcv<sup>0</sup><sup>6</sup>:

50"Uwo o ct{

Hk' qpq' ceeqr w' v' j g" j kvqtkecn' i njuu" qp" Eqpi tguu' ucwvwt { "i tcpv' qh f kvgtukf "lwtkuf levkqp" vq" v' j g' hgf gtcñ' eqwtu" . "v' j g' cp{ v' j kpi "v' j cv' hgm' y kj kp" v' j g gzenwukxg" lwtkuf levkqp" qh" Gpi rcpf ōu" geengukucvecn' eqwtu" kp" 39: ; " hcmu qwukf g" v' j g' hgf gtcñ' eqwtu" i tcpv' qh' f kvgtukf { "lwtkuf levkqp<sup>0</sup> " Dgecwug" v' j g r tqdcvg" qh' y km' qh' r gtuqpcn' guvcv" cpf "cev' kvpu" vq" ug' v' cukf g" v' j g' uco g" cu' y gm cu' v' j g' cr' r qkpo gpv' cpf "tgo qxcñ' qh" c" f gegf gpvū" r gtuqpcn' tgr tguv' v' kxg. hgm' y kj kp" v' j g" gzenwukxg" lwtkuf levkqp" qh' v' j g" Dtkuj "geengukucvecn' eqwtu" kp 39: ; . "v' j g' tghwacñ' qh' hgf gtcñ' eqwtu" vq" wpf gt v' nge" gkj gt "qh' v' j g" gug' cev' kxkku" ku eqpukngpv' y kj "v' j g" j kvqtkecn' kvgr tgv' kvqp" qh' Eqpi tguu' ucwvwt { "i tcpv' qh f kvgtukf "lwtkuf levkqp<sup>0</sup> " Uko kvctñ . "v' j g" hcev' v' j cv' ej cpegt { . "cpf "cv' v' lo gu" v' j g eqwtu" qh' eqo o qp" ncy . "gzgtekugf "lwtkuf levkqp" qxgt "uwku" hqt "ngi celgu" cpf f gdu' kp" gli j vggpj /egpwt { "Gpi rcpf "ku' eqpukngpv' y kj "v' j g" o qf gtp" r tceveg. gpf qtugf "kp" Markham . "qh' cmqy kpi "hgf gtcñ' eqwtu" vq" ōgpv' g' v' clp" uwku" ðp h' xqt" qh' etgf kqtu" . ngi cv' guu . "cpf " j gktu' cpf " qv' j g" erko cpw' ci clpuv' c f gegf gpvū" guvcv<sup>0</sup><sup>46</sup>:

Hk' grk' vq" v' j g" j kvqtkecn' kvgr tgv' kvqp" qh' Eqpi tguu' ucwvwt { "i tcpv' qh uwdlgev' o cvgt "lwtkuf levkqp" vq" v' j g" hgf gtcñ' eqwtu" . "j qy gxgt . " eqo r gm' v' j g eqpenwukqp" v' j cv' v' j g" hgf gtcñ' eqwtu" j cxg" lwtkuf levkqp" vq" gpv' g' v' clp" ej cmgpi gu vq" v' j g' xcrkf kv' qh' y km' qh' tgcñ' r tqr gt v' . "ukpeg" v' j qug' hgm' y kj kp" v' j g" gzenwukxg lwtkuf levkqp" qh' Gpi rcpf ōu" eqo o qp" ncy "eqwtu" kp" 39: ; 0" Nkngy kug . "hgf gtcñ eqwtu" uj qwf "r quuguu" lwtkuf levkqp" qxgt "uwku" kv' xqk' kpi "v' wuu . "cu' v' j qug' hgm y kj kp" v' j g" gzenwukxg" lwtkuf levkqp" qh' ej cpegt { " kp" gli j vggpj /egpwt { Gpi rcpf<sup>0</sup> " O qtgqxt . " uwku" kv' xqk' kpi " cmgi cv' kvpu" qh' gz' v' kv' kule" ht cvf " kp qdv' clp' kpi " r tqdcvg" qh' c" y km' uj qwf " dg" cev' kvpcdrg" kp" hgf gtcñ' eqwtu r tqeggf kpi u<sup>0</sup> " Hkpcm . "hgf gtcñ' eqwtu" uj qwf " dg" cdrg" vq" cf o kv' kvgt" guvcv .

4680 *Id.* 'E'40

4690 NCY TGPEG' O 0HIFGFO CP . 'C' J kvqti "QHCo GTÆCP' NCY '46: "§4f 0gf 03: ; 7-0

46: 0 6"RQo GTQI . "supra pqg" 35: . "E'337: "cv' 693" p08-2 Uko gu' ( "Dcu' g. "Probate Court II." supra pqg" 342 . "cv' 3446450

46: 0 O ctñj co 'x0Cngp . "548" WLU06; 2 . '6; 6'3; 68-0



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i kxgp'vj cv'ej cpegt { "gz gtelugf "eqpewttgpv'lwtkuf levkqp"qxgt "cf o kpkmtcvkqp'kp Gpi rcpf "k"39: ; 0"Vj wu."gxgp"kh"qpg"ceegr u"vj g"vug"qh'j kvqtlecn'Gpi rkuj r tceveg"cu"i vlf g."vj g"ueqr g"qh'vj g'r tqdcvg"gzegr vkqp"ku"o wej "pcttqy gt vj cp"o cp {"eqwtu'cpf "eqo o gpvcvtu'j cxg'cuwo gf 0

D0'EQP UVKWWKQP CN'NKO K/CVKQP U'QP "UWDLGEV'O CVVGT'LWTKUF KEVKQP

Vj g"Uwr tgo g"Eqwtv'j cu'pqv'f kgevn { cf f tguugf "vj g"s wguvkqp"y j gj gt vj g'r tqdcvg"gzegr vkqp"ku"o gtgn { "c"i mpu"qp"Eqpi tguu'ucvwwt { "i tcpw"qh uwdlgev'o cvgt "lwtkuf levkqp"vq"vj g"hgf gtcn'eqwtu'qt"kh'k'ku"eqpukwwkqpcmf o cpf cvgf "d { "Ct vleg"KKO"Vj g"Eqwtu'f gekukpu"y kj "tgur gev'vq"dqj "vj g f qo guke"tgrvkpu"gzegr vkqp"vq"hgf gtcn'eqwtv'lwtkuf levkqpô vj g"qpn { "qvj gt ko r rkgf "gzegr vkqp"vq"hgf gtcn'eqwtv'lwtkuf levkqp<sup>472</sup>ô cu"y gm' cu"vj g"pqy / f ghwpv'Cev'qh"O ctej "4."3: 89"ô3: 89"Cevö+<sup>473</sup>"j gy xgt."rtqxkf g"utqpi uwr r qtv'ht"vj g"eqpenvkqp"vj cv'vj g'r tqdcvg"gzegr vkqp"ku"o gtgn { "c"ucvwwt { i mpu'cpf "ku'pqv'eqpukwwkqpcmf "o cpf cvgf 0

30"F qo guke"tgrvkpu'Gzegr vkqp

Kp"Ankenbrandt v. Richards."c"o qvj gt"dtqwi j v'uwk'qp"dgi crh'qh'j gt ej kf tgp" ci kpuv" j gt "gz/j wudepf" cpf " j ku" i krtkpgf ." uggmki " o qpgvct { f co ci gu'ht"cmgi gf "ugzwcn'cpf "r j { ukecn'cdwug"qh'vj g"ej kf tgp<sup>474</sup>"Vj g f kntkv'eqwtv'eqpenmf gf "vj cv'k'rcengf "uwdlgev'o cvgt "lwtkuf levkqp"qxgt"vj g uwk'dcugf"qp"vj g'f qo guke"tgrvkpu"gzegr vkqp"vq"fxgtukv { "lwtkuf levkqp."cpf vj g"eqwtv'qh'cr r genu'chtko gf <sup>475</sup>

Vj g"Uwr tgo g"Eqwtv'tglgev'f "vj g"cti wo gpv'vj cv'vj g'f qo guke"tgrvkpu gzegr vkqp"y cu'eqpukwwkqpcmf "o cpf cvgf <sup>476</sup>"Kp"uq"j qrf kpi ."vj g"Eqwtv'tgrkf qp" vj g"r rkp" rpi wci g"qh" Ct vleg"KK"È"4"qh" vj g" Eqpukwwkqp." y j lej ðeqpvkpu'pq'rk kcvkqp"qp"uwdlgeu"qh'c"f qo guke"tgrvkpu'pcwt.g.ô<sup>477</sup>"cpf eqpenmf gf "vj cv' vj g" ðf qo guke"tgrvkpu" gzegr vkqp"gzkuw"cu" c" o cvgt"qh ucvwwt { "eqpwtv'vkqp<sup>478</sup>"Ulpeg"vj g'f qo guke"tgrvkpu"gzegr vkqp"vq"hgf gtcn

4720 Cpj qp { "D0'Wmo cp."P qv."The Domestic Relations Exception to Diversity Jurisdiction.": 5 EQNWO0N0Tgx03: 46.'3: 62'3; ; 5-0

4730 Cev'qh'O ctej "4.'3: 89.'ej 03; 8.'36'Ucv077: 0

4740 726'WU08: ; .8; 3'3; ; 4-0

4750 Id."cv8; 40

4760 Id."cv8; ; 69220

4770 Id."cv8; 70"O qtgxgt."k'tgcupgf "vj cv'ulpeg"ks'j cf "r tgxkvwu' "hqwpf"vj cv'k'j cf "lwtkuf levkqp qxgt"cr r genu'htqo "vgtkvtlen'eqwtu'lpqxknp "f kxqteg."cpf "vj cv'k'j cf "w'j grf "vj g"gzgtelug"qh'qtki lpcn lwtkuf levkqp"d { "hgf gtcn'eqwtu'lp"vj g'F kntkv'qh'Eqmo dlc"qxgt"fxqteg"cev'kpu."vj g'r qy gt"vq"j gct"uwej ecugu'o wuv'dg'y kj kp"Ct vleg"KK"i tcpv'qh'uwdlgev'o cvgt "lwtkuf levkqp"Id."cv8; 86; 90

4780 Id."cv8; ; 69220"Kp"j ku'eqpewttkpi "qr kpkp."Lxuleg'Drcemo vp"gzr tguugf "ungr vkuo "cdqw'vj g o clqtk'at'eqpenvkqp."y tkkpi "vj cv<

eqwtv'lwtkuf levkqp. 'hknq'vj g'r tqdcvg'gzegr vkqp. 'ku'dcugf "qp'vj g'wpf gtucpf kpi  
vj cv'j knqtkecm{ "uwej "o cwgty'y gtg'xgugf "gzenwukxgn{ "kp'vj g'geengukunkecn  
eqwtu. 'k'y qwf "uggo "v'hqmty "vj cv'j g'r tqdcvg'gzegr vkqp "ku'hknqy kug'pqv  
eqpukwkwqpcmf "o cpf cvgf 0<sup>79</sup>

40'Cev'qh'3: 89

Ugevqap"33"qh'vj g'lwf lekt { "Cev'qh'39: ; "r tqxkf gf "vj g'hgf gtcn'ektewkv  
eqwtu<sup>47</sup>: "y kj "qtki kpcn'lwtkuf levkqp"qxgt "ouwku'qh'c'ekkn'pcwtg'cv'eqo o qp  
ney "qt'kp'gs wks{ "o'dgvy ggp"c'ekkl gp'qh'vj g'ucvg'lp'y j lej "vj g'uwk'ku'dtqwi j v  
cpf "c'ekkl gp'qh'cpqj gt'ucvg. "kh'vj g'co qwpv'lp'eqpvtqxgtu{ "gzeggf gf "hknq  
j wpf tgf "f qmctu<sup>7</sup>; "Rctcmgn'v'j ku'y cu'Ugevqap"34. "y j lej "r tqxkf gf "vj cv'khi'c  
r nckp'khi'htqo "qpg'ucvg'hknf "uwk'ci ckpuv'c'f ghgpf cpv'htqo "cpqj gt'ucvg'lp'c  
ucvg" eqwtv' mjecvgf " lp" vj g' r nckp'khi'htqo "j qo g' ucvg." cpf " vj g' co qwpv' lp  
eqpvtqxgtu{ "gzeggf gf " &722." vj g' f ghgpf cpv' eqwrf " tgo qxg" vj g' cevqap" vj  
hgf gtcn' eqwtv' r tqxkf gf " j g' hknf " c" r gwkqp" hqt" tgo qxcn' wr qp" j ku' hktuv  
crr gctcpeg'lp'ucvg'eqwtu<sup>82</sup>"Vj ku'u'vgo "qh'i kxkpi "vj g'r nckp'khi'vj g'qr vkqp

Nknq'vj g' f kxgtuks{ "ucwvg." vj g' hgf gtcn's wgnkqp" i tcv' qh' lwtkuf levkqp" lp' Ct'veng' hknq' qh' vj g'  
Eqpukwkwq' hio ku'vj g'lwf leknr' qy gt' lp' hgf gtcn's wgnkqp' ecugu'v' "Ecugu. 'lp' Ncy "cpf "Gs wks{ (b  
Ct'0' hknq' E'40" Cuwo kpi "vj ku' hio kcvkqp' crr nku'y kj "gs wcn' hqt'eg' lp' vj g' eqpukwkwqpcn' eqpvz' v' cu  
vj g' Eqwtv' hpf u' xqf c{ "vj cv' k' f qgu' lp' vj g' ucwvqt { "eqpvz' v' vj g' Eqwtv' f gekkqp' xqf c{ "ecuu  
i tcv' g' f qwdv' wr qp' Eqpi tguu' cdkkx{ "v' eqp' hgf gtcn's wgnkqp' lwtkuf levkqp' 000' qp' vj g' hgf gtcn'  
eqwtu' lp' cpf { "o cvgtu' lpxqkxpi " f kxqtegu. c' hio qp{ . 'cpf' 'ej' kf' ewuqf { 0

*Id.* 'cv937'p0 "Dreno wp. 10'eqpewt'kpi #0  
4790 See *Ankenbrandt*. 726'WLU'cv8; ; 6922=Qj kq'ex rel'Rqr qxlek'x0C' i ngt. '4: 2'WLU059; . '5: 56: 6  
'3; 52=Dctdgt'x0Dctdgt. '84'WLU'43'J qy 0#7: 4. '7; 36; 5'3: 7; #0

47: 0 J knqtkecm{. "vj g'hgf gtcn'ektewkv'eqwtu'y gtg'xgt { "f hknf gtpv'htqo "vj g'o qf gtp' hgf gtcn'ektewkv  
eqwtu'qh'crr gen0'Wpf gt' vj g'lwf lekt { "Cev'qh'39: ; "j gtg'y gtg'y q'ngxgn'qh'v'lcen'eqwtu'<vj g' f kntlev  
eqwtu' "qpg' hqt' gcej "ucvg'qt'c' r qt'vkqp' vj g' gqht: "gcej "y kj "ku'qy p' f kntlev'lwf i g. "cpf "vj g'ektewkv'eqwtu  
'qpg' hqt' gcej "tgi kqp'qh'vj g'eqwvt { +. "y j lej "mngf "lw' i gu'qh'vj g'ht' qy p'cpf "ucv'y leg' gcej " { gct'lp' gcej  
f kntlev'y kj lp' vj g'ektewkv. "y kj "r cpn' eqpukxpi "qh'v' q'lw' n'eqv'qh'vj g'Uwr tgo g'Eqwtv' y j q'y qwf "otk' g  
ektewkv' "cpf "c' f kntlev'eqwtu'lwf i g'htqo "y kj lp' vj g'ektewkv' "kp' cf f kxqp' "v' j c' xkpi "crr gmcv'lwtkuf levkqp  
qxgt'egt'v'cp' ecugu' t' hgf "lp' vj g' f kntlev'eqwtu. "vj g'ektewkv'eqwtu' j cf "eqpewt' gtpv'lwtkuf levkqp' y kj "vj g'ucvg  
eqwtu'qxgt' f kxgtuks{ "cevqap' y j gtg' vj g'co qwpv'lp'eqpvtqxgtu{ "gzeggf gf " &7220" See RQWP. "supra pqg  
34; . 'cv3256280'Y j knq'c' r cpn'qh'vj g'ektewkv'eqwtu' q' h' h'elcm{ "eqpukngf "qh'vj tgg'o go dgtu. "qpn' "y q'y gtg  
tgs wktgf "v' j gct'c' ecug. "uq' k'y qwf "pqv'dg' v' p'w'w'cn' hqt' c'ektewkv'eqwtu' v' q' dg'gs wcm{ "f kxkf gf 0" See *id.* 'cv  
3260

47: 0 See 'lwf lekt { 'Cev'qh'39: ; . 'ej 042. 'E'33. '3'Ucv'095'39: ; #0  
JV' j g'ektewkv'eqwtu'uj cml'j cxg'qtki kpcn'eqi p'k' cpeg. "eqpewt' gtpv' y kj "vj g'eqwtu'qh'vj g'ugxgcn  
Ucvu. "qh'cm'uwku'qh'c'ekkn'pcwtg'cv'eqo o qp'ney "qt'kp'gs wks{ . "y j gtg' vj g'o cvgt'lp' f kur wg  
gzeggf u'000'vj g' uwo "qt'xcnwg'qh'hknq'j wpf tgf "f qmctu. "cpf '000'vj g'uwk'ku'dgvy ggp'c'ekkl gp'qh  
vj g'Ucv' y j gtg' vj g'uwk'ku'dtqwi j v'cpf "c'ekkl gp'qh'cpqj gt'Ucv'g0

*Id.*  
4820 See *id.* 'E'340  
JKhi'c'uwk'dg'eqo o gpegf "lp'cp{ "ucvg'eqwtu'000d{ "c'ekkl gp'qh'vj g'ucvg'lp'y j lej "vj g'uwk'ku  
dtqwi j v'ci ckpuv'c'ekkl gp'qh'cpqj gt'ucvg. "cpf "vj g'o cvgt'lp' f kur wg'gzeggf u'vj g'chtguckf "uwo  
qt'xcnwg'qh'hknq'j wpf tgf "f qmctu'000'cpf "vj g' f ghgpf cpv' u'j cm' cv' vj g' wo g' qh' g'v'gt'kpi "j ku  
crr gctcpeg'lp'uwej "ucvg'eqwtu' hknq'c' r gwkqp' hqt' vj g' tgo qxcn'qh'vj g'ecwag' hqt' v'lcen'lp'v' vj g'  
pgz'v'ektewkv'eqwtu'000'vj g'ecwag' u'j cml' vj gtg' r tqeggf "lp" vj g' uco g' o c'ppgt' cu'kh' k' j cf "dggp  
dtqwi j v'j gtg'd{ "qtki kpcn' t'qeguo

qh'ej qqulpi "cv'yj g'qwwgv'y j gyj gt"vq"dtkpi "uwk'lp"ucvq"qt"hgf gtcn'eqwtv'cpf  
 yj gp"i kxkpi "yj g'qwwqh'ucvq"fggpf cpv'c"ulo krt"qr vkqp"kh'uwk'y cu"lpxkcmf  
 hkgf "lp"ucvq"eqwtv'y cu"mipi "dgrkxgf "vq"dg"cf gs wcvq"vq"rtqvev'qwwqh'ucvq  
 r nclp'vhu"cpf "f gggpf cpw'htqo "mqecn'ucvq"rtglwf legu<sup>83</sup>""Dww'dkwgt"etqu/  
 ucvq"cpko qukv "gpi gpf gtgf "d{"yj g'Ekkl'Y ct"ngf "Eqpi tguu"vq"dgrkxg"yj g  
 gzkwkpi " uej go g" f kf " pqv' cf gs wcvq" r tqvev' qwwqh'ucvq" rski cpw<sup>84</sup>  
 Ceeqtf kpi n. "Eqpi tguu'r cuugf "yj g'3: 89"Cev'y j lej "rtqxkf gf "yj cv'kh'cv'any  
 vko g'r tkqt "vq"yj g'hpcn'j gctkpi "qt"v'kcn'qh'c"uwk."yj g'qwwqh'ucvq"rtv' "j cf  
 tgcupq"vq"dgrkxg"yj cv'f wq"vq"rtglwf leg"qt"mqecn'kphm'wpeg. "lwuk'eg"eqwv'pqv  
 dg"qdv'kpgf "lp"ucvq"eqwtv."yj g'qwwqh'ucvq"rtv' "eqwv' tgo qxg"yj g'cev'vq  
 hgf gtcn'eqwtv<sup>85</sup>

Kp "Gaines v. Fuentes"yj g'Uwr tgo g'Eqwtv'eqpukf gtgf "yj g'ko r cev'qh'vj g  
 3: 89"Cev'qp"rtqdcvq"o cwgtu<sup>86</sup>""Ekk' gpu'qh'Nqwkulcpc"hgkf "c"r gvklqp"lp"c  
 Nqwkulcpc"ucvq"rtqdcvq"eqwtv'uggn'kpi "tgxqecv'kq"qh'c"fgtgg'qh'rtqdcvq'qh'c  
 y km'qp"yj g'i tqwpf "yj cv'yj g'v'uko qp{ "vr qp'y j lej "k'y cu'cf o kwgf "y cu'hcnug  
 cpf "kpuw'helekp<sup>87</sup>""Qpg"qh'vj g'f gegf gpv'j gktu."c"ekkl gp"qh'P gy "[ qtm  
 y cu'ugtxgf "yj g'r gvklqp"cpf "uwdugs wgpv' "uqwi j v'vq"tgo qxg"yj g'cev'vq  
 hgf gtcn'ek'evk'eqwtv'rtu'wcpv'vq"dqj "Ugev'kq"34"qh'vj g'39: ; "Cev'cu'y gm'cu  
 vq" yj g' 3: 89" Cev." dw' yj g' ucvq" eqwtv' f gpkgf " yj g' cr r'nek'v'apu" cpf  
 uwdugs wgpv' "tgxqngf "yj g'r tqdcvq'qh'vj g'y km<sup>88</sup>""Vj g'f gekulqp'y cu'chkt o gf  
 d{ "yj g'Nqwkulcpc"Uwr tgo g'Eqwtv<sup>89</sup>

Vj g' WUO' Uwr tgo g' Eqwtv' tgxgtugf <sup>88</sup>: " " Vj g' f ku'gpv' tgcupqgf " yj cv'  
 cnj qwi j "Ugev'kq"34."yj g'tgo qxcn'r tqxkukqp"qh'vj g'39: ; "Cev."tghgtgf "qpnf

*Id.*  
 4830 See'Ej leci q' " POY OT0Eq0x0Y j kvqp." 2"WLU\*35"Y cm0"492."4: ; \*3: 93-0  
 4840 See'I ckgu'x0Hwpgvu." 4"WLU32."3: \*3: 97-0  
 4850 Cev'qh'O ctej "4."3: 89."ej 03; 8."36"Ucv077: 0"Vj g'incwgf'ger'gtgf <  
 Vj cv'y j gtg'c"uwk'ku'pqy "r gpf kpi ."qt"o c{"j g'gchgt'dg'dtqwi j v'lp'cp{"Ucvq"eqwtv."lp"y j lej  
 yj g'g'ku'eqwtv'qxtu{"dgy ggp'c'ekkl gp'qh'vj g'Ucvq'lp'y j lej "yj g'uwk'ku'dtqwi j v'cpf "c'ekkl gp'qh  
 cpqy gt"Ucvq."cpf "yj g'o cwgt "lp"f kur wq'gzeggf u'vj g'owo "qh'hkg'j wpf tgf "f qmvtu."gzenuk'g'qh  
 equu."uwej "ekkl gp'qh'cpqy gt"Ucvq."y j gyj gt"j g'dg'r nclp'vhu"qt"fggpf cpv'kh'j g'y km'o cng'cpf  
 hkg."lp"uwej "Ucvq"eqwtv."cp'chhf cxk'inc'kpi "yj cv'j g'j cu'tgcupq"vq"cpf "f qgu'dgrkxg"yj cv'htqo  
 r tglwf leg"qt"mqecn'kphm'wpeg."j g'y km'pqv'dg'cdng'vq"qdv'kpl'lwuk'eg"lp"uwej "Ucvq"eqwtv."o c{."cv  
 cp{" "ko g'dghq'g'hpcn'j gctkpi "qt"v'kcn'qh'vj g'uwk."hkg"c"r gvklqp"lp"uwej "Ucvq"eqwtv'ht"yj g  
 tgo qxcn'qh'vj g'uwk'lp"vq"yj g'pgz'v'ekewk'eqwtv'qh'vj g'Wpkgf "Ucvq"vq"dg"j grf "lp"yj g'f kur'ev  
 y j gtg"yj g'uwk'ku'r gpf kpi ."cpf "qhtg"i qgf "cpf "uw'helekp'uwgv' "ht"j ku'gpv'kpi "lp"uwej  
 eqwtv000yj g'uwk'uj cml'vj gtg'r tqeggf "lp"vj g'uco g'o cpggt"cu'kh'k'j cf "dggp'dtqwi j v'vj gtg'd{  
 qtki kpcn'r tqegu0

*Id.*  
 4860 ; 4"WLU32"\*3: 97-0  
 4870 *Id.*"cv330  
 4880 *Id.*"cv336340  
 4890 *Id.*" "Cu"vq"dqj "cr r'nek'v'apu" yj g'ucvq"eqwtv' tgcupqgf "yj cv' yj g' hgf gtcn' eqwtv' y qwf "ncem  
 lw'kuf'ek'v'kq"qxgt"yj g'wld'gevo cwgt'qh'vj g'f kur wq0"See *id.*  
 48: 0 *Id.*"cv440

vq"dc"suit"000d{ "c"ekkl gp"qh"vj g"Ucvg"lp"y j lej "vj g'uwk'ku'dtqwi j v'ci ckpuv'c ekkl gp"qh"cpqj gt"Ucvg.ö"kw"j cf "vq"dg'tgcf "in pari materia"y kj "Ugevkqp"33. vj g"r tqxkukqp"xgukpi "vj g"ektewk'eqwtu"y kj "qtki kpcn'lwtkuf levkqp"qxgt "öcm suits of a civil nature, at common law or in equity"000dgy ggp"c"ekkl gp"qh vj g"Ucvg"y j gtg"vj g'uwk'ku'dtqwi j v'cpf "c"ekkl gp"qh"cpqj gt"Ucvg<sup>48</sup>: ""Y j gp tgcf "kp"eqplwpevkqp"y kj "vj g"r tqxkukqp"qh" Ugevkqp"34"r tqxkf kpi "vj cv" c tgo qxgf "cevkkp"y qwf "r tqeggf "lp"vj g"ektewk'eqwtv"lp"vj g'uco g'o cpgt"cu kh'k'j cf "dggp"dtqwi j v'vj gtg"d{ "qtki kpcn'r tqegu.ö"vj g'f kuugpv'eqpenf gf "qpnf vj qug"cevkkpu"vj cv'eqwf "j cxg"dggp"qtki kpcmf "dtqwi j v'lp"vj g"ektewk'eqwtv eqwf "dg"tgo qxgf "tqo "vj g"ucvg'eqwtv<sup>92</sup>"Ukpeg"vj g'r tqdcvg"qh'y km'f kf "pqv hcm'y kj lp"vj g"lwtkuf levkqp"qh"vj g"eqwtu"qh"rcy "qt"gs wkv "lp"Gpi rcpf . "vj g f kuugpv'tgcuqpgf "uwej "cp"cevkkp"eqwf "pqv"dg"tgo qxgf "vq"hgf gtcn'eqwtv. ukpeg'k'eqwf "pqv"dg"dtqwi j v'lp"hgf gtcn'eqwtv"cu"cp"qtki kpcn'o cwgt<sup>93</sup>

Vj g'o clqtkv "cr r gctgf "vq"ceegr v'vj ku"kvgr tgvkqp"qh"Ugevkqp"34."dw twrgf "vj cv'tgo qxcn'y qwf "pqpgvj gruu"dg"cr r tqr tkvg'wvf gt"vj g"3: 89"Cev<sup>94</sup> Vj g'o clqtkv{ "pqvgf "vj cv"vj g"ueqr g"qh"vj g"hgf gtcn' lwf lekcn'r qy gt" wvf gt Ct veng"kkk"ku"dtqcf gt"vj cp"vj g"ueqr g"qh"lwtkuf levkqp"lp"Ugevkqp"34"qh"vj g 39: ; "Cev."gzvvpf kpi "vq" öcontroversies dgwy ggp" ekkl gpu"qh" f khtgtpv Ucvgu<sup>495</sup>""Vj g'o clqtkv ö lp"cr r ctgpv'tgkcpvg"qp"vj g"dtqcf gt"rcpi wci g'qh vj g"3: 89"Cev"r tqxkf kpi "hqt"tgo qxcn'qh"cp{ "öuwk'000lp"y j lej "vj gtg"ku"c controversy"dgy ggp"c"ekkl gp"qh"vj g"Ucvg"lp"y j lej "vj g'uwk'ku'dtqwi j v'cpf "c ekkl gp"qh"cpqj gt"Ucvg<sup>496</sup>ö tgcuqpgf "vj cv"vj g"öcev'eqxgtgf "gxgt{ "r quukdng ecug"lpqxmkpi "eqpvtxgtukgu"dgy ggp"ekkl gpu"qh"vj g"Ucvg"y j gtg"vj g"uwk y cu'dtqwi j v'cpf "ekkl gpu"qh"qvj gt"Ucvg<sup>6</sup>""Vj g"Eqwtv'eqpenf gf "vj g"ueqr g qh"ecugu"vj cv'eqwf "dg"removed"vq"hgf gtcn'eqwtv'wvf gt"vj g"3: 89"Cev"y cu dtqcf gt"vj cp"vj g"ueqr g"qh"ecugu"vj cv'eqwf "j cxg"dggp"kpkkcmf "dtqwi j v'lp hgf gtcn'eqwtv'r wtuwcpv"vq"Ugevkqp"33"qh"vj g"39: ; "Cev<sup>97</sup>""Ceeqtf kpi n'."gxgp kh'c'uwk'y cu"pqv'qpg"cv'rcy "qt"lp"gs wkv . "uwej "cu"cp"cevkkp"vq"tgxqmg"r tqdcvg. k'eqwf "pqpgvj gruu"dg"tgo qxgf "vq"hgf gtcn'eqwtv'wvf gt"vj g"3: 89"Cev"Vj g f kuugpv." y j kg" f kuci tggkpi " y kj " vj g" eqputwvkqp" qh" vj g" 3: 89" Cev pqpgvj gruu"eqpegf gf "vj cv"Eqpi tgu"j cf "vj g"r qy gt" wvf gt" Ct veng"kkk" vq r tqxkf g'hqt"lwtkuf levkqp"qxgt"uwej "uwku<sup>98</sup>

48; 0 *Id.*"cv44645"öDtcf rgl . "l0"f kuugpv kpi -0

4920 *Id.*"cv456460

4930 *Id.*"cv466470

4940 *Id.*"cv3: 0

4950 *Id.*"cv39"ösqv kpi "WLUDEQP UV0ctv0kkk"É"4+0

4960 3: 89"Cev"supra"pqvg"4850

4970 *Gaines.*;" 4"WLUcv3: 6420

4980 *Id.*"cv48"öDtcf rgl . "l0"f kuugpv kpi -0

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SOUTHERN CALIFORNIA LAW REVIEW

]Xqr096-369;

Vj wu." dqj " vj g" o clqtkv " cpf " vj g" f kuugpv" ci tggf " Eqpi tguu" j cf " vj g eqpukwkwqpcn' cwj qtkv " vj " xguv" vj g" hgf gtcn' eqwtu" y kj " uwdlgev" o cwgt lwtkuf levkqp" qxgt " r tqdcvg/ tgrvvgf " o cwgtu. " cpf " kpf ggf " vj g" o clqtkv " vj qvi j v vj cv'Eqpi tguu" j cf " f qpg" uq " lp" vj g" 3: 89" Cev0" Vj gthqtg. " y j kg" vj g" 3: 89" Cev y cu'ugrf qo " lpxqngf " cpf " j cu'ukpeg" dggp " tgr gcrngf .<sup>499</sup> ku'ueqr g" cu'lpvgr tgvvf cpf " cr r tqxgf " d { " vj g" Eqwtv' kp " Gaines" r tqxkf gu" utqpi " uwr r qt v' hqt " vj g eqpenwukqp " vj cv' vj g" gzeqr vqp " ku" qpn " c" ucwvwt { " rko kcvkqp " tvj gt " vj cp" c eqpukwkwqpcn' lqpg0

KX0'F QEVTRP G'QH' CUSTODIA LEGIS

Eqwtu" j cxg" j grf " i gpgtcm { " vj cv' vj g" r tqdcvg" gzeqr vqp " f qgu" pqv' cr r n { vj " kvgt " xkxqu" v wuu" cpf " r quukdn { " pqv' vj " vguco gpvct { " v wuu" gkj gt0" Vj ku o gcpu" vj cv' c " hgf gtcn' eqwtv' pqv' qpn { " o c { " cf lwf kecvg" vj g" xcrkf kv { " qh' c" v wuv y j gt g" vj g" tgs vkt go gpw' qh' f kxgt ukv { " lwtkuf levkqp" ctg" ucwvkgf . " dw" o c { " cnuq cf o kvvgt " vj g" v wuv. " kpenw' kpi " qtf gt kpi " cp" ceeqwpv kpi . " tgo qxkpi " cpf cr r kvv kpi " v wuvgu. " cpf " f go cpf kpi " vj cv' hwpf u" dg" f kvtkdwgf 0<sup>9</sup>: " [ gv dgecvug" vj ku" ku" cp" gz gtekv " qh' f kxgt ukv { " lwtkuf levkqp. " ucvg" eqwtu. " y j gvj gt eqwtu" qh' r tqdcvg" qt " eqwtu" qh' i gpgtcm' lwtkuf levkqp. " y km' j cxg" eqpewtgpv lwtkuf levkqp" qxgt " uvej " cevkvpu. " tckukpi " vj g" r quukdkrv { " vj cv' y q" eqwtu0 qpg ucvg" cpf " qpg" hgf gtcn' y km' uko wncpgqwan { " cwgo r v' vj " cf o kvvgt " vj g" uco g v wuv0

Vj g" Uwr tgo g" Eqwtv' cf f tguugf " vj ku' ukwcvkqp " kp Princess Lida of Thurn & Taxis v. Thompson.<sup>49</sup>: " Vj g" ecug' f gcn' y kj " c" v wuv' et gcvvf " kp" 3; 28" hqt" vj g dpgghk' qh' Rt kpeguu" Nkf c" cpf " j gt " ej kf tgp" d { " j gt " gz/ j wudcpf 0<sup>2</sup>: " kp" 3; 32. vj g" gz/ j wudcpf " tgr wf kvvf " vj g" ci tgggo gpv0<sup>3</sup>: " Rt kpeguu" Nkf c. " j gt " ej kf tgp.

4990 kp" 3: 97. " Eqpi tguu" gpcevfg " c" eqo r tgi gpukvg" tgo qxcn' ucwvg. " see" Cev' qh' O ctej " 5. " 3: 97. " 3: Ucv0692. " dw" vj g" ucwvg" y cu' uwdugs wgpvnl " j grf " pqv' vj " tguekpf " vj g" Cev' qh' O ctej " 4. " 3: 890" See" J guu' x0 Tgl pqrn u. " 335" WLU095. " 9; 6: 2" \*3: : 7-0" kp" 3: : 9. " Eqpi tguu" r cuugf " { gv' cpqvj gt " eqo r tgi gpukvg" tgo qxcn ucwvg. " see" Cev' qh' O ctej " 5. " 3: : 9. " 46" Ucv0775. " cpf " y j kg" pqv' kvv kpi " vj " tgr gcn' vj g" Cev' qh' O ctej " 4. 3: 89. " see" 3: " EQP1 0TGE0\*3: : 9+\* tgr qtvkpi " ucvg" gpv' qh' Tgr tguugvkvxg" F cxkf " Ewdgtuqp" vj cv' 0j vj g' dkm f qgu' pqv' r tqr qug" vj " tgr gcn' vj g" cev' qh' 3: 890+ " vj g" 3: : 9" cev' f kf " j cxg" vj g" ghtgev' qh' rko kkp i " tgo qxcn' vj cevkvpu" vj cv' eqwf " qtki kpcn { " dg" dtqvi j v' kp" hgf gtcn' eqwtu0 " See" Ezej tcp ( " vj g" Hkf 0 ( " F gr qukv' Eq0' x0 O qpv qo gt { " Eqvkv. " 3: ; " WLU0482. " 48; \*3; 27-0

] Wpf gt " vj g" lwf lekt { " cev' qh' 39: ; " uvej " ecugu' y gt g' qpn { " rcdrg" vj " tgo qxcn' ltao " c" ucvg" vj " vj g Ektewk' Eqwtv' -zu" o ki j v000j cxg" dggp" dtqvi j v' dghqtg" vj g" Ektewk' Eqwtv' d { " qtki kpcn' r tqegu0 lcpf " kv' y cu' tvgf " vj cv' vj ku' y cu' qvj gty kv' wpf gt " vj g" cev' qh' O ctej " 4. " 3: 890

Dw" vj g" cev' qh' 3: : 9" tguvgtgf " vj g" tvwg' qh' 39: ; . " cpf . " cu' y g" j cxg" j gt g' qh' tgf " f gekf gf . " vj qug ukv' qpn { " ecp" dg' tgo qxgf " qh' y j lej " vj g" Ektewk' Eqwtv' ctg' i kxgp' qtki kpcn' lwtkuf levkqp0

Id. P qpgvj gnuu. " kv' y cu' pqv' wvkv' 3; 6: " vj cv' vj g' tki j v' vj " tgo qxg" c" ecug' f wv' vj " r tglwf leg' qt " r qecnl' p hvgpeg y cu' rko kpcvfg 0" See 4: " WLU0E'3663" \*3; 6: +0

49: 0 See supra " Rctv' RKO000

49: 0 527" WLU0678" \*3; 5; +0

4: 20 Id. " cv67967: 0

4: 30 Id. " cv7: 0

cpf "qpg"qh'v'j g't wuvgu'dtqwi j v'uwk'lp'v'j g'ucv'Eqwtv'qh'Ego o qp'Rrgcu'lp Rgppu' rkcpc'v'g'phqteg'v'j g't wu'v'4' "Chgt'c'j gctkpi . 'v'j g'ucv'eqwtv'gpv'gtf c'f getgg'uwu'cl'kpi "v'j g'ci tggo gpv'cpf "qtf gtlkpi "v'j g'gz/j wudcpf "v'j r gthqto ceeqtf kpi n'f'5' "Vj g' eqwtv' cr r tqxgf "c" o qf h'ecv'qp' qh'v'j g'ci tggo gpv'lp 3; 37. "cpf "lp'3; 47" wu'ko cvn' "gpv'gtf "lp'v'j g'tgeqtf "v'j cv'v'j g'f getgg'j cf "dggp uc'v'k'hg'f'6

Qp'Lwn' "9."3; 52. "v'j g't wuvgu' h'rgf "c" r ct'v'cn'cee'qwpv'qh'v'j g't wu'v'lp'v'j g uco g'eqwt'v'7' "Vj g' h'qmy kpi "f c{. "Rt'kegu'Nkf c"cpf "qpg"qh'j gt'ej k'f tgp h'rgf "c"uwk'lp'gs w'v' "lp' h'gf gtcn'f k'nt'ev'eqwtv'ci cl'p'v'v'j g'v'y q' r'x'kpi "t wuvgu cpf "v'j g'cf o k'p'k'v'c'q'qh'v'j g'f gegcugf "t wuvg. "cmgi kpi "o k'uo cpci go gpv'qh t wu'v' h'wp'f u' cpf " tgs w'g'v'kpi " v'j cv' v'j g' t wuvgu' dg' tgo q'x'gf " cpf " v'j cv' cm f gh'gp'f cpw'dg'o cf g'v'q'cee'qwpv'h'q' "cpf "tgr c{ "v'j g' r'q'ug'v'qh'v'j g' g'ucv'v'8' Vj g'f gh'gp'f cpw'cungf "v'j g'ucv'eqwtv'v'q'gpl'q'lp'v'j g'r r'cl'p'v'k'hu' h'q' "r w'v'w'kpi v'j g'k'erclo "lp' h'gf gtcn'eqwt'v'9' "Y j k'g'v'j cv'tgs w'g'v'y cu'r g'p'f kpi . "v'j g' h'gf gtcn eqwtv'go r q'ct'k' "gpl'q'lp'g'f "v'j g'f gh'gp'f cpw' h'q' "h'w'v'j gt'r t'q'ug'ew'kpi "v'j g'ucv' eqwtv'cev'k'p'f' : "P q'p'g'y g'rguu. "v'j g'Rgppu' rkcpc' "Uwr tgo g'Eqwtv'ch'k'o gf "cp q'f gt'qh'v'j g'ucv'eqwtv'gpl'q'lp'kpi "v'j g'r r'cl'p'v'k'hu' h'q' "h'w'v'j gt'r w'v'w'kpi "v'j g'k' h'gf gtcn'eqwtv'cev'k'p'f' :

Vj wu'v'j g'WU'Uwr tgo g'Eqwtv'y cu'oe'qpl't'q'p'v'g'f "y k'j "c"u'k'w'c'v'k'p'y j g'tg g'cej "qh'v'j g'eqwtv'erclo kpi "l'w'k'f'lev'k'p'j cu't'g'v'c'k'p'g'f "v'j g'r ct'v'ku'd'gh'q't'g'k'v' h'q' "r t'q'egg'f kpi "lp'v'j g'q'v'j g't'v'2' "Vj g'Eqwtv'j g'f "v'j cv'cn'j q'wi j "v'j g't wu'v' r'es y cu'w'p's w'g'v'k'p'cd'n' "y k'j k'p' "v'j g'ucv'eqwtv'v' l'w'k'f'lev'k'p' "y j g'p' "v'j g'cev'k'p y cu'dt'q'wi j v'v'q'eqo r g'n'v'j g'gz/j wudcpf v'v'eqo r r'k'p'eg'y k'j "v'j g'ci tggo gpv. l'w'k'f'lev'k'p'v'g'to k'p'cv'g'f "q'peg'v'j g'f getgg'lp'gs w'v' "j cf "dggp'uc'v'k'hg'f "d{ "v'j g'gz/j wudcpf'f'3' "K' v'j g'p' cf f t'g'ug'f "y j g'v'j g't "v'j g' u'w'd'ugs w'gp'v' h'k'k'pi "qh'v'j g' t wuvgu'v'cee'qwpv'i c'x'g'v'j g'ucv'eqwtv'l'w'k'f'lev'k'p'q'x'gt'v'j g't wu'v'cpf "k'i'v'q. v'j g'p'c'w't'g'cpf "g'z'v'p'v'qh'v'j cv'l'w'k'f'lev'k'p'f'4' "Vj g'Eqwtv'p'q'v'g'f "v'j cv'cu'c o c'w'gt'qh'ucv'g' r'ey . "v'j g'ucv'Eqwtv'qh'Ego o qp'Rrgcu'h'q't'v'j g'eqwp'v'lp y j lej "cp{ "t wuvg'k'u'q'ec'v'g'f "k'u'x'g'ug'f "y k'j "l'w'k'f'lev'k'p'q'x'gt'cp{ "o c'w'gt'v'j cv eq'p'eg't'p'u'v'j g'lp'v'gi t'k'v' "qh'v'j g't wu'v' r'es'f'5' "C'f f k'k'q'p'cm' . "v'j g'Eqwtv'ucv'g'f "v'j cv

4: 40 *Id.*4: 50 *Id.*4: 60 *Id.* "cv67; 04: 70 *Id.*4: 80 *Id.*4: 90 *Id.*4: : 0 *Id.* "cv68204: ; 0 *Id.*4: 20 *Id.* "cv68304: 30 *Id.*4: 40 *Id.* "cv68404: 50 *Id.* "cv6846850



lwtkuf levkqp "ku" kpxqngf "gkj gt "d{ "c" r gvkqp "d{ "c" twvvgg" qt "vr qp" cr r rdecvkqp qh' cp" kpvgtgugf " r gtuqp.<sup>4; 6</sup> cpf " vj cv' vj g" ucvg" eqwtv' ecppqv' ghgevkxgnf gztgekug" uvej "lwtkuf levkqp" y kj qw" j cxkpi "c" uwduepvcn' o gcuwtg" qh' eqpvtqn qxgt "vj g" twv' hwpf u0.<sup>7</sup>

Vj g" Eqwtv' eqpenwf gf "vj cv' kh' vj g" hgf gtcn' eqwtv' cevkqp" j cf "dggp" qpg" kp y j lej "vj g" r rckpvhhu" o gtnf "uqwi j v' cf lwf levkqp" qh' vj gk' tki j v' vq" r ctvekrcvg kp' vj g" res" qt "cu' vq" vj g" s wcpwo "qh' vj gk' kpvgtguv' kp' kv' vj g" hgf gtcn' cevkqp" eqwfr tqeggf 0: 8" 5] Y j gtg' vj g' lwf i o gpv' uqwi j v' ku' utkewf "kp" r gtuqpc . "dqj" vj g ucvg" eqwtv' cpf " vj g" hgf gtcn' eqwtv." j cxkpi " eqpewtgpv' lwtkuf levkqp." o c{ r tqeggf "y kj " vj g" hski cvkqp" cv' hgcuv' wv' kn' lwf i o gpv' ku' qd' cvkpgf "kp" qpg' qh' vj go y j lej "o c{ "dg' ug' v' w" cu' tgu' lwf levc" kp' vj g" qj gt 0: 4: 9" [ gv' 0kh' vj g' v' y q' uwkuc t g' kp' tgo . "qt" s wcu' kp' tgo . "uq" vj cv' vj g" eqwtv." qt "ku" qh' hegt. "j cu" r quuguukqp qt' o wuv' j cxg' eqpvtqn' qh' vj g' r tqr gt v' "y j lej "ku" vj g' uwdlgev' qh' vj g' hski cvkqp" kp qtf gt "vq" r tqeggf "y kj " vj g" ecwug" cpf "i tcv' vj g" tgrkgh' uqwi j v' vj g" lwtkuf levkqp qh' vj g" qpg' eqwtv' o wuv' { kgrf "vq" vj cv' qh' vj g" qj gt 0: 4: : "Ceeqtf kpi "vq" vj g" Eqwtv. y j gtg' dqj " r tqeggf kpi u' ctg' kp' tgo . "vj g" hktuv' qpg" cuuwo kpi "lwtkuf levkqp" j cf lwtkuf levkqp" qxgt "vj g" res 0: : " "Dgecwug" vj g" hgf gtcn' cevkqp" tgrcvgf "uqrgn' " vq cf o kpkutcvkqp" cpf "tguv' qtcvkqp" qh' vj g" eqtr wu. "ky cu' c' r tqeggf kpi "kp' tgo " cpf vj wu" j cf "vq" { kgrf "vq" vj g' r tg/ gzkukpi "ucvg" eqwtv' r tqeggf kpi u' y kj "tgr gev' vq vj g" uco g' res 0<sup>22</sup>

Vj ku" f qextkpg. " npqy p" cu" custodia legis." qt" vj g" f qextkpg" qh' r tkqt gzenwukxg" lwtkuf levkqp.<sup>523</sup> "ku" 0pqj kpi "o qtg' vj cp" c" r tcevecn' hktuv' eqo g. "hktuv ugtxg0' o gyj qf "qh' tguv' kpi "lwtkuf levkqp" n' f kur wgu' dgy ggp' v' y q' eqwtu' y kj eqpewtgpv' lwtkuf levkqp<sup>524</sup> vj cv' r t xgpv' vj g' r tqdrgo u' vj cv' eqwfr "ctkug' htqo kpeqpukv' qtf gt u' y kj "tgr gev' vq" vj g" uco g" r tqr gt v' 0" "kp" eqpukf gt kpi "vj g cr r rdecvkqp" qh' vj g" f qextkpg. "nyj gt" eqwtu' j cxg" kf gpv' hgf "ugxgtcn' grgo gpv vj cv' o wuv' dg' r tguv' v' dghqtg' vj g' f qextkpg" ecp" dg' kpxqngf "vq" f kxguv' vj g' hgf gtcn eqwtv' qh' lwtkuf levkqp 0

4; 60 Id. cv6850  
4; 70 Id. cv6890  
4; 80 Id. cv6886890  
4; 90 Id.  
4; : 0 Id. ekkpi "Rgpp0I gp0Ecu0Eq0x0Rgppu{ rckplc. "4; 6" WLU03: ; . "3; 7" \*3; 57+0  
4; ; 0 Id.  
5220 Id. cv6890  
5230 E.g. "Gur cv' x0Gur cv' 78" HDUv' r 04f "3599." 35: 3" O (F 0Hr03; ; ; -0  
5240 DNCEMU' NCY "F EKVQP CT [ . "supra" pqv 33. "cv5: 6" ekkpi "Eqcucn' Rtqf 0' Etf k' Cuup" x0Qkn Uetgy 0Uc' pvgg. 0' 73" D0T0323: . "3242" \*UF 0I c03; ; 7+0

Hktuv."yj g"ucvq"eqwtv'cevqpp"o wuv'j cxg"dggp"hkrgf "dghqtg"vj g"hgf gtcn eqwtv'cevqpp.<sup>525</sup>y j gj gt "d{ "xktwg'qh'c'ur gekkhe'cevqpp'hkrgf "kp"vj g"ucvq"eqwtv y kj "tgi ctf "vq"vj g'cf o lpkntcevqpp"qh'vj g'twuv'vj cv'ku'r gpf lpi <sup>526</sup>cv'vj g'vko g vj g'hgf gtcn'uwk'ku'hkrgf. "uwej "cu'cp'ceeqpwpkpi .<sup>527</sup>qt"dgecvug'cu'c"o cvwt'qh ucvg'rcy "vj g"ucvq"eqwtv'gzgtekugf "eqpvkwpkpi "lwtkuf levkqp"qxgt"vj g"eqtr wu'qh c"twuv'qpeg"ku"lwtkuf levkqp"j cu" dggp"lpxqngf <sup>528</sup>" "Ugeqpf. " y g f qextkpg"qpnf "cr r nkgu'kh'dqj "cevqppu'ctg"kp"tgo "qt"swcuk'kp"tgo <sup>529</sup>"Vj wu. gxgp" kh" vj g" ucvg" eqwtv' gzgtekugu" eqpvkwpkpi " lwtkuf levkqp" qxgt" vj g cf o lpkntcevqpp"qh'vj g'twuv'vj g'f qextkpg'qh'custodia legis'r qugu'pq'dct"vq"vj g hgf gtcn'eqwtv'gpvtv'kpkpi. "uc{. "c'uwk'hq'f co ci gu'd{ "vj g'twuv'dgpghektkgu ci ckpuv' vj g' twuv'gu'r gtuqpcmf <sup>52</sup>: " " Vj kf. " vj g'ucvq"eqwtv' o wuv'j cxg" vj g r qy gt "vq'cf lwf'kecvg'cni'qh'vj g'erclo u'gh'gevkxgn <sup>52</sup>: " " Vj ku"o gcpu'vj cv'kh'qpg qh'vj g'erclo u'tckugf "kp"vj g'hgf gtcn'r tqeggf lpi "rcmu'qwukf g"vj g'lwtkuf levkqp qh'vj g'ucvq"eqwtv'lp"y j lej "vj g'r tg/gzku'kpi "cevqpp"ku'r gpf lpi. "vj g'f qextkpg y qwf" pqv' dct" vj g' hgf gtcn' eqwtv' hqo " gzgtekupi " lwtkuf levkqp" qxgt" vj g erclo <sup>532</sup>"C'hy "eqwtv'j cxg"j grf "vj g'f qextkpg'cr r nkgu'qpnf "kh'cu'c"o cvwt'qh ucvg'rcy. "vj g'ur gekrkf gf "ucvq"eqwtv'lp"y j lej "vj g'r tkqt"cevqpp"y cu'hkrgf "j cf

5250 See Tglej o cp" x0'Rkwudwi j "P cvar' Dcpm" 687" Hdf " 38." 3: " 5f" Ek0'3; 94=" Uej qnrpf "x0 Uej qnrpf. "P q0Ek05; 9EX77: \*CJ P +;3; ; 9'Y N'8; 7739.'cv, 4\*F 0Eapp0Qev045.'3; ; 9="Npecvgt'x0 O gtej cpur'P cvar'Dcpm'974'HDUwr 0': 8.'; : "Y (F 0Ctn03; ; 2+.'rev'd.'; 83"Hdf '935"\* vj "Ek03; ; 4=" Detpgu'x0Dtcpf tw. '728'HDUwr 0'5; 8.'5; ; 6622\*UF P Q 03; ; 3+0'Gxgp'kh'vj g'ucvq"eqwtv'cevqpp'ku'hkrgf uvdugs wgv'vq"vj g'hgf gtcn'eqwtv'cevqpp."j qy gxgt. "kv'j cu'dggp'wui i gungf "vj cv'vj g'hgf gtcn'eqwtv' o c{ "j cxg f ketg'vq"v'f'kuo ku'vj g'cevqpp'kp'hc'qt'qh'vj g'ucvq"eqwtv'0"See"J qn'x0'Y gtdg.'3; : "Hdf"; 32.'; 37"\* vj Ek03; 74+0

5260 Vj wu."vj g'o gtg'icev'vj cv'ceeqpwpkpi u'j cxg'r tgxkxwnf "dggp'hkrgf "cpf"cr r tqxgf "kp"ucvq"eqwtv r tqeggf lpi u'f qgu'pqv'o gcp"vj cv'vj qug'r tqeggf lpi u'j cxg'dggp'htuv'hkrgf. "cu'vj qug'r tqeggf lpi u'vgo kpcvg ppeg'vj g'eqwtv'cr r tqxgu'vj g'ceeqpwpkpi u0"See"Barnes."728'HDUwr 0'cv"6230"See also"Holt."3; : "Hdf"cv ; 37638"\*ucvpi " vj cv'f qextkpg" f qgu'pqv'cr r n' "kh' vj g'r tkqt"ucvq"eqwtv'cevqpp"y cu'f'kuo ku'gf "y kj qwr r tglwf'leg'dghqtg"vj g'hgf gtcn'cevqpp"y cu'hkrgf +0

5270 See"Y gkpi ctvgp'x0Y cttgp.'975'HDUwr 0'6; 3.'6; 7\*UF P Q 03; ; 2+0

5280 See id.=Barnes."728'HDUwr 0'cv'622623="Tqwungcw'x0Wpksgf "Ucvgu'Vtwuv'Eq0qh'P Q 0'644'HD Uwr 0'669.'67: "UF P Q 03; 98+0

5290 See Uctt'x0Twr r.'643'Hdf "; ; .3226628"\*8j "Ek03; 92+0

52: 0 See"O ctv' "x0Dtcvp."488'HDUwr 0'356.'35: "GF 0Rc03; 89+0"See also"Holt."3; : "Hdf"cv; 370 Vj g'twrg'ku'qj gty kug'kp'cevqppu'wv'levn' "kp"r gtuqppo "0000P qt" f qgu'vj g'twrg'000'cr r n' "y j gtg vj g'r wtr qug'qh'vj g'cevqpp'kp"vj g'ugeqpf "eqwtv'ku'o gtrn' "vq'gucdrkuj "vj g'tki j v'qt"kpvtg'uv'qh'vj g r n'kp'vkh'kp"r tqr gtv' "y kj kp"vj g'r quugukqp"qt"eqpv'qn'qh'vj g'htuv'eqwtv"uq'npqi "cu'vj g'ugeqpf eqwtv'f qgu'pqv'lpv'gthgtg"y kj "vj g'r tqeggf lpi u'lp"vj g'htuv'eqwtv'qt"y kj "vj g'eqpv'qn'qh'vj g r tqr gtv' "kp'ku'evwqf { 0

Id. 52: 0 See"Uej qnrpf "x0Uej qnrpf."P q0Ek05; 9EX77: \*CJ P +;3; ; 9'Y N'8; 7739.'cv, 4\*F 0Eapp0 Qev045.'3; ; 9="Barnes."728'HDUwr 0'cv'5; ; 66220

5320 See Cntq'v'kpcnku'x0'Dwtqwi j u."484'HDUwr 0'; 3: .; 43647"\*F 0'0 f 0'3; 89+0"vj qf lpi "vj cv f qextkpg" f qgu'pqv'cr r n' "y j gtg"vj g'ucvq"r tqdcvg'eqwtv' y kj "lwtkuf levkqp"qxgt"vj g'qpi qkpi "cf o lpkntcevqpp qh'vj g'twuv'v' qwf "pqv'j cxg'lwtkuf levkqp"qxgt'cp'cevqpp."cu'uwej "cp'cevqpp"ku'eqo o kwgf "vq"vj g'ucvq"eqwtv' u qh'gs'vks{ +0



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lwtkuf levkqp"gzenukxg"qh"vj g"ucvq"eqwtu"qh"i gpgtcrnlwtkuf levkqp<sup>533</sup>""Qvj gt eqwtu" j cxg" j grf " vj ku" j cu" pq" ghgev" qp" vj g" f qevtkpgu" cr r rncdrlkv<sup>534</sup> Hlpcmf .y j krg"vj g" f qevtkpg"y qwf "pqv"cr r gct"vq"det" c"r ctv<sup>535</sup>"ltqo "tgo qxkpi uvej "c"r tqeggf kpi "ltqo "ucvq"eqwtv"vq" hgf gtcn'eqwtv.<sup>535</sup>qpg"eqwtv"j cu" f gplgf lwtkuf levkqp"qxgt" c"tgo qxgf "ecug"y j gtg"vj g"ucvq"eqwtv"j cf "crt gcf { "kuwgf "c vgo r qtct { "tguwcklpi "qtf gt"qp"vj g"r tqr gtv<sup>536</sup>"cvkuwgdghgtg"vj g"vko gnl "pqvkg qh'tgo qxcnj cf "dggp"hrkf <sup>536</sup>

X0'RTWF GP VKCN'CDUVGP VKQP

Y j krg" vj g" r tqdcvg" gzeqr vkqp" gzenmf gu" o quv" r tqdcvg" cpf " r tqdcvg/ tgrcvf "o cwgtu"ltqo "hgf gtcn'eqwtv."uqo g"cti wcdnl "r tqdcvg/tgrcvf "o cwgtu. uvej "cu"vj qug"lpxqkpi "t wuu"qt"ctkupi "wpf gt" hgf gtcn'ucwvgu."y qwf "uwm uggo "vq" hcmly kj kp"vj g" hgf gtcn'eqwtv"uowlgev"o cwgt "lwtkuf levkqp0" [ gv'gxgp kh" c"erko "uwtxkgu"vj g" r tqdcvg" gzeqr vkqp" r tqr gt. "k'ku" hct "ltqo "egtckp" vj cv vj g" hgf gtcn'eqwtv"y kn'cf lwf kecvg"vj g"erko 0" Hqt "o]g xgp"y j gtg" c" r ctvewrt r tqdcvg/rkng"ecug"ku" hqwpf "vq"dg"qwwkf g"vj g"ueqr g"qh"vj g" r tqdcvg" gzeqr vkqp. vj g" f kurtkv" eqwtv" o c{. " kp" ku" f kuetgkqp." f gerkpg" vq" gztelug" ku lwtkuf levkqp.<sup>537</sup> r ctvewrtnl "hqt" o cwgtu" vj cv" ctg" oqp" vj g" xgti go" qh" vj g r tqdcvg" gzeqr vkqp<sup>538</sup> " Vj ku" ku" dgecvug" vj g" hgf gtcn' eqwtu" j cxg" cv" vj gkt f kur qucni" cxtkv<sup>539</sup> "qh"cdungpvkqp" f qevtkpgu" kpenf kpi "Pullman.<sup>539</sup> Burford.<sup>53:</sup> Thibodaux.<sup>53:</sup> Younger.<sup>542</sup> Colorado" River.<sup>543</sup> Brillhart-Wilton.<sup>544</sup> cu"y gm

5330 See Schonland."3; ; 9"Y N"8; 7739"cv", 4"j qrf kpi "vj cv"vj g" f qevtkpg"ku" kpcr r rncdng" dgecvug wpf gt"ucvq"re"y "vj g" r tqdcvg"eqwtu"j cxg"eqpewtgpv"tc"vj gt"vj cp"gzenukxg+lwtkuf levkqp"qxgt"t wuu"y kj vj g"qtf kpt { "eqwtu"qh"gs vks { +=Barnes."728"HDUwr r 0'cv'623624" f kuki vki kpi "Princess Lida"ltqo "vj g kpuv'ecug" dgecvug"lp"Rtkegu" Nkf c"vj g"ucvq" r tqdcvg"eqwtv"lwtkuf levkqp"y cu"gzenukxg."y j gtcu"vj g ucvg" r tqdcvg"eqwtv" lwtkuf levkqp" kp" vj g" kpuv'ecug" ku" eqpewtgpv" y kj " vj g" ucvg" eqwtu" qh" i gpgtcrnlwtkuf levkqp+0

5340 See "Dgcej "x0'Tqo g"Vtwu"Eq0"48; "Hdf"589."593694"\*4f "Ek0'3; 7; ="Tqwugcw"x0'Wpksf Ucvgu"Vtwu"Eq0qhpP Q 0'644"HDUwr r 0669.'67: \*UF P Q 03; 98+0

5350 E.g.. "Schonland."3; ; 9"Y N"8; 7739"cv", 36, 40

5360 See "In re"Vj qo cu" ("Ci pgu"Ectxgn"Hqwpf 0'58"HDUwr r 0'f "366.'36; 673"UF P Q 03; ; 3+0

5370 Tleg"x0'Tleg"Hqwpf 0'832"HDf "693.'699"9j "Ek0'3; 9; +ucvki "vj cv"vj g"ueqr g"qh"vj g" r tqdcvg gzeqr vkqp" f qgu"pqv" pgeguactkl " f gkpg"vj g" ctgc" kp"y j lej " vj g" gztelug" qh" hgf gtcn' lwf lekn' r qy gt" ku cr r tqr tkvg+0

5380 Rj knk u" P k gt. "Dgplco lp." Mko (" "Demqp"x0'Tqepvkn"6; 2"HDf "72; ."738"\*4f "Ek0'3; 95+ "cuugt kpi "vj cv"vj g" ku" r ctvewrtnl "utqpi "tgcup" hqt"cdungpvkqp"kp"ecug"y j lej . "vj qvi j "pqv"y kj kp"vj g gzeqr vkqp" hqt" o cwgtu" qh" r tqdcvg" cpf" cf o kpkv'ekqp"qt" o cvtko qp { "cpf" ewuqf { "cev'kpu" ctg" qp" vj g xgti g. "ulpeg" rkn"vj qug"y kj kp"vj g" gzeqr vkqp." vj g { "telug"kuwgu" -kp"y j lej " vj g" ucvgu" j cxg" cp" gur geknl utqpi "kpgt gu"cpf "c"y gm' f gxgr f "eqo r gvpeg" hqt" f gcrpi "y kj "vj go o+0" Accord" Egnpvcqp" x0' Hwtg. 824"HDUwr r 0999.'9: 36; 4"UF P Q 03; ; 7+0

5390 T0'Ego o o qh'Vgzcu"x0'Rwm cp"Eq0'534" WLU6; 8.'6; : 6723"3; 63+0

53: 0 Dwt hqt "x0'Uwp" QklEq0'53; "WLU537.'538656"3; 65+0

53: 0 Nkwukpc"Rqy gt" (" Nki j vEq0x0'Vj kdqf cvz.'582" WLU47.'4; 653"3; 7; +0

5420 [ qwpi gt"x0'J ctku.'623" WLU59"3; 93+0

5430 Eqmctcf q"Tkgt"Y cvgt"Eqpugtckvqp" F kn'x0'Wpksf "Ucvgu.'646" WLU: 22.: 3563; "3; 98+0

cu"vj g"Rooker-Feldman<sup>545</sup>"f qevtkpg"cpf "vj g"r tkpek r g"vj cv'gs wkw "ecp"qpnf  
of q"lwvleg"eqo r rvgvlf o'cpf "pqvöd{ "j cixgu<sup>546</sup>"Gcej "qh'vj gug"fqevtkpgu"j cu  
f kgevlf "qt"lpf kgevlf "dggp"cf f tguugf. "cpf "kp"uqo g"ecugu"cr r rkgf. "d{ "vj g  
hgf gtcn'eqwtw"lp"eqpukf gt kpi "r tqdcvg/tgrcvf "erko u"hcmlpi "qwuikf g"qh'vj g  
r tqdcvg"gzegr vkp0"Vj ku"Ugevkqp"dtlghf "f guetkdg"gej "qh'vj gug"fqevtkpgu.  
cpf "gzco kpgu"vj g" o cppgt"cpf "gzvqv"vq"y j lej "vj g" hgf gtcn' eqwtw"j cxg  
cr r rkgf "vj go "vq"r tqdcvg/tgrcvf "erko u0

C0"PULLMAN"CDUVGP VKQP

Pullman"cdugpvkqp"r tqxkf gu"vj cv'y j gtg" c"uwk"r t gugpvu"cp"wpugwrgf  
s wguvkqp"qh'ucv"rcy "cpf "c"i kxgp"kpvt r tgvvkqp"qh'vj cv'ucv"rcy "y qwr  
cmqy "vj g"eqwtv"q"cxqkf "tgej kpi "c" hgf gtcn'eqpukwvkqpcn's wguvkqp"tckugf "kp  
vj g"uwk"vj g" hgf gtcn'f kutev'eqwtv"uj qwr "uwur gpf "vj g" hgf gtcn'eqwtv'cevkkp  
cpf "cmqy "vj g"r ctvku"vq"tguvkg"vj g"wpugwrgf "s wguvkqp"qh'ucv"rcy "kp"ucv  
eqwt<sup>547</sup>"Vj wu"y j gtg"vj g"xcrkf k{ "qh'c"ucv"ucvwwg"ku'ej cmgpi gf "qp" hgf gtcn  
eqpukwvkqpcn"i tqwpu" cpf "vj g" o gcpkpi "qh'vj g" ucvwwg" ku" uwkkgpvl  
wpgtckp"vj cv"pcttqy "kpvt r tgvvkqp"qh'k'd{ "vj g"ucv"eqwtw"eqwrf "cxqkf  
tgej kpi "vj g"eqpukwvkqpcn's wguvkqp."Pullman"cdugpvkqp"ku'y ctcpvqf <sup>548</sup>"K  
ku"rkngy kug"y ctcpvqf "kh'c"uwk"cmgi gu"vj cv'vj g" f ghgpf cpw"eqpf wev'xkqrvgf  
vj g" WUO"eqpukwvkqp"cu"y gm"cu" c"r tqxkukqp"qh'ucv"rcy <sup>549</sup>"O qtgqxtg.  
Pullman"cdugpvkqp"cr r rkgu"exgp"y j gp"uwk"ku'dtqwi j v'r wuvcv'vq'E3; : 50<sup>4</sup>:  
Dw' y j gtg"vj g" ucv"rcy " dgkpi " ej cmgpi gf " ku" uwkkgpvl " erct." qt "vj g  
r rkpwhh" qr w" vq" ej cmgpi g" vj g" f ghgpf cpw" eqpf wev' qpnf " qp" hgf gtcn  
eqpukwvkqpcn"i tqwpu" rkgcxkpi "qw'ucv"rcy "erko u:" Pullman"cdugpvkqp  
f qgu"pqv"cr r rkg <sup>54</sup>: "Pullman"cdugpvkqp"ku"rkngy kug"lpcr r rkecdng"y j gtg"qpnf  
pqp/eqpukwvkqpcn' hgf gtcn' kuwgu."uwej "cu"vj g" kpvt r tgvvkqp"qh'c" hgf gtcn  
ucvwwg." ecp" dg" cxqkf gf <sup>52</sup>" Cnj qwi j " v'r kcmf " kpxqngf " kp" uwku" hqt

5440 Y knqp"x0Ugxp"Hcmi"Eq0"737"WUO499."4: 464: : "3; ; 7="Dtknj ctv'x0Gzegui"ku0Eq0'qh  
Co 0'538"WUO6: 3.'6; 66; 9\*3; 64+0  
5450 F kutev'qh"Eqno dlc"Eqwtv'qh"Cr r gcm'x0Hgf o cp."682"WUO684.'6: 46: 9\*3; : 5="Tqqngt"x0  
Hf gk{ "VtwvEq0'485"WUO635.'636638\*3; 45+0  
5460 See Icenuqp"x0WUOP cvniDcpm"375"HDUwr 0326."33963: "F 0Qt03; 79+\*ekkpi "Y cvgt o cp"x0  
Epcn'Nqwkpcp"Dcpni( "VtwvEq0'437"WUO55.'68\*3; 2; +0  
5470 See"TOT0Eqo o p"qh'Vgzcu'x0Rwmo cp"Eq0'534"WUO6; 8.'6; : 6723\*3; 63+0  
5480 See"Htptku'x0Tki i g"VqqnEq0'622"WUO63.'66\*3; 92+0  
5490 See Pullman."534"WUOcv'6; : 0"See also"Ukgt"x0Nqwkukmg(" P cuj xkng"TOT0Eq0'435"WUO  
397\*3; 2; +0  
54: 0 See"Cungy "x0J cti tcxg.'623"WUO698.'69969: \*3; 93+0  
54; 0 Compare Y kaequlp'x0Equpcvkpgcw'622"WUO655.'65; \*3; 93+:"with id."cv'662665"Dwti gt.  
E(0T kuugvpi +0  
5520 See"Rtqr r gt'x0Erntm'559"WUO694.'6; 2\*3; 6; +0

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SOUTHERN CALIFORNIA LAW REVIEW

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klpwexg"tgrgh"kw'ecp"cnq"dg"tckugf"lp"uwku"y j gtg"o qpg{ "f co ci gu"ctg uqwi j v<sup>53</sup>

Wpf gt "Pullman" cdugpvkqp." vj g" hgf gtcn' eqwtv' f qgu" pqv' wuwcm<sup>554</sup> f kuo ku'vj g'r tqeggf lpi u."dw'tc'vj gt'uc{ u'vj go "r gpf lpi "vj g'qweqo g'qh'vj g r tqeggf lpi u'lp'ucv'eqwtv<sup>555</sup>"Y j kg'vj g' hgf gtcn'eqwtv'r rclpvkh'ku'tgs wktgf "vq kphqto "vj g'ucv'eqwtv'qh'vj g' hgf gtcn'eqpukwkwqpcn'ej cmgpi gu'r gpf lpi "lp'vj g hgf gtcn'eqwtv'r tqeggf lpi u'uj'vj cv'vj g'ucv'eqwtv'ecp"kp'vgr tgv'vj g'ucv'g'rey cv'kuuw'lp'rki j v'qh'vj g'eqpukwkwqpcn'ej cmgpi g.<sup>556</sup>vj g'r rclpvkh'j cu'vj g'tki j v vq"tgwtp"vq" hgf gtcn'eqwtv'chgt "vj g'ucv'eqwtv'j cu'tguqrgf "vj g'ucv'g'rey s wguv'kqp "vq" j cxg"vj g' eqpukwkwqpcn' s wguv'kpu" tguqrgf "lp" hgf gtcn' eqwtv. wprgu'vj g'r rclpvkh'xqnpvctkn' "uwdo ku'vj g'eqpukwkwqpcn'ercko u'vq'vj g'ucv'g eqwtv<sup>557</sup>

Cnj qwi j "eqwtu'j cxg"eqpukf gtgf "Pullman"cdugpvkqp"lp'vj g'eqpvz'v'qh r tqdcv'g'tgrcv'gf "r tqeggf lpi u."vj g' "j cxg" dggp"tgrw'ecp'v'vq" cr r n' "k'lp" vj g r tqdcv'g' eqpvz'v' Wuwcm{ " vj ku' ku' dgecv'wg" uw'ej " ercko u' f q" pqv' v' l'ecm{ kpxqrg" wpuv'w'gf " s wguv'kpu"qh'ucv'g" rey "eqwr r'gf " y kj " vj g" r quukdk'v' "qh cxqkf lpi "c' hgf gtcn'eqpukwkwqpcn's wguv'kqp<sup>558</sup>

D0'THIBODAUX'CPF 'BURFORD CDUGP VKQP

Thibodaux" cdugpvkqp" ku' cr r rkecdrg" y j gtg" vj g" uwk' tckugu" f hhevw s wguv'kpu'qh'ucv'g"reyy "dgetlpi "qp"uwduv'p'kcn'r wdike"r qnle{ "o cvgtu'vj cv'ctg o qtg"lo r qtv'cp'vj cp"vj g'tguw'qh'vj g'ecug"dghqg"vj g'eqwtv<sup>559</sup>"Vj wu."hqt gzco r rg."c"uwk'ej cmgpi lpi "c"o wplek'c'k'v'au'cwj qtkv' "vq"gzgtekug"go kpgpv f qo clp'cu'c"o cvgt'qh'ucv'g"reyy "tckugu"c"s wguv'kqp'qh'uw'hh'ekgp'v'r wdike"lo r qtv vq"l'uwk'h{ "Thibodaux" cdugpvkqp.<sup>555</sup>: "dw"cdugpvkqp" cr r gct u"vq" dg"l'uwk'hgf qpn' "y j gtg"vj g'kuuw'qh'ucv'g"reyy "ku'wpergct<sup>555</sup>: "Eqwtu'vj cv'j cxg"eqpukf gtgf

5530 E.g., "Formaris."622"WLU'cv'63666=Wpksf "I cu'Rkr g'Npg"Eq0'x0'K'gcn'Ego gpv'Eq0'58; "WLU 356."357658"<sup>3</sup>; 84+0

5540 Kp'uo g'lpucpegu."c"ucv'eqwtv'y km'tghug"vq" f gelf g"vj g'kuuw'qh'ucv'g"reyy "uq"npi "cu"vj g hgf gtcn'eqwtv'ku'r gpf lpi 0"Kp"vj qug'ekewo ucpegu."vj g' hgf gtcn'f kntle'v'eqwtv'o wuv'f kuo ku'vj g'ecug."dw y kj qw'r tglw'leg."cpf "vj g'r rclpvkh'ku'htgg"vq"tgwtp"vq" hgf gtcn'eqwtv'chgt"vj g'ucv'eqwtv'r tqeggf lpi u j cxg'eqpen'f gf 0"See"J cttku'Eqwpv' "Eqo o au'x0O qqtg."642"WLU099.'9: "<sup>3</sup>; 97+0

5550 See Pullman."534"WLU'cv'7236240

5560 See"l qxw'(" 'Ekxle"Go r nq' ggu'Qti 0Eqo o 0x0Y lpf uqt."575"WLU0586.'588"<sup>3</sup>; 79+0

5570 See"Cpi n'pf "x0Nqwk'k'cpc"Uev'g'Df 0qh'O gf 0Gzco au."597"WLU0633.'657"<sup>3</sup>; 86+<sup>3</sup>F qwi reu."L0 eqpewt'kpi +0

5580 Dgti gtqp"x0Nqgd."999"HHf'9; 4.'9; : "p0"<sup>3</sup>uv'Ek0'3; : 7="E'g'g'p'v'cpq"x0Hwtg."824"HD'Uwr r 0 999.'9: 3"<sup>3</sup>UF (P (I 03; : 7="O ctv' "x0Dtcw."488"HD'Uwr r 0356."35; "<sup>3</sup>GF 0Rc03; 89+0

5590 See Eqm'tef q"Tk'gt"Y cvgt"Eqpugt'x'cv'kqp" F kn'0'x0'Wpksf "Ucv'gu."646"WLU: 22." : 36"<sup>3</sup>; 98+<sup>3</sup>cklpi "Nqwk'k'cpc"Rqy gt'(" Nki j v'Eq0'x0'Vj kdqf cvz."582"WLU047"<sup>3</sup>; 7; +0

55: 0 See Thibodaux."582"WLU'cv'64666"<sup>3</sup>Dtgp'p'c."L0'f'kuuw'k'p' +0

55: 0 See Cngi j gp' "Eqwpv' "x0H'c'p'm'IO cuj w'f'c'Eq0'582"WLU03: 7.'3: : 6; 2"<sup>3</sup>; 7; +0

*Thibodaux*" cduvgp vkpp" kp" r t q d c v g / t g r v g f " r t q e g g f k p i u " j c x g " h q w p f " k v k p c r r i e c d n g . " g k j g t " d g e c w u g " v j g t g " k u " p q " f k h l e w n " s w g u k q p " q h " u c v g " r c y . <sup>562</sup> q t d g e c w u g " p q " k u u v g " t c p u e g p f u " v j g " k o r q t v c p e g " q h " v j g " e c u g <sup>563</sup> " " k p f g g f . " q p g e q w t v j c u j g r f " v j c v c p { " e c u g " t c k u k p i " f k h l e w n " k u u v g u " q h " u c v g " r c y " d g c t k p i " q p r q i e { " r t q d r g o u " q h " u w d u c p v k r i " r w d i e " k o r q t v " y q w f " r k n g n { " k p x q n g " v j g r t q d c v g " g z e g r v k p p " c p f " k h " k " f k f " p q v . " k " r t q d c d n { " y q w f " p q v " s w c r k h { " h q t *Thibodaux*" c d u v g p v k p p <sup>564</sup>

*Burford*" c d u v g p v k p p " k u " t g r v g f " v j " d w " f k u k p e v " h t q o " *Thibodaux* c d u v g p v k p p " W p r i k n g " *Thibodaux*" c d u v g p v k p p . " h q t " *Burford*" c d u v g p v k p p " v j " c r r n { v j g " s w g u k q p " q h " u c v g " r c y " p g g f " p q v " k u g r h " d g " f g v g t o k p c v k g " q h " u c v g " r q i e { \* r k n g " c " f g v g t o k p c v k p p " q h " v j g " u e q r g " q h " c " e k v { a u " g o k p g p v f q o c k p " r q y g t u - " c p f v j w u " v j g " t g u q n w k p p " q h " v j g " u r g e k h e " s w g u k q p " d g h q t g " v j g " e q w t v " p g g f " p q v t c p u e g p f " v j g " t g u w n " k p " v j g " e c u g " d g h q t g " v j g " e q w t v <sup>565</sup> " " T c v j g t . " v j g " s w g u k q p " k u y j g v j g t " v j g " x g t { " c e v " q h " c " h g f g t c n " e q w t v " c f l w f k e c v k p i " c " e c u g " y q w f " k u g r h " k p u q o " g " y c { " d g " o f k u t w r v k x g " q h " u c v g " g h h q t u " v j " g u c d r k u j " c " e q j g t g p v " r q i e { " y k j t g u r g e v " v j " c " o c w g t " q h " u w d u c p v k r i " r w d i e " e q p e g t p o <sup>566</sup>

*Burford v. Sun Oil Co* 0 y c u " c " e j c m g p i g " v j " g " i t c p v k p i " q h " h q w " r g t o k u d { " c " u c v g " t g i w r v q t { " e q o o k u k q p " v j " f t k n " q k n " y g m u <sup>567</sup> " " D g e c w u g " v j g " u c v g d g r i k x g f " v j c v " v j g " t g i w r v k p p " q h " p c w t c n " t g u q w t e g u " u w e j " c u " q k n " e q w f " p q v g h h g e v k x g n { " d g " c e e q o r r k u j g f " r k e g o g c n " d w " j c f " v j " d g " e g p v c r k { g f " v j " d g g h h g e v k x g . " k v j c f " x g u v g f " c " u k p i n g " u c v g " f k u t l e v " e q w t v " y k j " c w j q t k v { " v j " t g x l g y v j g " e q o o k u k q p u " f g e k u k p u " h q t " o t g c u q p c d r g p g u u . o " y j k e j " y c u " k u g r h " u w d l g e v v j " t g x l g y " d { " c " u k p i n g " e q w t v " q h " c r r g e n " c p f " w n k o c v g n { " v j g " u c v g " u w r t g o g e q w t v " " V j w u " v j g " u c v g " c x q k f g f " v j g " r t q d r g o " q h " j c x k p i " e q p h r e v k p i f g v g t o k p c v k p u " d { " k p f k k f w c n f k u t l e v " c p f " c r r g m r v g " e q w t v " c e t q u u " v j g " u c v g <sup>568</sup> Y j k n g " v j g " f g v g t o k p c v k p p " q h " y j g v j g t " k " y c u " t g c u q p c d r g " v j " k u u v g " c p { " i k x g p r g t o k v " y q w f " p q v " r k n g n { " j c x g " c " t c p u e g p f g p v " g h h g e v " q p " v j g " u c v g . " v j g " x g t { h c e v " q h " h g f g t c n " e q w t v " f g v g t o k p k p i " v j g " t g c u q p c d r g p g u u " q h " v j g " k u u c p e g " q h r g t o k u " o y j g t g " v j g " u c v g " j c f " g u c d r k u j g f " k u " q y p " g r e d q t c v g " t g x l g y " u f u g o h q t " f g e r k p i " y k j " v j g " i g a n q i k e c n " e q o r r g z k k g u " q h " q k n " c p f " i c u " h g r f u . " y q w f j c x g " j c f " c p " k o r g t o k u k d n { " f k u t w r v k x g " g h h g e v " q p " u c v g " r q i e { " h q t " v j g o c p c i g o g p v " q h " v j q u g " h g r f u <sup>569</sup> " " W p r i k n g " *Pullman*" c d u v g p v k p p . " v j g " *Burford*

5620 See *Dgcej* "x0Tqo g"VtuvwEq0'48; "Hdf"589.'596'4f'Ek03; 7; =Martz.'488'HDUwr r0cv35; 0

5630 *Martz*.'488'HDUwr r0cv35; 0

5640 See "Ugc {"x0'Fqfi g."Pq0'; 7" E"5865."3; ; 7" Y N"779583."cv', 9" \*P (F 0' k0' Ugr 0'3; . "3; ; 7+ \*f guetkdkpi "*Thibodaux*" c d u v g p v k p p " y k j q w f k g e v f " e k k p i " *Thibodaux* +0

5650 See "*Colorado River Water Conservation Dist.*."646" WLUcv": 366370

5660 See "*id.*."cv": 360

5670 53; "WLU537."539"3; 65+0

5680 *Id.*."cv5486490

5690 *Colorado River Water Conservation Dist.*."646" WLUcv": 370

cdungpvkqp'r rclp'khh'j cu'pq'tki j v'vq'tgwtv'vq'hgf gtcn'f kxt'lev'eqwt v'vq'j cxg'j gt hgf gtcn'er'cko u'cf lwf kecvgf . 'dw'ku'kpuygcf 'gp'kmgf 'qpn' 'vq'tgxlgy 'kp'c'hgf gtcn eqwtv'd{ 'y c{ 'qh'c'y tkv'qh'egtvktctkd{ 'vj g'WLUUw tgo g'Eqwtv'6:

Vj gtg'ctg'c'pwo dgt'qh'rko kcvkpu'qp'vj g'wug'qh'Burford'cdungpvkqp0 Hktu.'y j krg'pqv'cp'gZR nek'rko kcvkqp. 'vj g'Uwr tgo g'Eqwtv'j cu'eqpukf gtgf 'vj g f qe'v'kpg' qpn' 'kp' vj g' eqpvzv' qh' ucvg/tgi wrcvgf " kpf wmtkgu'6: " " Ugeqpf . Burford'cdungpvkqp'ecp'dg'wugf "qpn' "y j gp'vj gtg'ku'c'f k'k'eww'wpegtv'kps wgvkqp' qh' ucvg' rcy 72: " H'k'cm' . " Burford'cdungpvkqp' ku' cxckrdng' qpn' y j gtg'r rclp'khh'u'uggn'kplwpe'kxg'qt'f gerctcvqt{ 'tgn'gh'73

Eqwtu' vj cv' j cxg' eqpukf gtgf " Burford" fktge'v' " j cxg' tglge'v' " ku cr r r'nek'v'kqp'kp'vj g'eqpvzv'qh'r tqdcvg/tgrv'v'g' o c'wgtu.'w'w'cm' "h'k'f'k'p' "gk'j'gt pq'f'k'k'eww's wgvkqp'qh'ucvg'rcy . "pq'qxgtctej k'p' ucvg'r q'k'c' "y k'j' "t'gur'gev vq'ugw'k'p' "uwej "er'ko u."qt'dqj' 74: " Q'p'g'eqwtv'j cu'hqwpf "vj cv'hgy "ecugu y qwf " r'k'ng' "r t'gug'p' uwej "c' s' wgvkqp' y k'j' qw' "c'nuq' k'p'x'q'k'p' "vj g'r tqdcvg gze'gr'v'kqp'v'q'hgf gtcn'uw'dlge'v'o c'wgt'lw'k'uf'k'ev'kqp'75

K'p'Ankenbrandt v. Richards'vj g'Eqwtv'eqpukf gtgf "vj g'cr r'nek'cl'k'v' "qh Burford'cdungpvkqp'kp'vj g'cpc'q'i'q'w' eqpvzv'qh'vj g'f'qo'g'w'k' "t'gr'v'k'p'u gze'gr'v'kqp'76: "Vj g'Eqwtv'ucv'g'f . "k'p'f'lev'c. "vj cv'Burford'cdungpvkqp' might'dg t'gr'g'x'c'p'v'k'p'ecugu'q'w'w'k'f'g'vj g'f'qo'g'w'k' "t'gr'v'k'p'u'gze'gr'v'kqp'y j gtg.'uc{ . "vj g hgf gtcn'ecug'y cu'h'k'g'f' "r'k'at'v'q'g'h'g'ew'v'k'p'qh'c'f'k'x'q'teg. "c'k'o'q'p' { . "qt'ej'k'f' ew'x'q'f' { "f'get'gg. "cpf' "vj g'uw'k'f'gr'g'p'f'g' "q'p'c'f'g'v'g'to'k'p'c'v'k'p'qh'vj g'status'qh vj g'r'ct'v'k'g'u'77: " [ g'v'g'x'g'p'k'p'uwej "ecugu. "vj g'Eqwtv't'g'cu'q'p'g'f' "vj cv'vj g'hgf gtcn eqwtv'uj'q'w'f' "t'g'v'k'p'lw'k'uf'k'ev'kqp. "t'cv'gt' "vj cp'cd'uc'k'p'r'g'to'c'p'g'p'v'v' . "v'q'g'p'uw't'g' r'tqo'r'v'cpf' "lw'w'f'k'ur'q'uk'k'p'qh'vj g'o'c'wgt' "w'r'q'p' "vj g'f'g'v'g'to'k'p'c'v'k'p'd{ "vj g

56: 0 See Burford. 53; WLUcv5560  
56: 0 See P gy " Qtrgcpu" Rwd0' Ugtx0' k'p'e0' x0' Eqwpek' qh' P gy " Qtrgcpu." 6; 3" WLU0 572" \*3; ; + \*t'g'x'lgy k'p' "w'k'k'f' "t'cv'g'tgi wrcv'k'p'="C'rcdco c"Rwd0'Ugtx0'Eqo o p'x0'U0'T{ 0'Eq0"563"WLU0563"\*3; 73+ \*c'q'p'uk'f'gt'k'p' "r'q'ec'nf't'c'k'p' "ug't'x'leg't'gi wrc'v'k'p'="Burford. 53; "WLU0537"\*3; 65+ "g'x'c'w'v'k'p' "t'gi wrc'v'k'p'qh'q'k'n f't'k'k'p' 't'k'j'w'0  
5720 S w'c'eng'p'd'w'uj "x0' C'm'rc'v'g' k'p'u0'Eq0"739" WLU0928."948649"\*3; ; 8+ "Colorado River Water Conservation Dist."646"WLUcv: 36="Burford. 53; "WLUcv54964: "Laj puq'p'x0'T'q'f' t'k' w'g'u."448" H'f'f' "3325. 3334"\*32j "Ek04222+0  
5730 Quackenbush. 739"WLUcv09530"Vj g'Uwr tgo g'Eqwtv'j cu.'j'qy'g'x'g't. "r'gh'q'r'gp' "vj g'r'q'uk'd'k'k'v'k'f' vj cv' Burford" o k'j' v'w'r'r'q't'v'c' "hgf gtcn'eqwt'v'v'f'g'ek'uk'p'v'q' "r'q'w'r'q'p'g'cf'lw'f'k'ev'k'p'qh'c' "f'co'c'i'g'u' "er'ko r'g'p'f'k'p' "t'g'u'q'w'k'p'd{ "vj g'ucv'g'eqwt'v'q'h'c'p'v'p'ug'w'g'f' 's' wgvkqp'qh'ucvg'rcy 0"See Quackenbush. 739"WLU cv09526530  
5740 See Dgti gtq'p'x0'N'qgd."999" H'f'f' "9; 4.": 22"\*3u'v'Ek03; : 7+ "Eo v' 0'k'p'u0'Eq0'x0'T'q'y'g.": 7" H0 Uwr r'0'4f'": 22.": 29"p'02"\*UF'0'Qj'k'q"3; ; : = "Ugc{ "x0'F'q'f' i'g."P'q0'; 7"E"5865."3; ; 7"Y N"779583."cv", 9 \*P' 0' 0'U'gr'03: . 3; ; 7+ "E'g'ng'p'c'p'q'x0' H'w'gt."824" H0Uwr r'0999."9: 3"UF' 0' 03; : 7+0  
5750 See Seay."3; ; 7"Y N"779583."cv", 90  
5760 Ankenbrandt."726"WLU08: ; \*3; ; 4+0  
5770 Id."cv9276280

ucvq" eqwtv" qh" vj g" tgrxcpv" kuwg.<sup>578</sup> o cnkpi " kv" o qtg" cnkp" vq" Pullman  
cdugpvkqpO"Vj wu."y j gtg" c" hgf gtcn'eqwtv'ku'cf lwf lecvkpi "c" r tqdcvg/ tgrcvf  
o cwtg. "Ankenbrandt" o ki j v' uwi i guv' vj cv' kh' c" uwk' ku' hkgf "qp" dgj crh' qh' qt  
ci ckpuv' cp' gucvq. "cpf" vj g' r tqr gt' cf lwf lecvkqp' qh' uvej "uwk' f gr gpf u' wr qp" vj g  
ucvq' r tqdcvg' eqwtv' cr r qkpvkpi "c" r gtuqpcn' tgr tguqpcv' xg' hqt' vj g' gucvq' y kj  
vj g' ecr cekv' "vq" uwg' cpf "dg" uwgf "qp" dgj crh' qh' vj g' gucvq. "vj g' hgf gtcn' eqwtv  
uj qwf' t' gvckp' l' wtkuf lecvkqp' qh' vj g' uwk' r gpf kpi "vj g' ucvq' eqwtv' u' cevkqpO"<sup>579</sup>

E0" YOUNGER CDUGPVKQP

Vj g" Younger" cdugpvkqp" f qevtkpg" kpkckm' "y cu' f k' gevgf" qpn' "cv' uwsu  
vj cv' o ki j v' kvgt' hgtg' y kj "qpi qkpi "ucvq" etko kpcn' r tqeggf kpi uO" K' r tqxkf gf  
vj cv' vj g' hgf gtcn' eqwtv' u' y qwf "pqv." cdugpv' ur gekn' ektewo ucpegu.<sup>57</sup> "gpvgt' vckp  
l' wtkuf lecvkqp" qxgt' uwsu' uggmkpi "gkj gt' cp' kplwpevkqp" ci ckpuv' r gpf kpi <sup>57</sup>; "ucvq  
etko kpcn' r tqeggf kpi u<sup>582</sup> "qt" c" f ger' tcvqt { "lwf i o gpv' ci ckpuv' c" ucvq" etko kpcn  
ucwvg' wpf gt' y j lej "r tqegwkwqp' u' ctg' r gpf kpi O<sup>583</sup> "Vj g' t' cvkqpcrgu' dgj kpf "vj ku  
hqt o "qh' cdugpvkqp" ctg' vj cv' gs wkv' "pggf" pqv' cev' k' uvej "kpuv' cepgu' ukpeg" cp  
cf gs wcvq" tgo gf { "gzkuu" d { "y c { "qh" c" f g' hgpug" k' vj g' ucvq" etko kpcn  
r tqeggf kpi u.<sup>584</sup> "cu" y gm' cu' t' gur gev' hqt" vj g' f k' u' k' pev' uq' xgt' gki pv' { "qh" vj g  
ucvq uO<sup>585</sup> "Cp" gze' r' v' k' qp" vq" Younger" cdugpvkqp" gzkuu" y j gtg" vj g' ucvq  
v' k' d' wpcn' e' c' ppq' v' qt' y k' n' i' p' q' v' g' p' v' t' v' k' p' vj g' hgf gtcn' e' q' p' u' k' w' k' q' p' c' n' e' r' e' k' o uO<sup>586</sup>

5780 Id."cv928"p80"See also Quackenbush."739" WLU0cv'952653" \*pqv' kpi "vj cv' cnj qwi j "c" f kuo kuon  
wpf gt' Burford' ku' pqv' cr r tqr t' evg' "kp" c' f co ci gu' cevkqp. "c" ucv' { "r gpf kpi "c" f g' gto k' p' cvkqp' d { "vj g' ucvq' eqwtv  
qp' e' f' k' ur wgf' s' w' g' u' k' qp' qh' ucvq' h' ey "o ki j v' dg' y' ctcpvgf +0

5790 Cf. Seay.'3; ; 7"Y N'779583'cv, 96, : 0

57: 0 Vj g' ur gekn' ektewo ucpegu' y gtg' r' ko k' gf "vq' ecugu' y j gtg' vj g' r tqegwkwqp' y cu' k' p' d' c' f' t' k' vj "qt  
f' p' q' g' "vj" c' t' cuu' vj g' f' g' h' g' p' f' cpv' "qt" y j gtg' vj g' ucvq' y cu' o' h' r' e' i' t' e' p' v' { "cpf" r' cv' g' p' v' { "x' k' q' n' v' k' g' qh' g' z' r' t' g' u  
e' q' p' u' k' w' k' q' p' c' n' i' t' q' j' k' d' k' k' q' p' u' k' p' g' x' g' t' { "e' n' w' u' g' u' g' p' v' g' e' g' c' p' f' r' e' t' c' i' t' e' r' j' . "c' p' f' k' p' y' j' c' v' x' g' t' o' c' p' p' g' t' c' p' f' c' i' c' k' p' u' v'  
y j qo g' x' g' t' c' p' g' h' q' t' v' o' k' i' j' v' d' g' o' c' f' g' v' q' r' r' n' l' k' o' b' l' q' w' p' i' g' t' x' o' l' c' t' t' k' u' . 623" WLU059. 74676" \*3; 93+ "s' w' q' v' k' p' i  
Y' c' u' q' p' x' o' D' w' e' m' 535" WLU05: 9. 624" \*3; 63+0

57: 0 Vj g' Uwr tgo g' Eqwtv' uwdugs wgpv' { "gzr' cpf' gf "vj g' f' qevtkpg' vq' eqxgt' pqv' qpn' { "r gpf kpi "etko kpcn  
r tqeggf kpi u. 'dw' c' n' q' vj q' u' g' vj cv' ctg' eqo o g' p' e' g' f' c' i' c' k' p' u' v' vj g' h' g' f' g' t' c' n' i' t' r' e' k' p' v' k' h' u' c' h' g' t' vj g' h' g' f' g' t' c' n' i' e' q' o' r' r' e' k' p' v'  
k' i' h' g' f' "d' w' d' g' h' q' t' g' c' p' { "r tqeggf kpi u' qh' u' w' d' u' c' p' e' g' q' p' vj g' o' g' t' k' u' j' c' x' g' v' c' n' g' p' r' r' e' g' l' p' vj g' h' g' f' g' t' c' n' e' q' w' t' v' O" See  
J' l' e' m' i' x' o' O' k' e' p' f' c. '644" WLU0554. '56; \*3; 97+0

5820 See Younger."623" WLU0cv'750

5830 See "Uco wgm' xO' O' cengm' 623" WLU0'88. "95" \*3; 93+0" Vj g' Uwr tgo g' Eqwtv' j cu' t' g' u' g' t' x' g' f' "vj g'  
s' w' g' u' k' q' p' y j g' vj g' t' Younger" c' r' r' i' g' u' l' p' u' w' k' u' h' q' t' o' q' p' g' l' f' c' o' c' i' g' u' . c' n' j' q' w' i' j' "vj g' Eqwtv' j cu' j' g' r' f' vj cv' u' w' e' j  
u' w' k' u' vj q' w' r' f' d' g' u' c' { g' f' r' g' p' f' k' p' i' vj g' t' g' u' q' n' w' k' q' p' qh' vj g' u' c' v' q' r' t' q' u' e' w' k' q' p' u' O" See "F' g' c' n' i' p' u' x' o' O' q' p' c' i' j' c' p. '6: 6  
WLU03; 5. 424" \*3; : : +0

5840 See Younger."623" WLU0cv'65666=F qwi ru' x' O' E' k' v' { "qh' l' g' c' p' p' g' w' g. '53; "WLU0379. '385" \*3; 65+0

5850 See Younger."623" WLU0cv'656660

5860 See O' q' q' t' g' x' O' U' k' o' u. '664" WLU0637. '647648" \*3; 9; +0



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SOUTHERN CALIFORNIA LAW REVIEW

]Xqr096-369;

Uwdugs wgpv' f gekukapu" j cxg" gzc p f gf " Younger" vq" eqxgt" ekkn  
gphqtego gpv' r t q e g g f k p i u" d t q w i j v' d { " v j g" u c v g .<sup>587</sup> k p e n w f k p i " v j q u g  
r t q u g e w g f " k p " c f o k p k u t c v k x g " v t k d w p e n u " v j c v ' c t g " l w f k e k n " k p " p c w t g o <sup>588</sup> " k p " c  
h g y " k p u c p e g u . " Younger " c d u v g p v k q p " j c u " d g g p " c r r n g f " k p " u w k u " k p x q n k p i  
r w t g n { " r t k x c v g " r c t v k u " y j g t g " v j g " o U c v g a " k p v g t g u u " k p " v j g " r t q e g g f k p i " c t g " u q  
k o r q t v c p v ' v j c v ' g z g t e k u g " q h ' v j g " h g f g t c n ' l w f k e k n ' r q y g t " y q w f " f k u t g i c t f " v j g  
e q o k { " d g y g g p " v j g " U c v g u " c p f " v j g " P c v k q p c n ' I q x g t p o g p v o <sup>589</sup> " Y j k r g " u e j  
e c u g u " j c f " v j g " r q v g p v k n " v q " g z r c p f " i t g c v n { " v j g " t g c e j " q h " Younger " c d u v g p v k q p .  
v j g " U w r t g o g " E q w t v ' j c u " u w d u g s w g p v n { " r k o k g f " v j g " c r r n e c v k q p " q h " Younger  
y j g t g " q p n { " r t k x c v g " r g t u q p u " c t g " r c t v k u " v q " o e k k n " r t q e g g f k p i u " k p x q n k p i  
e g t v k p " q t f g t u " v j c v ' c t g " w p k s w g n { " k p " h w t v j g t c p e g " q h " v j g " u c v g " e q w t u o <sup>58</sup> c d k k { " v q  
r g t h q t o " v j g k " l w f k e k n " h w p e v k q p u <sup>58</sup>:

Cm qu' cm<sup>58</sup>: "eqwtu'v'j cv'j cxg" eqpuk'gtgf "Younger" cdugpvkqp"kp"vj g  
eqpvz'v'qh'r tqdcv'g'grcv'f "o cwgtu'j cxg'j grf "k'v'q'dg'kpcr r rkecdrg<sup>592</sup>

F 0 "COLORADO RIVER" CDUGP VKQP

Kp "Colorado River Water Conservation District v. United States."<sup>593</sup> vj g  
Uwr tgo g "Eqwtv'ugv'htq vj "vj g"i gpgtcn'r tkpek r g"vj cv'ojc\_dugpvkqp"htqo "vj g

5870 See id. "cv'639" j qf kpi "vj cv'v'j g" eqwtv'uj qwf "cdvclp"htqo "j gctkpi "ucv'g"ewuqf { "enlo "htq  
ej kf tgp'cmgi gf n' "cdwugf "d { " r c t g p u = " v t c k p q t " x 0 J g t p e p f g l . " 6 5 3 " W L U 6 5 6 . " 6 ; 5 \* 3 ; 9 9 + \* j q f k p i " v j c v ' j g  
e q w t v ' u j q w f " c d u v c l p " h t q o " u c v g " e n l o " v q " t g e q x g t " y g h c t g " r c { o g p u " q d v c l p g f " d { " h c w f = " J w h o c p " x 0  
R w t u w g . " N f 0 " 6 4 2 " W L U 7 ; 4 . " 7 ; 7 . " 8 2 9 " \* 3 ; 9 7 + \* f k g e v k p i " v j g " e q w t v ' v q " c r r n { " Younger " c d u v g p v k q p " r t p e k r g u  
k p " c " u c v g " c e v k q p " v q " f g e n t g " c p " q d u e g p g " o q x l g " c " p w k u c p e g - 0

5880 Qj kq "Ekkn"Ti j w'Eqo o p'x0F c { q'p "Ej tkuep "Uej 0 "kpe0'699" WLU83; \*3; : 8+\* j qf kpi "vj cv  
f k u t e v " e q w t v ' u j q w f " j c x g " c d u v c l p g f " h t q o " t g x l g y k p i " c p " c f o k p k u t c v k x g " e q o r n c l p v " h t " g o r n { o g p v  
f k u e t o k p v k q p = " O k f f n g u z " E q w p v { " G j k e u " E q o o 0 " x 0 I c t f g p " U e v g " D e t " C u u p . " 6 7 9 " W L U 6 4 5 . " 6 5 4 6 6 6  
\* 3 ; : 4 + \* j q f k p i " v j c v ' h g f g t c n l e q w t v ' u j q w f " c d u v c l p " h t q o " t g x l g y k p i " c p " c v q t p g { " f k u e k r n p c t { " r t q e g g f k p i - 0

5890 Rgppl qh'Eq0x0Vgzceq. "kpe0'6: 3" WLU3. "33" \*3; : 9+\* ghwulpi "v'gplq'p'ueeguu'w'r'nc'p'v'k'h'p  
u c v g " e q w t v ' r t q e g g f k p i " h t q o " g z g t e k u k p i " k u " i k i j v v q " f g o c p f " v j c v ' j g " f g h p f c p v ' r q u v ' c " d q p f " c u " c " e a p f k k q p  
q h ' r t q u g e w k p i " c p " c r r g e n l y j g t g " v j g " u c v g " e q w t v ' f g h p f c p v ' y c u " e n l o k p i " v j c v ' k ' e q w f " p q v ' c h h q t f " c " d q p f  
c p f " v j c v ' j g " l w g " f g p l g f " k ' f w g " r t q e g u - 0 " See also "Lwk leg" x0Xckn "652" WLU549. "55965; \*3; 99+\* ghwulpi  
v q " g p l q p " u c v g " e q w t v ' l w f i g u " h t q o " w u k p i " v j g k " u c w w q t { " e q p v g o r v ' r t q e g f w t g u " q p " v j g " i t q w f " v j c v ' j g {  
f g p l g f " f w g " r t q e g u - 0

58: 0 Pgy "Qtngcpu'Rwd0Ugtx0kpe0x0Eqwpeki'qh'Pgy "Qtngcpu."6; 3" WLU572. "589" \*3; : ; - 0

58; 0 Qpg "eqwtv'j cu'cr r n g f " k ' l p " v j g " e q p v z ' v ' q h ' c " r w t g n { " r t k x c v g " r t q d c v g ' t g r c v g f " f k r w g . " { g v ' j g  
e q w t v ' u g g o g f " e q o r n g e n l { " v q " o k w p f g t u n c p f " v j g " Younger " f q e t k p g 0 " See " Y k n k o u " x 0 " C f n k p u q p . " 9 ; 4  
H U w r 0 ' 9 7 7 . " 9 8 8 " \* O ( F 0 ' C n 0 ' 3 ; ; 4 - \* g c u q p k p i " v j c v ' Younger " c r r n g f " d g e c w g " u e j " u w k u " k p x q n k g " v j g  
o l o r q t v c p v u c v g " l p v g t g u v l p " v j g " = q t f g t n { " c p f " l w u f k u t k d w k q p " q h " c " f g e g f g p v a i ' r t q r g t v { " c v f g e v j Q 6 - 0

5920 See "Tglpj ctf v'x0Mgm. "386" H5f "34; 8. "3524" \*32j "Ek0'3; ; ; = "Egngpvcq" x0Hwtg. "824" HD  
U w r 0 ' 9 9 9 . " 9 : 3 6 : 4 " \* U F O P Q 0 ' 3 ; : 7 - 0 " k p " v j g " t g r c v g f " c t g c " q h " f q o g u k e " t g r c v k p u " o c w g t u . " v j g " U w r t g o g  
E q w t v ' l p " A n k e n b r a n d t v . R i c h a r d s " j g r f " Younger " c d u v g p v k q p " y q w f " p q v ' c r r n { " w p r g u u " v j g t g " y g t g " r g p f k p i  
u c v g " r t q e g g f k p i u " c p f " c " x c r k f " c u u g t v k p " v j c v ' j g t g " y g t g " l o r q t v c p v u c v g " l p v g t g u u " c v " u c n g 0 " 7 2 6 " W L U 8 : . .  
9 2 7 " \* 3 ; ; 4 - 0

5930 646" WLU: 22" \*3; 98-0

gzgtekg"qh'hgf gtcn'lwtkuf levkqp"ku"vj g"gzegr vkqp."pqv"vj g"twrg.ö<sup>594</sup>"cpf "vj cv vj g'hgf gtcn'eqwtu"j cxg"c"öxkt wcm"wphtci i kpi "qdrki cvkqp"000"q"gzgtekg"vj g lwtkuf levkqp"i kxgp"vj go ö<sup>595</sup>"Vj g"eqwtv."j qy gxgt."hqwpf "cdungpvkqp"ku"kp uqo g" kpuvpegu" cr r tqr tkcvg" y j gtg" vj gtg" ctg" r ctcmgñ' hgf gtcn' cpf " ucvg r tqeggf kpi u'lpvxqñkpi 'uwduncpvkcm" 'vj g'ucg g'r ctvkgu"cpf 'vj g'ucg g'kuwguö<sup>596</sup>

Vj g"Eqwtv"kp"Colorado River"kf gpvkhgf "hqt "hcvqtu"vj cv'eqwpugn'lp hcxqt"qh"c"hgf gtcn'eqwtv'cdunckpki "kp"hcxqt"qh"c"ucvg"htwo <"3+"y j gtg o clpvckpki "dqj"cevqpu"y qwf "tgs wktg"vj g"ucvg"cpf "hgf gtcn'eqwtu"vq gzgtekg"uko wncpgqwu"lwtkuf levkqp"qxgt"cu"upi ng"res="4+"kh"vj g"ucvg"eqwtv hqtwo "ku"o qtg"eqpxgpkp"v"ht"vj g'r ctvkgu="5+"y j gtg"vj g"eqpewtgpv"ucvg r tqeggf kpi u"y gtg"lpkvcvgf "dghgtg"vj g'hgf gtcn'r tqeggf kpi u="cpf "6+"y j gtg f qkpi "uq"y qwf "cxqkf "r kgego gcn'rkki cvkqpö<sup>597</sup>"Vj g"Eqwtv"j cu"ukpeg"cf f gf vy q'hcvqtu'y gki j kpi "against"cdungpvkqp<"3+"y j gtg'hgf gtcn'icy "r tqxkf gu"vj g twrg"qh"fgelkqp"qp"vj g"o gtku<sup>598</sup>"=cpf "4+"y j gtg"vj g"ucvg"eqwtv'r tqeggf kpi u y knr tqdcn"dg"kp cf gs ucvg"vq"r tqvge"vj g'r rckpvkhu"tki j uö<sup>599</sup>

Kp"r tqdcvg"tgrcvgf "o cwgtu."cxqkf kpi "r kgego gcn'rkki cvkqp"vppf u"vq"dg vj g"hcen'r qkpv."cpf "ku"o quv"gcukñ "tglgevgf "kh"vj gtg"ctg"pq"r gpf kpi "ucvg eqwtv'r tqeggf kpi u.<sup>599</sup> "kh"vj g'r rckpvkhu"lp"vj g'hgf gtcn'cevqpu"ku"pqv'r ctv"vq"vj g ucvg"r tqdcvg"r tqeggf kpi u.<sup>599</sup> "qt"kh"vj g'kuwgu"lp"vj g'r tqdcvg"r tqeggf kpi "ctg f khgtgpv'htqo "vj qug"tckugf "kp"vj g'hgf gtcn'cevqpuö<sup>2</sup>"Kp"cf f kkpq."ukpeg"ucvg r tqdcvg"eqwtu"qhvgp"j cxg"lwtkuf levkqp"qpn"qxgt"vj g'r tqdcvg"qh"vj g"y kn'cpf vj g"cf o kpkntcvkqp"qh"vj g"guvcvg."eqo o qp"rcy "cpf "ucvwwqt {"encko u"co qpi r ctvkgu"y kn'qhvgp"pggf "vq"dg"hgf "kp"uqo g"qvj gt"eqwtv"uwej "cu"c"ucvg"eqwtv qh"i gpgtcn'lwtkuf levkqp." cpf " vj wu." f genkpi "lwtkuf levkqp" y kn' pqv" cxqkf r kgego gcn' rkki cvkqpö<sup>3</sup>" "O qt gxgt."kp"uwej "ektewo ucpegu."kv"uggo u"vj g

5940 Id."cv": 350  
5950 Id."cv": 390  
5960 See id."cv": 3: 0  
5970 See id."cv": 3: 63; 0  
5980 O qugu"J OEapp"O go ai"J qur 0x00 gtwet {"EqputOEqr 0"682"WLU03."45."48"\*3; : 5+0  
5990 Id."cv":480  
59: 0 See"Bergeron."999"HDf "cv9; ; 0  
59: 0 See Egrpvcpq"x0Hwt.g."824"HUWr r 0999."9: 4"UF P Q 03; : 7+0  
5: 20 See Ugc{"x0F qf i g."P q0; 7"E"5865."3; ; 7"Y N"779583."cv', .; ; "P (Kt0Ugr 03: ."3; ; 7+0 Vj gtg"ku"j qy gxgt."cwj qtkf"uwi i gukpi "vj cv"vj g'hgf gtcn'cpf "ucvg"cevqpu"pggf "pqv'dg"r telugñ"kf gpvkcnk k'ku"gpqwi j "vj cv'öuwduncpvkcm" 'vj g'ucg g'r ctvkgu"ctg"eqpvgo r qtcpgqwuñ "rkki cvkpi 'uwduncpvkcm" 'vj g'ucg g kuwgu"lp"cpqj gt"htwo ö"Eco kpkk"( "Kvctqr."Nk'0x0'Dgj png"Y ctgi qwkpi ."Kpe0"; 84"HDf "8; : ."922 \*9j "Ek03; ; 4+0  
5: 30 See" Moses H. Cone Mem'l Hosp.."682"WLUcv'42"vj qf kpi "vj cv'wpf gt"uwej "ektewo ucpegu"öc f gelukqp"vq"cmqy "Juvej "encko u"vq"dg"fgelk gf "kp"hgf gtcn'cvj gt"vj cp"ucvg"eqwtv'f qgu'pqv'cause"r kgego gen tguñwkqp"qh"vj g"r ctvkgu"wpf gtn'kpi "f kur wgu.ö"o cnkpi "cdungpvkqp"vpy cttepvgf "+"go r j cuku"cf f gf = I kctf kpc"x0Hpvpc."955"HDf "3269."3275"\*4f "Ek03; : 6+0"See also"Caminiti."; 84"HDf "cv'925"\*pqvki vj cv'y j gtg"vj g'r tqdcvg"eqwtv'rcem"lwtkuf levkqp"qxgt"c"r ctvkwet"encko "cu"ci clpv"e"r ctvkwet"r ctv'."kv



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]Xqr096-369;

hgf gtcn' hqtwo "ku." utkewf "ur gcnkpi ." vj g" hktuv' eqpewtgpv' hqtwo "kp" y j lej lwtkuf levkqp" y cu" qdvckpgf . " ukpeg" vj g" qpnf " qvj gt" hqtwo " y kj " eqpewtgpv lwtkuf levkqp" y qwf " dg" c" uvcvg" eqwtv' qh' i gpgtcn' lwtkuf levkqp. "kp" y j lej " c" pgy cevqp" y qwf " j cxg" vq" dg" hknf 0: 4" " Y j gtg" vj g" kuwgu" tckugf " kp" vj g" hgf gtcn cevqp" ctg" vj g" uco g" cu" vj qug" tckugf " kp" vj g" uvcvg" eqwtv' cevqp. " j qy gxgt. " vj g f guktg" vq" cxqkf " r kgego gcnfkki cvkqp" y gki j u' kp" hcxtq" qh' cdungpvkqp 0: 5

GO"BRILLHART-WILTON"CDUNGP VKQP

Wpf gt "vj g" Hgf gtcn' F gerctcvqt { "Lwf i o gpvu" Cev" \*HF LC 0: 5: 6" y j gtg" cp cewcn' eqpvtqxgtu { "gzkru. " vj g" hgf gtcn' eqwtu" j cxg" vj g" cwj qtkm { "vq" f gerctg vj g" tki j w' qh' vj g" r ctvku" xku/ </ xku" qpg" cpqj gt" qt" xku/ </ xku" c" r kgeg" qh r tqr gt v { 0" Uvej " c" f gerctcvkqp" j cu" vj g" ghgev' qh' c" hpcn' lwf i o gpv: 7" cpf" o c { j cxg" c" r tgenwukg" ghgev' kp" uwdugs wgpv' r tqeggf kpi u' y j gtg" vj g" f gerctcvqt { lwf i o gpv' kpxqrgf " c" s wukqp" qh' hgf gtcn' rcy 0: 8" " Y j gtg" uwk' ku" dtqwi j v r wtucpv' vq" vj g" HF LC. " hgf gtcn' eqwtu" j cxg" uwducpvkcm { " i tgcvgt" f kuetgvkqp" vq cduvckp" kp" hcxtq" qh' r gpf kpi " uvcvg" eqwtv' r tqeggf kpi u' vj cp" ku" r gto kwgf " wpf gt vj g" Colorado River" ucpf ctf 5: 9" dgecvug" qh' vj g" r gto kuukg" y qtf kpi " qh' vj g HF LC 0: : " " Wprkng" Colorado River" cdungpvkqp. " vj g" Eqwtv' j cu" pglj gt gpwo gtcvgf " eqo r tgi gpukg" hcvqtu" hqt" i wfk kpi " vj g" f kntlev' eqwtu cdungpvkqp" f kuetgvkqp" y kj " t gur gev' vq" uwku" dtqwi j v' r wtucpv' vq" vj g" HF LC. pqt" j cu" k' ug v' hqt vj " vj g" qwgt" dqwpf ctkgu" qh' vj g" cdungpvkqp" f kuetgvkqp 0: : Tcvj gt. " vj g" Eqwtv' j cu" uwi i guvgf " qpn { " vj cv' vj g" f gekukqp" dg" i wfk gf " d { 0: eqpukf gtcvku' qh' r tceveckm { " cpf" y kug" lwf lekcn' cf o kpkutcvkqp. 0: 5: 2" cpf" vj cv

y gki j u' ci kpu' cdungvkpi " wpf gt " Colorado River" = Wpkgf " Uvcgu" x0Rknpc. " : 2" H0f " 379: . 37: 4" \*4f " Ek0 3: ; ; : \*5j qrf kpi " c" f ku kucn' qh' c" uwk' qxgt" y j lej " vj g" uvcvg" r tqdcvg" eqwtv' y qwf " hknf " men' lwtkuf levkqp" cp cdwug' qh' f kuetgvkqp 0

- 5: 40 Giardina. "955" H0f " cv32750
- 5: 50 Caminiti. " ; 84" H0f " cv923624 = Gucvg" qh' I tqrgt " d { " I tqrgt " x0Eqwpv { " qh' Ucpvc" Etwl . " P q0 E/ ; 5/42; 47" TRC. " 3; ; 6" Y N' 8: 2263. " cv", 66, 7" \*P (F 0: c0F ge03. " 3; ; 6 0
- 5: 60 4: " WLU0E" 4423 " \*3; ; 6 0
- 5: 70 See id.
  - kp" c" ecug' qh' cewcn' eqpvtqxgtu { " y kj kp" ku" lwtkuf levkqp " 000cp { " eqwtv' qh' vj g" Wpkgf " Uvcgu. " wr qp vj g" hknf " qh' cp" cr r tqr tcvg" r ngef kpi . " o c { " f gerctg" vj g" tki j w' cpf " qvj gt" nci' tgnvku' qh' cp { kpvgtugf " r ctv { " ugnkpi " uvej " f gerctcvkqp. " y j gvj gt" qt" pqv' hwt vj gt" tgnk' ku" qt" eqwf " dg" uqwi j 0 Cp { " uvej " f gerctcvkqp" vj cmlj cxg' vj g' hqtg" cpf " ghgev' qh' c' hpcn' lwf i o gpv' qt" f getgg' cpf " vj cmlj gtxky cdng' cu' uvej 0
- Id.
  - 5: 80 Ugherix0Vj qo r uqp. " 637" WLU0674. " 69869: " \*3; 96- " \*Y j kg. " L0" eqpewt kpi = F cxkf " N0Uj cr ktq. State Courts and Federal Declaratory Judgments. " 96" P Y 0W0N0T GX097; . 986. " 98; \*3; 9; +0
  - 5: 90 Y knqp" x0Ugxgp " Hcm' Eq0" 737" WLU0499. " 4: 86: : " \*3; ; 7 0
  - 5: : 0 Id. " cv4: 8" \*s wvupi " 4: " WLU0E" 4423 " c- " \*3; ; : " gf 0Uwr r 0X+ r tqxf kpi " vj g" eqwtv' 0may f gerctg vj g' tki j w' cpf " vj gt" hgi cmlj gtxky qh' cp { " kpvgtugf " r ctv { " ugnkpi " uvej " f gerctcvkqp 0" \*go r j cuku' cf f gf +0
  - 5: : 0 See id. " cv4; 2 = Dtknj ctv' x0Gzeguu' kpu0Eq0" 538" WLU06; 3. " 6; 7" \*3; 64 0
  - 5: 20 Wilton. " 737" WLU0cv4: : 0

vj g'f kntlev'eqwtv'gzco kpg'vj g'ueqr g'qh'vj g'r gpf kpi "ucvq'eqwtv'r tqeggf kpi .  
vj g'pcwtg'qh'vj g'cxckrdng'f ghgpugu."cpf'y j gvj gt'vj g'ercko u'qh'cm'kpvgtgungf  
r ctvku'eqwrf "ucvuhcevqtkt" dg"cf lwf lecvgf 0: 3""Cm'qh'vj gug"eqpukf gtcvkqpu  
ctg"uwdlgev"vq"tgxky "qpnf "hqt"cdwug'qh'f kuetgkqp0: 4""Cu'y kj "Pullman  
cdvugpvkqp."vj g'cr r tqr tkcvq'eqwtug"ku"vq"ucv{ "vj g'r tqeggf kpi u'tcvj gt"vj cp  
f kuo ku'vj go "qwtki j v'vq"r tqvgev'ci clpuv'vj g'r quukdkkv{ "vj cv'vj g"ucvq'eqwtv  
ecug'o ki j v'hcni'vq'tguqkx'vj g'eqpvtqxgtu{ 0: 5

Y j krg"r tqdcvg"r tqeggf kpi u'ctg"r gpf kpi . "c"r ctv{ "y kni'uqo g'ko gu'hkg  
uukv'wpf gt"vj g"HF LC."dcugf"qp"vj g"f kxgtukv{ "qh"vj g"r ctvku."uggnkpi "c  
f gerctvqpp"cu"vq"vj g"xcrkf kv{ "qh"v'c"v'wuv"qt"qvj gt"uko kret"lpwtwo gpv."gxgp  
vj qvi j "vj g"xcrkf kv{ "qh'vj g'lpwtwo gpv'ecp"qt"ku'dgkpi "rkki cvgf "kp"vj g'r tqdcvg  
r tqeggf kpi u0: 6""Kp"uwej "kpuvpegu."hgf gtcn'eqwtu"i gpgtcn{ "gz gtekug"vj gkt  
dtqcf."wpdqwpf gf "f kuetgkqp"vq"v'f gerkpg"lwtkuf levkqp."wuwcm{ "tgcuvkpi "kv  
y qwf"dg"xgzcvkqu"cpf"wpgeppqo kcn'hqt"vj g'hgf gtcn'eqwtv"vq"r tqeggf  
y j gtg'c'r ctcmg'ucvq'eqwtv'uwk'ku'cf f tguakpi "vj g'gzcev'uco g's wguakp0: 7

HO'TQQMG/HGNF O CP 'F QEVTKPG

Vj g"Rooker-Feldman" f qevtkpg"j qrf u'vj cv'vj g'hgf gtcn' f kntlev' eqwtu  
rcenilwtkuf levkqp"qxgt"eqmvgtcn'cvcemu'qp'lwf i o gpw'tgpf gtgf "kp'ucvq'eqwtv  
r tqeggf kpi u0: 8""Vj g'tcvkqpcrg'hqt"vj g'f qevtkpg"ku'vj cv'vj g"ucvwwq{ "i tcvp'qh  
uwdlgev'o cwtg"lwtkuf levkqp"vq"vj g'hgf gtcn' f kntlev'eqwtu"ku'utlevn{ "qtki kpcn  
cpf" hqt" f kntlev' eqwtu" vq" gpvgtvklp" cevqpu" vq" tgxgtug" qt" o qf kh{ "vj g  
lwf i o gpw'qh'ucvq'eqwtu'f wq'vq'gttqtu."gxgp"eqpukvkwkqpcn'gttqtu."y qwf"dg  
cp"gz gtekug"qh'cr r gmvq'lwtkuf levkqp."cpf"qpnf "vj g"Uwr tgo g"Eqwtv'j cu'dggp  
i tcvp'gf "cr r gmvq" lwtkuf levkqp" qxgt" lwf i o gpw' tgp'gtgf " d{ "vj g" ucvgu0  
j ki j guv' eqwtu0: 9"" Vj ku' f qevtkpg" ku' vj wu' kpxqngf " kh" c" rkki cpv' cwgo r wu  
f ktgevn{ "vq" ej cmgpi g" vj g" lwf i o gpv' qh" c" ucvg" r tqdcvg" eqwtv' kp" cp  
kpf gr gpf gpv'hgf gtcn'eqwtv'cevqpp0: :

5; 30 Id."cv4: 46: 5=Brillhart."538"WLUcv6; 70  
5; 40 Wilton."737"WLUcv4: ; 6; 20  
5; 50 Id."cv4: : "p040  
5; 60 E.g.. "H{ "x0Hk} i gtcn'."69: "H0f"3: 3"%4f "Ek03; 95=In re"Vj qo cu"( "Ci pgu'Ectxgn'Hqwpf0  
58"HO'Uwr r0f"366."374"UF(P Q 0'3; ; 3+ "tgs vguakpi "f gerctvqpp"cu"vq"vj g"xcrkf kv{ "qh"v'c"tgek' tgecn  
ci tggp'vq'gzgewg'o kttq'to ci g'y km+=F cxku'x0J vpvgt."545"HO'Uwr r0; 98."; 9: 6: 2"FOEqpp03; 92+  
"tgs vguakpi "f gerctvqpp"vj cv'kpvgt'xkqu'v'wuv'ku'lp'xcrkf -0  
5; 70 Fay."69: "H0f "cv'3: 50"Accord" In re"Vj qo cu"( "Ci pgu'Ectxgn'Hqwpf0"58"HO'Uwr r0f"cv  
375676=Egpngt"x0Egpngt."882"HO'Uwr r09; 5."9; 8"GF'0O K3; : 9=FK'k'ppq"x0F'k'ppq."776"HO'Uwr r0  
; ; 8."3222"FO cu03; : 5+0  
5; 80 See" f kntlev'qh'Eqwv'q'Cr r gcu'x0Hgr i o cp."682"WLU684."698"\*3; : 5= "Tqqngt"x0  
Hf gk{ "v'wuv'Eq0"485"WLU635."636638"\*3; 45+0  
5; 90 Rooker."485"WLUcv6376380  
5; : 0 See"Y knico u'x0Cf nkuup."9; 4"HO'Uwr r0977."983684"FO (FOC'x03; ; 4+0

375: SOUTHERN CALIFORNIA LAW REVIEW ]Xqr096-369;

I 0"GS WkVl "ECP"QPNl "öF Q"LMUVKEG'EQORNGVGNl ö

C"y gm'gucdrkuj gf "rtkpek rg"f levcgu"vj cv'öc"eqwtv'qh'gs wkv{ "qwi j v'vq f q"lwukleg"eqo r rvgvnl "cpf "pqv'd{ "j cixguö5: ""Vj wu."y j gtg"cp"gs wkv{ "eqwtv j cu"lwtkuf levkqp" qxgt" qpn{ "qpg" cur gev' qh' c" ukv' dw' pqv' cpqyj gt. "k'y km f gerkpq" lwtkuf levkqp0' " Ceeqtf kpi n{ ." uqo g" hgf gtcn' eqwtu" j cxg" f gerkpqf lwtkuf levkqp" qxgt" r tqdcvg/tgrcvf " o cwgtu" hcnkpi " qwukf g" vj g" r tqdcvg gzeqr vkqp"y j gp"vj gtg"ctg"tgrcvf "o cwgtu"vq"dg"f gekf gf "vj cv'hcn'ly kj kp"vj g r tqdcvg"gzegr vkqp0"Vj wu."y j gtg"vj g" f gegf gpwv'ecr cekv{ "vq"gzgewwg"y kn'cu y gm'cu"cp"lpvgt'xkqu't wuv'ku'lp" f kur wg."eqwtu"j cxg"kpqxngf "vj ku'r tkpek rg vq" f gerkpq"lwtkuf levkqp"qxgt"vj g"xcrkf kv{ "qh'vj g"lpvgt'xkqu't wuv."gxgp"vj qwi j vj cv'ku'qwukf g"qh'vj g"r tqdcvg"gzegr vkqp."ukpeg"vj g"xcrkf kv{ "qh'vj g"y kn'o wuv dg"cf lwf lecvf "kp"cpqyj gt"htwö 622""Cf f kkpccm{ ." y j gtg"vj gtg"ku" c" f kur wg qxgt"vj g"xcrkf kv{ "qh'c"wgucö gpvct { "kpust wo gpv'cu"y gm'cu"ku'lpvgr tgcvkqp. hgf gtcn'eqwtu"j cxg" f gerkpqf "vq"eqpust wg"vj g"vgtö u"qh'vj g"kpust wo gpv'qp"vj g i tqwpf " vj cv' ku" xcirkf kv{ " ku" ukm' dgkpi " cf lwf lecvf " kp" qpi qkpi " r tqdcvg r tqeggf kpi uö623

J 0"öLCO DCNCl Cö"CDUVGP VKQP

C"pwo dgt"qh'eqwtu"cf lwf lecvkpi "r tqdcvg/tgrcvf "o cwgtu"j cxg"glkj gt cduvckpgf "qt" uwi i guvf " vj g{ " eqwf " cduvckp" qp" i tqwpf u" qvj gt" vj cp" vj qug eqpvckpgf " kp" vj g" tgeqi pl{ gf " ecvgi qtlgu" qh' cdvugpvkqp0' " Vj gug" eqwtu ht gs wgvnl "tgn{ "qp"vj g"i tgcvgt"gzr gt vkug"qh'ucvg"eqwtu"kp" f gcrkpi "y kj "uwej kuwgu"dcugf "qp"vj g"ucvg"eqwtuö f ckn{ "gzr gt kpeg.624" hco krlctkv{ "y kj "vj g rklki cvkqp.625" cpf "vj g"i tgcvgt"lpvgt guv'qh'vj g"ucvgu"kp" vj g"qweqo g"qh'vj g rklki cvkqpö626""Cduvcklpi "eqwtu"cnuq"ekg"lwf lekn'geqppö { .627" hgf gtcruo .628 cpf "vj g"lpvgt y klpki "qh'hgf gtcn'cpf "ucvg"eqwtu"r tqeggf kpi uö629""Cduvcklpi

5; ; 0 Eco r"x0Dq{f."44; "WLU0752."773\*3; 35-40"Accord"lcemqpp"x0WLU0P cvniDcpm"375"HDUwr r 0 326."339"\*F 0'Qt03; 79-4"\*ckkpi "Y cvgtö cp"x0'Ecpcn'Nqwkulcpc"Dcpnl( " Vt wuv'Eq0"437" WLU055."68 \*3; 2; +0  
6220 F cxku'x0J wpygt."545"HDUwr r 0; 98.; 9: ö: 2\*F 0Eqpp03; 92-0  
6230 Jackson."375"HDUwr r 0cv33863: 0  
6240 See" Tleg"x0Tleg"Hqyvpf 0"832"HDf "693."699\*9j "Ek03; 9; =Dcuurgt"x0Cttqy qqf."722"HDf 35: ."364665"\*: vj "Ek03; 96= Cenker."882"HDUwr r 0cv9; 7ö; 8=T qwugcw"x0Wpksf "Ucvgu"Vt wuv'Eq0'qh P[ ."644"HDUwr r 0669."67; \*UF 0P Q 03; 98-0  
6250 See"Rice."832"HDf "cv'69: =Rerr cu"x0'Vtcxnu "884"HDUwr r 0'336; ."3372"\*P 0'K03; : 9= Cenker."882"HDUwr r 0cv9; 7ö; 80  
6260 See"Pappas."884"HDUwr r 0cv3373674=Cenker."882"HDUwr r 0cv9; 7ö; 80  
6270 Reichman."687"HDf "cv'3: =Lqpgu"x0J ctr gt."77"HDUwr r 0'4f "752."756"\*UF 0Y 0'Xc03; ; ; = Rousseau."644"HDUwr r 0cv'67; 0  
6280 Jones."77"HDUwr r 04f "cv'7560  
6290 See Rice."832"HDf "cv'69: =Pappas."884"HDUwr r 0'cv'3373674=Cenker."882"HDUwr r 0'cv 9; 7ö; 80

4223\_ A DISSECTION OF THE PROBATE EXCEPTION 375;

eqwtu." j qy gxgt." r tqxkf g" rkwrg" dcuku" hqt" f gygto kpkpi " yj gkt" cwj qtkf " vq cduvckp"wpf gt"vj gug'ektewo ucpegu0

K'C'DUVGP VIQP "K' XQNXKPI "URGEKCNK GF "UVCVWQTI I TCPVUQH'LWTKUF KEVIQP

K'p"Markham v. Allen.<sup>62</sup>: "vj g"Uwr tgo g"Eqwtv."chgt"j qnf kpi "vj cv'vj g"uwkv f kf "pqv'hcmy kj kp"vj g"r tqdcvg"gzegr vkp."eqpukf gt gf "y j gyj gt"vj g"hgf gtcn eqwtv"uj qwrf "pqpgvj gruu"j cxg"cduvckpgf "kp"nki j v'qh"qpi qkpi "ucvg"eqwtv r tqeggf kpi u."cpf "vj g'hc'ev'vj cv'vj g"uwkv"kpqxkrgf "kuuwgu"qh'ucvg"rcy 0<sup>2</sup>: ""Vj g Eqwtv'tglgevgf "vj g'cti wo gpv'vj cv'vj g"o gtg'pggf "vq"kpvgtr tgv'ucvg"rcy "y cu'c uw'hc'ekgpv'dcuku"hqt"cduvckpgf.<sup>632</sup>"cpf "j grf "vj cv'y j gtg"u"cduvckpgf"hgf gtcn ucwmg"ur gekcmf "eqphgtu'lwtkuf levkqp"qp"vj g'f kntlev'eqwtv'kpf gr gpf gpv'qh'vj g ucwmgu"i gpgtcmf "i qxgtpkpi "hgf gtcn' eqwtv' lwtkuf levkqp." cduvckpgf "ku"pqv cr r tqr tkvg<sup>633</sup>

Vj wu."wpf gt"Markham."cduvckpgf"kp"r tqdcvg/tgrvgf "o cwgt"y qwrf pqv'dg"cr r tqr tkvg"y j gtg'uwk'ku'dtqwi j v'wpf gt"hgf gtcn'ucwmpvkxg"ucwmg hqt"y j lej "vj g'hgf gtcn'eqwtu"j cxg'uwldgevo cwgt'lwtkuf levkqp"kpf gr gpf gpv'qh vj g"i gpgtcmf i tcpv'qh' hgf gtcn' s wugvkp" lwtkuf levkqp" eqpvckpgf "kp" E' 35530 Ceeqtf kpi n. "ekskl'tki j w'cev'kpu"dtqwi j v'r wtuwepv"vq"EE'3; : 5."3; : 7"cpf 3; : 8.<sup>634</sup>"uwksu'dtqwi j v'wpf gt"vj g"TKEQ"ucwmg.<sup>635</sup>"cpf "ucwmgf "kpvgtr rgef gt cev'kpu<sup>636</sup>o vj g'r tqxkukpu"wpf gt"y j lej "o quv'pqp/f kxgtukf "r tqdcvg/tgrvgf

62: 0 548'WU'6; 2\*3; 68+0  
62: 0 Id.'cv6; 70  
6320 Id.  
6330 Id.'cv6; 76; 80  
6340 See'4: "WUUE0E'3565\*c+\*3; ; 6+0  
Vj g'f kntlev'eqwtu'uj cmfj cxg'qtki kpcn'lwtkuf levkqp"qh'cpf "ekskl'cev'kpu"cwj qtkf gf "d{ "rcy "vq"dg eqo o gpegf "d{ "cp{ "r gtuqp-<sup>3</sup>+Vq"tgeqxt "f co ci gu'ht"lplwt{ "vq"j ku'r gtuqp"qt"r tqr gtvf. "qt dgecwg"qh'vj g'f gr tkcvkqp"qh'cpf{ "tki j v'qt"r tkxkrgi g'qh'c"eksk gp"qh'vj g"Wpksgf "Ucvgu" d{ "cp{ cev'f qpg"kp"hw'vj gtcpeg"qh'cpf{ "eqpur kce{ "o gpvkpgf "kp"ugev'kpu"3; : 7"qh'Vksrg"64-<sup>3</sup>+4- Vq tgeqxt" f co ci gu'htqo "cp{ "r gtuqp"y j q"hc'ku"vq"r tgeqxt"vq"ckf "kp"r tgeqxtkpi "cp{ "y tqpi u o gpvkpgf "kp"ugev'kpu"3; : 7"qh'Vksrg"64"y j lej "j g'j cf "npqy rgi i g'y gtg"cdqww"vq"qeevt "cpf r qy gt"vq"r tgeqxt<sup>5</sup>+ Vq"tgf tguu"vj g'f gr tkcvkqp."wpf gt" eqm{ "qh'cpf{ "Ucvg"rcy. " ucwmg. qtf kpcpeg."tgi wrcvkp."ewuqo "qt"wuai g."qh'cpf{ "tki j v'r tkxkrgi g"qt"lo o wpkf "ugewgf" d{ "vj g Eqpvkwpkqp"qh'vj g"Wpksgf "Ucvgu"qt" d{ "cp{ "Cev'qh'Eapi tguu'r tqxkf kpi "hqt"gs waf'tki j w'qh eksk' gpu'qt"qh'cmf'r gtuqpu'y kj kp"vj g'lwtkuf levkqp"qh'vj g"Wpksgf "Ucvgu-<sup>6</sup>+Vq"tgeqxt" f co ci gu qt"vq"ugewg"gs wksdrg"qt"vj gt'tgrkgh'wpf gt"cpf{ "Cev'qh'Eapi tguu'r tqxkf kpi "hqt"vj g'r tqgevkqp"qh ekskl'tki j w'kpenf kpi "vj g'tki j v'vq'xqvg0  
Id.  
6350 See" 3: " WUUE0' E" 3; 86\*c+\* 3; ; 6+\* 6Vj g' f kntlev' eqwtu" qh' vj g' Wpksgf " Ucvgu" uj cmf j cxg lwtkuf levkqp"vq"r tgeqxtkpi "tguvckp" xkqrv'kpu"qh'ugev'kpu"3; 84"qh'vj ku'ej cr vgt" d{ "kuwvki "cr r tqr tkvg qtf gtu0= id." E'3; 86\*c+\* 6Cp{ "r gtuqp"lplwtgf "kp"j ku'dwulpguu"qt"r tqr gtvf "d{ "tgeuqj"qh'c" xkqrv'kpu"qh ugevkpu"3; 84"qh'vj ku'ej cr vgt"o c{ "uwg"vj gthqt"kp"cp{ "cr r tqr tkvg" Wpksgf "Ucvgu" f kntlev'eqwtv0  
6360 See 4: "WUUE0E'3557\*3; ; 6+\* 6Vj g' f kntlev'eqwtu'uj cmfj cxg'qtki kpcn'lwtkuf levkqp"qh'cpf{ "ekskl' cev'kpu"qh'kpvgtr rgef gt"qt"kp"vj g'bcwmg"qh'kpvgtr rgef gt00

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uwku"ctkug<sup>637</sup>ô y qwf "uggo "vq"r tguvpu"ukwcvkpu"y j gtg"cdugpvkqp"y qwf  
pqv'dg'y ctcpvgf "wvf gt"Markham0

XK'RCTURP I "VJ G'RTQDCVG'GZEGRVKQP

Vj g"xctkqu"hqto wrcg" gucdrikj gf "d{ "vj g" hgf gtcn' cr r gcu" eqwtu" hqt  
f gyto kpkpi "y j gj gt "c"uwk'hcmu"y kj kp "vj g" r tqdcvg"gzegr vkqp<sup>638</sup>" r tqxf g" c  
tqwi j " i wkf g" hqt " f gyto kpkpi " y j gp " vj g" r tqdcvg"gzegr vkqp" cr r rku0 " Cu  
uj qy p"cdqvg. "j qy gxgt. "vj g" hqt wrcg" hckl'vq" r tqxf g" eqwtu"y kj "cp" ceewtcvg  
o gcpu"qh'f gyto kpkpi "y j gj gt "c" i kxgp" r tqdcvg/ tgrvfg "uwk'hcmu"y kj kp "vj g  
gzegr vkqp0

Y j krg"pq"eqwtv"j cu"gzr rckn{ "dtqngp" f qy p"vj g" r tqdcvg"gzegr vkqp"kpq  
ku"eqo r qppv"r ctu. "qpg"ecp" kphgt "htqo "vj g" Uwr tgo g" Eqwtu" r tgegf gpw  
vj cv"vj g"gzegr vkqp"qwi j v"vq"dg"xkgy gf "cu"cp"co cni co "qh"hxg" f kpkpevt wrgu<  
vj g" Erie" f qextkpg. "vj g" rko ku" qp" Eqpi tguu0 i tcvp' qh" uwdlgev" o cvgt  
lwkuf levkqp" vq" vj g" hgf gtcn' eqwtu. "custodia legis" \*vj g" f qextkpg" qh" r tkqt  
gzenukxg" lwkuf levkqp+ " vj g" Ecug" qt" Eqpvtqxtu{ " tgs wktgo gpv. " cpf  
r twf gpvkn'cdugpvkqp0"Qpn{ "d{ "cr r n{ kpi "vj g"ug"hxg"t wrgu'kp" cpf go "ecp"qpg  
f gyto kpg'y j gj gt "c" i kxgp"uwk'hcmu"y kj kp "vj g" r tqdcvg"gzegr vkqp0

C0"UVR3<"VJ G'ERIE'F QEVTKPG

Vj g"Uwr tgo g"Eqwtu" r tqdcvg"gzegr vkqp" r tgegf gpw"j cxg"pqv'f ktgevf  
eqpukf gtgf "vj g" Erie" cur gev' qh" vj g"gzegr vkqp" dgecwug" cni' dw' qpg" qh" vj g  
Eqwtu" r tqdcvg"gzegr vkqp" r tgegf gpw" r tg/ f cvg" vj g"3; 5: "Erie" f gekukpp0<sup>639</sup>  
Rtkt "vq" Erie" cpf "ku" r tqi gp{ . "vj g" hgf gtcn' eqwtu0 gs wkv{ "lwkuf levkqp" y cu  
wplkqto "vj tqwi j qw" vj g" eqwvt { .<sup>63</sup>: "cpf " vj wu" k" y cu" wppgeguuct { "hqt" vj g  
hgf gtcn' eqwtu" vq" eqpukf gt" y j gj gt "c" i kxgp" gs wkcdng" qt" ngi cni' tgo gf { "y cu  
r tqxf gf "hqt" wvf gt" ucvg" rcy 0" Eqpugs wgpv{ . "vj g" Eqwtu" r tqdcvg"gzegr vkqp  
r tgegf gpw" f q"pqv'cf f tguu" vj ku'kuwg0

[ gv"vqf c{ "k" i qgu"y kj qw"uc{ kpi "vj cv"y j gp" c" hgf gtcn' eqwtv" gzgtckgu  
f kxgtukv{ "lwkuf levkqp" qxgt" c" ercko . "k" o wuv' cr r n{ "vj g" rcy "qh" vj g" ucvg" kp

6370 See supra"Rctv"KCD0#010  
6380 See supra"Rctv"KCD080  
6390 Markham v. Allen"ku"vj g"qpn{ "r quv'Erie" r tqdcvg/gzegr vkqp" r tgegf gp0"Uwqp"x0Gpi rkuj . "468  
WLU3; ; "3; 3: =Y cvto cp"x0'Ecpen'Nqvukpc"Dcpni( " Vtwu"Eq0"437" WLU55" \*3; 2; =Hcttgm"x0  
Q0Dtgp."3; ; "WLU; ; "3; 27=D{gtu"x0O eCwrg{ .36; "WLU82: "3; ; 5=J guu"x0Tg{pqrf u."335"WLU95  
\*3: : 7=I clpgu"x0Hvgpvgu"; 4"WLU32" \*3; 97=In re"Dtqf gtlenu"Y km": "WLU"43"Y cni0"725" \*3; 96=  
Re{pg"x0J qqm'96"WLU"9"Y cni0"647" \*3; 8: =I clpgu"x0Ej gy . '65"WLU"4"J qy 0"83; \*3; 66=0  
63: 0 E.g.. "Payne."96"WLU"9"Y cni0"652"pqvpi "vj g"gs wkv{ "r qy gt'qh"vj g" hgf gtcn' eqwtu"ku" wplkqto  
vj tqwi j qw" vj g" eqwvt { "cpf" gs wcn'vq" vj cv"qh"vj g" Gpi rkuj "j ki j "eqwtv'qh'ej cpegt { -0

y j lej "k' uku" cu" vj g" twg" qh" f gekukqp" hqt" vj cv' ercko <sup>63</sup>: "" Ceeqtf lpi n{. " kp f gvto kpkpi 'y j gvj gt" c' hgf gtcn' eqwt' v' ecp" gpvgt v' clp" c' r' tqdcvg/ tgrcvgf "ecwug" qh' cev' kqp. "t ghgt gpeg" vq" ucvg" rcy "ku" qh' ggp" pgeguuct { 0" Hqt "gz co r rg. "k' cp" j gk h' kgu" c" f kxgtukv{ "uwk' cmgi lpi "cp" kpf gr gpf gpv' eqo o qp" rcy "vqt' v' ercko "hqt k' vgp' v' kpcn' l' pvg' t' hgt gpeg" y kj "cp" g' zr' gev' v' kqp" qh' cp" l' pj' g' t' k' c' p' eg. "vj g' h' k' u' v' ugr ku" v' q' f' gvto k' pg" y j gvj gt "ucvg" rcy "tgeqi p' k' gu' uwej "c" ecwug" qh' cev' kqp <sup>64</sup> "" K vj gt g' ku' p' q' uwej "ecwug" qh' cev' kqp" v' p' f' gt "ucvg" rcy . "vj g' uwk' ku' p' q' v' f' kuo kuugf "hqt r' eni' qh' uwdlgev' o' cwgt "lwt' kuf' lev' kqp. "dwt' cvj gt "hqt" h' c' k' n' w' g' v' q' ucvg" c' ercko "hqt y j lej "t' r' gh' ecp" dg' i' t' cpv' g' f' <sup>643</sup>

DO"UVGR"4<UEQRG'QH'VJ G'HGF GTCN'EQWT'VUØ'UWDLGEV'O CVWGT  
LWT'KUF'KEVQP

Vj g" o' gt g' z' k' v' g' p' eg" qh' c' n' gi' c' n' q' t' "gs w' k' c' d' r' g' t' go' g' f' { "v' p' f' g' t' "ucvg" rcy "ku' p' q' v' g' p' q' w' j "hqt" c' "hgf gtcn' eqwt' v' v' q' "gz g' t' ekug" f' kxgtukv{ "lwt' kuf' lev' kqp" q' x' g' t' "c' r' tqdcvg/ tgrcvgf "ecwug" qh' cev' kqp" <sup>64</sup> "" Hqt "vj g' g' v' q' "dg" ucw' w' q' t' { "hgf gtcn' eqwt' v' uwdlgev' o' cwgt "lwt' kuf' lev' kqp. "vj g' n' gi' c' n' q' t' "gs w' k' c' d' r' g' t' go' g' f' { "o' w' u' v' h' c' n' i' y' k' j' k' p' v' j' g' t' c' f' k' k' q' p' c' n' u' e' q' r' g' qh' v' j' g' G' p' i' r' k' u' j' "eqwt' v' qh' e' j' c' p' e' g' t' { "c' p' f' "eqo o' qp" rcy "lp' 39: ; <sup>644</sup> "" Vj wu. "h' c' "ucvg" c' d' q' r' k' u' j' g' u' k' u' r' tqdcvg" eqwt' v' c' p' f' "x' g' u' v' k' u' "eqwt' v' qh' i' g' p' g' t' c' n' l' w' t' k' u' f' l' e' v' k' q' p" y' k' j' "l' w' t' k' u' f' l' e' v' k' q' p" q' x' g' t' "v' j' g' r' tqdcvg" qh' y' k' m. "c" hgf gtcn' eqwt' v' u' k' v' k' p' i' "k' p' f' k' x' g' t' u' k' v' { "y' q' w' f' "p' q' v' "v' p' f' g' t' "v' j' g' e' w' t' g' p' v' k' p' v' g' r' t' g' v' k' q' p" qh' v' j' g' ucw' w' q' t' { "i' t' c' p' v' qh' u' w' d' l' g' e' v' o' cwgt "l' w' t' k' u' f' l' e' v' k' q' p. "d' g' "c' d' r' g' v' q' "gz g' t' e' k' u' g' "l' w' t' k' u' f' l' e' v' k' q' p' q' x' g' t' "c' p' "c' e' v' k' q' p" v' q' r' tqdcvg" v' j' g' y' k' n' <sup>645</sup>

Vj g' x' c' t' k' u' w' h' q' t' o' w' r' e' g' f' g' x' g' n' r' g' f' "d' { "v' j' g' h' g' f' g' t' c' n' ' e' q' w' t' v' h' c' k' i' v' q' "e' c' r' w' t' g' v' j' k' u' v' u' g' r' "k' p' v' j' g' r' tqdcvg" g' z' e' g' r' v' k' q' p' "c' p' c' n' u' k' u' 0" D' g' e' c' w' u' g' v' j' g' "ö' t' q' w' g' ö' v' g' u' v' c' m' q' y' u

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63: 0 See Gtlg" T0T0E q0x0Vqo r n' p' u. "526" WU086" \*3; 5: -0  
 6420 See generally" Cn' g' p' x' 0' J' c' m' "35; "H5f "938" \*; v' "E' k' 0' 3; ; : = "H' k' u' v' q' p' g' x' 0' I' c' n' d' t' g' e' v' j. "47" H5f 545" \*8 v' "E' k' 0' 3; ; 6 = "O' q' q' t' g' x' 0' I' t' c' { d' g' c' n' : 65" H0f "928. "932" \*5 f' "E' k' 0' 3; ; : = "F' g' Y' k' v' x' 0' F' w' e' g. "897" H0f 892" \*7 v' "E' k' 0' 3; ; 4: 0  
 6430 Compare" H' g' f' 0' T' 0' E' k' 0' R' 0' 34 \*d+ \*3+ "c' e' v' k' q' p' f' k' u' o' k' u' u' g' f' "h' q' t' "r' e' n' i' q' h' l' w' t' k' u' f' l' e' v' k' q' p' q' x' g' t' "v' j' g' u' w' d' l' g' e' v' o' c' w' g' t' + "w' i' t' h' "H' g' f' 0' T' 0' E' k' 0' R' 0' 34 \*d+ \*8+ "c' e' v' k' q' p' f' k' u' o' k' u' u' g' f' "h' q' t' "h' c' k' i' v' q' v' q' "ucvg" c' "e' r' c' k' o' "w' r' q' p' "y' j' l' e' j' "t' r' g' h' e' c' p' d' g' i' t' c' p' v' g' f' "d' g' e' c' w' u' g' "p' q' "e' c' w' u' g' q' h' "c' e' v' k' q' p' "g' z' k' u' g' f' "v' p' f' g' t' "h' g' f' g' t' c' n' i' u' c' w' w' g' + 0" See also" J' c' t' v' h' t' f' "H' k' g' "k' p' u' 0' E' q' 0' x' 0' E' c' i' h' q' t' p' l' c. "72; "WU0986.": 35" \*3; ; 5+ "U' e' c' r' k' e. "I' 0' f' k' u' g' p' v' k' p' i' -0  
 6440 See" I' v' c' t' e' p' v' f' "V' t' w' u' v' E' q' 0' q' h' P' Q' 0' x' 0' l' q' t' m' "548" WU0; ; . "327" \*3; 67+ "V' j' g' "E' q' w' t' v' k' p' "Guaranty Trust Co. of N.Y." j' g' r' f' "v' j' c' v' p' q' y' k' j' u' c' p' f' l' p' i' "v' j' g' "E' r' i' e" f' q' e' w' t' k' p' g' c' p' f' "k' u' c' r' r' n' e' c' d' k' i' v' f' "v' q' "u' w' k' u' l' p' "g' s' w' k' v' . "k' v' k' u' p' q' v' j' g' "e' c' u' g' <  
 vj cv'y j cvxgt"gs wkscdrg"tgo gf { "ku'cxckrdrg"lp" c" Ucv'g"eqwt'v' o' wuv'dg'cxckrdrg"lp" c" f' kxgtukv{ uwk' lp" c" hgf gtcn' eqwt'v' 0000Gs wkscdrg' tgrgh' lp" c" hgf gtcn' eqwt'v' ku' qh' eqwtug' uwdlgev' v' t' g' u' t' l' e' v' k' q' p' u' v' j' g' u' w' k' v' o' w' u' v' d' g' y' k' j' l' p' v' j' g' t' c' f' k' k' q' p' c' n' u' e' q' r' g' qh' g' s' w' k' v' { "c' u' j' k' u' q' t' e' c' n' f' "g' x' q' i' x' g' f' "l' p' v' j' g' G' p' i' r' k' u' j' "E' q' w' t' v' q' h' E' j' c' p' e' g' t' { 0  
 Id.  
 6450 Cf. "J' c' o' k' n' q' p' x' 0' P' l' e' n' g' p. "89: "H0f "92; . "932" \*9 v' "E' k' 0' 3; ; 4+ "ö' V' j' k' u' l' p' q' v' v' q' "u' c' { . "q' h' i' e' q' w' t' u' g. v' j' c' v' h' g' f' g' t' c' n' i' e' q' w' t' v' e' c' p' p' q' y' "r' tqdcvg" y' k' m' l' p' "k' i' k' p' q' k' i' d' g' e' c' w' u' g' v' j' g' "ucvg" j' c' u' "c' d' q' r' k' u' j' g' f' "k' u' "u' r' g' e' k' r' i' k' g' f' r' tqdcvg" e' q' w' t' u' 0" R' t' q' d' c' v' g' t' g' o' c' k' p' u' c' "r' g' e' w' r' c' t' n' f' "n' e' c' n' i' h' p' e' v' k' q' p" y' j' l' e' j' "h' g' f' g' t' c' n' i' e' q' w' t' v' c' t' g' k' n' i' g' s' w' k' r' g' f' "v' q' r' g' t' h' q' t' o' 0-0



3764

SOUTHERN CALIFORNIA LAW REVIEW

]Xqr096-369;

hgf gtcn'eqwtv'lwtkuf levkqp"y j gtg"ctgo gf { "ku"cxckrdng"kp"cu"ucvg"eqwtv'qh  
 i gpgtcn'lwtkuf levkqp."k'y qwf "lpeqttgevn" "eqpenmf g'yj cv'yj g'hgf gtcn'eqwtv'j cu  
 uwdlgev'o cwtg"lwtkuf levkqp"qxgt"ej cmgpi gu"vq"vj g"xcrkf kq"qh"cy km'y j gtg  
 ucvg"m'y "r tqxkf gf "uwej "c"ngi cn'qt "gs wkcdng"ecwug"qh"cevkqp0" Wpf gt "vj g  
 or tcevecro"vgu."y j gtg"vj g"ucvg"j cu"grko kpcvgf "ku"ugr ctvg"r tqdcvg"eqwtu.  
 hgf gtcn' eqwtv' lwtkuf levkqp" y qwf " dg" cr r tqr tlcvg" wpf gt " vj g" otgrcvkxg  
 gxr gtvkugö"r tqpi "qh'yj g'vgu0"Y j gtg"vj g"ucvg"r tqxkf gu"htq"cp"kp"gr gpf gpv  
 cevkqp"vq"ej cmgpi g'yj g"xcrkf kq"qh"cy km'hgf gtcn'eqwtv'lwtkuf levkqp"y qwf "dg  
 cr r tqr tlcvg"wpf gt"vj g"ölvf lelcni'geppqo { ö"r tqpi "qh'yj g'vgu0"Vq"dg"uwtg."vj g  
 öpcwtg"qh'ercko ö"vgu"y qwf "r tngxpv"vj g'hgf gtcn'eqwtv'htqo "cf lwf lecvkpi "c  
 ucvg/etgcvgf "gs wkcdng"qt "ngi cn'cevkqp"ej cmgpi kpi " vj g"xcrkf kq"qh"cy km  
 cf o kwgf "vq"r tqdcvg."cu"vj cv'y qwf "i q"vq"vj g"öxcrkf kq"ö"qh"vj g"kpux wo gpv0  
 [ gv'k'y qwf "hckl"vq"ecr wtg"vj g"xctkqwu"gzegr vkpu"vq"vj g"geengukunlecn  
 eqwtu0"gzenukxg"lwtkuf levkqp"qxgt"uwej "ej cmgpi gu"kp"gli j vggpvj /egpwt {  
 Cpi rpf 0

Upep" vj g" j kvqtkecn' rko kcvkqp" qp" hgf gtcn' eqwtv' uwdlgev' o cwtg  
 lwtkuf levkqp"ku"o gtg"i nquu"qp"vj g"i gpgtcn'ucwwqt { "i tcvu"qh'uwdlgev'o cwtg  
 lwtkuf levkqp"cpf "ku"pqv"cequvkwkqpcn'iko kcvkqp."y j gtg"Eqpi tgu"etgcvgu"c  
 hgf gtcn'ngi cn'qt"gs wkcdng"tgo gf { "cpf "ur gekhkecm" r tqxkf gu"htq" hgf gtcn'eqwtv  
 uwdlgev'o cwtg"lwtkuf levkqp"qxgt"uwej "cevkpu"cu"y kj "vj g"TEQ"ucwwg."vj ku  
 uvr " kp" vj g" cpcn' vlcni' htco gy qtni' qh" vj g" r tqdcvg" gzegr vkqp" y qwf " dg  
 kpcr r rccdrng<sup>646</sup>

E0"UvGR"5<CUSTODIA LEGIS

Vj g"ötqwgö"vgu"htq" f gyto kplpi "y j gp"vj g"r tqdcvg"gzegr vkqp"cr r nqu  
 wtpu"qp"y j gj gt"vj g"r ctvewct"cevkqp"eqwf "dg"j getf "kp"cu"ucvg"eqwtv'qh  
 i gpgtcn'lwtkuf levkqp."qt"kh'k'ku"eqi plk cdng"qpn" "kp"cu"ucvg"r tqdcvg"eqwtv0"  
 Kk  
 vj g"rcwgt."hgf gtcn'eqwtv'f kxgtukv"lwtkuf levkqp"fqgu"pqv"gzku<sup>647</sup>"Vq"dg"uwtg.  
 gxgp"uqo g"qh"vj g"qrf gt"Uwr tgo g"Eqwtv'ecugu"j cxg"o cf g"tghgtgpeg"vq"vj gtg  
 dgkpi "hgf gtcn'lwtkuf levkqp"y j gtg"cp"cevkqp"ecp"dg"dtqwi j v"kp"vj g"ucvg"eqwtu  
 qh'i gpgtcn'lwtkuf levkqp<sup>648</sup>

6460 Cf'O ctnj co "x0Cmgp."548"WLU6; 2."6; 76; 8"3; 68+"j qrf kpi "y j gtg"ctgo gf { "ku"cxckrdng"kp"cu"ucvg"eqwtv'qh  
 i gpgtcn'lwtkuf levkqp."k'y qwf "lpeqttgevn" "eqpenmf g'yj cv'yj g'hgf gtcn'eqwtv'j cu  
 uwdlgev'o cwtg"lwtkuf levkqp"qxgt"ej cmgpi gu"vq"vj g"xcrkf kq"qh"cy km'y j gtg  
 ucvg"m'y "r tqxkf gf "uwej "c"ngi cn'qt "gs wkcdng"ecwug"qh"cevkqp0" Wpf gt "vj g  
 or tcevecro"vgu."y j gtg"vj g"ucvg"j cu"grko kpcvgf "ku"ugr ctvg"r tqdcvg"eqwtu.  
 hgf gtcn' eqwtv' lwtkuf levkqp" y qwf " dg" cr r tqr tlcvg" wpf gt " vj g" otgrcvkxg  
 gxr gtvkugö"r tqpi "qh'yj g'vgu0"Y j gtg"vj g"ucvg"r tqxkf gu"htq"cp"kp"gr gpf gpv  
 cevkqp"vq"ej cmgpi g'yj g"xcrkf kq"qh"cy km'hgf gtcn'eqwtv'lwtkuf levkqp"y qwf "dg  
 cr r tqr tlcvg"wpf gt"vj g"ölvf lelcni'geppqo { ö"r tqpi "qh'yj g'vgu0"Vq"dg"uwtg."vj g  
 öpcwtg"qh'ercko ö"vgu"y qwf "r tngxpv"vj g'hgf gtcn'eqwtv'htqo "cf lwf lecvkpi "c  
 ucvg/etgcvgf "gs wkcdng"qt "ngi cn'cevkqp"ej cmgpi kpi " vj g"xcrkf kq"qh"cy km  
 cf o kwgf "vq"r tqdcvg."cu"vj cv'y qwf "i q"vq"vj g"öxcrkf kq"ö"qh"vj g"kpux wo gpv0  
 [ gv'k'y qwf "hckl"vq"ecr wtg"vj g"xctkqwu"gzegr vkpu"vq"vj g"geengukunlecn  
 eqwtu0"gzenukxg"lwtkuf levkqp"qxgt"uwej "ej cmgpi gu"kp"gli j vggpvj /egpwt {  
 Cpi rpf 0

6470 See *supra* "Rctv"K0000  
 6480 See "I clpgu"x0Hvpgv"; 4"WLU32."42643"3; 97="In re"Dtqf gthenu"Y km": "WLU"43"Y cni-  
 725."73; 642"3; 9640

[ gv'vj ku'y qwf "h{ "kp"vj g"rceg"qh'hko n{ "gucdrkuj gf "r tgegf gpv'j qrf kpi vj cv'vj g'ucv'gu'ecppqv'f ghcev'vj g'hgf gtcn'eqpukwkwkpcn'cpf "ucvwwqt { "tki j v'qh c" f kxgtug"r ctv' "vq" tgo qxg" c" uwk'vq "hgf gtcn'eqwtv"\*qt"vq "hkrq"kv'vj gtg"cu"cp qtki kpcn' o cvgt+" d{ " o gtg" kpvgtpcn' cttcpi go gpv' qh' vj g" f kwtkdwkqp" qh lwtkuf levkqp" dgvy ggp" vj gkt" r tqdcvg" eqwtu" cpf " vj gkt" eqwtu" qh" i gpgtcn lwtkuf levkqp<sup>649</sup>

Y j cv'vj g'otqwgö"v'gu'ku'tgcm{ "v { kpi "vq"ecr wwtg"ku'pqvj kpi "o qtg'vj cp" c uj qt vj cpf "crr r tqzko cvkqp"qh'vj g"custodia legis" f qevtkpg. "wpf gt"y j lej "vy q eqwtu'ecppqv'gz gtekuq'eqpewtt gpv'lwtkuf levkqp"qxgt "c" r tqeggf kpi "kp'tgo 0"Cu c"i gpgtcn'twrg. "y j gp" c" eqpvtqxgtu{ "ku"tgrni cvgf "d{ "ucv'g"mcy "vq"vj g"ucv'g r tqdcvg"eqwtu"\*cu"qr r qugf "vq"vj g"ucv'g"eqwtu"qh'i gpgtcn'lwtkuf levkqp+ "k'ku wuwcm{ "dgecvwg"kv'ku" r ctv' qh' vj g" qpi qkpi "kp"tgo " r tqeggf kpi " cpf "pqv' cp kpf gr gpf gpv'kp" r gtuqpcp "cev'kqp0"Dw'ulpe" c"ucv'g"eqwrf "ej qqug"vq" xgu'ku r tqdcvg"eqwtu'y kj "lwtkuf levkqp"qxgt "kpf gr gpf gpv'kp" r gtuqpcp "cev'kqp. "uwej cu'y tqpi hwi'f gcvj "uwxu"qt "cev'kqp" d{ "etgf kqtu. "vj g"otqwgö"v'gu'y qtmu'qpn{ cu" c" emug" crr r tqzko cvkqp" qh' vj g" f qevtkpg" qh" custodia legis. " cpf " ecppqv cny c { u'dg'eqttge0

6490 See "Y cvgt cp"x0'Ecpcn'Nqwkulpc"Depni( "Vtwu'Eq0'437"WLU'55."65666"\*3; 2; +\*j qrf kpi "c hgf gtcn'eqwtv'j cu' uwdlgev" o cvgt" lwtkuf levkqp" vq" cf lwf lecv'g" uwxu" d{ "etgf kqtu" rgi cvggu. " cpf " j gktu" vq gucndrkuj " vj gkt" ercko u" ci clpuv' cp" gucv'g. " pqvy kj ucprf kpi " ucvg" ucwv'gu' i kxkpi " ucvg" r tqdcvg" eqwtu gzenwuxg"lwtkuf levkqp"qxgt "uwej "uwxu"="Erctn'x0'Dgxt. "35; "WLU; 8."324625"\*3; ; 3="J gu'x0Tg(p qrf u" 335" WLU'95."99" \*3; : 7=" \*jVj g" eqpvtqxgtv'f " s vgw'kqp" qh' f gdv' qt" pq" f gdv' ku' qp" y j lej . " h' vj g tgr tgu'p'v'kvg" qh' vj g" f g'gef gpv'ku" c" ekk' gp" qh' c" Ucv'g" f h' h' g' p' v' h' qo " vj cv'qh' vj g" qv' j gt" r ctv' . " vj g" r ctv' r tqr gtn' "uksv'gf " j cu" c" tki j v' i kxgp" d{ " vj g" Eqpukwkwkqp" qh' vj g" Wp'k'gf "Ucv'gu" vq" j cxg" v' t' g' f " qtki kpcn{ " qt d{ " tgo qxcn'lp" c" eqwtv'qh' vj g" Wp'k'gf "Ucv'gu" y j lej "ecppqv'dg" f gh'cev'g" d{ "Ucv'g" ucwv'gu' g'p'cev'g" h'qt" vj g o qtg' eqp'x'p'k'p'v'gu'wgo gpv'qh' gucv'gu" qh' f g'gef gpv'ku" = "Re { pg" x0J qqm "96" WLU'9" Y cno" 647. "64; 652 \*3; 8: +\*j qrf kpi " vj g' eqpukwkwkpcn'cpf "ucvwwqt { "tki j v'qh' c' ekk' gp" qh' qp'g" ucvg" vq" j cxg' vj gkt "uwx'ci clpuv' c' ekk' gp" qh' cpvj gt" ucvg" j gctf "kp" c" hgf gtcn'v'kdwpcn' y qwf "dg" cdtqi cvgf "h' f kxgtuk{ " lwtkuf levkqp" y gte uwdlgev" vq" vj g' h' p' v' g' t' p' n' f' kwtkdwkqp" qh' l' w' f' l' e' n' i' r' qy' gt' y' kj' kp" c" ucvg" = I t' g' j' q' w' p' f' " N' k' p' u' " h' p' e' 0' x' 0' N' g' z' k' p' i' v' q' p' Ucv'g" Depni( " Vtwu'Eq0'826" H0f "3373."3376677"\*: vj "Ek03; 9; +\*j qrf kpi " vj g' f' gekukqp" qh' ucvg" vq" j kxg eqwv'f " eqwtu" gzenwuxg" lwtkuf levkqp" qxgt" ercko u" ci clpuv' vj g' gucv'gu" qh' f' g'gef gpv' f' qgu' p' qv' cev' cu" c' t' g' u' t' k' v' q' p' " q' p' h' g' f' g' t' c' n' f' e' q' w' t' v' f' k' x' g' t' u' k' { " l' w' t' k' u' f' l' e' v' k' p' = " U' y' c' p' " x' 0' G' u' c' v' g' " q' h' " O' q' p' g' v' g' . " 622" H0f "496."498"\*: vj "Ek03; 8: +\*j ekk'pi " [ q' p' r' g' { " x' 0' N' c' x' g' p' f' g' . " : " WLU'43" Y cno" 498"\*3; 96=" Beach. "48; " H0f " cv'594695 \*ekk'pi " O e' R' n' c' p' " x' 0' E' c' t' r' c' p' f' . " 439" WLU'48: .4: 36: 4"\*3; 32=" D' q' t' g' " x' 0' E' j' c' r' o' c' p' . " 33; " WLU'7: 9"\*3: : 9=" Hess. "335" WLU'cv'98699=" Gaines. " ; 4" WLU'cv'32" \*j qrf kpi " h' u' qo' g' vj kpi " ku' p' q' v' f' g' g' o' f' " vq" d' g' c' " o' r' w' g' n' f' r' t' q' d' c' v' g' " o' c' w' g' t' o' " vj g' h' g' f' g' t' c' n' e' q' w' t' v' l' w' t' k' u' f' l' e' v' k' p' " k' u' p' q' v' q' w' u' g' f' " d' { " vj g' o' g' t' g' " l' p' v' g' t' p' c' n' c' t' t' c' p' i' g' o' g' p' v' q' h' vj g' u' c' v' g' " e' q' w' t' u' d' { " y' c' { " q' h' i' r' w' k' p' i' " c' o' c' w' g' t' y' k' j' k' p' vj g' g' z' e' n' w' u' x' g' l' w' t' k' u' f' l' e' v' k' p' q' h' vj g' r' t' q' d' c' v' g' " e' q' w' t' u' = " D' e' t' p' g' u' " x' 0' D' t' c' p' f' t' w' . " 728" H0U' r 05; 8: "5; ; \*UF (P Q 03; : 3=" ekk'pi " D' g' c' e' j' " x' 0' T' q' o' g' " V' t' w' u' E' q' 0' 48; " H0f " 589. " 595 \*4f " Ek03; 7; +h'qt" vj g' r' t' q' r' q' u' k' k' p' vj cv' eqpvtqxgtu' vj cv' y g' g' p' q' v' t' g' i' c' t' f' g' f' " cu' r' t' q' d' c' v' g' o' c' w' g' t' u' " l' p' " 39; ; eqwrf "pqv'dg" mgr v' h' qo " hgf gtcn'eqwtv' lwtkuf levkqp" dcugf " qp" l' p' v' g' t' p' c' n' c' t' t' c' p' i' g' o' g' p' u' " q' h' vj g' g' u' c' v' g' " e' q' w' t' u' = " D' t' { f' g' p' " x' 0' F' c' x' k' u' " 744" H0U' r 0338: . " 3393" \*GF 0' O' q' 0' 3; : 3=" p' q' v' k' p' i' " u' c' v' g' u' " e' c' p' p' q' v' l' o' r' q' u' g' t' g' u' t' c' k' p' u' " q' p' h' g' f' g' t' c' n' l' w' t' k' u' f' l' e' v' k' p' d' { " e' t' g' e' v' k' p' i' " r' t' q' d' c' v' g' " e' q' w' t' u' " c' p' f' " x' g' u' k' p' i' " vj g' o' " y' k' j' " g' z' e' n' w' u' x' g' l' w' t' k' u' f' l' e' v' k' p' = " I' c' e' m' a' q' p' " x' 0' WLU' P' c' v' a' i' D' c' p' m' " 375" H0U' r 0326. " 333634" \*F 0' Q' t' 0' 3; 79=" \*j qrf kpi " vj g' u' c' v' g' u' " e' c' p' p' q' v' i' t' o' k' h' g' f' g' t' c' n' e' q' w' t' v' l' w' t' k' u' f' l' e' v' k' p' . " c' p' f' " vj cv' h' c' " t' k' i' j' v' y' c' u' " g' p' h' q' t' e' g' e' d' r' g' " l' p' " vj g' " G' p' i' r' k' u' j' " J' k' i' j' " E' q' w' t' v' q' h' " E' j' c' p' e' g' t' { " l' p' " 39; ; " c' p' f' e' q' w' r' " d' g' " g' p' h' q' t' e' g' f' " l' p' " r' g' t' u' q' p' c' o' " l' p' " u' q' o' g' u' c' v' g' " e' q' w' t' v' o' " c' p' { " e' q' w' t' v' l' p' " vj g' u' c' v' g' " g' x' g' p' " c' r' t' q' d' c' v' g' " e' q' w' t' u' " vj g' p' vj g' g' e' c' p' " u' k' n' i' d' g' " h' g' f' g' t' c' n' e' q' w' t' v' l' w' t' k' u' f' l' e' v' k' p' -4)



Kpf ggf. "vj g" custodia legis" twrg" wpf gtrkgu" vj g" r tkpek rg" vj cv" y j krg" c hgf gtrcn'eqwtv'ukwki "kp" f kxgtukv { "ecp" gucdrikuj "vj g" f gdu'ci ckpuv'vj g" gucvy. vj g" f gdu' gucdrikuj gf " o wuv' vcnrg" vj g" r nreg" cpf " uj ctg" qh" vj g" gucvy" cu cf o kpkuyt gf "d { "vj g" r tqdcvg" eqwtv' "Vj g" f gdu' gucdrikuj gf "ecppqv'dg" gphqtegf d { " r tqegu" f ktgev { " ci ckpuv' vj g" r tqr gt v { " qh" vj g" f gegf gpv. " ukpeg" hqt" vj g hgf gtrcn'eqwtv'v' qtf gt "vj g" f kwt kdwkqp" qh' vj g" cuugv' qh' cp" gucvy" vj cv' ku' dgkpi cf o kpkuyt gf "d { "c" ucvy" r tqdcvg" eqwtv' y qwf " o gcp" vj cv' dqj " eqwtv' y gtg gztgekupi " lwtkuf levkqp" qxgt "vj g" uco g" res<sup>64</sup>:

Ceeqtf kpi n { . "vj g" kuug' ku' pqv' kp" y j cv' eqwtv' vj g' cevqp" ecp" dg" dtqwi j v. dw' y j gvj gt "k' ku" cp" kpf gr gpf gpv' inter partes" cevqp<sup>65</sup> " Vj g" Uwr tgo g" Eqwt v j cu' gzr nckpgf "vj cv' cevqp" qt " uwk' inter partes" o' tghgtu <

qpn { " vj " kpf gr gpf gpv' eqpvtqxgtukgu" inter partes. " cpf " pqv' vj " o gtg eqpvtqxgtukgu" y j lej " o c { " ctkg" qp" cp" cr r rkecvkqp" vj " r tqdcvg" c" y kn dgecvy" vj g" ucvy" rny " r tqxf gu" hqt " pqv' kg. " qt " vj " f kur wgu" eqpegtkpi " vj g ugwki " cukf g" qh' c" r tqdcvg. " y j gp' vj g" tgo gf { " vj " ugv' cukf g" chqt gf " d { " ucvy rny " ku' c" o gtg eqpvtkvkqp" qh' vj g" r tqdcvg" r tqeggf kpi <sup>64</sup>:

Wpf gt "vj ku' uvr "qh' vj g" r tqdcvg" gzev vqp" kps vkt { . "vj g" ng { " ku' vj " gzc" o kpg" vj g ucvy" ucvwqt { " uej go g" vj " f gvgto kpg" y j gvj gt " vj g" uwk' ku' c" o gtg eqpvtkvkqp" qh' vj g" r tqeggf kpi u" vj " r tqdcvg" vj g" y kn' qt " ku' kpuv' gf " cp kpf gr gpf gpv' inter partes" cevqp<sup>65</sup> " Hqt " gzc" o r ng. " y j gtg ucvy" rny " tgs vkt gu' c uwk' ej cnngpi kpi " vj g" y kn' dg" dtqwi j v' dghgtg" vj g" uco g" lwi g" y j q" ku gztgekupi " lwtkuf levkqp" qxgt " vj g" r tqdcvg" qh' vj g' y kn' cpf " vj g" cf o kpkuyt kvkqp" qh vj g" gucvy. " vj g" cevqp" y kn' dg" eqpukf gt gf " vj " dg" c" o gtg eqpvtkvkqp" qh' vj g

64: 0 See "D { gtu' x00 eCwrg { . "36; "WLU082: . "836" \*3; ; 5-0" Vj g" Eqwtv' tgcuppgf " o y j gtg r tqr gt v { " ku' kp vj g" cewcn' r quguukqp" qh' qpq" eqwtv' qh' eqo r ggpv' lwtkuf levkqp. " uwej " r quguukqp" ecppqv' dg" f kuwtdgf " d { r tqegu" qw' qh' cpqj gt' eqwtv' <sup>65</sup> " Id. " J gpeg' vj g" ucvy go gpv' kp" Markham vj cv hgf gtrcn' eqwtv' qh' gs wkv { " j cxg' lwtkuf levkqp" vj g' gpv' v' kp' uwk' " kp' rxcxt" qh' etgf kqtu " rgi cvgu" cpf j gtu' cpf " qvj gt' erck' cpw' ci ckpuv' c' f gegf gpv' gucvy" " vj g' gucdrikuj " vj g' erck' u' u' rpi " cu' vj g hgf gtrcn' eqwtv' v' qgu' pqv' kv' gtht g' y kj " vj g' r tqdcvg" r tqeggf kpi u' qt' cuwv' g' i gpgtrcn' lwtkuf levkqp" qh vj g' r tqdcvg" qt' eqpvtkvkqp" vj g' r tqr gt v { " kp' vj g' ewwqf { " qh' vj g' ucvy" eqwtv' Markham. "548" WLU0v'6; 60

64: 0 Httgm' x0' Qdtkp. "3; ; "WLU: . "332" \*3; 27+ " go r j cuku" kp" qtki kpcn' <sup>65</sup> " See generally id. " cv 336638" \*j qrf kpi " vj cv' y j gtg' c' r tqeggf kpi " vj g' eqpvtkv' c' y kn' wpf gt' ucvy" rny " ecp" qpn' " dg" j gctf " dghgtg" vj g eqwtv' vj cv' cf o kvgf " vj g" y kn' vj " r tqdcvg. " cpf " y j gtg" vj g' tgn' k' kp" vj cv' r tqeggf kpi " qr gtcv' u' cu' ci ckpuv' vj g gpv' g' y qtf " cpf " pqv' lwtv' vj g' r ctv' gu' dghgtg" vj g' eqwtv' " ku' ku' pqv' cp" cevqp" inter partes" = " Uwwq" x0' Gpi nkuj . 468" WLU03; . "42962: " \*3; 3: + " j qrf kpi " vj cv' y j gtg' c' uwk' vj g' ej cnngpi g' c' y kn' o wuv' dg' dtqwi j v' kp' vj g' eqwtv kp" y j lej " kv' cu' r tqdcvgf. " cpf " y j gtg" vj g' ucvy" eqwtv' qh' i gpgtrcn' lwtkuf levkqp" j cxg' pq' qtki kpcn' lwtkuf levkqp qxgt' cevqp' vj g' c' ppw' c' y kn' c' uwk' vj g' c' ppw' c' y kn' ku' o gtrn' " uwr r ngo gpv' cn' vj g' r tqdcvg" qh' vj g' y kn' cpf vj g' g' ku' vj wu' pq" hgf gtrcn' eqwtv' lwtkuf levkqp" = " Waterman. "437" WLU0v'66" \*pqv' kpi " vj cv' vj gtg" ku' pq" hgf gtrcn eqwtv' lwtkuf levkqp" y j gp' vj g' r tqeggf kpi u' ctg' kp' tgo " cpf " ctg' vj wu' r wtrn' " r tqdcvg" kp' ej ctcevgt-0

6520 See " Sutton. "468" WLU0v'427628" \*cpcn' | kpi " vj g' ucvwqt { " uej go g" hqt" ej cnngpi kpi " c" y kn' kp Vgzcu" = " Farrell. "3; ; " WLU0v'333636" \*cpcn' | kpi " vj g' ucvwqt { " uej go g" hqt" ej cnngpi kpi " c" y kn' kp Y cuj kpi vq-0

r tqdcvg" r tqeggf kpi " cpf " pqv" cp" kpf gr gpf gpv" *inter partes*" cevkkp<sup>653</sup>  
 O qtgqxt."kh"vj g"tguwn"qh"vj g"lwf i o gpv"ctkukpi "htqo "c"ej cmgpi g"vq"vj g  
 xcrlf k{ "qh"cy km'y gtg"dkpf kpi "cu"ci ckpu"vj g"y j qrg"y qtrf "cpf"pqv"o gtgnf  
 vj g"r ctvku"vq"vj g"uwk:"k"y qwf "dg" c"uwk"kp"tgo "tcvj gt"vj cp" c"uwk" *inter*  
*partes*"cpf"vj g"hgf gtcn"eqwt"v"y qwf "rcen"lwtkuf levkqp"qxgt"vj g"uwk<sup>0</sup>"Gxgp  
 cuwo kpi "vj g"j kvqtkcni"rko kc"vkkp"qp"vj g"ueqr g"qh"vj g"ucwwqt { "i tcpv"qh  
 uwdlgev"o cwtg"lwtkuf levkqp" f qgu"pqv" dct" cf lwf levkqp"qh"cp" kpf gr gpf gpv  
 cevkkp"vq"ej cmgpi g"vj g"xcrlf k{ "qh"cy km"kp"hgf gtcn"eqwt"v"vj g"*custodia legis*  
 f qevtkpg"o ki j v" f gr gpf kpi "qp"vj g"ucvga"ucwwqt { "uej go g<sup>0</sup>"Dw"ulpeg"vj g  
*custodia legis*" f qevtkpg"ku"dculecmf "c"twrg"qh"htuv"eqo g."htuv"ugt xgf."vj g  
 hgf gtcn"eqwt"v"y qwf "pqv"dg" dcttgf "htqo "gzgtekukpi "lwtkuf levkqp"qxgt"cp  
 cevkkp"ej cmgpi kpi "vj g"xcrlf k{ "qh"cy km<sup>0</sup> gxgp"kh"wej"cp"cevkkp"ku" f ggo gf  
 vq"dg"r ctv"qh"vj g"qpi qkpi "r tqdcvg"r tqeggf kpi u<sup>0</sup> kh"vj g"hgf gtcn"cevkkp"ku"hgkf  
 r tkqt"vq"vj g"eqo o gpego gpv"qh"cp { "ucv"r tqdcvg"r tqeggf kpi u<sup>0</sup>

F 0"UVGR'6<ECUG'QT"EQP VTQXGTU

Uqo g"eqwtu"j cxg"s wguvkqpgf "y j gvj gt"r tqdcvg"o cwtgu"ctg"lwtkckdrj  
 oecugu"qt"eqpvtqxgtulgu<sup>0</sup>y kj kp"vj g"o gcpkpi "qh"ctvlerg"KKK<sup>654</sup>"K"Gaines v.  
 Fuentes.<sup>655</sup>jj qy gxgt."vj g"Uwr tgo g"Eqwtv"fkukpi wkuj gf"cp"cevkkp"vq"r tqdcvg  
 c"y km"htqo "cp"cevkkp"ej cmgpi kpi "c"y km<sup>0</sup>"Vj g"Eqwtv"tgcuaqpgf "vj cv"vj g"o gtg  
 r tqdcvg"qh"cy km"ku"cp"cevkkp"kp"tgo ."y j lej "f qgu"pqv"pgeguuctk{."cpf"kp"hev  
 ugrf qo "f qgu."kpxqrg"cp { "ecug"qt"eqpvtqxgtu { "dgy ggp"r ctvku"y kj kp"vj g  
 o gcpkpi "qh"ctvlerg"KKK<sup>656</sup>"Dw"qpeg" c" f kur wg"ctkugu"eqpegtpkpi "vj g"xcrlf k{  
 qt"eqpvtwvkkp"qh"cy km"cp"ctvlerg"KKK"eqpvtqxgtu { "ctkugu<sup>657</sup>"Ceeqt f kpi n{.  
 qpeg"cy km"j cu"dgpp"r tqdcvgf."cp"cevkkp"d { "c"ngi cvgg."j gk"qt"qvj gt"erko cpv  
 ci ckpu"cp"gzgewqt"ku" c"ecug"qt"eqpvtqxgtu { "y kj kp"vj g"o gcpkpi "qh"ctvlerg  
 KKK<sup>658</sup>"cu"ku" c"uwk"uggnkpi "c" f gerctvkkp"cu"vq"j gktuj kr "qt"vj g"eqpvtwvkkp"qt  
 xcrlf k{ "qh"cy km<sup>659</sup>

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6530 See Sutton."468" WLU0cv42962: =Farrell."3; ; "WLU0cv3366380  
 6540 E.g."Cmnp"x0O ctnj co ."369" Hbf "358"; vj "Ek03; 67+."rev" d."548" WLU06; 2"\*3; 68+ "I cmj gt  
 x0I tcpv"382" H0Uwr r 0: . ."; 6"\*P (F 0'k03; 7: =Tleg"x0Tleg" Hqwpf 0"832" Hbf "693."697"( "p08"\*9vj "Ek0  
 3; 9; #0  
 6550 ; 4" WLU032"\*3: 97+0  
 6560 Id."cv436440  
 6570 Id."cv440  
 ]Lwtkuf levkqp"cu"vq"y kmu"cpf"vj gk"r tqdcvg"cu"wej . "ku"pgkij gt"lpenwf gf "kp"pqt"gzegr vgf "qvw"qh  
 vj g"i tcpv"qh"lwf kelen'r qy gt"vq"vj g"eqwtu"qh"vj g" Wpkgf "Ucvgu0"Uq" hct"cu"ku"ku" *ex parte*"cpf  
 o gtgnf "cf o kpkwt cvxg."k"ku"pqv"eqphgtgf."cpf"kw"ecppq"v"dg"gzgtekugf "d { "vj go "cv"cmi"wpk"kp" c  
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SOUTHERN CALIFORNIA LAW REVIEW

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*SOUTHERN CALIFORNIA LAW REVIEW*

DV

PROBATE COURT 4

**DATA ENTRY  
PICK UP THIS DATE**FILED  
9/1/2015 4:53:35 PM  
Stan Stanart  
County Clerk  
Harris County

NO. 412,249

ESTATE OF	§	IN THE PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS

**APPLICATION FOR AUTHORITY TO RETAIN COUNSEL - MACINTYRE,  
MCCULLOCH, STANFIELD & YOUNG, LLP**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Gregory A. Lester, Temporary Administrator Pending Contest of the Estate of Nelva E. Brunsting, Deceased, ("Applicant"), and files this his Application for Authority to Retain Counsel – MacIntyre, McCulloch, Stanfield & Young, LLP, and in support of such Application, would respectfully show unto the Court the following:

1.

Applicant was appointed Temporary Administrator Pending Contest of the Estate of Nelva E. Brunsting, Deceased, by Order of this Court signed on July 23, 2015. A true and correct copy of the Order Appointing Temporary Administrator Pending Contest is attached hereto as **Exhibit "A."** Applicant qualified by taking the Oath on July 24, 2015 and filing a Bond on July 27, 2015.

2.

Applicant requests permission to retain the services of JILL W. YOUNG, an attorney with the law firm of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP located in Houston, Harris County, Texas, as well as other members of that firm that specialize in probate litigation. Counsel will represent Mr. Lester in the matters filed herein, which involve the Temporary Administrator Pending Contest and those items enumerated in the Court's Order.

09022015:1437:P0094

09022015:1437:P0095

3.

Applicant wishes to formally retain Counsel on behalf of the Estate. Applicant alleges and believes retaining Counsel for the purpose of representation in the aforementioned Estate is in the best interest of the Estate.

4.

Additionally, Applicant requests the services of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP to assist Applicant with his fiduciary responsibilities pursuant to the Texas Estates Code and this Court's Order. Applicant believes that it would be in the best interest of the Estate to retain counsel to assist him with such fiduciary responsibilities in the Estate on file herein.

WHEREFORE, PREMISES CONSIDERED, Applicant GREGORY A. LESTER, Temporary Administrator Pending Contest of the Estate of Nelva E. Brunsting, Deceased, requests that this Court allow him to retain the law firm of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP to represent him in his capacity as Temporary Administrator Pending Contest of the Estate of the Decedent, and for such other and further relief which the Court may deem proper.

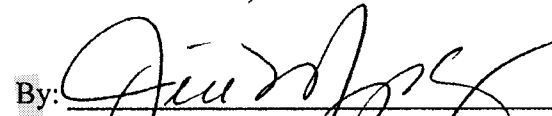
09022015:1437:P0096

Respectfully submitted,



GREGORY A. LESTER, TEMPORARY  
ADMINISTRATOR OF THE ESTATE OF  
NELVA E. BRUNSTING, DECEASED

MacINTYRE, McCULLOCH, STANFIELD  
& YOUNG, LLP

By: 

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ATTORNEYS FOR APPLICANT



09022015:1437:P0097

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was sent by e-mail, e-serve, facsimile, and/or United States certified mail, return receipt requested, on this the 14<sup>th</sup> day of September, 2015, to the following parties:

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[brad@mendellawfirm.com](mailto:brad@mendellawfirm.com)  
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(713) 658-1921 (Fax)  
[dsmith@craincaton.com](mailto:dsmith@craincaton.com)  
[acovey@craincaton.com](mailto:acovey@craincaton.com)  
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*Attorneys for Carl Henry Brunsting*

Candace Louise Curtis  
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American Canyon, California 94503  
*Pro Se*

  
JILL W. YOUNG

No. 412,249

IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER APPOINTING TEMPORARY ADMINISTRATOR PENDING CONTEST  
PURSUANT TO TEXAS ESTATES CODE 452.051

On March 23, 2015, the Court heard and approved Carl Henry Brunsting's Application to Resign as Independent Executor. On July 21, 2015 the Court heard and considered CARL HENRY BRUNSTING'S APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND CANDACE LOUISE CURTIS' APPLICATION FOR APPOINTMENT AS SUCCESSOR PERSONAL REPRESENTATIVE; Anita Kay Brunsting's OBJECTION TO CANDACE CURTS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE; AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR, RESPONSE TO CARL BRUNSTING'S APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND OBJECTION TO CANDACE CURTIS'S APPLICATION FOR APPOINTMENT AS SUCCESSOR EXECUTOR; Carl Brunsting's OBJECTION TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR; and Candace Curtis' RESPONSE TO OBJECTIONS TO APPLICATION FOR APPOINTMENT AND OBJECTION TO AMY BRUNSTINGS APPLICATION FOR APPOINTMENT.

The Court finds that the Court has jurisdiction and venue over Decedent's Estate; that it is in the best interest of the Estate that a personal representative be immediately appointed; and that the parties have reached an agreement regarding the appointment of a Temporary Administrator Pending Contest with limited powers, which was announced on the record at said hearing, the terms of which are substantially as follows:

1. GREG LESTER would be a suitable temporary representative, is not disqualified from acting as such, and should be appointed Temporary Administrator

09022015:1437:PO098

07222015:1343:PO846

09022015:1437:P0099

07242015:1343:P0047

Pending Contest of this Estate with limited powers to evaluate all claims filed against 1) Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC, 2) Anita Kay Brunsting f/k/a Anita Kay Riley, Individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust and the Anita Kay Brunsting Personal Asset Trust; and 3) Amy Ruth Brunsting f/k/a Amy Ruth Tschirhart, Individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Tschirhart Personal Asset Trust; and 4) Carole Ann Brunsting, Individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust. Greg Lester, Temporary Administrator Pending Contest will report to the Court regarding the merits of these claims on or before the expiration of this Order. This Order shall expire 180 days after the date that it is signed.

2. Amy Brunsting and Anita Brunsting, as the Successor Co-Trustees of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, and the Nelva E. Brunsting Survivor's Trust agree to advance funds to the Estate of Nelva E. Brunsting (the "Estate") to pay all court approved fees and expenses of the Temporary Administrator Pending Contest.

3. The Temporary Administrator Pending Contest has the authority to seek a continuance in the "District Court Case" in which the Estate is a plaintiff, of the hearing on the Motion for Summary Judgment current scheduled for July 31, 2015 and to seek continuance of the October, 2015 trial setting in that matter.

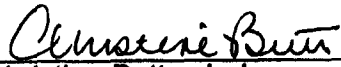
4. Amy Brunsting and Candace Louise Curtis each agree to a qualified declination to serve as Successor Independent Executor of the Estates of Nelva E. Brunsting and Elmer H. Brunsting, pursuant to the respective wills filed in each Estate, during the pendency of the Temporary Administration of this Estate.

09022015:1437: P0100

07242015:1343: P0048

IT IS THEREFORE ORDED that Greg Lester is hereby appointed Temporary Administrator Pending Contest of this Estate and shall give a cash Bond in the amount of \$100.00 (On Hundred Dollars), conditioned as required by law; that the Temporary Administration shall continue until the expiration of 180 days after the date of this Order, or as may be further ordered by this court; that the Clerk of this Court shall issue Letters of Temporary Administration when the Temporary Administrator has qualified according to law; and that the Temporary Administrator shall have the powers enumerated by the agreement of the parties as restated above.

Signed July 23, 2015.

  
Christine Butts, Judge  
Harris County Probate Court No. 4



09022015:1497:PO101

NO. 412,249

ESTATE OF	§	IN THE PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS

**ORDER GRANTING AUTHORITY TO RETAIN COUNSEL – MACINTYRE,  
MCCULLOCH, STANFIELD & YOUNG, LLP**

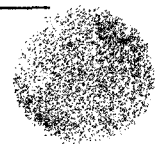
BE IT REMEMBERED that on this day came on for consideration the Application of Gregory A. Lester, Temporary Administrator of the Estate of Nelva E. Brunsting, Deceased, in connection with the Application for Authority to Retain Counsel – MacIntyre, McCulloch, Stanfield & Young, LLP, and the Court finding that due and proper notice of the Application has been given, finds that the Application should in all respects be granted, it is accordingly,

ORDERED, ADJUDGED and DECREED by the Court that Gregory A. Lester, Temporary Administrator of the Estate of Nelva E. Brunsting, Deceased, be and is hereby granted authority to retain JILL W. YOUNG with the law firm of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP as Counsel for Applicant, to perform such legal services on behalf of the Estate as are necessary and reasonable, including assisting Applicant in carrying out his fiduciary responsibilities.

IT IS FURTHER ORDERED by the Court that GREGORY A. LESTER, Administrator of the of the Estate of Nelva E. Brunsting, Deceased, be and is hereby granted authority to retain the law firm of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP pursuant to the Texas Estates Code and this Court’s Order.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JUDGE PRESIDING





09022015:1437:P0102

APPROVED AS TO FORM:

MACINTYRE MCCULLOCH STANFIELD  
& YOUNG, LLP

By: 

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State Bar No. 00797670  
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(713) 572-2902 (Fax)

ATTORNEYS FOR APPLICANT

COPY UNOFFICIAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS AND RICK §  
WAYNE MUNSON, §

Plaintiffs, §

V. §

CIVIL ACTION NO. 4:16-CV-01969

CANDACE KUNZ-FREED, ALBERT §  
VACEK, JR., BERNARD LYLE §  
MATHEWS III, NEAL SPIELMAN, §  
BRADLEY FEATHERSTON, STEPHEN §  
A. MENDEL, DARLENE PAYNE SMITH, §  
JASON OSTROM, GREGORY LESTER, §  
JILL WILLARD YOUNG, CHRISTINE §  
RIDDLE BUTTS, CLARINDA §  
COMSTOCK, TONI BIAMONTE, BOBBY §  
BAYLESS, ANITA 'BRUNSTING, AND §  
AMY BRUNSTING, §

Defendants. §

**DEFENDANTS CANDACE KUNZ-FREED AND ALBERT VACEK JR.'S ADOPTION  
AND JOINDER IN JILL WILLARD YOUNG'S MOTION TO STRIKE PLAINTIFFS'  
"ADDENDUM OF MEMORANDUM IN SUPPORT OF RICO COMPLAINT"**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Defendants Candace Kuntz-Freed and Albert Vacek, Jr. (collectively referred to as "V&F") hereby file this Adoption and Joinder in Jill Willard Young's Motion to Strike Plaintiffs' "Addendum of Memorandum in Support of RICO Complaint and would respectfully show the Court the following:

**I.**

**THE COURT SHOULD STRIKE PLAINTIFFS' ADDENDUM**

1. In the interest of justice and judicial economy, and pursuant to Federal Rule of Civil Procedure 10(c), V&F hereby adopts and incorporates by reference, as if recited herein the

arguments and authority contained in Jill Willard Young's Motion to Strike (Dkt. 38). This Court should strike Plaintiffs' Addendum, because it is not a valid pleading under the Federal Rules of Civil Procedure.

2. More importantly, the Court should dismiss Plaintiffs' claims against V&F. The "Addendum" does not change the merits of V&F's Motions to Dismiss. The "Addendum" sparsely references V&F. *See* Addendum, at ¶¶ 21, 23, 26, 29, 38, and 61. Of those references, none form the basis for a valid complaint or support a RICO claim against V&F.

3. Plaintiffs' claims should be dismissed because they have not adequately pleaded a violation of the RICO Act. Even assuming that Plaintiffs' Addendum is considered to be a supplement to Plaintiffs' Complaint, it does not change the fact that Plaintiffs have failed to meet the required pleading standards.

**II.**  
**PRAYER**

WHEREFORE PREMISES CONSIDERED, Defendants Candace Kuntz-Freed and Albert Vacek, Jr. hereby request that the Court strike Plaintiffs' Addendum.



Respectfully Submitted,

By: */s/ Cory S. Reed* \_\_\_\_\_

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Houston, Texas 77056

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**ATTORNEYS FOR DEFENDANTS**

**CANDACE KUNTZ-FREED AND**

**ALBERT VACEK, JR.**

**CERTIFICATE OF SERVICE**

I certify that on the 4th day of October, 2016, a true and correct copy of the foregoing was served via the Court's ECF system upon the following counsel of record:

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/s/ Cory S. Reed

**Cory S. Reed**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS	§	
Plaintiff,	§	
	§	Civil Action No. 4:12-cv-00592
v	§	
	§	The Honorable Kenneth Hoyt
ANITA KAY BRUNSTING, et al	§	
Defendants	§	

Opposed Motion

---

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

Rule 42(a) Courtesy Copy

**PLAINTIFF’S MOTION FOR CONSOLIDATION OF RELATED CASES PURSUANT TO 28 U.S.C. §1367, RULE 42(A) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND LOCAL RULE 7.6 WITH SUPPORTING MEMORANDUM**

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1. Above named Plaintiff respectfully moves this Court to order consolidation of the following cases pursuant to 28 U.S.C. §1367, Rule 42(a) of the Federal Rules of Civil Procedure and Local Rule 7.6:

a. Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, Civil Action No. 4:12-CV-00592 (TXSD Filed 2/27/2012) currently pending before the Honorable Kenneth Hoyt, and

b. Civil Action No. 4:16-cv-01969 currently pending before the Honorable Alfred H. Bennett (TXSD filed 7/5/2016)

2. Plaintiff moves for consolidation of pre-trial proceedings and trial, but not consolidation for the purposes of judgment and appeal. The two cases are appropriate for consolidation for the following reasons:

3. The two cases share common parties. Candace Curtis is a Plaintiff in both federal suits and Amy and Anita Brunsting are Defendants in both suits.

4. The later suit is the cumulative product of events occurring in the course of litigating the earlier matter and although the remedies requested and the jurisdictions upon which the authorities of the Court have been invoked are divergent, all the facts flow from common acts and events.

5. The two cases involve common questions of law and fact because both arise from the same factual situation; namely, the rupture and looting of the Brunsting family of trusts and injuries resulting from the Defendants' efforts to evade accountability; and thus the two cases also involve common questions of law.

6. Through a series of awkward circumstances, the earlier diversity matter was remanded to Harris County Probate Court No. 4. The probate court experience produced evidence of a sinister design, resulting in the necessity for Plaintiff to again seek remedy in this Court and, thus, Plaintiff filed a separate action into the Southern District of Texas, Case No. 4:16-cv-01969, in

concert with Federal Rule of Civil Procedure Rule 11(b) motion for sanctions and with Federal Rule of Civil Procedure 60(b) and (d) motion for vacatur in the above titled Court.

7. While the earlier suit was a simple breach of fiduciary seeking disclosures and accounting, the later filed case is a Racketeer Influenced Corrupt Organization (RICO) suit brought under federal question jurisdiction, implicating the Probate Court's officers' participation in the conduct of an enterprise through a pattern of racketeering activity.

8. Judicial convenience and economy will be enhanced by consolidation of the actions.

9. Consolidation will result in one trial under one judge, which will bind all plaintiffs and defendants for all purposes. This will save time and avoid unnecessary costs to the Defendants, to the Plaintiffs in both actions, and to the witnesses who would otherwise be required to testify in two cases.

10. Consolidation will not delay final disposition of any matter.

11. Consolidation of these two cases will promote the uniformity of decision and eliminate any potential for conflicting rulings, provide for judicial economy and the convenience of witnesses and parties, and will promote the expeditious disposal of all matters.

### **HISTORY AND NATURE OF THE PROCEEDINGS**

12. 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.

13. Plaintiff Candace Curtis filed a Pro se Petition in the United States District Court for the Southern District of Texas, Houston Division, on February 27, 2012, claiming breach of fiduciary, seeking disclosures and a full, true, complete accounting.<sup>1</sup>

14. Plaintiff Curtis complaint was dismissed under the probate exception to federal diversity jurisdiction and Curtis appealed. The Fifth Circuit reversed and Ordered remand on January 9, 2013.

15. On January 29, 2013, attorney Bobbie Bayless filed suit against Nelva Brunsting's trust attorneys, Candace Kunz-Freed, Albert Vacek Jr. and Vacek & Freed P.L.L.C., in the Harris County District Court on behalf of Carl Brunsting as executor of the estate of Nelva Brunsting<sup>2</sup> raising claims only related to the Brunsting trusts then in the custody of a federal court.

16. On April 9, 2013, this Honorable Court issued an Order enjoining Defendants Amy and Anita Brunsting from spending trust funds or liquidating trust assets without the Court's prior approval.

17. Also on April 9, 2013, Bobbie Bayless filed suit in Harris County Probate Court No. 4, on behalf of Carl Brunsting individually (412249-401) and as executor of the estate of Nelva Brunsting (412249) naming federal Plaintiff Curtis a "Nominal Defendant" in both suits.

18. Not only did Bayless advance claims exclusively related to the trusts already in the custody of the federal Court, she claimed the breaches of fiduciary against the beneficiaries of the Brunsting trusts were claims belonging to the estate of Nelva Brunsting. That theory was disposed of in the Fifth Circuit in *Curtis v Brunsting* 710 F.3d 406. The "Trust(s)" is the only heir in fact to the estate and assets in the trusts are not property of the estate of Nelva Brunsting.

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<sup>1</sup> No. 4:12-CV-00592; Candace Louise Curtis v. Anita Kay Brunsting; USDC for the Southern District of Texas, Houston Division

<sup>2</sup> No. 2013-05455; Carl Henry Brunsting as Executor of the Estate of Nelva Brunsting v. Candace Freed and Vacek & Freed P.L.L.C.; 164TH Judicial District Court of Harris County, Texas.



19. At paragraph 1, page 2 of *Curtis v Brunsting* 710 F.3d 406:

*In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust (“the Trust”) for the benefit of their offspring. At the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively “the Brunstings’ Wills”) appear to include pour-over provisions, providing that all property in each estate is devised and bequeathed to the Trust. Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust.*

20. Under the wills Carl Brunsting has no standing to bring claims against trustees as heir or executor of an estate. He only has standing to bring claims individually as a trustee or beneficiary of the trust and that trust was in the custody of the federal court.

21. In *Curtis v Brunsting* the Fifth Circuit explained the doctrine of comity by citing to the Supreme Court’s clarification of the “distinctly limited scope” of the probate exception,<sup>3</sup> explaining:

*[W]e comprehend the ‘interference’ language in Markham as essentially a reiteration of the guiding principle that, when one court is exercising in rem jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent’s estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.<sup>4</sup>*

22. In or about November of 2013, Pro se Plaintiff Curtis retained the services of Houston Attorney Jason Ostrom. On May 15, 2014, Attorney Jason Ostrom caused this Honorable Court to issue an Order for Remand of *Curtis v Brunsting* to the custody of Harris County Probate Court No. 4 (412,249-402) for consolidation with the claims of Carl Brunsting (412,249-401).

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<sup>3</sup> *Marshall v Marshall* 546 U.S. 293, 310

<sup>4</sup> *Marshall v Marshall* 546 U.S. 293, 311–12

23. On July 5, 2016, Plaintiff Curtis, along with her domestic partner Rik Munson, both individually and as private attorneys general on behalf of the public trust, filed a RICO suit into the United States District Court for the Southern District of Texas, Houston Division (No. 4:16-cv-01969), accusing the Harris County Probate Court and its officers of public corruption conspiracies involving schemes and artifices to deprive Plaintiff Curtis, the People of Texas, and others, of the honest services of an elected public official.

24. The record will show the Probate Court has refused to resolve any substantive matter on the merits and the reason is clearly that no court can assume in rem jurisdiction over a res in the custody of another court. Thus, the probate court never had jurisdiction over the Brunsting trust, which renders the Order for remand to the state probate court void ab initio.

25. Rather than dismiss and return Curtis v Brunsting to the federal court, the RICO Defendants chose a less honorable course, forcing Plaintiff Curtis to respond accordingly.

26. On August 3, 2016, Plaintiff Curtis filed a F.R.C.P. Rule 11(b) motion for sanctions and F.R.C.P. Rule 60(b) and (d) motions for vacatur of the remand to state court, on the ground that the remand was obtained by fraud upon Plaintiff Curtis and upon the Court, thus vitiating the application to amend the original petition that facilitated the remand in the first instance.

27. Plaintiffs respectfully request this Honorable Court take Judicial Notice of the complaint, motions to dismiss and Plaintiffs' replies in the closely related proceedings pursuant to Federal Rules of evidence §201.<sup>5</sup>

### **STAGE OF THE PROCEEDINGS**

28. The RICO suit is in the opening phase and the initial conference is set for October 28, 2016 at 9:00 a.m. before the Honorable Alfred Bennett.

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<sup>5</sup> Case 4:16-cv-01969 TXSD Motions to dismiss Dkt 19, 20, 23, 25 and replies Dkt 33, 34, and 41

29. The earlier breach of fiduciary matter, Candace Curtis v. Anita and Amy Brunsting 4:12-cv-00592, is ripe for F.R.C.P. Rule 12(c) relief on the unresolved summary and declaratory judgment pleadings. Those motions have not been answered and the probate court refused to set the motions for hearing. A proper determination on the merits of those unresolved motions will be necessary to support the racketeering conspiracy and predicate act claims arising under the later filed RICO suit.

30. Plaintiff hereby incorporates by reference the Rule 11<sup>6</sup> and 60<sup>7</sup> motions referred to in item 18 supra, and the federal civil RICO complaint referred to in item 17 supra, as if fully restated herein, and further asks this Honorable Court to take Judicial notice of the relevant public records.

**MEMORANDUM IN SUPPORT OF RULE 42(A) MOTION**

31. Above named Plaintiff has moved this Court, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, to consolidate the following cases: Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, No. 4:12-CV-00592 (TXSD Filed 2/27/2012) and Curtis, et al. v Kunz-Freed, et al, No. 4:16-cv-01969 (TXSD Filed 07/05/16).

32. Plaintiffs' motion requests consolidation for the limited purposes of pre-trial proceedings and trial only, it does not request consolidation for the purposes of judgment or rights to appeal.

33. Rule 42(a) of the Federal Rules of Civil procedure provides:

*Rule 42. Consolidation; separate trials.*

*(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it*

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<sup>6</sup> Case 4:12-cv-00592 Document 120 Filed in TXSD on 08/05/16

<sup>7</sup> Case 4:12-cv-00592 Document 115 Filed in TXSD on 08/03/16

*may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.*

34. The purpose of Rule 42(a) "is to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties." *Wright & A. Miller, Federal Practice and Procedure*, § 2381 (1971).

35. Local Rule 7.6 and Federal Rule of Civil Procedure 42(a) requires the motion be filed in the earlier Court and the above Court is the earlier Court. However, Federal Rule of Civil Procedure 42(b) prevents consolidation, when doing so would pollute diversity and deprive the Court of jurisdiction.

36. The earlier matter was filed under diversity with the allegation that Defendants were acting in secret and were uniquely in exclusive possession of all of the information relating to the case.

37. Plaintiff Curtis submitted a First Amended Complaint in the above Court on April 29, 2013, seeking to amend the claim to federal question jurisdiction based upon newly discovered evidence involving fraudulent securities transfers. That amendment was properly rejected by the Court due to Plaintiff's failure to provide a certificate of conference as required by local rule.

**BOTH ACTIONS INVOLVE COMMON QUESTIONS OF LAW AND FACT**

38. Rule 42(a) permits a district court to consolidate separate actions when they involve "a common question of law or fact." Fed.R.Civ.P. 42(a).

39. Even if there are some questions that are not common, consolidation is not precluded. *Batazzi v. Petroleum Helicopters, Inc.*, 664 F.2d 49, 50 (5th Cir. 1981); *See Central Motor Co. v. United States*, 583 F.2d 470 (10th Cir. 1978).

40. Common questions of law and fact abound in these cases, as both stem from the same (long con) conspiracy and the later controversy is based upon evidence evolving out of Defendants' continued attempts to foreclose remedy in the trust suit case, aided and abetted by the state court and its officers.

41. It was the process of seeking remedy and Defendants' continued efforts to obstruct justice and evade accountability, that has produced a clear picture of a larger mosaic involving a pattern of racketeering activity targeting familial wealth.

42. Although the lawsuits were filed at separate times and in separate forums, and although multiple actions were improperly brought in state courts, all of it is, in fact, only one continuous event and therefore, it necessarily follows that the matter is particularly appropriate for consolidation.

**A COURT HAS BROAD DISCRETION IN ORDERING CONSOLIDATION**

43. A court has broad discretion in determining whether consolidation is practical. *Atlantic States Legal Foundation Inc. v. Koch Refining Co.*, 681 F. Supp 609, 615 (D. Minn. 1988). In exercising this discretion, a court should weigh the time and effort consolidation would save, with any inconvenience or delay it would cause. *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985); *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984). See also *Kramer v. Boeing Co.*, 134 F.R.D. 256 (D. Minn. 1991).

44. Consolidation offers efficiency and convenience in this case. Consolidation will result in one trial which will bind all plaintiffs and defendants. This will save time and avoid unnecessary costs to the defendants, the plaintiffs, this Court, and the witnesses who would otherwise be required to testify in both cases.

45. Consolidation will not delay the disposition of this case. In fact, it will minimize delays. The cases are at different stages of the discovery process, but this does not bar consolidation. (*United States v. City of Chicago*, 385 F. Supp. 540, 543 (N.D. Ill. 1974).

46. The earlier case was filed under diversity, but evidence discovered in the course of pursuing remedy has produced racketeer influenced corrupt organization claims under federal question jurisdiction and the record will show No. 4:12-cv-00592 has been brought back to the federal court in direct response to the probate court's unwillingness to ensure Plaintiff's right to be heard and blatant refusal to resolve any matter on the merits.

47. Consolidation is necessary to the ends of justice and for complete resolution of all matters for all parties and, whereas, the rules will not allow all of the related cases and necessary parties to be consolidated under diversity jurisdiction, all of the related cases and necessary parties can and should be consolidated under federal question jurisdiction pursuant to 28 U.S.C. §1367.

48. Thus, whether the economy and efficiency of the Court will best be served by transferring the federal question suit to this Honorable Court or by transferring the diversity case to Judge Bennett's Honorable Court, Plaintiffs' do not presume to suggest, but do believe that justice can only be served by consolidation of all related matters under one roof for all purposes.

### CONCLUSION

49. Jurisdiction of the probate court at the point in time when its jurisdiction was invoked, is a proper subject of inquiry under Rule 60. "Courts can always consider questions as to subject matter jurisdiction whenever raised and even sua sponte." *U.S. v. White*, 139 F.3d 998 cert den 119 S.Ct 343, 525 U.S. 393, 142 L.Ed.2d 283 (1998).

50. The remand Order is void ab initio for want of jurisdiction in the state court. Want of, and acts excess of, subject matter jurisdiction can never be cured after the fact. Furthermore,

Plaintiff Curtis was named a nominal defendant in the estates probate suit and simply cannot be consolidated with a plaintiff that has named her a defendant in the same lawsuit.

**STANDARD OF REVIEW**

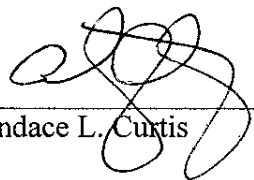
51. Rule 60(b) motions are reviewed for abuse of discretion. *American Bankers Ins. Co. v. Northwestern Nat'l Ins. Co.*, 198 F.3d 1332, 1338 (11th Cir. 1999); *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307, 1316 (11th Cir. 2000).

52. However, motions under Rule 60(b)(4), on the ground that a judgment is void are reviewed de novo. *Burke v. Smith*, 252 F.3d 1260,1263 (11th Cir. 2001).

WHEREFORE, Petitioner respectfully requests the motion for consolidation be granted.

Respectfully submitted,

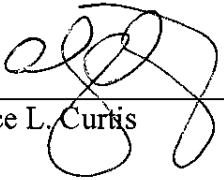
October 5, 2016

  
Candace L. Curtis



**CERTIFICATE OF CONFERENCE**

I certify that I have communicated with Defendants and they are opposed to the relief requested herein.

  
\_\_\_\_\_  
Candace L. Curtis

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on this 5th day of October, 2016, on the following via email and deposit in USPS Priority Mail:

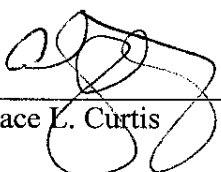
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Houston, Texas 77079  
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Attorney for Anita Brunsting

I hereby certify that a true and correct courtesy copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on all parties this 5th day of October, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

  
\_\_\_\_\_  
Candace L. Curtis

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS	§	
Plaintiff	§	
	§	Civil Action No. 4:12-cv-00592
v	§	
	§	The Honorable Kenneth Hoyt
ANITA KAY BRUNSTING, et al	§	
Defendants	§	

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

**ORDER FOR CONSOLIDATION**

Upon consideration, the Motion for Transfer and Consolidation for pre-trial proceedings and trial, but not consolidation for the purposes of judgment and appeal (Doc. No.\_\_\_\_), filed by Plaintiff in Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, Civil Action No. 4:12-CV-00592, is hereby Granted.

The following actions are hereby consolidated for pre-trial proceedings and trial only: Civil Action No. 4:12-cv-00592 Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, (Filed TXSD 2/27/2012) and Civil Action No. 4:16-cv-01969 Curtis et al., v Kunz-Freed et al (Filed TXSD 7/05/2016).

All depositions, interrogatory responses, materials produced in response to requests for production, and responses to requests for admissions in any of these actions may be used in any

other action consolidated by this Order. All notices, requests, responses, motions and other filings relating to pretrial proceedings must be served on all counsel in each of these actions and bear the case caption for each action that has been consolidated pursuant to this order.

SO ORDERED

Date: \_\_\_\_\_, 2016

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The Honorable Kenneth Hoyt  
United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

CANDACE LOUISE CURTIS, ET AL.,

Plaintiffs,

V.

CANDACE KUNZ-FREED, ET AL.,

Defendants.

§  
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§

Civil Action No. 4:16-cv-01969

**DEFENDANT NEAL SPIELMAN’S RULE 7.1 CERTIFICATE OF INTERESTED  
PARTIES**

Pursuant to Fed.R.Civ.R. 7.1, Defendant Neal Spielman (“Defendant”) files this Certificate of Interested Parties. To the best of Defendant’s knowledge, there are no other interested parties who may be financially interested in the outcome of this litigation, other than the named parties to the suit.

In accordance with this Court’s Order, if new parties are added, or if additional persons or entities that are financially interested in the outcome of the litigation are identified at any time during the pendency of this litigation, counsel will promptly file an amended certificate with the clerk.

Respectfully submitted,

By: /s/ Martin S. Schexnayder  
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Winget, Spadafora & Schwartzberg, LLP  
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Houston, Texas 77056  
Telephone: (713) 343-9200  
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State Bar No. 17745610  
Federal Bar No. 15146

**ATTORNEY FOR DEFENDANT NEAL  
SPIELMAN**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was forwarded to all attorneys of record in accordance with the Federal Rules, on this 6th day of October, 2016.

/s/ Martin S. Schexnayder  
Martin S. Schexnayder

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 ANITA AND AMY BRUNSTING’S  
 MOTIONS TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE  
 12(B)(6)**

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1. 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 at 18 U.S.C. §§1961-1968 and the right of claims provided at 18 U.S.C. §1964(c). (Dkt 1)

2. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26) as a factual supplement to the RICO complaint, in response to Defendant claims of a want of specific factual allegations and other affirmative defenses.

3. On September 16, 2016, Defendant Anita Brunsting filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) (Dkt 30).

4. On September 21, 2016, Defendant Amy Brunsting filed a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss (Dkt 35).

**I. STANDARD OF REVIEW**

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

5. 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).

6. 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).

## II. ISSUES PRESENTED

7. Both Amy and Anita Brunsting’s motions are brought pursuant to Rule 12(b)(6) and claim Plaintiffs have failed to provide sufficient factual allegations to place them on notice of the claims against them, a due process argument.

8. Defendants claim ignorance of facts, while at the same time presenting an opposing view of the facts.

9. Defendants also misstate Plaintiffs’ aiding and abetting claims and then deny their misstatements, and appear not to understand the allegations themselves.

## III. HISTORY OF THE CONTROVERSY

10. Plaintiffs hereby incorporate by reference the “Standards of Review”, “Contextual Summary”, “History of the Controversy”, and “History of the Litigation” (Dkt 33 sections I, II, III and IV) from Plaintiffs’ response to the Motions to Dismiss filed by Defendants Vacek & Freed, (Dkts 19 & 20) as if fully restated herein.



#### IV. THE ARGUMENT

11. In a Rule 12(b)(6) motion to dismiss Defendants do not have the pleasure of arguing the facts and the only issue after the finder of fact applies the law, is whether or not Plaintiffs have sufficiently pled their claims. If Plaintiffs have not fully pled their claims, the question becomes whether the complaint could be amended to satisfy the heightened pleading standards demanded by Federal Rule of Civil Procedure Rule 9(b).

12. While offering knowledge of opposing facts, Defendants ask the Court to believe they lack sufficient notice of facts to defend the claims against them.

13. In this case Plaintiffs have responded to each previous motion to dismiss, by simply pointing to the public records of proceedings in the state and federal court, many of which are contained in the attachments to Plaintiffs' Addendum of Memorandum (Dkt 26).

14. These two Defendants' motions to dismiss share an uncanny similarity and other than an occasional detour, individualized for the particular movant, and a little transposition in the order of appearance of the words, each strike the same chords with nearly identical expressions. Plaintiffs will therefore respond to both pleadings in harmony.

#### **Creative Pleading And Something Called A "QBT"**

15. These two Motions (Dkt 30 and 35), and Mr. Mendel's subsequent Rule 12(b)(6) Motion, (Dkt 36) for the first time in any pleadings, in any related action, in any court, over a period of four and one-half years, each introduce in their alternate claim of facts, something they call a "Qualified Beneficiary Trust" (QBT) allegedly drafted by Defendant Albert Vacek, Jr.

16. These two Defendants and their carousel of lawyers have steadfastly clung to an instrument they proclaim to be "the trust", allegedly signed by Nelva Brunsting on August 25, 2010. Plaintiffs do not need to rehash these unresolved motions to respond to these assertions.

17. In answer to these “QBT” assertions, Plaintiffs incorporate by reference and respectfully request the Court take Judicial notice of, pursuant to Federal Rule of Evidence 201, 1) Defendant Anita and Amy Brunstings’ No Evidence Motion for Partial Summary Judgment (Dkt 26-5), Plaintiff Curtis Answer and Demand to Produce Evidence (Dkt 26-11), The Report of Temporary Administrator Gregory Lester (Dkt 26-9), Plaintiff Curtis Motion for Partial Summary and Declaratory Judgment (Dkt 26-14), the (Request for setting A1 attached) the March 9, 2016 transcript (Dkt 26-16) and the Rule 60 Motion itself (Dkt 26)

#### **V. FAILURE TO STATE A CLAIM**

18. These Defendants state that they are litigants in estate related proceedings involving Plaintiff Curtis, profess ignorance of any wrongdoing, and claim they are not participants in any racketeering scheme.

19. In response to previous motions to dismiss for failure to state a claim, Plaintiffs have pointed only to the public record and particularly the motions and pleadings from the state court, and Defendants are clearly connected to those records, all of which have been served upon them through their respective agents.

20. Plaintiffs will continue to point to the public record in response to these two Motions.

21. A motion to dismiss is not a substitute for an answer and aside from claiming lack of knowledge and lack of notice, Defendants advance several affirmative claims of contrary facts. The substance of the motion is 1) want of sufficient information to satisfy notice requirements, 2) a general denial, and 3) an opposing view of the facts.

22. All of the facts necessary to meet Plaintiffs’ burden are contained in the public record and are cited with specificity throughout Plaintiffs’ original Complaint, Addendum, and Responses to Motions to Dismiss.

23. Plaintiffs' Addendum of Memorandum (Dkt 26) and Plaintiffs' prior Responses address the only relevant challenge under Rule 12(b)(6) and answers any questions of how each player fits into the enterprise operations puzzle. In response to Motions to Dismiss, Plaintiffs easily point to the record and how the individual exhibits concatenate to explain each participant's contribution to the overall mosaic.

24. The motives of the enterprise are greed and political aspirations, the means are described in the RICO complaint, and by refusing to honor any legal or moral obligations Anita and Amy Brunsting provide the opportunity for the rest of these Defendants to participate.

25. As alleged in the complaint, Anita Brunsting presents the other players with an exploitation opportunity. Anita Brunsting planned to hijack the family trust res, by improperly seizing control of the office of trustee.

26. Defendants exercised the powers of the office and refused to honor any of the duties of the office, which is how they became defendants in the first place.

27. To Plaintiffs' knowledge neither Amy nor Anita Brunsting has ever set foot inside the Harris County Probate Court #4 and apparently think hiring mercenaries to fight their battles removes them from the center of the controversy and the consequences of their attorney's acts as well. It does not.

28. The facts show Anita Brunsting violated the no contest clause in the 2005 Restatement, not when she misappropriated assets to her own benefit in violation of trust provisions, but when she advanced theories that those benefits were gifts, fees, and reimbursements thereby attempting to enlarge her share of the trust res.

29. In an exploitation game of lawyers playing the ends against the middle, as in the case at bar, this fact alone is significant.

30. On April 9, 2013, Honorable United States District Judge Kenneth Hoyt issued an injunction, not only enjoining Anita and Amy Brunsting from spending trust money or liquidating trust assets without the Court's prior approval, but also commanding specific performance. Defendants Anita and Amy are commanded by that injunction, to deposit income into an appropriate account for the beneficiary. To date, they have refused or otherwise failed to do so and continue to hold Plaintiff Curtis' property and that of siblings Carl and Carole Brunsting, without offering a single legal defense. (Dkt 26-11)

31. The absolute refusal of these two Defendants to honor any legal or moral obligations has opened the door of opportunity for the other Defendants to play their shakedown game against Plaintiff victim Candace Curtis and her victim siblings, Carl and Carole Brunsting.

#### **Probate of the Estate of Nelva Brunsting**

32. Defendants claim the matter before the Court is related to probate of the Estate of Nelva Brunsting.

33. The Fifth Circuit Court of Appeals in *Curtis v Brunsting* 704 F.3d 406 properly held that assets in an inter an vivos trust are not property of a decedent's estate and that the suit filed in TXSD by Plaintiff Candace Louise Curtis February 27, 2012, No. 4:12-cv-0592, was related only to an inter vivos trust and not to an estate. The Circuit Court also noted that the wills of both Grantors bequeathed everything to "the trust" *Curtis v Brunsting* 704 F.3d 406, 409-410.

34. Because the only heir in fact to the Estate of Nelva Brunsting (Dkt 41-2, 41-3) is "the trust", Carl Brunsting had no standing to bring suit individually in the probate court as an heir to the Estate, as he is only a beneficiary of the heir in fact ("trust").

35. Trespass against the trust during the life of Nelva Brunsting created claims belonging to the cestui que. If Candace Freed's only liability for betraying Privity and the fiduciary duties she

owed Nelva Brunsting are to the estate, those claims belong to the injured cestui que (beneficiaries) of the heir in fact trust and are the duty of the trustees to pursue.

36. In any event, the trust res was in the in rem custody of a federal court when all of the trust related claims were filed in state courts under the disguise of the Estate of Nelva Brunsting, and those state court suits were filed after the Fifth Circuit Opinion in this case was published.

### **Wiretap Recordings**

37. Defendants assertions of alternate facts are irrelevant under Rule 12(b)(6), but are none-the-less interesting when compared against the public record and, thus, worthy of note.

38. The RICO complaint states that Anita Brunsting's counsel of record, Bradley Featherston, disseminated private third party telephone communication recordings on or about July 1, 2015 via certified U.S. Mail signed receipt required.(see Dkt 26-8, Carl's application for Protective Order); (Dkt 26-12, Transcript of the hearing on Carl's application for Protective Order); (Attached Exhibit A2, Defendants Joint opposition to the application for protective order); and (Plaintiff Curtis wiretap brief attached as Exhibit A3 with sub-exhibits A-G).

39. These Defendants also misstate the allegations in the complaint, (Dkt 1) which alleges that Anita Brunsting's counsel, Bradley Featherston, "disseminated" wiretap recordings by certified mail more than three and one-half years after Carl Brunsting's petition to take depositions before suit was filed, and a demand for such disclosures was first made. Defendants none-the-less attempt to conceal the disruptive purpose for the dissemination, as occurring in the ordinary course of discovery. Plaintiff Curtis' wiretap brief gives the lie to these claims (A3).<sup>1</sup>

### **False Affidavit**

40. Amy Brunsting claims she did not file a false affidavit in the federal court.

---

<sup>1</sup> RICO Claim numbers 14 through 20 in the complaint specifically refer to the wiretap recordings.

41. Amy's affidavit, ascribed and sworn to before one authorized to accept an oath, was filed March 6, 2012 in the Southern District of Texas Case 4:12-cv-0592, attached to a motion for emergency order<sup>2</sup> to remove a lis pendens filed among the papers in the federal petition. The emergency motion resulted in sua sponte dismissal March 8, 2012 (TXSD 4:12-cv-0592 Dkt 11).

42. Plaintiffs respectfully request this Honorable Court take judicial notice, pursuant to Federal Rule of Evidence 201, of Dkt 120 in TXSD case 4:12-cv-0592, which is a Rule 11 Motion for Sanctions, filed August 5, 2015, against Defendants Anita and Amy Brunsting and their counsel, for continued violation of the federal injunction issued April 9, 2013. (Dkt 26-2)

43. The Honorable Kenneth Hoyt commented at the injunction hearing that all that was necessary to resolve the controversy was to distribute the assets, and the injunction Judge Hoyt issued commands immediate specific performance regarding the deposit of "income".

44. Defendants Anita and Amy Brunsting, aided and abetted by their attorneys, continue to thumb their noses at the dignity and authority of a federal Court, while simultaneously seeking a priori relief from related claims before this Court.

45. RICO Complaint Claim 37 directly addresses Amy Brunsting's false affidavit (Dkt 26-18) regarding establishment of the personal asset trusts, and no more need be stated on that topic here.

46. Participation in a racketeering conspiracy can be both active and passive and both the active and passive participation of these two Defendants has been central. If one removes Anita Brunsting from the equation, none of this could have happened. Amy Brunsting's active and passive participation is equally incriminatory.

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<sup>2</sup> Docket entries 10 and 10-1, Case 4:12-cv-0592 filed TXSD 2/27/2012

## VI. CONCLUSION

47. All of the evidence necessary to establish Plaintiffs' case is contained in the public record. Defendants profess to have been party to those proceedings, have professed personal knowledge of a contrary set of facts and cannot possibly claim want of notice of the facts contained in the records and pleadings in those events.

48. These Defendants are more than apprised of the specific conduct amounting to their participation in the racketeering conspiracy, whether ignorant of the law or unaware of the acts of their agents.

49. Defendants Anita and Amy Brunsting, facilitated by the excellent assistance of Defendant Candace Freed, and aided and abetted by the other Defendants, have shown nothing but wanton and willful disrespect for all legal and moral obligations. Without their absolute refusal to act, the original lawsuit would not have been filed, or, in the alternative, would have been resolved and the familial litigants would have gone on with their lives. Instead, the sibling beneficiaries are mired in a continuing lawyer orchestrated soap opera, all about manipulating the judicial process in order to bust the Brunsting trusts for their own personal financial gain.

50. Defendants' Rule 12(b)(6) Motions are just another attempt to avoid accountability. The motions to dismiss should both be denied for the reasons stated and these Defendants should be held to answer under the law.

Wherefore, Plaintiffs respectfully move this Honorable Court for an Oder denying Anita and Amy Brunsting's Rule 12(b)(6) motions to dismiss.

Respectfully submitted October 6, 2016,

/s/Candace L. Curtis  
Candace L. Curtis

/s/Rik W. Munson

Rik W. Munson

**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 October 6, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/Candace L. Curtis

Candace L. Curtis

/s/Rik W. Munson

Rik W. Munson



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Curtis, et al		§	
	Plaintiffs	§	
v		§	Civil Action No. 4:16-cv-01969
Kunz-Freed, et al		§	
	Defendants	§	

---

**ORDER**

Upon due consideration, the Rule 12(b)(6) Motion to Dismiss filed by Defendants Anita and Amy Brunsting, docket entries 30 and 35, should be Denied.

It is SO ORDERED

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Alfred H Bennet  
United Stated District Judge

Dear Judge Comstock

I am writing today to ask for a hearing date in effort to expeditiously dispose of this case. Concurrent with this request for setting, I am filing a motion to transfer the related District Court case to Probate #4.

Because summary and declaratory judgement motions filed in the Probate Court by both Plaintiff's and Defendant's raise questions involving the validity, efficacy and applicability of instruments drawn up by District Court Defendant Candace Freed it would necessarily follow that the risk of contradictory and inconsistent rulings on the same issues of law and fact and the burden of duplicate proceedings upon the courts would mandate the transfer of the related District Court suit to the Probate Court sua sponte.

Plaintiff Curtis Motion for the transfer of the district court case was filed on 2/09/2016 (PBT-2016-44972) and there are several dispositive matters pending before the Court for which plaintiff seeks setting:

1. Defendants No-Evidence Motion for Partial Summary Judgment (PBT-2015-227757)
2. Plaintiff Curtis Answer with Motion and Demand to Produce Evidence. (PBT-2015-227757)
3. Plaintiff Carl Brunsting's Motion for Partial Summary Judgment (PBT-2015-225037)
4. Plaintiff Curtis verified motion for partial summary judgment and petitions for declaratory judgment. (PBT-2016-26242)

WHEREFORE Plaintiff Curtis respectfully requests the Court set a hearing on her motion for Partial Summary and Declaratory Judgments (PBT-2016-26242) and on her Motion and Demand to Produce Evidence (PBT-2015-227757) and upon any other pending dispositive motions the Court may deem appropriate to settle at the hearing.

Respectfully

ANM

PROBATE COURT 4

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7/31/2015 4:08:49 PM  
Stan Stanart  
County Clerk  
Harris CountyDATA-ENTRY  
PICK UP THIS DATE

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, et al	§
v.	§
ANITA KAY BRUNSTING, et al	§

**DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S  
MOTION FOR PROTECTIVE ORDER**

Defendants, Anita Brunsting, Amy Brunsting, and Carole Brunsting, file their response to the Motion for Protective Order filed by Drina Brunsting, as attorney-in-fact for Carl Brunsting, and would respectfully show the Court as follows:

**I. Summary of the Argument**

It is certainly understandable that Drina has such opposition to the recordings because it proves that Nelva was planning for Drina and Carl's divorce and that Nelva felt Carl's medical condition made him unable to serve as a trustee. Thus, the evidence essentially destroys most of Drina's claims in this proceeding.

Drina's "motion for protective order" is not a protective order in any sense of the term. The relief Drina seeks can fairly be summarized as follows: sworn testimony regarding the recordings; turnover to Drina's counsel of all copies of the recordings; and a ruling the recordings cannot be used in this proceeding. Thus, Drina's motion is some convoluted discovery/injunctive/admissibility relief without any legal authority, be it a statute, rule, or case law, upon which this Court could reasonably rely to grant her relief.

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Finally, and most importantly, Drina provides no evidence that both parties to the conversations did not consent to the recordings, which is a prerequisite to the relief sought. Accordingly, the Motion must be denied.

## II. Argument & Authorities

### A. Protective Orders

Protective Orders are described in Texas Rule of Civil Procedure 192.6, which provides:

(a) Motion. A person from whom discovery is sought, and any other person affected by the discovery request, may move within the time permitted for response to the discovery request for an order protecting that person from the discovery sought. A person should not move for protection when an objection to written discovery or an assertion of privilege is appropriate, but a motion does not waive the objection or assertion of privilege. If a person seeks protection regarding the time or place of discovery, the person must state a reasonable time and place for discovery with which the person will comply. A person must comply with a request to the extent protection is not sought unless it is unreasonable under the circumstances to do so before obtaining a ruling on the motion.

(b) Order. To protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights, the court may make any order in the interest of justice and may - among other things - order that:

- (1) the requested discovery not be sought in whole or in part;
- (2) the extent or subject matter of discovery be limited;
- (3) the discovery not be undertaken at the time or place specified;
- (4) the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the court;
- (5) the results of discovery be sealed or otherwise protected, subject to the provisions of Rule 76a.

In the case at hand, Drina propounded discovery to Anita, in which she complied by providing discovery responses. Drina now seeks a protective order against discovery she

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propounded against an opposing party. It is nonsense. There is nothing in the rules nor any other legal authority that allows a party to move for a protective order against that party's own discovery requests and the responses thereto.

With respect to the information Drina seeks regarding the recordings, Drina provides no reason why she would be unable to obtain such information through normal discovery channels such as interrogatories or deposition. Defendants were unable to find any reported cases where a Court compelled a party to create an affidavit at the opposing parties' request. Drina's motion appears to be another boondoggle Drina created to needlessly drive up litigation costs.

**B. Alleged Illegal Wiretapping**

The chief authority upon which Drina's motion is based is the Texas Civil Wire Tap Act, Tex. Civ. Prac. & Rem. Code, Title 123. In Texas, where one party consents, the Texas Civil Wire Tap Act is inapplicable. *Kotrla v. Kotrla*, 718 S.W.2d 853, 855 (Tex.App.—Corpus Christi 1986, writ ref'd n.r.e). With respect to the first recording between Carl and Nelva, there is no evidence that Nelva did not consent to the recording.

With respect to the remaining conversations between Carl and Drina, at the time of the recordings Carl and Drina intended to divorce. It seems perfectly logical that Carl consented to the recordings at that time.

Further, on information and belief, Carl was aware of all of the video recordings made. Additionally, on information and belief, all audio recordings came from an answering machine which Carl either intentionally set up to record the call and/or which triggered in accordance with its own operation. Either way, one – if not both – participants had full knowledge that he/she was being recorded.

Now that Carl and Drina have apparently reconciled, Carl's counsel alleges neither

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consented to the recordings. There is no evidence to support the allegation. In short, Drina has not proven that both her and Carl did not consent to the recordings at the time they were made.

**C. Drina's requests are merely an attempt to hide evidence that is damaging to her/Carl's claims.**

One of the underlying tenets of Carl/Drina/Candace's claims is that certain actions undertaken by Nelva and/or by Anita, Amy or Carole were improperly taken. Unfounded and insupportable allegation of incompetence, undue influence, etc. abound. Yet now, we have Drina taking efforts to suppress exculpatory evidence. The evidence Drina seeks to hide constitutes evidence that adds context and color to decisions made and actions taken. It is evidence that will assist the fact-finder in confirming what Anita, Amy or Carole already know to be true. Specifically, that the actions undertaken by Nelva and/or by Anita, Amy or Carole were proper and justified in light of the circumstances as they were or appeared to be at the time.

**D. Proposed Agreed Protective Order**

Defendants might be willing to enter into a standard joint agreed protective order, such as the one attached hereto as Exhibit A, which would prevent the parties from distributing materials incident to this litigation to third-parties. However, thus far, Drina has not consented to proceed in this manner. Defendants otherwise oppose creating new, weird, atypical rules unfounded in Texas jurisprudence.

**III. Prayer**

For these reasons, Defendants, Anita Brunsting, Amy Brunsting, and Carole Brunsting pray that Carl Henry Brunsting's Motion for Protective Order be denied. Additionally, Defendants pray for such other and further relief (general and special, legal and equitable) to which they may be entitled, collectively, individually or in any of their representative capacities.



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Respectfully submitted,

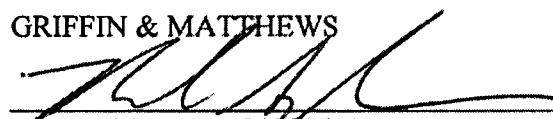
/s/ Brad Featherston

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*ATTORNEYS ANITA KAY BRUNSTING*

GRIFFIN & MATTHEWS

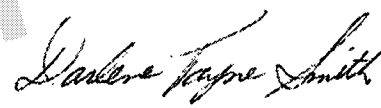


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---

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*ATTORNEYS FOR CAROLE ANN BRUNSTING*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 3<sup>rd</sup> day of July, 2015, to the following in the manner set forth below:

**Candace Louise Curtis – Pro Se:**

Candace Louise Curtis  
218 Landana Street  
American Canyon, California 94503  
*Via C.M.R.R.R. 7014 0150 0001 5384 0122*

**Attorneys for Carl Henry Brunsting:**

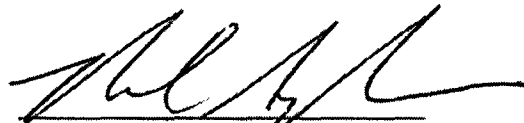
Bobbie G. Bayless  
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**Attorneys for Carole Ann Brunsting:**

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Houston, Texas 77079  
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NEAL E. SPIELMAN



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FILED  
8/10/2015 12:00:00 AM  
Stan Stanart  
County Clerk  
Harris County

NO. 412,249-401

PROBATE COURT 4

CANDACE LOUISE CURTIS

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IN PROBATE COURT

*Plaintiff,*

V.

NUMBER FOUR (4) OF

ANITA KAY BRUNSTING, ET AL

*Defendants.*

HARRIS COUNTY, TEXAS

**RESPONSE TO DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S  
MOTION FOR PROTECTIVE ORDER**

The Court has raised very valid issues regarding the questions before it, and has asked to be briefed. Plaintiff Curtis therefore submits the following analysis of the questions raised and, although seemingly complex at first view, the matter is really quite simple. There is only one primary premise and thus the first principles require answer to only one inquiry, which is whether or not the interception and dissemination of the challenged electronic communications was lawful.

Plaintiff will respectfully show that the greater weight of unrebutted presumptions falls in favor of the illegality of the recordings, and that judicial discretion would best be exercised with caution, as the Court cannot allow dissemination without proof of the legality of the recordings without also becoming a principal to the crime of dissemination.<sup>1</sup>

**Summary of the Argument**

1. The recordings are evidence of illegally intercepted electronic communications, a second degree felony<sup>2</sup> in Texas with a moderate severity level.
2. Illegally intercepted electronic communications may not be received in evidence nor exchanged under the pretext of discovery in any civil action, as unauthorized possession or dissemination of illegally intercepted electronic communications is a second degree felony which, as noted, the Court would be unwise to participate in.

<sup>1</sup> Collins v. Collins, 904 S.W.2d 792 (Tex. App. 1995)

<sup>2</sup> Texas [Penal] Code Annotated Sections 12.33, 12.35, 16.01 (West 1997); 1997 Tex. Gen. Laws 1051; Texas [Civil Practice and Remedies] Code Annotated Sections 123.002, 123.004 (West 1997); Texas Code of Criminal Procedure Annotated Article 18.20 (West 1997).

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3. The burden of bringing forth evidence is on the proponents of the legality and admissibility of the recorded wiretap conversations, as the presumption that intercepted electronic communications found in the possession of third parties, meaning persons not privy to the conversations, are presumed unlawful and the burden of showing that the challenged recordings meet one of the statutory exceptions is upon the Defendant disseminators.
4. The Court is without discretion and no agreement is necessary. Under the circumstances here, the Court must issue a protective order, even if only temporary, pending resolution of the issue of whether or not interception and dissemination of the challenged electronic communications was lawful.
5. The attached exhibits in a chronology of relevant events reveals that the recordings are the fruit of an illicit conspiracy targeting Carl and Drina that did not involve Nelva Brunsting and, Defendants' unanimous claims are defeated in their own words uttered at or about the time of the recordings, as hereinafter more fully appears.

#### Texas Authority on Admissibility

The admissibility of evidence illegally obtained is tempered by Tex.R.Civ.Evid. 402, which provides in pertinent part that, "[a]ll relevant evidence is admissible, except as otherwise provided ... by statute." Consequently, before the recordings can be held to be inadmissible, the Plaintiff(s) must show their exclusion is required under either the federal or state statute. Section 2511(1) of the federal wiretap statute<sup>3</sup> prohibits the use or disclosure of communications by any person except as provided by statute. *Gelbard v. United States*, 408 U.S. 41, 51-52, 92 S.Ct. 2357, 2363, 33 L.Ed.2d 179 (1972) (witness could not be forced to disclose testimony from illegal wiretap to grand jury).

Section 123.002 of the state wiretap statute states that a party has a cause of action against any person who "divulges information" that was obtained by an illegal wiretap. TEX.CIV.PRAC. & REM.CODE § 123.002.

Section 123.004 states that a party whose communication is intercepted may ask the court for an injunction prohibiting the "divulgence or use of information obtained by an interception." TEX. CIV.PRAC. & REM.CODE § 123.004.

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<sup>3</sup> Title III of the Omnibus Crime Control and Safe Streets Act of 1968, more commonly known as the "Wiretap Act," is found at 18 U.S.C. §§ 2510-2522.

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Although the Texas wiretap statute does not specifically provide for the exclusion of illegally obtained "communications," the provisions for a cause of action for divulging wiretap information and the injunctive remedies provided in section 123.004 are sufficient to rebut the presumption of admissibility under rule 402.

Because the tapes were illegally obtained under the federal and state statutes, the trial court should not allow their dissemination, or admit them into evidence, under the exception provided at Tex.R.Civ.Evid. 402.

The recorded conversations are not admissible because the criminal statute dealing with the use of the intercepted communications criminalizes their dissemination, and the civil statute provides a method to prevent dissemination.

*To permit such evidence to be introduced at trial when it is illegal to disseminate it would make the court a partner to the illegal conduct the statute seeks to proscribe. Gelbard, 408 U.S. at 51, 92 S.Ct. at 2362-63; Turner, 765 S.W.2d at 470.*

#### Exceptions

In addition to the numerous governmental or agency exceptions to the general rule, it is not unlawful to intercept any form of wire, oral or electronic communications between others if one of the persons is a party to the communication or one of the parties has given their consent to the interception. Tex. Civ. Prac. & Rem. Code §123.001(2); Tex. Pen. Code §16.02(c)(3)(A); 18 U.S.C §2511(2)(c); Kotrla v. Kotrla, 718 S.W.2d 853, 855 (Tex. App. - CorpusChristi 1986); See also, Hall v. State, 862 S.W.2d 710(Tex. App. - Beaumont 1993, no writ); Turner v. PV International Corporation , 765 S.W.2d 455, 469-71(Tex. App. - Dallas 1988, writ denied per curiam, 778S.W.2d 865 (Tex. 1989).

#### Interception, Possession, and Dissemination

The Right to Privacy is the Controlling Presumption

The right to privacy is held in such high esteem that the U.S. Congress and the Texas Legislature have both made it a felony to illegally intercept, possess or disseminate electronic communications. There are very limited exceptions none of which apply here.

The mandatory but rebuttable presumptions are that the participants to these phone conversations had a reasonable expectation of privacy; that the right has been violated and; that the burden of showing the interception of those electronic communications meets one of the statutory exceptions is upon persons who were themselves not a party to the private electronic

communications, but who we find to be in possession of and disseminating the challenged recordings.

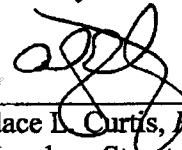
Defendants have produced no evidence tending to show that the intercepted electronic communications meet any of the lawful exceptions and the ball is in their court. If the wiretap recordings cannot be shown by the Defendants to meet one of the statutory exceptions, the recordings are prima facie unlawful, regardless of any alleged motives for their interception.

While no more than the foregoing law and fact summary is essential to the disposition of the singular issue before the Court, it seems necessary to address Defendants' unanimously disingenuous assertions and thus Plaintiff does so with the attached Memorandum.

The attached memorandum on the matter of context and color, with attached exhibits, is hereby incorporated by reference as if fully restated herein.

Plaintiff Curtis respectfully submits the following proposed order.

Respectfully submitted,



\_\_\_\_\_  
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[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)  
925-759-9020

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 9<sup>th</sup> day of August 2015, to the following via email:

**Attorneys for Anita Kay Brunsting**

Bradley E. Featherston  
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1155 Dairy Ashford, Suite 104  
Houston, Texas 77079  
[brad@meddellawfirm.com](mailto:brad@meddellawfirm.com)

09/12/2015 10:20:40 AM

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Griffin & Matthews  
1155 Dairy Ashford, Suite 300  
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[nspielman@grifmatlaw.com](mailto:nspielman@grifmatlaw.com)

Attorneys for Drina Brunsting as  
attorney-in-fact for Carl Henry Brunsting:

Bobbie G. Bayless  
Bayless & Stokes  
2931 Ferndale  
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[bayless@baylessstokes.com](mailto:bayless@baylessstokes.com)

Attorneys for Carole Ann Brunsting

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Five Houston Center  
1401 McKinney, 17<sup>th</sup> Floor  
Houston, Texas 77010  
[dsmith@craincaton.com](mailto:dsmith@craincaton.com)

  
\_\_\_\_\_  
CANDACE L. CURTIS



2020:0201:1020:P0207

No. 412,249-401

IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

TEMPORARY PROTECTIVE ORDER

On August 3, 2015 the Court heard and considered CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER and Defendants' response thereto.

At issue are recordings of intercepted electronic communications between Plaintiff Carl Henry Brunsting and his wife Drina.

After hearing on the merits and reviewing briefs submitted by the parties, the Court is of the opinion that the recordings in point are "Protected Communications" as that term is defined at 18 U.S.C. §§2510(1) & 2510(12) and that a protective order is necessary to protect privacy rights pending disposition of the pending questions at issue.

IT IS THEREFORE ORDERED that any person or entity subject to this Order-including without limitation the parties to this action, their representatives, agents, experts and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order -shall adhere to the following terms, upon pain of contempt and any other applicable civil or criminal penalties:

1. No person or entity shall, in response to a request for discovery or subpoena issued in this action, produce any Protected Communication for any third party or person absent further order of this Court.
2. To the extent a Protected Communication is or has already been produced in response to a request for discovery or subpoena issued in this action, any recipient of such production shall (a) immediately surrender any and all documents that contain or

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reflect a Protected Communication to real party in interest Carl Henry Brunsting through his Counsel of Record and (b) destroy any copies made of such Protected Communication, as well as any derivative materials that reflect a Protected Communication on any medium of storage whatsoever.

3. Any party to this action that issues a request for discovery or subpoena calling for the production of a Protected Communication shall simultaneously provide the recipient of the discovery request or subpoena with a copy of this Protective Order. To the extent a party to this action has already issued such a request or subpoena, such party shall provide a copy of this Protective Order to the recipient within three (3) business days of the entry of this Order.

4. Any person who receives a request for discovery or subpoena in this action calling for the production of a Protected Communication shall, without revealing the substance or content of a Protected Communication, provide both the issuing party and the Court with a general description of that Protected Communication so that the issuing party can make an application to this Court for production of that Protected Communication, and that Plaintiff Carl Henry Brunsting can respond to that application.

IT IS FURTHER ORDERED that on or before \_\_\_\_\_, sworn affidavits are to be provided by Defendants Anita Brunsting, Amy Brunsting, and Carole Brunsting, stating any personal knowledge with regard to every recording made since July 1, 2010 within the following categories:

- All audio or video recordings of meetings, conversations, telephone messages, or other communications with Elmer, Nelva, or any of the Brunsting Descendants concerning Brunsting Issues,
- All audio or video recordings of Nelva's execution of any documents.
- All audio or video recordings of evaluations of Nelva's capacity,
- All other audio or video recordings of any Brunsting family member, and
- All investigations made of any Brunsting family member, including any surveillance logs or reports.

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The sworn affidavits shall identify every party involved in making the recordings and specify the date, location, and means used to make the recordings, the current location of all original recordings and all copies of all recordings, all parties to whom the contents of recordings have been disclosed, and all uses which have been made of the recordings.

IT IS SO ORDERED!

Signed August, \_\_\_\_\_, 2015.

\_\_\_\_\_  
Christine Butts, Judge  
Harris County Probate Court No. 4



09112015:1020:P0210

NO. 412,249-401

CANDACE LOUISE CURTIS

*Plaintiff,*

V.

ANITA KAY BRUNSTING, ET AL

*Defendants.*

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§

IN PROBATE COURT

NUMBER FOUR (4) OF

HARRIS COUNTY, TEXAS

**MEMORANDUM OF FACTS SUPPORTED BY DEFENDANTS' OWN DISCLOSURES**

Plaintiff Candace Louise Curtis respectfully submits for the perusal of the Court this memorandum of facts adding to the inquiry context and color revealing the true nature of the intentions behind the unlawful interception and dissemination of the private electronic communications at issue.

**Statement of the Issue**

Recordings of private electronic telephone conversations between plaintiff Carl Brunsting and his wife Drina Brunsting have been disseminated to all of the parties to the present lawsuits. These recordings, if any, were requested by Plaintiff Brunsting to be produced by the Defendants in the Petition for Deposition Before Suit filed by Carl Brunsting March 9, 2012, when there were no other parties, however, the recordings were not disclosed until July 5, 2015.

Plaintiff Carl Henry Brunsting, along with his wife and attorney in fact Drina Brunsting, challenged the recordings as the product of the illegal interception of electronic communications, in violation of state and federal wiretap laws, and thus seek protective orders.

In DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER Defendants unanimously assume the following postures:

1. *It is certainly understandable that Drina has such opposition to the recordings because it proves that Nelva was planning for Drina and Carl's divorce and that Nelva felt Carl's medical condition made him unable to serve as a trustee.*
2. *On information and belief, all audio recordings came from an answering machine which Carl either intentionally set up to record the calls and/or which triggered in accordance with its own operation. Either way, one-if not both-participants had full knowledge that he/she was being recorded.*
3. *Drina provides no evidence that both parties to the conversations did not consent to the recordings, which is a prerequisite to the relief sought.*

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### A Recital of Known Facts

1. There are known recordings of private phone communications between Carl and Nelva and between Carl and his wife Drina, which are the object of the application for protective order.
2. The recordings were disseminated by Defendant Anita Brunsting, who is not a party to any of the disclosed communications.
3. We have a claim by Carl Henry Brunsting and his wife Drina that the recordings were illegally obtained.
4. We have a unanimous response from all three Defendants asserting upon information and belief that the recordings were legally obtained but answers to interrogatories on the subject indicate that none of them know anything individually.
5. The question of admissibility hinges upon the legality of the interception and dissemination of the communications.
6. A presumption that the right of privacy has been violated is primary and stands unrebutted by competent evidence to the contrary.
7. The burden of proof as to the legality of the acquisition and dissemination of the recordings is on the proponent of the assertions that the recordings were obtained legally and are therefore admissible.
8. The proponent of the legitimacy and admissibility of the recordings objects that declaring the facts necessary to qualify the recordings as legally obtained evidence before dissemination is somehow onerous, but at the same time want carte blanche to disseminate the recordings to persons not privy to the conversations under the auspices of discovery and disclosure.
9. Unless the recordings can be qualified as legally obtained they are inadmissible and cannot be disseminated lawfully.
10. There are questions as to the recordings' origins and Defendants file a joint motion claiming the existence of specific facts while taking no individual responsibility for personal knowledge.
11. Anita Brunsting, through her counsel Brad Featherston, disseminated the recordings and, thus, Anita Brunsting would have at least some personal knowledge regarding the chain of custody and control, and both now share in the culpability and attendant civil liability.
12. Assertions that the recordings were made on an answering machine would indicate personal knowledge by one if not all of the Defendants.

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13. An assertion that the recordings were authorized by Carl Brunsting requires evidentiary support from the proponent of the claim, and there has been none.
14. Assertions that Carl Brunsting installed and activated the Answering Machine are inconsistent with the Defendants' emails of the same date of the purchase of the voice recorder showing they were conspiring to get guardianship over Carl.
15. Carl was both incompetent and the proper subject of Defendants' intended guardianship effort or he was competent to install and activate the "Answering Machine" that Defendants insist he made the recordings on. Both of these things cannot be true.
16. In the Bates stamped disclosures there is a receipt for a signal activated SONY digital voice recorder purchased four days before the first dated recording on the disseminated CD. When combined with the attached email and other exhibits talking about getting guardianship over Carl, continuing the Private Investigator over the weekend, knowing where Carl and Drina were and what they were doing at that very point in time, and all of these events in the same time period as other documented activities, provides a presumption that the circumstances and intentions surrounding the acquisition of the recordings are not what Defendants claim, as hereinafter more fully appears.

The hierarchy of presumptions is as follows:

1. The participants to a private telephone conversation have a reasonable expectation of privacy against electronic eavesdropping.
2. The waiver of a known right must be a knowing and intelligent act done with sufficient knowledge of the relevant circumstance and likely consequences, and it must be both a voluntary and an overt act.
3. There is no affirmative evidence of such waiver.
4. Unless rebutted the presumption that the recordings were illegally obtained is not only controlling but the prudent course.

#### **The True Context and Color**

The only probative value these recordings could possibly have is in the fact of their very existence. Defendants argue that the content of the challenged recordings adds context and color to the events of the time showing that Nelva was preparing for Carl's alleged divorce. As in all other instances Defendants fail to provide anything but claims of Nelva's intentions based upon the strength of the honor and integrity of their word alone.

Despite all the posturing and game playing the evidence will show the Defendants are intractably disingenuous and that they illegally intercepted the private electronic communications as part of a conspiracy to steal the family inheritance. That conspiracy involved attempts to have

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Nelva declared incompetent and to gather what they thought would be evidence to support guardianship over Carl.

The evidence will further show Defendants stalked Nelva through her email and banking activities online, in addition to tapping her phone and recording every conversation involving anyone who spoke with Nelva on the phone, including Plaintiff Curtis in California.

Candace Freed took her instructions from ANITA despite her claims it was Nelva who was making the requests for changes to the trust. (Exhibit A)

The October 25, 2010 phone conference called for by Candace Freed excluded Carl and Nelva and was ultimately about having Nelva declared incompetent, which they failed to achieve by mid-November. The "law firm" did not keep an audio recording of that conference.

There is no evidence Nelva even knew of these changes before Plaintiff Curtis' 10/26/2010 phone call, after which Nelva sent Candace her hand written note repudiating the alleged 8/25/2010 QBD.

Defendant Carole Brunsting sent an email about overhearing Nelva's conversation on the phone with Candace Freed. (Exhibit B)

Freed sends a follow up email regarding the failed attempt at getting Nelva declared incompetent on Nov. 17, 2010, apparently referring to this same conversation. (Exhibit C)

Despite Defendant Amy Brunsting's claims of not being involved before Nelva's death, Amy and Anita corresponded with Candace Freed December 23, 2010 and on several other dates prior to Nelva's demise. (Exhibit D)

On March 8, 2011 Anita emails Carole, Amy and Candace bragging about reminding Nelva she was no longer trustee and no longer had access to the trust. (Exhibit E)

March 17, 2011 Tino (Nelva's caregiver) buys a Sony Digital Voice Recorder, (Brunsting 004570) which shows one ICD-PX312 digital voice recorder purchased by Tino at Best Buy in Houston. (Exhibit F)

March 17 and 18, 2011 emails mention the PI and talk about getting guardianship over Carl. (Exhibit G 1-3)

March 21, 2011 is the record date of first wiretap .wav file (received from Brad on CD 7/5/2015) (See Carl Brunsting Petition for Protective Order)

On March 24 and 25, 2011 there are large trust-prohibited transfers of Exxon Mobil and Chevron Stocks labeled as "gifts". (See Report of Special Master)

On March 29, 2011 Amy and Anita communicated with Freed (Exhibit D)



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April 22, 2011 is the record date of second .wav file (received from Brad 7/5/2015) (See Carl Brunsting Petition for Protective Order)

Then on May 11, 23 and 25, and on June 14 and 15, there are more large trust-prohibited transfers of Exxon Mobil and Chevron Stocks. (Report of Special Master)

July 27, 2011 Anita corresponds with Freed (Exhibit D)

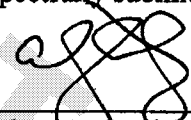
August 16, 2011 Anita corresponds with Freed (Exhibit D)

September 20, 2011 Amy and Anita correspond with Freed (Exhibit D)

February 27, 2015 is the record date of the third and fourth .wav files (received from Brad 7/5/2015) (See Carl Brunsting Petition for Protective Order), indicating these two recordings had been excerpted from a master storage disk containing even more undisclosed recordings.

There is an overwhelming volume of evidence clearly showing more of the same pernicious intent, but since the matter before the Court is limited to the singular question of the legality of Protected Communications, Plaintiff Curtis will not respond to the plethora of Defendants' extemporaneous expressions of disingenuous, self-serving bias, and otherwise irrelevant assertions.

Respectfully submitted,

  
Candace L. Curtis, *Pro se*  
218 Landana Street  
American Canyon, California 94503  
[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)  
925-759-9020

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 9<sup>th</sup> day of August 2015, to the following via email:

**Attorneys for Anita Kay Brunsting**

Bradley E. Featherston  
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Attorneys for Drina Brunsting as  
attorney-in-fact for Carl Henry Brunsting:

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Houston, Texas 77098  
[bayless@baylessstokes.com](mailto:bayless@baylessstokes.com)

Attorneys for Carole Ann Brunsting

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Houston, Texas 77010  
[dsmith@craincaton.com](mailto:dsmith@craincaton.com)

  
\_\_\_\_\_  
CANDACE L. CURTIS

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EXHIBIT

A

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08/11/2015:1020:PO217

**PM TRUST REVIEW MEETING**Client Name: Brunsting, NelvaDate: 07/30/10 Estate Size: 2 mil±IRA: Husband - N/A Wife - \_\_\_\_\_Current Address/Phone: 13630 Pinelock Hwy TX 77079Date of Trust/Restatement: \_\_\_\_\_ Previous Amendments? Yes.Subtrust Funding Done previously? Yes. DT & ST.AMENDMENT:  QBD(PAT) \_\_\_\_\_ Other \_\_\_\_\_ Instr Ltr  HCPOA ApptSUCCTee/HIPAA  EXTPOA  COT  POA  DIRAnita Kay Riley & Arny Ruth... Co-teesor Successors of them. Then most Distribution Change (QBD):PAT QBD**IF PAT QBD then:**Each beneficiary Trustee of Own Trust:  yes \_\_\_\_\_ noDistribution of PAT: except for Carl, Anita & Arnie as Co-tees for Carl  
(except they have it to name, Carl as owner)  
need to Low Succ TeeSame as LT except need language  
about the last amend (QBD) use early distr.

Signing Date &amp; Time

Wed. Aug. 4th  
2:pm.

Fee: \_\_\_\_\_

Paid: \_\_\_\_\_ Mail: \_\_\_\_\_

V&amp;F 000687

17-20360.2545



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**Specific Distribution:**

\_\_\_\_\_  
\_\_\_\_\_

**Ultimate Distribution:**

\_\_\_\_\_  
\_\_\_\_\_

**HEALTH CARE DOCUMENTS:**

1<sup>st</sup> Agent: Carol

2<sup>nd</sup> Agent: Anita

3<sup>rd</sup> Amy

IRA TRUST:  yes  no For whom?  husband  wife

Trustees upon disability of Trustor or spouse: \_\_\_\_\_

Each beneficiary Trustee of own trust?  yes  no

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SS# of Surviving Spouse/Beneficiaries: \_\_\_\_\_

V&F 000688

ORI 12015: 1020: P0219

**FUNDING:**

Real Estate \_\_\_\_\_

Which property has NO MORTGAGE? \_\_\_\_\_

\_\_\_\_ Recording HS Deed

\_\_\_\_ Apply for HS Exemption

Tax-deferred Assets \_\_\_\_\_

\_\_\_\_ Bank & Brokerage Accounts

\_\_\_\_ Safe Deposit Box

\_\_\_\_ Life Insurance

\_\_\_\_ Stocks and Bonds

\_\_\_\_ Oil & Gas Interests

\_\_\_\_ Motor Vehicles

\_\_\_\_ Credit Union Accounts

\_\_\_\_ Sole Proprietorship Assets

\_\_\_\_ Partnership Interests

\_\_\_\_ Promissory Notes & Mortgages

\_\_\_\_ CDs

\_\_\_\_ Annuities

**Additional Documents:** \_\_\_\_\_

**NOTES:**

Needs new DFPDA order

Anita

Carol

Amy

Any Name Changes for children? \_\_\_\_\_ Any children Predecease? No.

If Yes, who: \_\_\_\_\_

V&F 000689

09/12/2015:1020:P0220

FEES:

QUOTED: \$ \_\_\_\_\_ (Plus Expenses)

AMOUNT REC'D: None DATE: \_\_\_\_\_

BALANCE DUE: \_\_\_\_\_

DOCUBANK? \_\_\_\_\_

Cost per QBD 1200.

Hipaa Pkg 250 - med POA  
D.F.P.O.A. 150.-  
Appl. of Succ TEE  
New Card.

Courtesy discount \$150.-

Cy

G:\PM Docs\Checklists\5-1 Checklists\PM Trust Review Mtg.wpd

V&F 000690

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Anita - called  
Carol has encephlytus  
amendments to trust  
Anita + Annice as Co.tees

change list under ME

Carol  
Anita  
Annice

financial P.O.A

Anita  
Carol  
Annice

Amend to trust / PAT's w/ Annice  
to consent Supp Needs to Anita  
to be  
Co.tees.  
sp needs?

V&F 000691

---

**From:** Anita Brunsting  
**To:** Candace Freed  
**Sent:** 10/6/2010 8:19:06 PM  
**Subject:** Brunsting Family Trust

Candace,

I spoke to mom tonight and she agreed to resign as trustee and appoint me as trustee. I told her that you would be contacting her to re-explain things and make sure she understood what was happening.

If you have any questions, my cell is 361-550-7132.

Thanks,  
Anita

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# EXHIBIT

## B

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08/12/2015:1020:P0224

**From:** Carole Brunsting <cbrunsting@sbcglobal.net>  
**Sent:** Thursday, October 28, 2010 9:00 AM  
**To:** Candace Curtis  
**Subject:** Re: One more

Candy,

The more I think about this the whole key is Carl. When I was listening to Mother's call with Candace, Mother told Candace that Carl was trustee, not Anita and was not following the changes Candace was telling her she had made to have Carl removed.. Legally, I wonder if what Candace did was right without consulting Carl or his power of attorney since Carl has always been present at all meetings.

--- On Thu, 10/28/10, Candace Curtis <occurtis@sbcglobal.net> wrote:

From: Candace Curtis <occurtis@sbcglobal.net>  
Subject: Re: One more  
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>  
Date: Thursday, October 28, 2010, 10:34 AM

Candace DOES know she fucked up. That's why she had such a nasty attitude towards both you and I. Anita is smug and Amy plays dumb.

I hope Carl goes home today! If he does I hope the sun is shining. 10 minutes smiling into the sunshine + coffee + the Beatles = a sharper, happy Carl. I have a strong feeling that he will recover in leaps and bounds ALL ON HIS OWN, with support from his wife and family. The fact that Daddy is looking over us gives me strength. I can feel him stronger than ever before.

My suggestion is that when Dr. White finds Mother competent the following should happen:

1. You need to complete your time-line to demonstrate that due to various factors (badgering, low oxygen, Carl's illness, her illness, pneumonia, general stress and worry due to all of this), Mother was incompetent and under extreme duress when she signed everything she signed, particularly the Power of Attorney. We can compose a letter to Candace for Mother to sign, demanding that she wants to have papers drawn up to revoke anything she agreed to between the first of July and now.
2. As Mother gathers strength over the next few weeks she will go to her MD Anderson appointments, etc. and move towards treatment and recovery. I want to stress nutrition, adequate good sleep, and stress-free living.
3. In the meantime she can sell what she needs to, to pay for Robert or Tino or whoever Drina needs to assist her with Carl (if she even needs someone - Carl may recover a lot in a few weeks at home). The cost will be minimal compared to the \$100k shithead got to buy her house.

Going forward, Mother will have to tell Candace IN WRITING what she wants done with the trust. You can help her compose the letters. There can be no question when it's in writing. You can assist Mother in reviewing the paperwork before she signs (at home - at her leisure), to make sure all her wishes have been incorporated. This should never be done under the pressure and duress she was subjected to. Mother can take as much time as she needs to read and understand that everything will be as she wants it to be.



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The fair and equitable solution in my mind is:

Make all five of us successor co-trustees and require a majority to make any change whatsoever. Then, if Mother steps down there will be no shenanigans. Everything will be transparent and we'll all know everything everyone else knows. That way when Anita wants to sell the farm, or move away from Edward Jones, she can put it up for a vote among us. All five of us are intelligent people and none of us can honestly say we have NEVER made a wrong choice in our lives. This way Mother will be at peace to live out her life, and she will die knowing that she has not pitted one against the other, or given control of one over the other, or played favorites, or been bullied into doing something she didn't really want to do, or would not have done in the first place.

Now this may go AGAINST the norm, or what Candace and her ilk would recommend, but fuck them. They are attorneys who get paid to do what their clients want them to do and they love having to draw up documents. Fees, fees, fees, \$\$\$\$\$\$\$\$\$\$

If Anita succeeds in her agenda and becomes trustee, we should have her competency tested just to show her what it feels like. If everything stays the way it is right now, that's the first thing I'm going to do when the day comes that she's in charge of me. Na, Na, Na, Na, Na, Na.

Love you,

C

---

**From:** Carole Brunsting <cbrunsting@sbcglobal.net>  
**To:** occurtis@sbcglobal.net  
**Sent:** Wed, October 27, 2010 9:32:06 PM  
**Subject:** One more

And do not overlook an exploration of the family's motives in requesting a competency evaluation, she cautioned. Do family members have reason for wanting their oddly behaving relative to be declared incompetent?

This is from an article about not rushing to declare an elderly person incompetent. Mother passes the smell test and I have to make sure Tino does not let her out of the house without her clothes being ironed and SEE!!! MOTHER MADE THE APPOINTMENT TO GET HER HAIR DONE!!! CANDY THAT IS IT!!! MOTHER DOES CARE ABOUT HER APPEARANCE!! She will not go out without her makeup on and I have to get her a nail file all the time. Mother also called Edward Jones on her own and sold \$10K so she would have enough money to live on.

She was temporarily incompetent when she was too low on oxygen and if they made her walk to Candace's office I know for a fact her levels were too low because Dr. White joked about it. Tino did not take her so she had to walk from the parking lot to the office. She did not understand what she was signing because she was too short of breath and I can prove that. Candane has to know she F\*\*\*\*ed up.

--- On Wed, 10/27/10, Carole Brunsting <cbrunsting@sbcglobal.net> wrote:

From: Carole Brunsting <cbrunsting@sbcglobal.net>  
Subject: Found this  
To: occurtis@sbcglobal.net



08112015:1020:P0226

Date: Wednesday, October 27, 2010, 10:38 PM

There are any number of situations that may cause you to question the competency of a family member to make sound life decisions, such as when:

- An elderly person suddenly changes a will or trust in a manner that is significantly different from all previous wills or trusts, which could result in will litigation if not appropriately handled during the elder's life.
- A family member has suspicion that the elderly person is being unduly influenced by others

Anita is unduly influencing Mother and now Amy has piled on. Mother never would have made these changes on her own. This was all done by the hand of Anita who put herself in charge of everything.

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# EXHIBIT

## C

COPY

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**Subject:** Fw: Nelva Brunsting  
**From:** Candace Curtis <occurtis@sbcglobal.net>  
**Date:** 3/11/2015 6:24 PM  
**To:** Rik Munson <blowintough@att.net>

On Wednesday, November 17, 2010 2:38 PM, Candace Freed <candace@vacek.com> wrote:

Amy and Family, Thank you for the update on your mom, Nelva Brunsting. The purpose of the conference call and the suggestion that Ms. Brunsting be evaluated was based solely on conversations that I had with Ms. Brunsting and to let you all know that I had concerns based on those conversations. If she has been evaluated by her physician and you as a family are comfortable with his or her diagnosis, then you have addressed the concerns that I had. I appreciate your letting me know the opinion of the doctor. I hope your mom is doing well and she continues to improve.

Please let me know if I can be any further assistance.

Very truly Yours,

*Candace L. Kunz-Freed*  
*Attorney at Law*

*Vacek & Freed, PLLC*  
14800 St. Mary's Lane, Suite 230  
Houston, Texas 77079  
Phone: 281.531.5800  
Toll-Free: 800.229.3002  
Fax: 281.531.5885  
E-mail: candace@vacek.com  
www.vacek.com

*We have moved! Our new office address is as shown above.* We are one exit west of our old office building. Exit Dairy Ashford. Turn south on Dairy Ashford. St. Mary's Lane is a side street one block south of I-10 Katy Freeway. Turn west on St. Mary's Lane. Our building is in the northwest corner of the four-way stop.

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**EXHIBIT**

**D**

COPY

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08/11/2015:1020:P0290

DEFENDANTS' PRIVILEGE LOG

V&F ① 002054 - V&F 002057	1/27/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F ② 002058 - V&F 002060	7/27/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F ③ 002061 - V&F 002066	12/08/11	Candace L. Kuntz-Freed	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F ④ 002067 - V&F 002070	12/23/10	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F ⑤ 002071 - V&F 002072	3/29/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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V&F 002073 V&F 002075	9/20/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002076	11/29/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002077 V&F 002078	12/28/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002079	1/12/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 0020890	1/31/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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V&F 002081 (11)	2/14/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002082 - V&F 002085 (12)	2/14/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002086 - V&F 002089 (13)	3/20/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002090 - V&F 002093 (14)	3/29/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002094 (15)	4/12/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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V&F 002095 - V&F 002096	(16)	1/24/11	Anita Brunsting	Candace L. Kunz-Freed	Email	Email string between attorney and client regarding stock valuation.	Attorney-Client Communication
V&F 002097	(17)	1/27/11	Summer Peoples	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002098	(18)	7/27/11	Summer Peoples	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002099	(19)	8/16/11	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002100	(20)	12/8/11	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002101 - V&F 002102	(21)	12/20/11	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding life insurance proceeds.	Attorney-Client Communication
V&F 002103 - V&F 002104	(22)	12/20/11	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding life insurance proceeds.	Attorney-Client Communication

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V&F 002105 - V&F 002106	12/28/11	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002107	1/03/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Communication between attorney and client regarding title of the Buick.	Attorney-Client Communication
V&F 002108	1/05/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding Trust Information Sheets.	Attorney-Client Communication
V&F 002109 - V&F 002112	1/09/12	Candace L. Kunz-Freed	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Email string between attorney and client regarding distribution of trust funds.	Attorney-Client Communication
V&F 002113 - V&F 002114	1/22/12	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding notice to beneficiaries.	Attorney-Client Communication
V&F 002115 - V&F 002116	1/23/12	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding notice to beneficiaries.	Attorney-Client Communication

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V&F 002117 - V&F 002118	(21)	1/23/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding trust accounting.	Attorney-Client Communication
V&F 002119 - V&F 002121	(22)	1/24/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding trust documents.	Attorney-Client Communication
V&F 002122 - V&F 002123	(23)	1/24/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding trust accounting.	Attorney-Client Communication
V&F 002124 - V&F 002125	(24)	1/31/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding Farmland LLC.	Attorney-Client Communication
V&F 002126 - V&F 002127	(25)	1/31/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002128	(26)	2/14/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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V&F 002129	(35) 2/15/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding estate planning documents.	Attorney-Client Communication
V&F 002130 - V&F 002132	(36) 2/28/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Ruth Brunsting, and Summer Peoples	Email	Attorney communications to client regarding promissory note.	Attorney-Client Communication Attorney Work Product
V&F 002133 - V&F 002139	(37) 3/02/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Ruth Brunsting, and Bernard Mathews	Email	Attorney communications to client regarding trust value report.	Attorney-Client Communication Attorney Work Product
V&F 002140 - V&F 002142	(38) 3/06/12	Amy Ruth Brunsting	Candace L. Kunz-Freed	Email	Communication between attorney and client regarding promissory note.	Attorney-Client Communication Attorney Work Product
V&F 002143 - V&F 002148	(39) 3/14/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Communication between attorney and client regarding promissory note.	Attorney-Client Communication Attorney Work Product

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V&F 002149	(40) 3/20/12	Summer Peoples	Amy Ruth Brunsting, Anita Kay Brunsting, and Chip Mathews	Email	Attorney communications to client regarding request for wills.	Attorney-Client Communication
V&F 002150 - V&F 002151	(41) 3/20/13	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002152	(42) 3/22/12	Anita Kay Brunsting	Candace L. Kunz-Freed, Chip Mathews, and Amy Ruth Brunsting	Email	Attorney communications to client regarding December of 2011 accounting.	Attorney-Client Communication
V&F 002153	(43) 3/22/12	Anita Kay Brunsting	Candace L. Kunz-Freed	Email	Attorney communications to client regarding accounting.	Attorney-Client Communication
V&F 002154 - V&F 002155	(44) 3/27/12	Anita Kay Brunsting	Chip Mathews, Amy Brunsting, Candace L. Kunz-Freed	Email	Email string between attorney and client regarding accounting.	Attorney-Client Communication
V&F 002156 - V&F 002158	(45) 3/28/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Brunsting, and Chip Mathews	Email	Email string between attorney and client regarding asset lists.	Attorney-Client Communication

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V&F 002159	(4b)	3/28/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Brunsting, and Bernard Mathews	Email	Attorney communications to client regarding asset lists.	Attorney-Client Communication
V&F 002160 - V&F 002161	(4c)	3/29/12	Anita Kay Brunsting	Candace L. Kunz-Freed	Email	Email string between attorney and client regarding assets and expenses.	Attorney-Client Communication Attorney Work Product
V&F 002162 - V&F 002163	(4b)	3/29/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002164 - V&F 002166	(4a)	3/30/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Ruth Brunsting, and Bernard Mathews	Email	Email string between attorney and client regarding asset list.	Attorney-Client Communication
V&F 002167	(5d)	4/12/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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V&F 002168 - V&F 002183	(5)	Candace L. Kunz-Freed	Chart	Attorney notes/history of representation	Attorney-Client Communication Attorney Work Product
V&F 002184 - V&F 002191	(6)		Document	Authorization for Release of Protected Health Information	Attorney Work Product
V&F 002192	(5)		Document	Authorization for Release of Information	Attorney Work Product

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08/11/2015: 10:20: P0240

**EXHIBIT**

**E**

**COPY**

Print

**From:** Candace Curtis (occurtis@sbcglobal.net)  
**To:** occurtis@sbcglobal.net;  
**Date:** Sat, February 18, 2012 11:29:12 AM  
**Cc:**  
**Subject:** Fw: New Development

----- Forwarded Message -----

**From:** Anita Brunsting <akbrunsting@suddenlink.net>  
**To:** Candace Curtis <occurtis@sbcglobal.net>; Amy <at.home3@yahoo.com>; Carole Brunsting <cbrunsting@sbcglobal.net>  
**Sent:** Tue, March 8, 2011 7:15:32 PM  
**Subject:** RE: New Development

I got the same TM from Tino. I hesitate to promise them anything in writing about money. Rather than a monthly payment, I would rather grant them a certain amount each year, but only through the direct payment of their bills - for example; mom could gift Carl \$13,000/year, but only if they send me the bill statements to pay directly, and only for bills for living/medical expenses - when the trust has paid \$13,000 in bills for the year, that's the end of the money for that year. We could ask them to sign for this money against his inheritance, but then we'd have another form that we'd have to get them to sign (probably notarized), and as we don't know if she's had Carl declared incompetent, the validity of any form he signs might be questionable.

I do like the idea of a letter telling Drina that she may have no contact w/ mom (physical, verbal, visual, phone or electronic means) and she is not to enter mom's house. She can bring Carl to visit mom, but she must remain outside the house - any violation of this letter will be considered harassment and the police will be called if she does not comply. I would also like to add in the letter that Carl's inheritance will be put into a Personal Asset Trust for his care and living expenses - I think this information might be enough to tip her hand.

I would also like to ask Candace, what this letter would do for us legally - like if we did end up calling the police would the letter lend any credence to our case?

I won't do anything until we can come upon an agreement as what to do - I can also write this letter in the role of mom's power of attorney (which she signed last year).

I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care. I told her to "just say No" to Carl or Drina if they brought up the trust or money and to refer them to me. I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts - she seems fine w/ everything, and expressed no desire to put Carl back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/ Drina, not Carl. Mom begrudgingly admits to knowledge of the unpleasantness of this whole situation and Drina's past behavior since Carl has been ill, but I think she is really naive regarding the lengths to which Drina may go through to get Carl's inheritance.

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EXHIBIT

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Keep your receipt!



Val #: 0422-1045-6045-3089

0216 003 2499 03/17/11 18:22 00005044

1792142 ICDPX312 59.99  
ICDPX312 DIGITAL VOICE RECORD  
ITEM TAX 4.95  
6094193 RZ SILVER 0.00 N  
REWARD ZONE PREMIER SILVER  
MEMBER ID 0323918420

SUBTOTAL 59.99  
SALES TAX AMOUNT 4.95  
TOTAL 64.94

XXXXXXXXXX0307 DEBIT 64.94  
FAUSTINO VAQUERO JR  
APPROVAL 132943  
REFERENCE NUMBER: 0216003

ALEX,  
THANKS FOR SHOPPING AT BEST BUY TODAY!  
YOUR REWARD ZONE BALANCE AS OF 03/08/11  
POSTED POINTS: 153  
Go to [MyRZ.com](http://MyRZ.com) FOR MORE INFO

Congratulations! As an added benefit of  
being a Reward Zone program Premier  
Silver member, you may return eligible  
products up to 45 days from purchase date.

Dear Valued Customer,

To help keep prices low for all our customers,

Directly or indirectly by the products listed on this receipt.

THE SHACK THANKS YOU.

RADIOSHACK 01-8020  
Kroger Plaza Sc  
14356 Memorial Dr  
Houston, TX 77079-6704  
(281) 486-9429

Order: 057553 03/17/2011 08:14P Term #002

Helped By: 001 (MAR)  
Entered By: 001 (MAR)

4200223 3' 1/8' M-N PATCH CABLE 1 8.39

Subtotal 8.39  
Tax 0.254 0.69  
Total 9.08

Credit Card 9.08

Change Due 0.00

Rec# XXXXXXXXXXXX0307 N  
Card Type 01  
Trans# 12087148  
Auth# 161235 9.08  
Host Captured Y

The card holder identified hereon may apply the total  
amount shown on this receipt to the appropriate account  
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I agree to pay above total according to card issuer  
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08/18/2010 12:58:10 PM

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**From:** Amy Tschirhart <at.home3@yahoo.com>  
**Sent:** Wednesday, August 18, 2010 12:58 PM  
**To:** Anita Brunsting; Carole Brunsting; Candy Curtis  
**Subject:** CPA's advice

Hi,

I talked to the CPA who does my taxes today and asked her what she would recommend. She told me that Drina should talk to an attorney who specializes in debt created by medical bills. Medical bill debt is treated differently than other debt. I did a quick check on the internet and there are several in Houston.

She said that creditors cannot touch Drina's house or cars. She also recommended not paying any of the medical bills right now. She said to wait until the dust settles, then talk with each company about a payment plan, possibly as little as \$10 a month. She told me that in all likelihood, they would eventually write off her debt as a loss. She said Drina should definitely not touch any retirement or inheritance, or borrow anything against them.

I called Drina today and told her what Darlene said. She said her father had been telling her the same things. I tried to emphasize that she should not be paying any bills right now, but I don't know if she really understood why. She is overly concerned with her credit score rating. Darlene said that is not that important because they own their house and cars and are not as reliant on credit compared to younger people.

Anyhow, I know that Drina is in a hard spot right now, but I honestly think that keeping her from accessing any of Carl's inheritance would be in her best interest. It would be a waste to spend it on medical bills and they will need the money in the future. I don't think that is going to sit well with Drina because she's going to see it as us being tight-fisted with the money. I strongly suggest that if any of us talk to her, we do it as nicely as we can. Acknowledge that the debt is so huge it is unpayable in her lifetime. Encourage her to seek a professional to find the best way to deal with it. Remind her that we want the best for her and Carl in their future and that we are thinking of their best interests.

Love,  
Amy



08112015:1020:P0247

**From:** Carole Brunsting <cbrunsting@sbcglobal.net>  
**Sent:** Friday, March 18, 2011 11:59 AM  
**To:** Anita Brunsting; Amy Tschirhart; Candace Curtis  
**Subject:** Re: atty for guardianship

I think that Drina has always projected her own family issues onto ours. She was completely distanced from her own family until a year ago when her brother passed away and now she talks about the relationship with her dad like they have been close forever which has not been the case.

She must have had some very bad things happen to her in her childhood and slowly but surely she twisted Carl's mind to go along with everything she did and said. I think you are right that this will have to play itself out to see what she does. She has been waiting for the day she and Carl get the "big" trust payout and then it will be see you later chumps!

--- On Fri, 3/18/11, Candace Curtis <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)> wrote:

**From:** Candace Curtis <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)>  
**Subject:** Re: atty for guardianship  
**To:** "Anita Brunsting" <[akbrunsting@suddenlink.net](mailto:akbrunsting@suddenlink.net)>, "Carole Brunsting" <[cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)>, "Amy Tschirhart" <[at.home3@yahoo.com](mailto:at.home3@yahoo.com)>  
**Date:** Friday, March 18, 2011, 1:49 PM

The Brunsting family has never been very demonstrative of their love for one another, but I chalk that up to being Dutch. What I cannot seem to wrap my arms around is the extreme coldness of Drina and Marta. They have always been limp when hugged and hugging is one of the best things in the world. One power hug and all my cares fly out the window. I believe it must be a genetic brain chemical imbalance in Drina's family. She has spent her life with Carl trying to distance HIM from his family and turn him into a cold fish like her. How did she ever get pregnant in the first place? Maybe we should try to get some DNA from Marta and Carl and do a paternity test. Wouldn't it be something if he wasn't her father????????? LOL

Frankly, as long as the trust is safe, we should probably just let nature take its course and sooner or later we will get Carl out of their clutches and into ours. He might be pissed off for awhile, but I have some small faith that once he can reason better he will see that we only seek what is best for him in the long run BECAUSE WE LOVE HIM. Once he is able to reason and be reasoned with, and has regained some control of his life, if he chooses to go back to his moron wife and their moron spawn, I will mourn him as if he were dead. Until such time I will assume that, somehow, at some point in his recovery, he will realize how miserable the bitch has made his life. He might see that all she has ever cared about is money and how to avoid having to go out and earn some.

If asked, Carl would probably say no to coming out here to live with us, even though it might be the very best thing for him. He should never feel like he has been "dumped" on anyone. I think he would have a lot more stimulation out here. He does love the Bay Area and after a short time he might gain some real incentive to get well.

**From:** Anita Brunsting <[akbrunsting@suddenlink.net](mailto:akbrunsting@suddenlink.net)>  
**To:** Carole Brunsting <[cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)>; Candace Curtis <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)>; Amy Tschirhart <[at.home3@yahoo.com](mailto:at.home3@yahoo.com)>

**Sent:** Fri, March 18, 2011 8:59:24 AM

**Subject:** atty for guardianship

Ok, I think I may have found an atty who could handle the guardianship issue. She was recommended to me by the Burgower firm that Amy's lawyer had given her - the Burgower firm does not do guardianship cases. This atty's name is Ellen Yarrell; her offices are in the Galleria area; she charges an initial consult fee of \$350 for 1 hr of her time, and probably requires a retainer of \$2000. Her paralegal (Elizabeth) said that she's handled cases like this before (where an impaired person has been divorced by their spouse). I asked about the expense and she said that Yarrell could give us a better idea after the consult and it depends on whether the guardianship would be contested (so that depends on whether we fight Drina now, or wait to see if she'll divorce him and then we're facing Marta (if she pursues it)). I got the feeling that "expensive" meant more like \$50,000 not \$1 million.

I thought of another plus on our side if Drina divorces him - Drina will probably expect him to come live w/ mother - so if he's w/ us and not his daughter that lends more credence to our side for guardianship (possession is 9/10's of the law?).

I also talked to mom last night and told her what was going on. I asked her if she was ok w/ using her money to pay for Carl's legal fees and of course she said yes.

08/12/2015: 10:20: P0249

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**From:** Carole Brunsting <cbrunsting@sbcglobal.net>  
**Sent:** Friday, March 18, 2011 8:41 AM  
**To:** Anita Brunsting; Amy Tschirhart; Candace Curtis  
**Subject:** Re: guardianship assessment form

They are there right now according to the PI. And Michael took him on Wednesday.

--- On Fri, 3/18/11, Candace Curtis <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)> wrote:

**From:** Candace Curtis <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)>  
**Subject:** Re: guardianship assessment form  
**To:** "Anita Brunsting" <[akbrunsting@suddenlink.net](mailto:akbrunsting@suddenlink.net)>, "Carole Brunsting" <[cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)>, "Amy Tschirhart" <[at.home3@yahoo.com](mailto:at.home3@yahoo.com)>  
**Date:** Friday, March 18, 2011, 10:33 AM

Do you know if he went to therapy at all this week?

---

**From:** Anita Brunsting <[akbrunsting@suddenlink.net](mailto:akbrunsting@suddenlink.net)>  
**To:** Candace Curtis <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)>; Carole Brunsting <[cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)>; Amy Tschirhart <[at.home3@yahoo.com](mailto:at.home3@yahoo.com)>  
**Sent:** Fri, March 18, 2011 8:26:05 AM  
**Subject:** RE: guardianship assessment form

we're continuing the pi over the weekend or unless it looks like she's headed toward Beaumont - will also use him through next week. \$750 is for the lawyer's (Cole) initial consult not a dr. If she divorces him then someone needs to sue for guardianship - Marta would be considered next in line by the law, but if she doesn't sue for it then I don't think she'd be considered. If Drina gets him to sign divorce papers that give him any less than 50% of their assets then a guardian can countersue her to recover those.

---

**From:** Candace Curtis [<mailto:occurtis@sbcglobal.net>]  
**Sent:** Friday, March 18, 2011 10:20 AM  
**To:** Anita Brunsting; Carole Brunsting; Amy Tschirhart  
**Subject:** Re: guardianship assessment form

\$750 an hour FOR WHAT? The woman is abusing him and negligent in his care. Have they been out even one time this week? Last I heard, Monday and Tuesday there was no activity other than a visit from Marta. APS said that once they confirmed she was following doctor's orders, they closed the case. If the instructions were 3 times a week and he hasn't been, or only goes once or twice, SHE IS NEGLIGENT, and they better reopen it or start a new one. Let me know if you want me to call.

Any doctor who has seen Carl would most likely say NO to all of the questions. I would, just based on past phone conversations with Carl.

What if Drina files for divorce? Would that be abandonment? Would the trust even be an issue if SHE divorces him?

09112015:1020:PO250

If I could have anything I wanted for Carl, I would have him assessed by the neuropsychologists at the place I found in Houston. I don't know if he could handle long periods of testing, but he has got to get some cognitive brain function back OR HE WILL NEVER EVEN BECOME CLOSE TO WHOLE AGAIN. It's a good sign that his behavior has improved, but is it because she beats him with a stick and mentally assaults him to get him to act right?

Maybe guardianship is the wrong approach. Maybe we should go after Drina and have her declared incompetent to care for him, or criminally negligent for not obtaining proper rehabilitation. There has to be a reason why she doesn't want her husband of almost 30 years to recover.

Let me know if he will be staying at Mother's again over the weekend. If so, we might want to extend the PI over the weekend so we can see what the hell she does. The more "evidence" we can amass, the better.

Love you guys,

C

---

**From:** Anita Brunsting <[akbrunsting@suddenlink.net](mailto:akbrunsting@suddenlink.net)>  
**To:** Carole Brunsting <[cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)>; Candace Curtis <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)>; Amy Tschirhart <[at.home3@yahoo.com](mailto:at.home3@yahoo.com)>  
**Sent:** Thu, March 17, 2011 2:18:05 PM  
**Subject:** guardianship assessment form

Just thought you'd find this interesting, this is the form that we'd have to have a physician use to assess Carl and possible a MHMR psychologist as well. I just thought it would give you an idea as to what they're looking for - Carl definitely fits the bill -

Just fyi, you may have already known this.

Anita

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

CANDACE LOUISE CURTIS, ET AL.,

Plaintiffs,

v.

CANDACE KUNZ-FREED, ET AL.,

Defendants.

§  
§  
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§  
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Civil Action No. 4:16-cv-01969

**DEFENDANT JILL WILLARD YOUNG’S  
CERTIFICATE OF INTERESTED PARTIES**

Defendant Jill Willard Young, files this certificate of interested parties pursuant to the Court’s July 6, 2016 Order, ¶ 2 [Dkt. No. 3]. Persons or entities with an interest in the outcome of this case are as follows:

1. Plaintiff Candace Louise Curtis, pro se  
218 Landana Street  
American Canyon, CA 94503  
925-759-9020  
occurtis@sbcglobal.net
2. Plaintiff Rik Wayne Munson, pro se  
218 Landana Street  
American Canyon, CA 94503  
925-349-8348  
blowintough@att.net
3. Defendant Jill Willard Young  
c/o Robert S. Harrell  
Rafe A. Schaefer  
Norton Rose Fulbright US LLP  
1301 McKinney St., Suite 5100  
Houston, Texas 77010  
robert.harrell@nortonrosefulbright.com  
rafe.schaefer@nortonrosefulbright.com
4. Defendant Candace Kunz-Freed  
c/o Cory S Reed

Thompson Coe Cousins Irons  
One Riverway, Suite 1600  
Houston, TX 77056  
713-403-8213  
creed@thompsoncoe.com

5. Defendant Albert Vacek, Jr.  
c/o Cory S Reed  
Thompson Coe Cousins Irons  
One Riverway, Suite 1600  
Houston, TX 77056  
713-403-8213  
creed@thompsoncoe.com
6. Defendant Bernard Lyle Matthews  
2000 S. Dairy Ashford Rd, Suite 520  
Houston, Texas 77077
7. Defendant Anita Kay Brunsting, pro se  
203 Bloomingdale Circle  
Victoria, TX 77904
8. Defendant Amy Ruth Brunsting, pro se  
2582 Country Ledge Drive  
New Braunfels, TX 78132
9. Defendant Neal Spielman  
Griffin & Matthews  
1155 Dairy Ashford, Suite 300  
Houston, Texas 77079
10. Defendant Bradley Featherston  
Featherston Tran P.L.L.C.  
20333 State Highway 249, Suite 200  
Houston, Texas 77070
11. Defendant Stephen Mendel  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, TX 77079
12. Defendant Darlene Payne Smith  
1401 McKinney, 17th Floor  
Houston, Texas 77010
13. Defendant Jason Ostrom  
Ostrom Sain LLP  
5020 Montrose Blvd



Suite 310  
Houston, TX 77006  
713-863-8891  
jason@ostromsain.com

14. Defendant Gregory Lester  
955 N Dairy Ashford Rd # 220  
Houston, TX 77079
15. Defendant Bobbie Bayless  
Bayless Stokes  
2931 Ferndale  
Houston, TX 77098  
713-522-2224  
Fax: 713-522-2218  
Email: bayless@baylessstokes.com
16. Defendant The Honorable Christine Riddle Butts  
c/o Laura Beckman Hedge  
Harris County Attorney's Office  
1019 Congress, 15th Floor  
Houston, Texas 77002  
713-274-5137  
laura.hedge@cao.hctx.net
17. Defendant Clarinda Comstock  
c/o Laura Beckman Hedge  
Harris County Attorney's Office  
1019 Congress, 15th Floor  
Houston, Texas 77002  
713-274-5137  
laura.hedge@cao.hctx.net
18. Defendant Toni Biamonte  
c/o Laura Beckman Hedge  
Harris County Attorney's Office  
1019 Congress, 15th Floor  
Houston, Texas 77002  
713-274-5137  
laura.hedge@cao.hctx.net



Dated: October 6, 2016

Respectfully submitted,

*/s/ Robert S. Harrell*

---

Robert S. Harrell  
Attorney-in-charge  
State Bar No. 09041350  
Federal ID No. 6690  
robert.harrell@nortonrosefulbright.com  
1301 McKinney, Suite 5100  
Houston, TX 77010-3095  
Telephone: (713) 651-5151  
Facsimile: (713) 651-5246

OF COUNSEL:

Rafe A. Schaefer  
State Bar No. 24077700  
Federal ID No. 1743273  
rafe.schaefer@nortonrosefulbright.com  
NORTON ROSE FULBRIGHT US LLP  
1301 McKinney, Suite 5100  
Houston, TX 77010-3095  
Telephone: (713) 651-5151  
Facsimile: (713) 651-5246

ATTORNEYS FOR DEFENDANT JILL  
WILLARD YOUNG

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above Certificate of Interested Parties has been served on October 6, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

*/s/ Robert S. Harrell*

---

Robert S. Harrell

**WPKVGF'UVCVGF'KVTKEV'EQWTV  
UQWJ GTP'F'KVTKEV'QH'VGZCU  
J QWUVQP'FKKUKQP**

**ECPFKEG'NQWUG'EWTVKU. ET AL.**

**XU**

**ECPFCEG'MWP\ /HTGGF. ET ALO**

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**ElkhiCevkqp Pq06-38/ex/23; 8;**

**FGHGPF'CPVULWFI G'EJ THUVPG'TKFFNG'DWVU. LWFI G'ENCTKPF C  
EQO UVOEM( 'VOP[ 'DCKCO QPVG'UUNOPPOSED O QVKQP HOT'NGCXG  
VQ'HKG O QVKQP'VQ'F KUO KUUP GZEGUUQHRCI G'NKO K**

F ghgpf cpw Lwf i g"Ej tkvkpg"Tk f ng"Dwwu."Lwf i g"Erctkpf c"Eqo uqen'cpf "Vqp {  
Dckco qpvq \*eqmgevkn{ "F ghgpf cpw"+. j gtgd{ 'hkg vj g hqmjy kpi Wpqr r qugf O qvkqp hgt  
Ngcxg vq Hkg O qvkqp"vq'F kuo kuu k{ "Gzeguu qh Rci g Nko kt ("Motion")0

Ugevkqp D\*7-+\*G+qh Lwf i g Alfred H. Bennett's Eqwtv Rtqegf wtgu rko kv vj g htkpi "qh  
f qewo gpw uwej cu Defendants' O qvkqp"vq'F kuo kuu vq 42 r ci gu y kj qwngcxg"qh Eqwtv0  
Vj g"Eqwtv"Rtqegf wtgu hwt vj gt "f ktgeu vj g"r ctvku"vq uggmngcxg"y j gp vj gkt "f qewo gpw  
gzeggf vj g r ci g rko k0" F ghgpf cpw uggmngcxg vq hkg vj gkt O qvkqp"vq'F kuo kuu k{ gzeguu  
qh vj g r ci g rko kv dgecwug qh vj g eqo r ngzkv{ qh vj g hcew cpf rny tngxcpv vq vj ku ecug.  
cpf "vj g ngpi vj qh vj g erko u cuugtvgf d{ Rrckpvkhu k{ vj gkt gzvgpukxg 84/r ci g."439  
rctci tcr j Eqo r rckpv."vj g eqo r ngzkv{ qh"vj g TKEQ ecug rny tngxcpv vq"vj ku ecug. cpf  
vj g pwo dgt "qh'eqwpw'cmgi gf "ci ckpuv'F ghgpf cpw \*Rrckpvkhu"j cxg"cuugtvgf "cv'ngcu'38"qh  
69'erko u'ci ckpuv"vj g"J qpqtedng"Lwf i gu'cpf "O t0Dckco qpvq+0

F ghgpf cpw'j cxg gzgtekugf "dguvghhqtu vq'nggr vj gkt Twg 34\*d+\*3+"cpf \*8+"O qvqp vq F kuo kuu cu'eqpekug. cpf "vq vj g r qkp."cu'r quukdngOJ qy gxgt."vj g'Rrckp'kffs' TKEQ erko u cu ewttgpn{ r ncf "ctg dgrkxgf "d{ F ghgpf cpw. chgt tgcupcdng kps wkt { kpq vj g"tgrxcpv Uwr tgo g Eqwt'cpf Hktj "Ektewk'Cwj qtkv{."vq dg uq f ghkcpv \*cu"vq. *inter alia*. "TKEQ ucpfkpi cpf rtqzko cvg ecwug," "TKEQ ucpfkpi cpf fktgev" kplwt{," "rcwern," "gpygtr tkug," "eqpur ktce{." cpf "rtgflkcvg"cev pgzwu"vq fktgev" kplwt{"), thcv gzvgpukxg dtlghkpi "y cu"tgs wktgf "vq cf gswcvg n{ cfftgau vj g o {tkcf r ncf kpi f ghkcpv"tgs wkt kpi f kuo kuur0

F ghgpf cpw' Motion is 33 r ci gu. *exclusive of* vj g'egt vhlkcvg"qh'ugt xlegOF ghgpf cpw r tc{ vj g'Eqwtvi tcpv vj go ngcxg vq' hkt vj gkt "O qvqp"vq'F kuo kuu0 Vj ku"O qvqp"ht'Ngcxg ku'wpqr r qugf "d{ "vj g Rrckp'khu0

**PRAYER**

Hqt"vj g"tgcuppu"ugv'htyj "cdqyg."F ghgpf cpw Lwf i g"Ej tkvkg"Tkf f ng"Dwuu."Lwf i g Erctkpf c'Ego uqen'cpf "Vqp{ 'Dckco qpvg tgur gev hwm{ 'tgs wgu'vj g'Eqwtvi tcpv'vj gkt "O qvqp hqt'Ngcxg"vq' hkt "O qvqp"vq'F kuo kuu'kp'Gzeguu'qh'Rci g'Nko ku."cpf "cy ctf "vj gug'F ghgpf cpw uwej "qvj gt"cpf "hwt vj gt'tgrkgh'cv'rcy "qt'kp'gs wkv{."vq'y j kej 'F ghgpf cpw'b c{ "uj qy "vj go ugrkgu vq"dg'lwuvn{ "gpvknf 0

**Dated:           October 7, 2016.**

Tgur ge v h w n { ' U w d o k w g f .

/s/ Laura Beckman Hedge

**Laura Beckman Hedge**

Cuukwcpv'Eqwv{ Cwqtpg{

**ATTORNEY-IN-CHARGE**

Vgzcu'Ucvg'Dct'P q0229; 24: :

Hgf gtcn'Dct'P q045465

rwtcj gf i gB ecqj evzpgv

323; 'Eqpi tgu. '37<sup>y</sup> Hnqt

J qwvqp. "Vgzcu"99224

Vgrgr j qpg<"\*935+496/7359

Hceuko krg< \*935+977/: ; 46

**ATTORNEY FOR DEFENDANTS, JUDGE  
CHRISTINE RIDDLE BUTTS, JUDGE  
CLARINDA COMSTOCK & TONY  
BAIAMONTE**

**OF COUNSEL:**

XREGT[ CP.

J CTTK'EQWPV[ 'CVVQTPG[

**CERTIFICATE OF SERVICE**

Vj g'w'pf gtuki pgf "j gtgd { "egt v'kgu"vj cv'c"v'wg"cpf "eqtt gev'eqr { "qh vj g'hqtgi qkpi "kpuwwo gpv j cu'dggp'ugt'xgf qp"cm'eqwpugn'qh'tgeqtf "k"cee'qtf cpeg"y kj "vj g'Hgf gtcn'T wgu'qh'E'k'k'Rtqegf wtg qp"vj ku'vj g 9<sup>th</sup> f c { "qh Qe'v'q'dgt."4238."xlc"GEHD

Ecpf ceg"Nqwkug'E w'v'ku  
43: "Ncpf cpc"U'tggv  
Co gtlecp"Ecp{qp."EC"; 6725

Lcuqp Qutqo  
Qutqo "Uclp"NNR  
7242'O qp'v'q'ug"D'x'f 0"U'w'k'g"532  
J qw'w'q'p."Vgzcu"99228

Tkn'Y c {pg'O wpuqp  
43: "Ncpf cpc"U'tggv  
Co gtlecp"Ecp{qp."EC"; 6725

Eq { "UOTggf  
Vj qo r uqp'E'q'g'E'q'w'k'u'k'q'p'u  
Qpg T'k'g'ty c {."U'w'k'g"3822  
J qw'w'q'p."Vgzcu"99278

O ct'v'p"Uco wgn'Uej g'z'p'c { f gt  
Y k'p'i g'v"U' r' c'f' c'q'g't'c" ( "U'ej y ct'v' dgti "NNR  
Vy q" T'k'g'ty c {."U'w'k'g"947  
J qw'w'q'p."VZ"99278

U'g'r j gp"C'0'O g'p'f g'n  
Vj g'O g'p'f g'n'N'c'y "H'k't'o ."N'N'R'0  
3377'F c'k { "C'uj h'q't'f."U'w'k'g"326  
J qw'w'q'p."VZ"9929;

T'c'h'g"C'0'U'ej c'g'h'g't  
P'q't'v'q'p" T'q'ug'H'w'd't'k'j v'W'U'N'N'R  
3523'O e'M'k'p'p'g {  
J qw'w'q'p."VZ"99232

D'q'd'd'l'g'I 0'D'c { r'g'u'u  
D'c { r'g'u'u'U'q'q'g'u  
4; 53'H'g't'p'f'c'g'  
J qw'w'q'p."VZ"992; ;

C'p'k'c"D't'w'p'u'k'p'i  
425'D'q'q'o k'p'i f'c'g'E'k't'e'g  
X'l'e'v'q't'k'c."VZ"99; 26

Co { "D't'w'p'u'k'p'i  
47: 4'E'q'w'p'v't { "N'g'f i g'F t'k'x'g  
P'g'y "D't'c'w'p'h'g'u."VZ"9: 354

/s/ Laura Beckman Hedge  
N'c'w't'c'D'g'e'n'o c'p"J g'f i g

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*

§

VS.

§

§

Civil Action No. 4:16-cv-01969

CANDACE KUNZ-FREED, *ET AL.*

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**ORDER**

Vj g"Eqwtv."j cxkpi "eqpukf gtgf" vj g F ghgpf cpw Lxf i g"Ej tkvkpg"Tk f r g"Dwwu."Lxf i g  
Clarinda Comstock and Tony Baiamonte's Wpqr r qugf O qvkp"ht"Ngcxg vq Hkrg O qvkp"vq  
F kuo kuu k"gzeguu qh Rci g Nko kv ("Motion"), hpf u"vj g"tgrgh"tgs wguvf "vq"dg k"qtf gt cpf  
vj gtghqtg I TCP VU vj g'O qvkp0

Kvku"uq"QTF GTGF 0

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Vj g"J qpqtcdrg"Crhtgf "J 0Dgppgw  
Wpkgf "Ucvgu'F kvtkv'Lxf i g

United States Courts  
Southern District of Texas  
FILED

OCT 05 2016

David J. Bradley, Clerk of Court

Southern District of Texas, Texas

515 RUSK ST HOUSTON TX 77002

CASE #: 4:16-CV-01969

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON

Plaintiff

vs

CANDACE KUNZ-FREED; ALBERT VACEK JR; BERNARD LYLE MATHEWS III; NEAL SPIELMAN;  
BRADLEY FEATHERSTON; STEPHEN A MENDEL; DARLENE

Defendant

AFFIDAVIT OF SERVICE

I, CHRISTOPHER G SAMPA, make statement to the fact;  
That I am a competent person more than 18 years of age or older and not a party to  
this action, nor interested in outcome of the suit. That I received the documents stated  
below on 08/25/16 5:09 pm, instructing for same to be delivered upon Young, Jill Willard.

That I delivered to : Young, Jill Willard.

the following : SUMMONS; VERIFIED COMPLAINT FOR DAMAGES; COURT PROCEDURES  
AND PRACTICES; CERTIFICATION OF SERVICE IN REMOVED ACTION; ORDER  
FOR CONFERENCE AND DISCLOSURE; NOTICE OF LAWSUIT (16)

at this address : 2900 Wesleyan Ste 150  
HOUSTON, Harris County, TX 77027

Manner of Delivery : by PERSONALLY delivering the document(s) to the person  
above.

Delivered on : AUG 26, 2016 11:10 am

My name is CHRISTOPHER G SAMPA, my date of birth is MAR 12th, 1965, and my address  
is Professional Civil Process Houston, 2626 South Loop West Ste 423, Houston TX  
77054, and U.S.A. I declare under penalty of perjury that the foregoing is true and  
correct.

Executed in Harris County, State of Texas, on the 29 day of

August, 2016.

  
CHRISTOPHER G SAMPA Declarant  
953

Texas Certification#: SCH-1088 Exp. 08/31/17

Private Process Server  
Professional Civil Process Of Texas, Inc  
103 Vista View Trail Spicewood TX 78669  
(512) 477-3500

PCP Inv#: H16800443  
SO Inv#: A16803303  
Reference : 4:16-CV-01969

+ Service Fee: 70.00  
Witness Fee: .00  
Mileage Fee: .00



tomcat

Curtis, Candace L

RETURN TO CLIENT

17-20360.2588



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

**ORIGINAL**

Curtis et al.,

*Plaintiff(s)*

v.

Kunz-Freed et al.,

*Defendant(s)*

Civil Action No. 4:16-cv-01969

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* Jill Willard Young  
2900 Wesleyan, Suite 150  
Houston, TX 77027

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis  
218 Landana St.  
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

**DAVID J. BRADLEY**

Date:     AUG 17 2016    

  
Signature of Clerk or Deputy Clerk

Southern District of Texas, Texas  
515 RUSK ST HOUSTON TX 77002

United States Courts  
Southern District of Texas  
FILED

OCT 05 2016

CASE #: 4:16-CV-01969

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON

David J. Bradley, Clerk of Court

Plaintiff

vs

CANDACE KUNZ-FREED; ALBERT VACEK JR; BERNARD LYLE MATHEWS III; NEAL SPIELMAN;  
BRADLEY FEATHERSTON; STEPHEN A MENDEL; DARLENE PAYNE SMITH; JASON OSTROM; GREGORY  
LESTER; ET AL

Defendant

AFFIDAVIT OF SERVICE

I, DAVID STANFIELD, make statement to the fact;  
That I am a competent person more than 18 years of age or older and not a party to  
this action, nor interested in outcome of the suit. That I received the documents stated  
below on 08/25/16 12:23 pm, instructing for same to be delivered upon Brunsting, Anita  
Kay.

That I delivered to : Brunsting, Anita Kay.

the following : SUMMONS; VERIFIED COMPLAINT FOR DAMAGES; COURT PROCEDURES  
AND PRACTICES; CERTIFICATION OF SERVICE IN REMOVED ACTION; ORDER  
FOR CONFERENCE AND DISCLOSURE; NOTICE OF LAWSUIT (16)

at this address : 203 Bloomingdale Cir  
VICTORIA, Victoria County, TX 77904

Manner of Delivery : by PERSONALLY delivering the document(s) to the person  
above.

Delivered on : AUG 25, 2016 6:53 pm

My name is DAVID STANFIELD, my date of birth is 7-3-66, and my address  
is 103 Vista View Trl #103, Spicewood, TX 78669 and U.S.A. I declare under penalty  
of perjury that the foregoing is true and correct.

Executed in VICTORIA County, State of Texas, on the 25th day of

August, 2016.

\_\_\_\_\_  
DAVID STANFIELD Declarant  
714

Texas Certification#: SCH-9704 Exp. 05/31/18

Private Process Server  
Professional Civil Process Of Texas, Inc  
103 Vista View Trail Spicewood TX 78669  
(512) 477-3500

PCP Inv#: A16803284

Reference : 4:16-CV-01969



+ Service Fee: 70.00  
Witness Fee: .00  
Mileage Fee: .00

tomcat

Curtis, Candace L

RETURN TO CLIENT

17-20360.2590

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

**ORIGINAL**

Curtis et al.,

*Plaintiff(s)*

v.

Kunz-Freed et al.,

*Defendant(s)*

Civil Action No. 4:16-cv-01969

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* Anita Kay Brunsting  
203 Bloomingdale Circle  
Victoria, TX 77904

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis  
218 Landana St.  
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

**DAVID J. BRADLEY**

Date: \_\_\_\_\_

**AUG 17 2016**



*Signature of Clerk or Deputy Clerk*

Southern District of Texas, Texas  
515 RUSK ST HOUSTON TX 77002

United States Courts  
Southern District of Texas  
FILED

CASE #: 4:16-CV-01969

OCT 05 2016

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON

David J. Bradley, Clerk of Court

Plaintiff

vs

CANDACE KUNZ-FREED; ALBERT VACEK JR; BERNARD LYLE MATHEWS III; NEAL SPIELMAN;  
BRADLEY FEATHERSTON; STEPHEN A MENDEL; DARLENE

Defendant

AFFIDAVIT OF SERVICE

I, LINDELL CHARLES, make statement to the fact;  
That I am a competent person more than 18 years of age or older and not a party to  
this action, nor interested in outcome of the suit. That I received the documents stated  
below on 08/26/16 9:16 pm, instructing for same to be delivered upon Lester, Gregory.

That I delivered to : Lester, Gregory.

the following : SUMMONS; VERIFIED COMPLAINT FOR DAMAGES; COURT PROCEDURES  
AND PRACTICES; CERTIFICATION OF SERVICE IN REMOVED ACTION; ORDER  
FOR CONFERENCE AND DISCLOSURE; NOTICE OF LAWSUIT (16)

at this address : 955 N Dairy Ashford Rd #220  
HOUSTON, Harris County, TX 77079

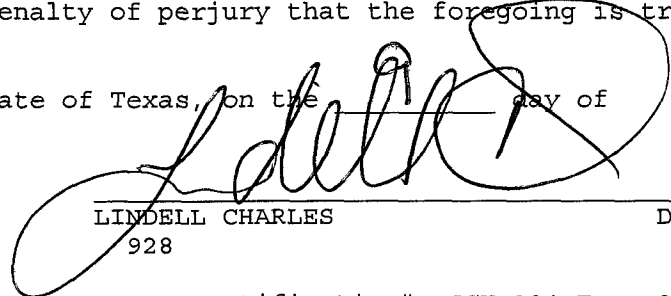
Manner of Delivery : by PERSONALLY delivering the document(s) to the person  
above.

Delivered on : September 2, 2016 1:58 pm

My name is LINDELL CHARLES, my date of birth is August 22nd, 1971, and my address is  
Professional Civil Process Houston, 2626 South Loop West Ste 423, Houston TX 77054,  
and U.S.A. I declare under penalty of perjury that the foregoing is true and  
correct.

Executed in Harris County, State of Texas, on the \_\_\_\_\_ day of \_\_\_\_\_

SEPTEMBER 2, 2016.



LINDELL CHARLES Declarant  
928

Texas Certification#: SCH-324 Exp. 09/30/17

Private Process Server  
Professional Civil Process Of Texas, Inc  
103 Vista View Trail Spicewood TX 78669  
(512) 477-3500

PCP Inv#: H16800438  
SO Inv#: A16803293  
Reference : 4:16-CV-01969



AX02A16803293

+ Service Fee: 70.00  
Witness Fee: .00  
Mileage Fee: .00

serverh

Curtis, Candace L

RETURN TO CLIENT

17-20360.2592

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the  
Southern District of Texas

**ORIGINAL**

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Gregory Lester  
955 N Dairy Ashford Rd # 220  
Houston, TX 77079

A lawsuit has been filed against you.

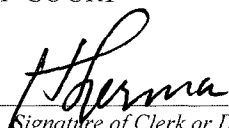
Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Candace Louise Curtis  
218 Landana St.  
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT DAVID J. BRADLEY

Date:           AUG 17 2016          

  
Signature of Clerk or Deputy Clerk

United States Courts  
Southern District of Texas  
FILED

OCT 05 2016

Southern District of Texas, Texas  
515 RUSK ST HOUSTON TX 77002

David J. Bradley, Clerk of Court

CASE #: 4:16-CV-01969

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON

Plaintiff

VS

CANDACE KUNZ-FREED; ALBERT VACEK JR; BERNARD LYLE MATHEWS III; NEAL SPIELMAN;  
BRADLEY FEATHERSTON; STEPHEN A MENDEL; DARLENE PAYNE SMITH; JASON OSTROM; GREGORY  
LESTER; ET AL

Defendant

AFFIDAVIT OF SERVICE

I, **KIMBERLY BARTHOLOMEW**, make statement to the fact;  
That I am a competent person more than 18 years of age or older and not a party to  
this action, nor interested in outcome of the suit. That I received the documents stated  
below on 08/25/16 10:43 am, instructing for same to be delivered upon Brusting, Amy Ruth.

That I delivered to : Brusting, Amy Ruth.  
the following : SUMMONS; VERIFIED COMPLAINT FOR DAMAGES; COURT PROCEDURES  
AND PRACTICES; CERTIFICATION OF SERVICE IN REMOVED ACTION; ORDER  
FOR CONFERENCE AND DISCLOSURE; NOTICE OF LAWSUIT (16)  
at this address : 2582 County Ledge  
NEW BRAUNFELS, Comal County, TX 78132  
Manner of Delivery : by PERSONALLY delivering the document(s) to the person  
above.  
Delivered on : August 30, 2016 7:52 am

My name is **KIMBERLY BARTHOLOMEW**, my date of birth is December 27th, 1978, and my  
address is 103 Vista View Trl #103, Spicewood, TX 78669 and U.S.A. I declare under  
penalty of perjury that the foregoing is true and correct.  
Executed in CALDWELL County, State of Texas, on the 31st day of

August, 2016.



**KIMBERLY BARTHOLOMEW** Declarant  
2113

Texas Certification#: SCH-10964 Exp. 06/30/17

Private Process Server  
Professional Civil Process Of Texas, Inc  
103 Vista View Trail Spicewood TX 78669  
(512) 477-3500

PCP Inv#: A16803289  
Reference : 4:16-CV-01969



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AX02A16803289

+ Service Fee: 70.00  
Witness Fee: .00  
Mileage Fee: .00

Curtis, Candace L

RETURN TO CLIENT

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

**ORIGINAL**

Curtis et al.,

*Plaintiff(s)*

v.

Kunz-Freed et al.,

*Defendant(s)*

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Amy Ruth Brunsting  
2582 Country Ledge  
New Braunfels, TX 78132

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis  
218 Landana St.  
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

**DAVID J. BRADLEY**

Date:

**AUG 17 2016**



*Signature of Clerk or Deputy Clerk*



Southern District of Texas, Texas  
515 RUSK ST HOUSTON TX 77002

United States Courts  
Southern District of Texas  
FILED

OC 05 2016

CASE #: 4:16-CV-01969

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON

David J. Bradley, Clerk of Court

Plaintiff

vs

CANDACE KUNZ-FREED; ALBERT VACEK JR; BERNARD LYLE MATHEWS III; NEAL SPIELMAN;  
BRADLEY FEATHERSTON; STEPHEN A MENDEL; DARLENE

Defendant

AFFIDAVIT OF SERVICE

I, **LINDELL CHARLES**, make statement to the fact;  
That I am a competent person more than 18 years of age or older and not a party to  
this action, nor interested in outcome of the suit. That I received the documents stated  
below on 08/26/16 9:17 pm, instructing for same to be delivered upon Mendel, Stephen A.

That I delivered to : Mendel, Stephen A.

the following : SUMMONS; VERIFIED COMPLAINT FOR DAMAGES; COURT PROCEDURES  
AND PRACTICES; CERTIFICATION OF SERVICE IN REMOVED ACTION; ORDER  
FOR CONFERENCE AND DISCLOSURE; NOTICE OF LAWSUIT (16)

at this address : 1155 Dairy Asshford Ste 104  
HOUSTON, Harris County, TX 77079

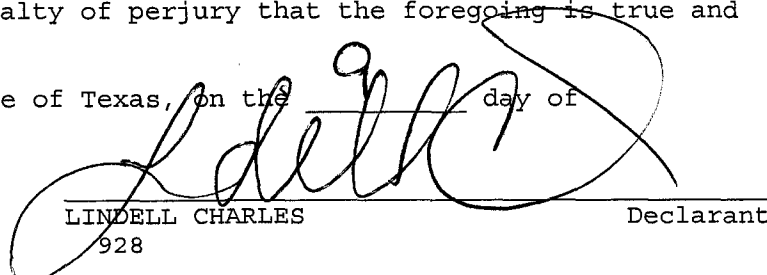
Manner of Delivery : by PERSONALLY delivering the document(s) to the person  
above.

Delivered on : September 2, 2016 2:10 pm

My name is LINDELL CHARLES, my date of birth is August 22nd, 1971, and my address is  
Professional Civil Process Houston, 2626 South Loop West Ste 423, Houston TX 77054,  
and U.S.A. I declare under penalty of perjury that the foregoing is true and  
correct.

Executed in Harris County, State of Texas, on the \_\_\_\_\_ day of \_\_\_\_\_

September 20 20 16

  
\_\_\_\_\_  
LINDELL CHARLES Declarant  
928

Texas Certification#: SCH-324 Exp. 09/30/17

Private Process Server  
Professional Civil Process Of Texas, Inc  
103 Vista View Trail Spicewood TX 78669  
(512) 477-3500

PCP Inv#: H16800441  
SO Inv#: A16803300  
Reference : 4:16-CV-01969



+ Service Fee: 70.00  
Witness Fee: .00  
Mileage Fee: .00

serverh

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Curtis, Candace L

RETURN TO CLIENT

17-20360.2596

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

**ORIGINAL**

Curtis et al.,

*Plaintiff(s)*

v.

Kunz-Freed et al.,

*Defendant(s)*

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Stephen A. Mendel  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, TX 77079

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:


Candace Louise Curtis  
218 Landana St.  
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

**DAVID J. BRADLEY**

Date:     AUG 17 2016    

  
\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.* §  
§  
VS. §  
§ Civil Action No. 4:16-cv-01969  
CANDACE KUNZ-FREED, *ET AL.* §  
§  
§

---

DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA  
COMSTOCK & TONY BAIAMONTE'S MOTION TO DISMISS COMPLAINT  
PURSUANT TO FED. R. CIV. P. 12(b)(1) and (6)

---

**Laura Beckman Hedge**  
CuukwcpvEqwpv{ 'Cwqtpg{  
**ATTORNEY-IN-CHARGE**  
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Hgf gten'Dct P q045465  
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323; 'Eqpi tguu.'37<sup>y</sup> Hqqt  
J qwxqp."Vgzcu"99224  
Vgrgr j qpg<"\*935+496/7359  
Hceuko kg<"\*935+977/: ; 46

**ATTORNEY FOR DEFENDANTS, JUDGE  
CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA  
COMSTOCK & TONY BAIAMONTE**

**OF COUNSEL:**

XIPEGT[ CP.  
J CTTKU'EQWP V[ 'CVVQTP G[

**NATURE OF CASE, STATEMENT OF ISSUES AND SUMMARY OF ARGUMENT**

Rickelhu "lp" y ku "ecug" ctg "Ecpf leg" Ewt ku "c" f ku twpvgf "ukdrpi "lp" c" r tqdcvg "ecug" cpf "Tkm Munson, her alleged "domestic partner" and paralegal who claims to have assisted Curtis in her qpi qkpi "rkki cvkqp" ci ckpuv" j gt "ukdrpi u0 Wpj cr r {" y kj "y" g" ewtgpv" ucvg" qh" y" g" r tqdcvg "ecug. Rickelhu" j cxg' hcnugn{ 'cmgi gf 'y' g' J qpqtcdrng' Lwf i gu' Ej tkvkg' Tkf f ng' Dwwu' cpf 'Emtkpf c' Eqo uqem ("Honorable Judges") cpf udukwwg Eqwtv' Tgr qtvt" Vqp{ " Dckco qpvq \*eqmgevkngn{. "Harris County Defendants") j cxg" gpi ci gf "lp" c" etko kpcn' cpf "ekxkn' eqpur kce {" y kj "y" g" qr r qulpi "rkki cpvu and their attorneys, among others, to defraud and deprive them of the assets of Nelva Brunsting's gucvq" cpf "hco kn{ "t wu0

Vj g J cttku" Eqwpv{ "F ghgpf cpvu hkg this Motion to Dismiss the Plaintiffs' Xgtkhgf Eqo r rckpvht' F co ci gu ]F qe0%3\_ 'r wtuwcpv' vq HGF0T0E x0R034\* d+\*3+ cpf "34\* d+\*8+0Vj ku' r gcf kpi hcku" vq "ucvg" c" r r wukdrng" cpf "cevkqpcdrng" erko "ci ckpuv y j g" J cttku" Eqwpv{ "F ghgpf cpvu cpf "lpuv gcf cuugt u" pwo gtqwu" htkxqruw cpf y j qm{ "i tqwpf ngu" erko u y j kej "ctg" vphqwpf gf . "qwtci gqu" cpf ucpevkqpcdrng0

Plaintiffs allege the "multi/dknkqp" f qmct "Rtqdcvg" lpf wut {" ku" cp "knkky" y gcnj "f kwtkdwkqp go r ktg' twp" d {" o qtcn{ "dcpntw v' lwf i gu" cpf "cwtqpg{ u" 000 that is part of a "cancerous judicial black o ctnet plague" spread "throughout the state court systems" that have become "criminal racketeering enterprises."<sup>3</sup> Rickelhu" cmgi g' lwf i gu have become part of the "worst organized cartel qh' r tgf cvqt {" etko kpcn' lp" y' g' j kxqt {" qh' y' ku' pcvkqp0"<sup>4</sup>

Vwtpkpi "y" gkt "cwgpvkqp" vq "y" g' J cttku" Eqwpv{ "F ghgpf cpvu. "Rickelhu" cmgi g the "blatantly

<sup>3</sup> Eqo r rckpv] F qe03\_ 'E' 392. "3; 50

<sup>4</sup> Id0" cv3940

corrupt probate court and its officers” engaged in a conspiracy to “loot assets” and “exploit the elders of our society” to unjustly enrich the attorneys and other “legal professionals” in Harris County Probate Court No. 4 (“Probate Court 4”).<sup>5</sup> Vj g"rtgf kcvg"cew"cmgi gf "ci ckpuv"vj g J qpqtcdrg Judges include the referral of the case to mediation to an “extortionist thug mediator.”<sup>6</sup> cpf the removal of Curtis’ o qvqp"lqt uwo o ct{"lwf i o gpv"ltqo "vj g"Equrt’s docket pending o gf kcvqp0 Vj gug"rtgf kcvg"cew"ctg"cmgi gf "wpf gt"xctkquw'htf gtcnlucwgu.'kpenw kpi '3: "WUE0ÈÈ 464. 593."3223."3568. cpf "3; 73\*d+\*4+. "64"WUE0ÈÈ"3; : 5."3; : 7. cpf VGZ0RGP CN EQFG È"53024. 53025."540430

Rckpwhu"cf f kqpcm{ "cmgi g"vj cvVqp{ "Dckco qpvg".c"eqpvtcev'eqwtvtgr qtvtg"vj cv'y cu'j kfg vq uvqqi tcr j kcm{ tgeqtf "c *single hearing* in the underlying probate proceeding, “knowingly and willfully spoliat[e], destroy[ed] or otherwise conceal[ed]” some unidentified “material evidence” kp"xkqr vqp"qh'3: "WUE0ÈÈ"3734\*e+. "3734\*m"cpf "373; 0 O t0Dckco qpvg"j cu'f gutq {gf "pqvj kpi cpf "vj g eqpenwqt { cmgi cvqp ku'wpf gpkcdn{ 'htkqmwu0 Rckpwhu'cuugtvc'vqcnlqhcvtgcu37'ugr ctcvg ercko u'ci ckpuv'vj g"J cttku'Eqwpv{ 'F ghgpf cpwu

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<sup>5</sup> Id0cvÈÈ99.'9: . '9; . '4370

<sup>6</sup> Cnj qwi j "Rckpwhu"cf f kqpcm{ "cmgi g"vj cvVqp{ "Dckco qpvg".c"eqpvtcev'eqwtvtgr qtvtg"vj cv'y cu'j kfg vq uvqqi tcr j kcm{ tgeqtf "c *single hearing* in the underlying probate proceeding, “knowingly and willfully spoliat[e], destroy[ed] or otherwise conceal[ed]” some unidentified “material evidence” kp"xkqr vqp"qh'3: "WUE0ÈÈ"3734\*e+. "3734\*m"cpf "373; 0 O t0Dckco qpvg"j cu'f gutq {gf "pqvj kpi cpf "vj g eqpenwqt { cmgi cvqp ku'wpf gpkcdn{ 'htkqmwu0 Rckpwhu'cuugtvc'vqcnlqhcvtgcu37'ugr ctcvg ercko u'ci ckpuv'vj g"J cttku'Eqwpv{ 'F ghgpf cpwu

<sup>7</sup> Id0cvÈÈ353."3540

<sup>8</sup> K'f qgu"pqv'cr r gct "Rckpwhu"ctg"cuugt kpi "ercko u'ci ckpuv'vj g"J cttku'Eqwpv{ 'F ghgpf cpwu"ht"cp { qvj gt"cmgi gf "rtgf kcvg"cew"kp"vj g"Eqo r rckpv."È'7; . "ukpeg"o quv"qh'vj gug"ercko u."kq0'kngi cn y kgrcr r kpi . 'o kucr r kcvqp"qh'htf velet { . "uwdqtpkpi 'r gtlwt { . 'kf gpvkv{ "vj ghv."gve0'ctg'ur gmgf "qww'kp ugr ctcvg'eqpwu'ci ckpuv'vj gt 'f ghgpf cpwu'cpf 'pqv'vj g"J cttku'Eqwpv{ 'F ghgpf cpwu0'Vq'vj g'gz vgpvt rgf ci ckpuv'vj g"J cttku'Eqwpv{ 'F ghgpf cpwu."vj g{ 'ctg'f gpkgf "cpf 'rcenlcp{ 'hcewcn'dcuku0

<sup>9</sup> O t0Dckco qpvg'y cu'ko r tqr gtn{ "uwgf "cu "VqpkDkco qpvg0 : F qe0%3. È3650

against the Honorable Judges are barred by judicial, official and governmental immunity. Likewise, the claims against Tony Baiamonte are barred by governmental, qualified and official immunity.

Harris County Defendants are entitled to dismissal on these additional grounds: (1) the 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.

Neither Curtis nor Munson have standing to bring this lawsuit. Munson is not a party to the underlying probate proceeding and has no "private attorney general" standing. Further, his complaints that he could have pursued other work but instead spent four years providing paralegal services to Curtis and therefore lost out on other "property and business interests" is not a basis for standing.

Harris County Defendants seek to dismiss all of Plaintiffs' claims because there is no subject matter jurisdiction over the Defendants, and alternatively, for their failure to state a claim upon which relief may be granted, pursuant to Rules 12(b)(6), 8(a) and 9(b) of the Federal Rules of Civil Procedure.

### **ARGUMENT & AUTHORITIES**

#### **1. The Court lacks subject matter jurisdiction.**

FED. R. CIV. P. 12(b)(1) allows a party to move for dismissal of an action for lack of subject matter jurisdiction. Federal courts are courts of limited jurisdiction; absent jurisdiction conferred

by statute or the Constitution, they lack the power to adjudicate claims.<sup>9</sup> Subject matter jurisdiction cannot be established by waiver or consent.<sup>10</sup> If subject matter jurisdiction is lacking, the court must dismiss the suit.<sup>11</sup>

When a plaintiff lacks standing, the court lacks subject matter jurisdiction.<sup>12</sup> “[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III.”<sup>13</sup> The constitutional requirements to establish standing are (1) injury in fact that is concrete, particularized, and actual or imminent, not hypothetical; (2) a fairly traceable causal link between the plaintiff's injury and the defendant's challenged actions; and the likelihood of redressability by the requested relief.<sup>14</sup> The Eleventh Amendment and sovereign immunity also restrict federal court jurisdiction.<sup>15</sup> “The Eleventh Amendment bars an individual from suing a state in federal court unless the state consents or Congress has clearly and validly abrogated the state's sovereign immunity.”<sup>16</sup> A suit against a state agency or department is considered to be a suit against the state under the Eleventh Amendment.<sup>17</sup> In addition, the Eleventh Amendment bars suit against a state official when “the state is the real substantial party in interest.”<sup>18</sup>

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<sup>9</sup> *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994).

<sup>10</sup> *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 919 (5th Cir.), *cert. denied*, 534 U.S. 993, 122 S.Ct. 459, 151 L.Ed.2d 377 (2001).

<sup>11</sup> *Stockman v. Fed. Election Comm'n*, 138 F.3d 144, 151 (5th Cir.1998).

<sup>12</sup> *Cadle Co. v. Neubauer*, 562 F.3d 369, 371 (5th Cir.2009).

<sup>13</sup> *Lujan v. Defendants of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

<sup>14</sup> *Lujan*, 504 U.S. at 560–61; *Little v. KPMG LLP*, 575 F.3d 533, 520 (5th Cir.2009).

<sup>15</sup> *Vogt v. Board of Commissioners of the Orleans Levee Dist.*, 294 F.2d 684, 688 (5th Cir.), *cert. denied*, 537 U.S. 1088 (2002).

<sup>16</sup> *Fairley v. Louisiana State*, 254 Fed. Appx. 275, 276–77 (5th Cir. Sept.11, 2007), *citing* U.S. Const. Amend. XI, and *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670, 119 S.Ct. 2219, 144 L.Ed.2d 605 (1999).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, *citing Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984).



“When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits.”<sup>19</sup>

The Court lacks jurisdiction because the Plaintiffs have no standing to assert RICO claims and because the Defendants are entitled to immunity from suit.

**a. Plaintiffs fail to allege standing under RICO<sup>20</sup>**

Plaintiffs must plead and prove that they have legal standing to sue for an alleged RICO violation. The standing provision of civil RICO provides that “any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor ... and shall recover threefold the damages he sustains”<sup>21</sup> To have standing under the RICO Act, a plaintiff must allege a tangible financial loss.<sup>22</sup> Injury to mere expectancy interests or to an intangible property interest is not sufficient to confer RICO standing.<sup>23</sup> Thus, speculative damages are not compensable under RICO.<sup>24</sup>

Additionally, a plaintiff may sue under § 1964(c) (civil RICO) only if the alleged RICO violations (“predicate acts”) were the proximate cause of the plaintiff’s injury.<sup>25</sup> In *Holmes v.*

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<sup>19</sup> *Randall D. Wolcott, MD, PA v. Sebelius*, — F.3d —, No. 10–10290, 635 F.3d 757, 2011 WL 870724, \*4 (5th Cir. Mar.15, 2011), citing *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir.2001). Fed.R.Civ.P. 12(h)(3).

<sup>20</sup> To state a civil RICO claim under § 1962, a plaintiff must allege: (1) the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Elliott v. Foufas*, 867 F.2d 877, 880 (5th Cir. 1989) (citing *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985)).

<sup>21</sup> *In re Taxable Mun. Bond Sec. Litig. v. Kutak*, 51 F.3d 518, 521 (5th Cir.1995) (quoting 18 U.S.C. § 1964(c)).

<sup>22</sup> *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 607 (5th Cir. 1998).

<sup>23</sup> *Id.*

<sup>24</sup> *In re Taxable Mun. Bond Secs. Litig.*, 51 F.3d 518, 523 (5th Cir. 1995).

<sup>25</sup> *Holmes v. Sec. Inv'r Prot. Corp.*, 503 U. S. 258, 268 (1992)

*Securities Investor Protection Corp.*, the Supreme Court held that the proximate-cause requirement necessitates the "demand for *some direct relation between the injury asserted and the injurious conduct alleged.*"<sup>26</sup>

Thus, a RICO plaintiff must satisfy two elements to establish standing to bring a RICO claim: (1) a direct, concrete financial injury to Plaintiff's business or property; and (2) proximate causation (i.e., that the alleged injury was proximately caused by the alleged RICO predicate act(s)). The Plaintiffs herein have neither alleged nor proven that they have suffered any *direct, personal, concrete financial injury* to their business or property. Rather, Plaintiff Curtis has alleged *only indirect injury* -i.e., alleged loss to the *assets of the Brunsting family trust and estate in the underlying probate proceeding*. "[T]he plaintiff only has standing *if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation.*"<sup>27</sup> (Emphasis added). Even Curtis acknowledges there are only "threats of injury to property rights" of which she only has an "expectancy interest."<sup>28</sup>

Plaintiff Munson is even further removed as he *admittedly* has no interest in the Brunsting family trust and estate and was not a party to any prior lawsuits involving the subject trust and estate.<sup>29</sup> His only connection to the prior lawsuits was the "paralegal services" he provided to Curtis.

**i. No proximate cause.**

Plaintiffs have littered their Complaint with unsubstantiated allegations that Harris County

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<sup>26</sup> *Id.*, at 268 [Emphasis added]; *See also, Anza v. Ideal Steel Supply Corp.*, 547 US 451, 457 (2006).

<sup>27</sup> *Sedima*, 473 U.S. at 496 (emphasis added).

<sup>28</sup> Doc. 1, ¶¶ 163, 165, 213.

<sup>29</sup> See Doc. 33, ¶ 69.

Defendants have committed *unspecified* acts of honest services fraud, fraud, theft, mail fraud,<sup>30</sup> wire fraud,<sup>31</sup> obstruction of justice<sup>32</sup>, spoliation of evidence<sup>33</sup> and interference with commerce or extortion<sup>34</sup>. It appears the complaints concerning mail fraud and wire fraud is limited to the other defendants – such as the exchange of discovery responses – which does not involve the Harris County Defendants.<sup>35</sup>

To satisfy the stringent pleading requirements of Rule 9(b) regarding claims sounding in fraud, “the plaintiff must specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent.”<sup>36</sup> Plaintiffs must set out “*the who, what, when, where, and how*” of the fraud.<sup>37</sup>

Plaintiffs’ Complaint, despite its corpulence (59 pages and 217 paragraphs), wholly fails to plead “the who, what, when, where, and how” of the alleged fraud as required by Rule 9(b). This particularity requirement also applies to the pleading of mail fraud or wire fraud as predicate acts in a RICO claim.<sup>38</sup>

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<sup>30</sup> See 18 U. S. C. § 1341.

<sup>31</sup> See 18 U. S. C. § 1343.

<sup>32</sup> See 18 U. S. C. § 1503.

<sup>33</sup> See 18 U. S. C. § 1512.

<sup>34</sup> See 18 U. S. C. § 1951.

<sup>35</sup> See Doc. 1, ¶¶ 127, 135 – 141.

<sup>36</sup> See *Sullivan*, 600 F.3d at 551

<sup>37</sup> See *Benchmark Elecs. v. J.M. Huber Corp.*, 343 F.3d 719, 724 (5th Cir. 2003)(emphasis added); See also, *Dawson v. Bank of America, NA*, No. 14-20560, Summary Calendar (5th Cir. Mar. 13, 2015). See also *Carroll v. Fort James Corp.*, 470 F.3d 1171, 1174 (5th Cir. 2005) (citing *Williams v. Bell Helicopter Textron, Inc.*, 417 F.3d 450, 453 (5th Cir. 2005) (quoting *United States ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 125 F.3d 899, 903 (5th Cir. 1997)).

<sup>38</sup> See *Tel-Phonic Services, Inc. v. TBS Intern., Inc.*, 975 F. 2d 1134, 1138-9 (5th Cir. 1992), citing *Landry v. Air Line Pilots Ass'n Int'l AFL-CIO*, 901 F.2d 404, 430 (5th Cir.), cert. denied, \_\_\_ U.S. \_\_\_, 111 S.Ct. 244, 112 L.Ed.2d 203 (1990); See, also, *Elliott v. Foufas*, 867 F.2d 877, 880 (5th Cir. 1989).

Having failed to plead any facts in support of the conclusory allegations of racketeering activity based upon fraud, Plaintiffs have failed to plead and prove proximate causation as a required element of RICO standing.<sup>39</sup>

Likewise, Plaintiffs' "factual allegations" of proximate cause are scant to non-existent. The Complaint contains their proximate cause allegations, which are nothing but conclusory recitations, wholly devoid of the heightened level of factual pleading for fraud cases mandated by Rule 9(b) and federal law.

Dismissal for failure to plead allegations of fraud, including RICO predicate acts of alleged mail fraud and wire fraud with particularity as required by Rule 9(b), is treated the same as Rule 12(b)(6) dismissal for failure to state a claim.<sup>40</sup> The Fifth Circuit interprets Rule 9(b) to require "specificity as to the statements (or omissions) considered to be fraudulent, the speaker, when and why the statement were made, and an explanation of why they were fraudulent."<sup>41</sup>

Further, it is clear from the Complaint that Plaintiffs have not alleged any unlawful act against the County Defendants. Plaintiffs have listed 6 federal crimes that appear in 18 U.S.C. § 1961(1)'s definition of racketeering activity. However, to successfully plead a RICO claim under § 1962(c), Plaintiffs must do more than simply list the predicate act crimes necessary to establish a pattern of racketeering activity. Plaintiffs must also plead facts that, if true, would establish that each predicate act was in fact committed by the County Defendants.<sup>42</sup>

Plaintiff's Complaint fails to meet this standard. For the identified predicate acts, Plaintiffs

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<sup>39</sup> *Id.*; *See also, Holmes* at 268.

<sup>40</sup> *See Lovelace v Software Spectrum, Inc.*, 78 F.3d 1015, 1017 (5th Cir. 1996).

<sup>41</sup> *See Plotkin v. IP Axxess, Inc.*, 407 F.3d 690, 696 (5th Cir. 2005).

<sup>42</sup> *Elliott*, 867 F.2d at 880.

simply identify the statute, provide a general description of the conduct it prohibits (although for most the conduct is not even described), and then assert the County Defendants violated the statute. This is not sufficient to establish (1) a predicate act was committed, or (2) any damages were proximately caused by the alleged act.

In addition, Plaintiffs cite to various other purported predicate acts as a basis for RICO, but this fails too because only predicate acts of *racketeering activity* provide a basis for recovery under RICO section 1964(c).<sup>43</sup> The following generalized claims are not predicate acts that support a claim for racketeering activity: theft under the Texas Penal Code (Claim 12), conspiracy for “state law theft” and “aiding and abetting” (Claim 23), spoliation (Claim 38), conspiracy to violate constitutional rights (Claim 44), “aiding and abetting breach of fiduciary, defalcation and scienter” (Claim 45), “aiding and abetting misapplication of fiduciary, defalcation and scienter” (Claim 46) and “tortious interference with inheritance expectancy” (Claim 47). Further, Plaintiff’s conclusory statements concerning these claims cannot support a claim against the Harris County Defendants.

**ii. No direct injury.**

Plaintiffs also lack RICO standing because they have failed to plead the “direct injury” (“directness”) requirement.<sup>44</sup>

A justiciable interest is required as an element of standing under Texas law.<sup>45</sup> As noted by the Supreme Court, “There is no need to broaden the universe of actionable harms to permit RICO

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<sup>43</sup> *Brandenburg v. Seidel*, 859 F.2d at 1179, 1188 (4<sup>th</sup> Cir. 1988).

<sup>44</sup> *See Holmes*, at 268.

<sup>45</sup> See also TEX. CIV. P. & REM CODE ANN. §§ 134.001-.005 (West 2011 & Supp. 2013) (Theft Liability Act); TEX. CIV. P. & REM CODE ANN. § 31.03(a) (West Supp. 2013) (claim under the Theft Liability Act requires ownership interest in the property unlawfully appropriated).

suits *by parties who have been injured only indirectly.*"<sup>46</sup>

The Plaintiffs have failed to adequately allege *direct (i.e., personal)* concrete financial loss, as required to establish standing to sue for civil RICO or civil RICO conspiracy.<sup>47</sup> Rather, they have made myriad conclusory, unsubstantiated claims. Curtis acknowledges there are only "threats of injury to property rights" of which she only has an "expectancy interest."<sup>48</sup> Munson has *no* such interest at all.

Because Plaintiffs have wholly failed to plead standing to bring their RICO claims (i.e., the existence of a *direct* injury to their personal business or property, which was proximately caused by a predicate act, this motion should be granted and their RICO claims dismissed with prejudice.

**b. The Honorable Judges are entitled to judicial immunity.**

Plaintiffs attempt to argue around judicial immunity by asserting the Honorable Judges were engaged in "non-judicial acts."<sup>49</sup> Despite the exceptionally lengthy Complaint, the sum and substance of *all* allegations against the Honorable Judges is the Plaintiffs' belief that the actions taken by them during the course of the pending cases were improper and/or wrong. Indeed, the acts complained of are removing a motion for summary judgment from the hearing docket and ordering the parties to mediation.

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<sup>46</sup> See *Anza v. Ideal Steel Supply Corp.*, 547 US 451, 460 (2006) (emphasis added).

<sup>47</sup> "[T]o demonstrate injury for RICO purposes, plaintiffs must show proof of concrete financial loss." *Chaset v. Fleer/Skybox Intern, LP*, 300 F.3d 1083, 1086-87 (9th Cir. 2002); *Regions Bank v. J.R. Oil Co.*, 387 F.3d 721, 728-29 (8th Cir.2004) (same); see also *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 492 n. 16 (5th Cir.2003) (A plaintiff lacks RICO standing "unless he can show concrete financial loss").

<sup>48</sup> Doc. 1, ¶¶ 163, 165, 213.

<sup>49</sup> Doc. 1, ¶¶ 18, 19.

It is unquestionably clear that these actions were judicial acts that were made within Probate Court 4's jurisdiction and for which the Honorable Judges are entitled to immunity. The Complaint is completely void of any facts alleging actions taken in a nonjudicial role.

The Honorable Judges are entitled to absolute judicial immunity from suit for acts undertaken in their judicial capacity even if they are done maliciously or corruptly (which Defendants emphatically deny).<sup>50</sup> The two exceptions to this doctrine, i.e., actions by the judge in a non-judicial role and actions, while judicial actions, taken in complete absence of jurisdiction, do not apply here as Plaintiffs have not alleged facts that would invoke either.<sup>51</sup> Further, as Texas judges, the Honorable Judges are entitled to Eleventh Amendment protection and governmental immunity for claims against them in their official capacity.<sup>52</sup> Absolute judicial immunity does not bar prospective relief against a judge, but Plaintiffs have not sought such relief against the Honorable Judges.<sup>53</sup>

In a similar case, Houston's First Court of Appeals affirmed the trial court's finding that two probate judges were entitled to judicial immunity. In *James v. Underwood*, two siblings were involved in a legal dispute over who had the right to manage their mother's assets.<sup>54</sup> Their controversy spawned multiple lawsuits filed in various district and probate courts, resulting in no less than 11 appellate decisions.<sup>55</sup> James sued two judges (Judge Olen Underwood and Judge

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<sup>50</sup> *Price v. Porter*, 351 Fed. Appx. 925, 927 (5th Cir.2009), citing *Mireles v. Waco*, 502 U.S. at 10, and *Stump v. Sparkman*, 435 U.S. at 355–57.

<sup>51</sup> *Id.*

<sup>52</sup> *Holloway v. Walker*, 765 F.2d 517, 519 (5th Cir.), cert. denied, 474 U.S. 1037, 106 S.Ct. 605, 88 L.Ed.2d 583 (1985).

<sup>53</sup> *Bauer v. State of Texas*, 341 F.3d 352, 357 (5th Cir.2003).

<sup>54</sup> *James v. Underwood*, 438 S.W.3d 704, 706-07 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2014, no pet.).

<sup>55</sup> *Id.* at 707.



Patrick Sebesta) who had presided over aspects of her on-going legal dispute with her sibling and an intervenor.<sup>56</sup> The judges filed a motion to dismiss on the basis of judicial and sovereign immunity and the motion was granted.<sup>57</sup> The First Court of Appeals concluded the dismissal based on judicial immunity was proper and therefore did not reach the issue of sovereign immunity.<sup>58</sup> The Court noted that immunity from suit “deprives a trial court of subject-matter jurisdiction.”<sup>59</sup> “The Supreme Court has stated repeatedly that ‘it is a general principal of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.’”<sup>60</sup>

In a suit alleging RICO violations, the Fifth Circuit determined that three state court judges and a court secretary were entitled to absolute judicial immunity and quasi-judicial immunity, respectively.<sup>61</sup> The plaintiffs sued twenty individual and corporate defendants, alleging a law firm engaged in a criminal conspiracy with the other defendants to infiltrate and to control the state and federal court systems in Texas.<sup>62</sup> As predicate acts to the RICO violation, the plaintiffs alleged illegal campaign contributions, bribery, mail and wire fraud, and obstruction of justice.<sup>63</sup> The Fifth Circuit rejected as frivolous the plaintiffs’ argument that there is no absolute judicial

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 709.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*, citing *Reata Constr. Corp v. City of Dallas*, 197 S.W.3d 371, 374 (Tex. 2006).

<sup>60</sup> *Id.*, citing *Bradley v. Fisher*, 80 U.S. 335, 347, 13 Wall. 335, 20 L.Ed. 646 (1871), *Mireles v. Waco*, 502 U.S. at 10, *Stump v. Sparkman*, 435 U.S. at 355.

<sup>61</sup> *Kirkendall v. Grambling & Mounce, Inc.*, 4 F.3d 989, 1993 WL 360732, \*2 (5<sup>th</sup> Cir. 1993).

<sup>62</sup> *Id.*, \*1.

<sup>63</sup> *Id.*

immunity and quasi-judicial immunity in RICO actions.<sup>64</sup>

Judicial immunity provides immunity from suit, not just from the ultimate assessment of damages.<sup>65</sup> “Judges enjoy absolute judicial immunity from liability for judicial acts, no matter how erroneous the act or how evil the motive, unless the act is performed in the clear absence of all jurisdiction.”<sup>66</sup> To determine whether an act is “judicial”, the courts look at the following four factors: (1) the act complained of is one normally performed by a judge, (2) the act occurred in the courtroom or an appropriate adjunct such as the judge’s chambers, (3) the controversy centered around a case pending before the judge, and (4) the act arose out of an exchange with the judge in the judge’s official capacity.<sup>67</sup> These factors are construed broadly in favor of immunity.<sup>68</sup> And, not all factors must be met for immunity to exist – in some circumstances, immunity may exist even if only one factor is met.<sup>69</sup> The factors are not required to be given equal weight; rather they are weighted according to the facts of the particular case.<sup>70</sup>

In considering whether the act complained of is normally performed by a judge, we ask whether the action is a “function normally performed by a judge, and to the expectations of the parties, i.e. whether they dealt with the judge in his judicial capacity.”<sup>71</sup> The relevant inquiry is

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<sup>64</sup> *Id.*, at \*3.

<sup>65</sup> *James at 709* (citations omitted).

<sup>66</sup> *Id.*, quoting *Alpert v. Gerstner*, 232 S.W.3d 117, 127 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2006, pet. denied)(quoting *City of Houston v. W. Capital Fin. Servs. Corp.*, 961 S.W.2d 687, 689 (Tex. App.—Houston [1<sup>st</sup> dist.] 1998, pet. dismiss’d w.o.j.)).

<sup>67</sup> *Id.*, at 710, citing *Bradt v. West*, 892 S.W.2d 56 67 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1994, writ denied); see also *Malina v. Gonzales*, 994 F.2d 1121, 1124 (5<sup>th</sup> Cir. 1993).

<sup>68</sup> *Id.*, citing *Bradt*, at 67.

<sup>69</sup> *Id.* (citation omitted).

<sup>70</sup> *Id.*, citing *Bradt* at 67.

<sup>71</sup> *Id.*, citing *Mireles*, 502 U.S. at 11; *Twilligear v. Carrell*, 148 S.W.3d 502, 504 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2004, pet. denied).

the “nature” and “function” of the act, not the “act” itself.<sup>72</sup> This distinction is necessary, otherwise any act characterized as improper would be deemed nonjudicial because “an improper or erroneous act cannot be said to be normally performed by a judge.”<sup>73</sup>

In *Twilligear*, the Fourteenth Court of Appeals concluded that a judge accused of “negligence and gross negligence in failing to adequately oversee expenditures from a guardianship account” was exercising judicial action.<sup>74</sup> In the instant case, the Plaintiffs accuse the Honorable Judges of “obstruction of justice” by “removing Summary Judgment Motions from Calendar and creating stasis”, and conspiring to “redirect civil litigation away from the public record to a staged mediation” for the purpose of “adding delay and increasing expense” and “holding the money cow trust hostage for attorney fee ransoms.”<sup>75</sup> The actions Plaintiffs complain of are the rulings and Orders issued by the Honorable Judges.<sup>76</sup> The act of holding hearings and issuing rulings and Orders are all functions normally performed by a judge. This satisfies the first element of whether the actions were “judicial acts.” The complained of actions occurred in court or in the course of handling their docket; therefore the second factor also supports a finding that the Honorable Judges’ actions were judicial in nature.<sup>77</sup>

The third factor is whether the controversy centered around a case pending before the judge. The entirety of the allegations raised center around the underlying probate proceeding

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<sup>72</sup> *Id.*, citing *Mireles*, 502 U.S. at 13, *Stump*, 435 U.S. at 362.

<sup>73</sup> *Id.*, citing *Mireles*, 502 U.S. at 12.

<sup>74</sup> *Id.*, citing *Twilligear*, 148 S.W.3d at 505.

<sup>75</sup> Doc. 1, ¶¶ 121, 131.

<sup>76</sup> *Id.*

<sup>77</sup> *James*, at 711, citing *Bradt*, 892 S.W.2d at 67. *See also* the Complaint.

before the Honorable Judges. Accordingly, this factor supports the conclusion that the Honorable Judges' actions were judicial.<sup>78</sup>

The final factor is whether the act arose out of an exchange with the judge in the judge's official capacity.<sup>79</sup> Plaintiff Curtis, both pro se and through her former counsel, Jason Ostrom (who is also a named defendant in this lawsuit), appeared before the Honorable Judges and interacted with them in the judges' judicial capacities and not in any alternative capacities. The Honorable Judges acted in a judicial capacity in doing so, whether their rulings or decisions were correct or not (Defendants *emphatically* contend they were correct). Accordingly, this last factor supports the conclusion that the Honorable Judges' actions were judicial.

The next inquiry is whether the judges acted in a "complete absence of all jurisdiction."<sup>80</sup> "Where a court has some subject-matter jurisdiction, there is sufficient jurisdiction for immunity purposes."<sup>81</sup> The First Court of Appeals determined probate judges have jurisdiction to preside over probate cases, which is what Judge Sebesta had been doing at the point when his actions became "actionable" in the plaintiff's view.<sup>82</sup> Importantly, immunity is not lost based on an allegation that the action taken had procedural errors, even "grave" ones. *Id.*, citing *Bradt*, at 68 (holding that judge had jurisdiction, for judicial immunity purposes, to sign order even if that order would be determined void because motion to recuse judge was pending). *See also In re J. B.H.*, No. 14-05-00745-CV, 2006 WL 2254130, \*2 (Tex. App.—Houston [14<sup>th</sup> Dist.] Aug. 8, 2006, pet.

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<sup>78</sup> *Id.* at 711.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*, citing *Mireles*, 502 U.S. at 12; *Bradt*, 892 S.W.2d at 68.

<sup>81</sup> *Id.*, at 712, quoting *Malina*, 994 F.2d at 1125.

<sup>82</sup> *Id.*

denied)(mem.op.) (affirming dismissal of claims against judge who had judicial immunity regarding order in guardianship proceeding).

The Honorable Judges had the necessary jurisdiction to take the actions they did. Because the actions complained of by Plaintiffs are judicial in nature and because they were made within the Honorable Judges' jurisdiction, they are entitled to absolute judicial immunity on all claims brought against them.

**c. Tony Baiamonte is entitled to official immunity.**

To the extent Plaintiffs are asserting claims against Tony Baiamonte in his official capacity (which it appears is the case since he is only referred to in his capacity as the "Official Court Reporter"), such a claim is construed as a claim against Harris County. *See Hafer v. Melo*, 502 U.S. 21, 25 (1991) ("Suits against state officials in their official capacity therefore should be treated as suits against the State."); *see also Bennett v. Pippin*, 74 F.3d 578, 584 (5th Cir.1996) ("When a plaintiff sues a county or municipal official in her official capacity, the county or municipality is liable for the resulting judgment and, accordingly, may control the litigation on behalf of the officer in her official capacity. A suit against the Sheriff in his official capacity is a suit against the County."). Harris County (and therefore Tony Baiamonte) cannot be liable under RICO for two independent reasons: (1) it is incapable of forming the *mens rea* required for the underlying criminal act, and (2) because RICO is punitive in nature, municipal entities enjoy common law immunity from the punitive damages.<sup>83</sup>

**d. Harris County Defendants are entitled to qualified immunity.**

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<sup>83</sup> *Gil Ramirez Group, L.L.C. v. Houston Independent School Dist.*, 786 F.3d 400, 412 (5<sup>th</sup> Cir. 2015).

The doctrine of qualified immunity shields public officials acting within the scope of their authority from civil liability.<sup>84</sup> “The threshold inquiry a court must undertake in a qualified immunity analysis is whether plaintiff’s allegations, if true, establish a constitutional violation.”<sup>85</sup> Plaintiffs have not presented any facts to support a constitutional violation.

In *Bagby v. King*, a litigant filed suit against two federal judges, a federal district clerk, and an appeals court clerk claiming he had been denied access to various federal district and appellate courts in California.<sup>86</sup> The Magistrate Judge issued a Show Cause Order explaining that the plaintiff’s claims failed to overcome the doctrines of absolute judicial immunity and qualified immunity and directed plaintiff to amend his complaint to cure these defects.<sup>87</sup> Instead, the plaintiff filed a host of new lawsuits against a number of federal judicial officers and court staff, complaining cryptically about their handling and disposition of prior lawsuits plaintiff had filed or attempted to file.<sup>88</sup> The court determined the plaintiff’s claims extended no further than complaints about the dispositions of previous lawsuits.<sup>89</sup> The court held the plaintiff’s purported claims were barred by either judicial immunity, qualified immunity, or failed to state a non-frivolous claim.<sup>90</sup>

In the instant case, the Plaintiffs have likewise complained about actions taken by the Honorable Judges in their handling of the probate matter and appear to complain about actions taken by Tony Baiamonte acting as the Official Court Reporter. Plaintiffs contend Mr. Baiamonte

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<sup>84</sup> *Bilbrey v. Corona*, No. H-04-2075, 2005 WL 1515409 \*2 (S.D. Tex., June 27, 2005) (J. Hittner), citing *Harlow v. Fitzgerald*, 457 U.S. 800, 815-19, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).

<sup>85</sup> *Id.*, quoting *Hope v. Pelzer*, 536 U.S. 730, 736, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002).

<sup>86</sup> *Bagby v. King*, No. SA-14-CA0682-XR, 2014 WL 4692479 \*1 (W.D. Tex. Sept. 18, 2014).

<sup>87</sup> *Id.* at \*2.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

“knowingly and willfully” spoliated, destroyed or otherwise concealed some unidentified “material evidence of a racketeering conspiracy.”<sup>91</sup> These cryptic, conclusory complaints of all Harris County Defendants are not sufficient to identify a violation of any constitutional rights. Defendants are therefore entitled to qualified immunity and the case against them must be dismissed.

**2. Plaintiffs have failed to state a claim against the Harris County Defendants.**

Rule 12(b)(6) mandates dismissal when a plaintiff fails to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). A complaint that fails to satisfy the pleading requirements of Rule 8(a) or Rule 9(b) is subject to dismissal under Rule 12(b)(6).<sup>92</sup> To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.”<sup>93</sup>

A complaint must also “provide the plaintiff’s grounds for entitlement to relief including factual allegations that when assumed to be true ‘raise a right to relief above the speculative level.’”<sup>94</sup> “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”<sup>95</sup> “Nor does a complaint suffice if it tenders ‘naked assertion[s],’ devoid of ‘further factual enhancement.’”<sup>96</sup>

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<sup>91</sup> Complaint, ¶ 143.

<sup>92</sup> See *Ashcroft v. Iqbal*, 556 U.S. 662, 677-79 (2009) (Rule 8(a)); *Lovelace v. Software Spectrum, Inc.*, 78 F.3d 1015, 1017 (5th Cir. 1996) (Rule 9(b)).

<sup>93</sup> *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007).

<sup>94</sup> *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5<sup>th</sup> Cir. 2007) (quoting *Twombly*, 550 U.S. at 555-566).

<sup>95</sup> *Iqbal*, 556 U.S. at 678.

<sup>96</sup> *Id.* (quoting, 550 U.S. at 557).



Plaintiff alleges a RICO claim under § 1962(c) and (d). To state a claim under any subsection, “a plaintiff must plead specific facts ... which establish the existence of an enterprise.”<sup>97</sup> Plaintiffs have not pled facts that show or create a reasonable inference of a pattern of racketeering activity or the existence of any enterprise.

**a. Plaintiffs fail to allege conspiracy.**

In their rambling and disjointed Complaint, Plaintiffs allege the following regarding an alleged RICO conspiracy:

The Harris County Defendants and the other Defendants “did at various times unlawfully, willfully and knowingly combine, conspire and agree with each other to violate 18 U.S.C. Sections 1962(c), by participating, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity involving multiple predicate acts within the meaning of 18 U.S.C. § 1961(1) in violation of 18 U.S.C. § 1962(c) and (d)” (Complaint, ¶59)

\* \* \*

“It was part of the racketeering conspiracy that through the use of estate plan instruments Defendants, acting in concert both individually and severally, would and did intercept assets intended for the heirs of estates that pass through Harris County Probate Court, an enterprise, which engaged in, and the activities of which affected interstate and foreign commerce.” (Complaint, ¶ 66)

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“It was part of the racketeering conspiracy that through the use of trust instruments Defendants, acting in concert both individually and severally, would and did intercept assets intended for the beneficiaries of trusts that pass through Harris County Probate Court, an enterprise, which engaged in, and the activities of which affected interstate and foreign commerce.” (Complaint, ¶ 67)

Beyond this *conclusory* language, the Complaint contains no further factual enhancement regarding the alleged conspiracy. “[A] conclusory allegation of agreement at some unidentified

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<sup>97</sup> *Elliott v. Foufas*, 867 F.2d 877, 881 (5th Cir.1989); *accord State Farm Mut. Auto. Ins. Co. v. Giventer*, 212 F.Supp.2d 639, 649–50 (N.D.Tex.2002).

point does not supply facts adequate to show illegality."<sup>98</sup> Because Plaintiffs allege no pattern of activity or the acquisition, establishment, conduct, or control of any enterprise as required under RICO, Plaintiffs have failed to state a RICO claim upon which relief may be granted.

Furthermore, civil conspiracy is a *derivative* tort; therefore, liability for a civil conspiracy depends on participation in an underlying tort.<sup>99</sup> Because the core of a RICO civil conspiracy is *an agreement to commit predicate acts*, a RICO civil conspiracy complaint, at the very least, must allege *specifically* such an agreement.<sup>100</sup> Plaintiffs have wholly failed to allege a *specific agreement* among Defendants to commit the RICO predicate acts alleged. **There are no allegations that Judge Butts, Judge Comstock or Tony Baiamonte was a party to or principal in any such agreement.**

The Plaintiffs have pled **no facts** which would support even the existence of any conspiracy. As such, Plaintiffs have failed to establish that there is any plausibility to their conclusory allegations of conspiracy.<sup>101</sup>

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<sup>98</sup> See *Spectrum Stores Inc. v. Citgo Petroleum Corp.*, 632 F.3d 938, 948 (5th Cir., 2011), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

<sup>99</sup> *Homoki v. Conversion Servs., Inc.*, 717 F.3d 388, 402(5th Cir., 2013), citing *Allstate Ins. Co. v. Receivable Fin. Co., L.L.C.*, 501 F.3d 398, 414 (5th Cir. 2007) (citations omitted). In order to adequately plead a claim for civil conspiracy, a plaintiff must adequately plead the underlying tort. *Id.*, citing *Meadows v. Hartford Life Ins. Co.*, 492 F.3d 634, 649 (5th Cir. 2007) ("If a plaintiff fails to state a separate claim on which the court may grant relief, then the claim for civil conspiracy necessarily fails.")

<sup>100</sup> See *Tel-Phonic Services, Inc. v. TBS Intern., Inc.*, 975 F.2d 1134, 1140-1 (5th Cir. 1992)( Where complaints fail to plead specifically any agreement to commit predicate acts of racketeering, the RICO conspiracy claim was also properly dismissed.) , citing *Hecht v. Commerce Clearing House, Inc.*, 897 F.2d 21, 25 (2d Cir.1990)[Emphasis added]; see also *Glessner v. Kenny*, 952 F.2d 702, 714 (3d Cir.1991) (civil RICO conspiracy claim must plead agreement to commit predicate acts and knowledge that the acts were part of a pattern of racketeering activity); *Miranda v. Ponce Fed. Bank*, 948 F.2d 41, 47 (1st Cir.1991) (civil RICO conspiracy claim must charge that defendants knowingly entered into an agreement to commit two or more predicate crimes).

<sup>101</sup> *Twombly*, 127 S. Ct. at 1971-2.

As the Supreme Court held in *Twombly*<sup>102</sup>, “[b]ecause the plaintiffs here have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed.”<sup>103</sup>

**b. Plaintiffs fail to plausibly allege the existence of an “enterprise” or “association-in-fact.”**

In order to state a claim under RICO, a plaintiff must allege, among other elements, the existence of an enterprise and association-in-fact. The Plaintiffs’ Complaint does not make it plausible that either a legal enterprise or an association-in-fact existed.

An enterprise is defined as “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.”<sup>104</sup> The Fifth Circuit requires that “[i]n order to avoid dismissal for failure to state a claim, a plaintiff must plead specific facts, not mere conclusory allegations, which establish the existence of an enterprise.”<sup>105</sup>

Without any legal authority cited, Plaintiffs contend Probate Court Four is an “enterprise” within the meaning of 18 U.S.C. § 1961(4) because it was “involved in various aspects of interstate and foreign commerce” by its adjudication of lawsuits involving persons or properties outside of Texas.<sup>106</sup> This is a conclusory recitation and purely legal conclusion, unsupported by facts. The Fifth Circuit has held that “a recitation of the elements masquerading as facts” . . . does not make

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<sup>102</sup> *Id.* at 1974.

<sup>103</sup> Plaintiffs assert § 1983 as part and parcel of their “predicate acts.” It is unclear whether Plaintiffs are asserting a conspiracy to violate § 1983. However, a § 1983 claim is not actionable without an actual violation of § 1983 and Plaintiff has not alleged facts sufficient to support a claim that there was a constitutional violation under § 1983. *See Pfannsteil v. City of Marion*, 918 F.2d 1178, 1187 (5th Cir.1990).

<sup>104</sup> 18 U.S.C. § 1961(4); *see also Elliott*, 867 F.2d at 881.

<sup>105</sup> *Elliott*, 867 F.2d at 881.

<sup>106</sup> Complaint, ¶ 36-38.

it any more or less probable that the listed parties have an existence separate and apart from the pattern of racketeering, are an ongoing organization, and function as a continuing unit as shown by a hierarchical or consensual decision making structure.”<sup>107</sup>

Probate Court Four is not a legal entity. There is an abundance of case law holding that various county or city officials and departments are not separate units of government and capable of being sued. “A county is a corporate and political body.” TEX. LOC. GOV'T CODE § 71.001. With respect to counties, the county as a whole constitutes the governmental unit. The commissioner’s court is the governing body.<sup>108</sup> Plaintiff’s contention that Probate Court is an “enterprise” for purposes of RICO has no basis in law or fact.

Because the RICO Act was enacted to address continuing threats of racketeering activities, the alleged RICO enterprises must meet certain "continuity" requirements.<sup>109</sup>

To establish an "association in fact" enterprise under 18 U.S.C. § 1961(4), a plaintiff must show "evidence of an ongoing organization, formal or informal, and ... evidence that the various associates function as a continuing unit."<sup>110</sup> The Supreme Court in *Turkette* stated that the "enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct."<sup>111</sup> The Fifth Circuit has enumerated the requirements

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<sup>107</sup> See *Brunig v. Clark*, 560 F.3d 292, 297 (5th. Cir. 2009)(Rule 12(b)(6) dismissal of Plaintiff’s RICO claims affirmed for failure to plead the plausible existence of an enterprise or association in fact).

<sup>108</sup> *Tarrant County v. Ashmore*, 624 S.W.2d 740 (Tex.App.—Fort Worth 1981), *rev'd on other grounds*, 635 S.W.2d 417 (Tex.1982), *cert. denied*, 459 U.S. 1038, 103 S.Ct. 452, 74 L.Ed.2d 606 (1982).

<sup>109</sup> See, e.g., *Delta Truck*, 855 F.2d at 242-43 ("The concept of continuity as a means of controlling the scope of RICO has also been incorporated into the enterprise element of section 1962.").

<sup>110</sup> *Atkinson v. Anadarko Bank & Trust Co.*, 808 F.2d 438, 440-41 (5th Cir. 1987) (quoting *US. v. Turkette*, 452 U.S. 576, 583 (1981)).

<sup>111</sup> 452 U.S. at 583.

of an enterprise as requiring that it "(1) must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization and (3) its members must function as a continuing unit shown by a hierarchical or consensual decision making structure."<sup>112</sup>

"[T]wo individuals who join together for the commission of one discrete criminal offense have not created an "association-in-fact" enterprise, even if they commit two predicate acts during the commission of this offense, because their relationship to one another has no continuity."<sup>113</sup> However, "if the individuals associate together to commit several criminal acts, their relationship gains an ongoing nature, coming within the purview of RICO."<sup>114</sup>

Here, the purported enterprise fails to meet RICO's "continuity" requirement on all three levels. First, nothing in the Complaint even remotely suggests that the alleged enterprise is an ongoing organization that maintains operations that are separate and apart from the alleged predicate acts. Second, there are no facts in the Complaint suggesting that the enterprise is an ongoing organization, or that the various enterprise members function as a continuing unit. Lastly, there are no allegations of any hierarchical or consensual decision making structure. The Absence of factual support for these key allegations is fatal, and thus, Plaintiffs have failed to meet the pleading standard for a cognizable enterprise.

Having failed to plausibly allege the existence of an enterprise or association-in-fact, the Plaintiffs' Complaint must be dismissed for failing to state a claim upon which relief may be granted.

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<sup>112</sup> *Landry v. Air Line Pilots Ass'n Int'l*, 901 F.2d 404, 433 (5th Cir.1990).

<sup>113</sup> *Montesano et al. v. Seafirst Commercial Corp. et al.*, 818 F.2d 423, 426-27 (5th Cir. 1987).

<sup>114</sup> *Ocean Energy II, Inc. v. Alexander & Alexander, Inc.*, 868 F.2d 740, 749 (5th Cir. 1989) (quoting *Montesano*, 818 F.2d at 427).

**c. Plaintiffs have failed to plead a pattern of racketeering activity.**

Plaintiffs have also failed to plead facts sufficient to show a "pattern of racketeering activity," an element comprised of (1) the predicate acts and (2) a pattern of such acts.<sup>115</sup> To properly allege a "pattern" of predicate acts, Plaintiffs must plead both that the acts are related to each other *and* that those acts either constitute or threaten long-term criminal activity, thereby reflecting "continuity."<sup>116</sup>

When used in discussion of predicate acts, the term "continuity" has a meaning that differs from the "continuity" requirement imposed on RICO enterprises, even though the label is the same. Establishing continuity in this context requires facts sufficient to show that the predicate acts "amount to or threaten continuous racketeering activity."<sup>117</sup> Such continuity may refer "either to a closed period of repeated conduct or to past conduct that by its nature projects into the future with a threat of repetition."<sup>118</sup>

Here, Plaintiffs allege several times throughout their Complaint that the Harris County Defendants engaged in a "pattern of racketeering." However, their conclusory allegations fail to set forth the necessary *pattern* of predicate acts and the supporting facts to establish that they amount to or threaten continuous racketeering activity.

**d. Plaintiffs' Complaint is not plausible.**

The Supreme Court held, "[a] pleading that offers "labels and conclusions" or "a formulaic

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<sup>115</sup> See *In re Burzynski*, 989 F.2d 989 733, 741-42 (5th Cir. 1993) (citing *Delta Truck*, 855 F.2d at 242-43).

<sup>116</sup> *HJ, Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989).

<sup>117</sup> *In re Burzynski*, 989 F.2d at 742-43 (finding no continuity where the acts complained of had ended and, thus, did not threaten long-term criminal activity).

<sup>118</sup> *Id.*, quoting *HJ, Inc.*, 492 U.S. at 241.

recitation of the elements of a cause of action will not do." <sup>119</sup> Nor does a complaint suffice if it tenders "naked assertions" devoid of "further factual enhancement." <sup>120</sup>

Further, under Rule 8(a), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). To survive dismissal, Rule 8(a) requires that a plaintiff must plead "enough facts to state a claim for relief that is plausible on its face," <sup>121</sup> and must plead those facts with enough specificity "to raise a right to relief above the speculative level." <sup>122</sup>

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." <sup>123</sup> The plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." <sup>124</sup> "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" <sup>125</sup>

As is the case with their allegations of conspiracy and RICO predicate acts, the Plaintiffs have "**labeled**" myriad alleged offenses including: (1) honest services mail fraud (18 U.S.C. § 1346); (2) fraud (18 U.S.C. § 1001); (3) theft (Texas Penal Code § 31.02); (4) theft (Texas Penal Code § 31.03); (5) Hobbs Act extortion (18 U.S.C. § 1951(b)(2)); (6) conspiracy (18 U.S.C. § 371); (7) conspiracy to obstruct justice (18 U.S.C. §§ 1512(c), 1512(k), 1519, and 1951(b)(2) and 18

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<sup>119</sup> *Id.* at 1965.

<sup>120</sup> *Id.* at 1966.

<sup>121</sup> *Twombly*, 550 U.S. at 570

<sup>122</sup> *Id.* at 555.

<sup>123</sup> *Iqbal*, 556 U.S. at 678.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*



U.S.C. § 242); (8) theft and extortion (Texas Penal Code § 32.21); (9) access to the Courts (42 U.S.C. § 1983); (10) substantive due process (42 U.S.C. § 1985); (11) equal protection; (12) property rights (Texas Penal Code §§ 31.02 and 31.03); (13) spoliation (18 U.S.C. § 1512(c)); (14) aiding and abetting breach of fiduciary, defalcation & scienter; (15) aiding and abetting misapplication of fiduciary, defalcation & scienter; and (16) tortious interference with inheritance expectancy -- yet Plaintiffs have failed to plead the essential elements of a cause of action for most, if not all, of the above alleged causes of action or offenses, much less pled any non-conclusory factual support. Rather, the Plaintiffs' rambling and disjointed Complaint is littered with bald, conclusory assertions, masquerading as facts.

The Plaintiffs' Complaint, standing alone, fails to meet either the Rule 12(b)(6) "plausibility" standard or the broadly similar standards announced by the Second<sup>126</sup> and Ninth Circuits.<sup>127</sup> Plaintiffs' few factual allegations are inextricably bound up with legal conclusions (e.g., Tony Baiamonte "did unlawfully, knowingly and willfully spoliated, destroy or otherwise conceal material evidence of a racketeering conspiracy in violation of 18 U.S.C. §§ 1512(c) conspiracy 1512(k) and 1419, aiding and abetting the racketeering conspiracy. . .";<sup>128</sup> the Harris County Defendants "did unlawfully, willfully and knowingly conspire to alter the course of justice, under color of official right, for the purpose of executing or attempting to execute a scheme and artifice to defraud and deprive, in furtherance of a pattern of racketeering activity affecting

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<sup>126</sup> *Trans World Airlines, Inc. v. Hughes*, 449 F.2d 51, 64 (2d Cir. 1971) (first alteration in original), rev'd on other grounds sub nom. *Hughes Tool Co. v. Trans World Airlines, Inc.*, 409 U.S. 363 (1973).

<sup>127</sup> The Ninth Circuit has held that factual allegations are not well-pleaded when they "parrot the language" of the statute creating liability. *DirecTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007).

<sup>128</sup> Complaint, ¶143.

interstate and foreign commerce in violation of 18 U.S.C. § 1346”<sup>129</sup>; on July 22, 2015, Judge Comstock “aided and abetted by persons known and unknown to Plaintiffs...did unlawfully, willfully and knowingly combine, conspire and agree with each other to obstruct and conceal evidence and engage in predicate acts including but not limited to 18 U.S.C. § 1512(c) conspiracy 1512(k), 1519 and 18 U.S.C. §§ 1951(b)(2) and 2, Extortion and Texas Penal Codes §§ 31.02, 31.03 and 32.21 (theft/extortion) by removing Summary Judgment Motions from Calendar and creating stasis,<sup>130</sup> as part of a conspiracy to deprive Plaintiff Curtis of an impartial forum.” ). These are but a few of countless examples.

Plaintiffs have not alleged any factual support that actions taken by the Harris County Defendants are predicate acts under 18 USC § 1961(b).

Read in its entirety, the complaint merely "parrot[s] the language" of the RICO statute,<sup>131</sup> and comprises a "threadbare recital of the elements of a cause of action, supported by mere conclusory statements."<sup>132</sup> Indeed, given the lack of factual detail (as opposed to a litany of *vague and conclusory* legal conclusions masquerading as facts) in the Complaint, it is impossible to even speculate as to whether the facts "might [ . . . ] have been the case."<sup>133</sup>

To plead facial plausibility, a plaintiff must set forth **factual content** that permits the courts to draw the reasonable inference that the defendant is liable.<sup>134</sup> The “tenet that a court must accept

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<sup>129</sup> Complaint, ¶122.

<sup>130</sup> Complaint, ¶131.

<sup>131</sup> See *Wooten v. McDonald Transit Assocs., Inc.*, 775 F.3d 689, 696 (5th Cir.2015) citing *DirecTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007)

<sup>132</sup> *Iqbal*, 556 U.S. at 678.

<sup>133</sup> *Wooten* at p.696, citing *Trans World Airlines, Inc.*

<sup>134</sup> *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937. (Emphasis added).

as true all of the allegations contained in a complaint is inapplicable to legal conclusions.”<sup>135</sup> Although the Plaintiffs allege that the Harris County Defendants engaged in, or conspired to engage in, racketeering activity in the form of fraud and other acts aimed at depleting the assets of the trust in the underlying contested probate proceeding, their Complaint is *devoid of facts* to make it plausible and amounts to a “threadbare recital of the elements of a cause of action, supported by mere conclusory statements.”<sup>136</sup>

In addition to failing to plead the “*who, what where, when and how*” of mail fraud, wire fraud or state law fraud, or that *anyone* relied on such conduct, the Plaintiffs offer no “factual content allow[ing] [this] court to draw the reasonable inference” that Defendants have plausible liability such that Plaintiffs are entitled to relief for their claims.<sup>137</sup>

The Plaintiffs’ legal conclusions are not entitled to the presumption of validity.<sup>138</sup> They have pled insufficient facts to establish a plausible entitlement to relief for the claims they are asserting. Because the Plaintiffs have failed to adequately plead that the alleged RICO predicate acts were a *direct and proximate cause* of injury to their personal “business or property,” the Court should dismiss under FED. R. CIV. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

Because the Plaintiff’s Complaint is not plausible, it should be dismissed.

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<sup>135</sup> *Id.*

<sup>136</sup> *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937.

<sup>137</sup> *See Patrick v. Wal-Mart, Inc.—Store # 155*, 681 F.3d 614, 622 (5th. Cir., 2012) citing *Amacker v. Renaissance Asset Mgmt. LLC*, 657 F.3d 252, 254 (5th Cir.2011). (quotation marks and citation omitted). [Emphasis added]

<sup>138</sup> *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937.

**e. Plaintiffs' claims are frivolous.**

A complaint is frivolous if it lacks an arguable basis in law or fact.<sup>139</sup> “A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist.”<sup>140</sup>

The claims brought against the Harris County Defendants are frivolous and brought in violation of FED. R. CIV. P. 11. There is no conspiracy to deprive the Plaintiffs of the assets of the Brunsting estate, no racketeering scheme and no use of the mail, wire or internet to further any alleged scheme or conspiracy. Perhaps the only “conspiracy” is that of the Plaintiffs and other litigants that are bringing these frivolous lawsuits against Harris County Probate Courts for RICO violations.<sup>141</sup>

As is patently obvious from Plaintiffs' 62-page Complaint, they were dissatisfied with the rulings and administration of the Brunsting probate case in Probate Court Four. **This is not a basis for bringing a lawsuit.** This case should be dismissed *with prejudice*. See *Boyd v. Biggers*, 31 F.3d 279 (5th Cir. 1994) at 285 (dismissing *with prejudice* the claims against Judge Biggers because the plaintiff did not complain of any actions that were nonjudicial in nature); *Lister v. Perdue*, No. 3:14-CV-715-D-BN, 2014 WL 7927823, (N.D. Tex., Aug. 27, 2014) at \*3 (dismissing

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<sup>139</sup> See *Denton v. Hernandez*, 504 U.S. 25, 31, 112 S.Ct. 1728, 118 L.Ed.2d 340 (1992); *Richardson v. Spurlock*, 260 F.3d 495, 498 (5th Cir.2001)(citing *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir.1997)).

<sup>140</sup> *Davis v. Scott*, 157 F.3d 1003, 1005 (5th Cir.1998)(quoting *McCormick v. Stalder*, 105 F.3d 1059, 1061 (5th Cir.1997)).

<sup>141</sup> Plaintiff mentions the RICO suit filed against the judges in **Probate Court One**, claiming it is related by “continuity.” **(Case 4:16-cv-00733; pending before Judge Hoyt)** [Doc. 33, ¶ 51]. This smear campaign against the Honorable Judges in Probate Court One and Probate Court Four appears to be nothing more than pure harassment by disgruntled litigants. Indeed, due to the frivolous filing in the **Probate Court One case**, dismissal and sanctions have been sought.

*with prejudice* the claims against Judge Lewis and her court staff because all actions complained of were nonjudicial in nature); *Bilbrew v. Wilkinson*, No. H-05-0130, 2005 WL 3019743 \*9-10, (S.D. Tex., Nov. 10, 2005)(J. Gilmore) (dismissed *with prejudice* as frivolous and finding Judge Wilkinson entitled to absolute judicial immunity). This lawsuit is frivolous because it lacks an arguable basis in law or fact. It should be dismissed with prejudice.

### CONCLUSION

The case should be dismissed with prejudice in its entirety because Plaintiffs have no actionable RICO claim against the Harris County Defendants. The Honorable Judges are entitled to judicial immunity, official immunity and governmental immunity. Likewise, Tony Baiamonte is entitled to official immunity and governmental immunity. Additionally, the Plaintiffs lack standing to bring the conspiracy/RICO claims asserted in this lawsuit – Plaintiffs have failed to allege facts sufficient to establish they suffered a tangible financial loss and that it was proximately caused by any “predicate acts” by the Harris County Defendants. Further, Plaintiffs have no state law claims against the Harris County Defendants and they should be dismissed under TEX. CIV. P. & REM. CODE § 101.106. Harris County Defendants are entitled to dismissal on the Plaintiffs’ claims pursuant to FED. R. CIV. P. 12(b)(1).

The case should also be dismissed with prejudice in its entirety because Plaintiffs have failed to state a claim against the Harris County Defendants. Plaintiffs have failed to allege a conspiracy, failed to allege a RICO violation, failed to establish a pattern of racketeering activity, failed to establish an “enterprise” or “association-in-fact,” their claims are not plausible on their face, and their claims are frivolous.

**PRAYER**

For the reasons set forth above, the Harris County Defendants request the Court grant its Motion to Dismiss the Plaintiffs' Verified Complaint for Damages [Doc. 1] with prejudice, sanction the Plaintiffs for filing a frivolous and groundless lawsuit, and award the Harris County Defendants such other and further relief, at law or in equity, to which they may show themselves to be justly entitled.

**Dated: October 7, 2016.**

Respectfully Submitted,

*/s/ Laura Beckman Hedge*

**Laura Beckman Hedge**

Assistant County Attorney

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BAIAMONTE**

**OF COUNSEL:**

VINCE RYAN,  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 7<sup>th</sup> day of October, 2016, via ECF.

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Laura Beckman Hedge



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**CANDICE LOUISE CURTIS, *ET AL.*** §  
§  
**VS.** §  
§ **Civil Action No. 4:16-cv-01969**  
**CANDACE KUNZ-FREED, *ET AL.*** §  
§  
§

**DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE’S UNOPPOSED AMENDED MOTION FOR LEAVE TO FILE MOTION TO DISMISS IN EXCESS OF PAGE LIMIT**

Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte (collectively “Defendants”), hereby file the following Unopposed Amended Motion for Leave to File Motion to Dismiss In Excess of Page Limit (“Motion”).

Section B(5)(E) of Judge Alfred H. Bennett’s Court Procedures limit the filing of documents such as Defendants’ Motion to Dismiss to 20 pages without leave of Court. The Court Procedures further directs the parties to seek leave when their documents exceed the page limit. Defendants seek leave to file their Motion to Dismiss in excess of the page limit, because of the complexity of the facts and law relevant to this case, and the length of the claims asserted by Plaintiffs in their extensive 62-page, 217 paragraph Complaint, the complexity of the RICO case law relevant to this case, and the number of counts alleged against Defendants (Plaintiffs have asserted at least 16 of 47 claims against the Honorable Judges and Mr. Baiamonte).

Defendants have exercised best efforts to keep their Rule 12(b)(1) and (6) Motion to Dismiss as concise, and to the point, as possible. However, the Plaintiffs' RICO claims as currently plead are believed by Defendants, after reasonable inquiry into the relevant Supreme Court and Fifth Circuit Authority, to be so deficient (as to, *inter alia*, "RICO standing and proximate cause," "RICO standing and direct injury," "pattern," "enterprise," "conspiracy," and "predicate act nexus to direct injury"), that extensive briefing was required to adequately address the myriad pleading deficiencies requiring dismissal.

Defendants' Motion is 31 pages, *exclusive of* the certificate of service. Defendants pray the Court grant them leave to file their Motion to Dismiss. This Motion for Leave is unopposed by the Plaintiffs.

**PRAYER**

For the reasons set forth above, Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte respectfully request the Court grant their Motion for Leave to file Motion to Dismiss in Excess of Page Limits, and award these Defendants such other and further relief, at law or in equity, to which Defendants may show themselves to be justly entitled.

**Dated:           October 7, 2016.**

Respectfully Submitted,

/s/ Laura Beckman Hedge

**Laura Beckman Hedge**

Assistant County Attorney

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BAIAMONTE**

**OF COUNSEL:**

VINCE RYAN,  
HARRIS COUNTY ATTORNEY

**CERTIFICATE OF CONFERENCE**

The undersigned counsel hereby certifies that I emailed Plaintiffs Candace Curtis and Rik Wayne Munson on October 7, 2016 to inquire whether they would be opposed to the Motion for Leave to file Motion to Dismiss in Excess of Page Limit and they advised they were **unopposed**.

/s/ Laura Beckman Hedge

Laura Beckman Hedge

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 7<sup>th</sup> day of October, 2016, via ECF.

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/s/ Laura Beckman Hedge  
Laura Beckman Hedge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*

§

VS.

§

§

Civil Action No. 4:16-cv-01969

CANDACE KUNZ-FREED, *ET AL.*

§

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**ORDER**

The Court, having considered the Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte’s Unopposed Amended Motion for Leave to File Motion to Dismiss In Excess of Page Limit (“Motion”), finds the relief requested to be in order and therefore GRANTS the Motion.

It is so ORDERED.

\_\_\_\_\_

Date

\_\_\_\_\_

The Honorable Alfred H. Bennett  
United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

CANDACE LOUISE CURTIS, ET AL.,

Plaintiffs,

v.

CANDACE KUNZ-FREED, ET AL.,

Defendants.

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Civil Action No. 4:16-cv-01969

**DEFENDANT JILL WILLARD YOUNG'S  
REPLY IN SUPPORT OF MOTION TO DISMISS**

Plaintiffs' Response further highlights the infirmities of their Complaint, which should be dismissed because of the attorney–immunity doctrine, Plaintiffs' failure to plead the elements of a RICO claim, and the delusional and implausible nature of Plaintiffs' allegations.

**I. Ms. Young is protected by the attorney–immunity doctrine.**

Plaintiffs' Response to Defendant Young's Motion to Dismiss highlights the Complaint's inescapable—and irremediable—failure: In Texas, a Plaintiff cannot avoid the attorney immunity doctrine by “[m]erely labeling an attorney’s conduct ‘fraudulent.’” *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 483 (Tex. 2015); *Dixon Fin. Services, Ltd. v. Greenberg, Peden, Siegmyer & Oshman, P.C.*, No. 01-06-00696-CV, 2008 WL 746548, at \*9 (Tex. App.—Houston [1st Dist.] Mar. 20, 2008, pet. denied) (“Characterizing an attorney’s action in advancing his client’s rights as fraudulent does not change the rule that an attorney cannot be held liable for discharging his duties to his client.”). Plaintiffs’ cannot overcome Ms. Young’s immunity for two reasons:

First, although Plaintiffs’ Response to Ms. Young’s Motion to Dismiss contains many factual assertions, those assertions are entirely absent from Plaintiffs’ Complaint—*none* of the factual assertions made in the Response appears in the Complaint. And whether Ms. Young’s Motion to Dismiss should be granted is based on the assertions made in Plaintiffs’ Complaint—not other filings. Second, Plaintiffs fail to address the law cited in Ms. Young’s Motion. Instead, they try to justify their denomination of the fictitious criminal enterprise as the “probate mafia” and “Harris County Tomb Raiders.” But these arguments do not change Ms. Young’s “true immunity from suit” relating to her representation of Temporary Administrator Lester. *See Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 348 (5th Cir. 2016). And Plaintiffs have only alleged acts relating to Ms. Young’s routine handling of legal tasks as counsel for Temporary Administrator Lester. Specifically, the only assertion (although regurgitated in many different



ways) made in the Response against Ms. Young is that she represented Temporary Administrator Lester in his preparation of a single report. *See* Response [DKT. 41], at ¶¶ 22–29, 32–34, 47–48, 51, 59–60 (all discussing the “report” and Ms. Young’s representation of Temporary Administrator Lester).

Plaintiffs do not dispute the law cited by Ms. Young, nor do they dispute that their allegations arise only out of Ms. Young’s representation of Temporary Administrator Lester. Plaintiffs’ assertion that the report is somehow fraudulent or incorrect does not change Ms. Young’s complete immunity from suit, because Plaintiffs have only alleged acts relating to Ms. Young’s routine handling of legal tasks as counsel for Temporary Administrator Lester. *See Byrd*, 467 S.W.3d at 481–83; *see also* Order Granting Motion to Dismiss (DKT. 320), *Sheshtawy v. Conservative Club of Houston, Inc.*, No. 4:16-cv-00733, at \*9 (S.D. Tex. Oct. 7, 2016) (dismissing almost identical allegations because “**routine litigation conduct . . . cannot become a basis for a RICO suit**”) (emphasis added). Thus, Plaintiffs’ Complaint should be dismissed.

## II. **Plaintiffs’ Complaint is too delusional to state a valid claim for relief.**

In the last week, another Court has considered and rejected almost identical allegations to those made by Plaintiffs. *See* Order Granting Motion to Dismiss (DKT. 320), *Sheshtawy v. Conservative Club of Houston, Inc.*, No. 4:16-cv-00733 (S.D. Tex. Oct. 7, 2016). In *Sheshtawy*, three groups of plaintiffs alleged parties and attorneys practicing before Harris County Probate Court No. 1 were members of a RICO conspiracy, along with two judges. The *Sheshtawy* plaintiffs’ alleged “proof” of conspiracy was that “Defendant Judge Loyd Wright and Defendant Associate Judge Ruth Ann Stiles always ruled against . . . the Plaintiffs.” *See* Amended Complaint, *Sheshtawy v. Conservative Club of Houston, Inc.*, No. 4:16-cv-00733, ¶ 359 (DKT.. 102). The Court dismissed the matter, holding that the plaintiffs’ allegations were “pure zanyism.” *Id.* at \*9.

Here, Plaintiffs make similar allegations against the parties, attorneys, and judges in Probate Court No. 4. And as in *Sheshtawy*, the allegations are frivolous, because they are too fanciful, fantastic, and delusional to state a valid claim for relief.

**III. Plaintiffs still cannot articulate the elements of a RICO claim against Ms. Young.**

In Ms. Young's Motion to Dismiss, Ms. Young showed that Plaintiffs' RICO claim should be dismissed for two independent reasons—Plaintiffs have not shown they suffered any injury proximately caused by a violation of RICO by Ms. Young, and Plaintiffs have failed to plead with particularity any predicate acts of mail or wire fraud by Ms. Young. Plaintiffs address neither failure.

**A. Plaintiffs have not alleged they suffered any injury proximately caused by a violation of RICO by Ms. Young.**

First, Plaintiffs admit that they have not suffered any injury proximately caused by a violation of RICO by Ms. Young. Indeed, Plaintiffs admit that they were not injured by the only wrongful act of Ms. Young that they allege—Ms. Young's representation of Temporary Administrator Lester, who prepared the report. Response at ¶ 28. Specifically, Plaintiffs admit that they were not injured by the report, and, instead, the "'Report' was nothing but a vehicle for threatening Plaintiff Curtis with injury to property rights if she did not agree to enter into a mediated settlement agreement." *Id.*

But the threat of injury is not actual injury and does not create a RICO claim. *See* 18 U.S.C. § 1964(c) ("Any person injured in his business or property by reason of a violation of [RICO] may sue."). And Plaintiffs' allegations are much too tenuous to give rise to standing under RICO. Plaintiffs appear to assert that there must be some connection between Ms. Young's representation of Mr. Lester, Mr. Lester's creation of the report, the Plaintiffs' alleged fear of the "threat" of the report, and then the mediated settlement agreement that was entered

into by Plaintiffs. Response at ¶ 28. That is not sufficient under RICO. Instead, a plaintiff “must show that the [RICO] violation was a but-for and proximate cause of the injury.” *Allstate Ins. Co. v. Plambeck*, 802 F.3d 665, 676 (5th Cir. 2015). Proximate cause requires “directness”—“the injury or damage was either a direct result or a reasonably probable consequence of the act.” *Plambeck*, 802 F.3d at 676.

Here, Plaintiffs do not plead facts showing they suffered any financial loss that directly resulted from any alleged RICO violation by Ms. Young. See *Gil Ramirez Grp., L.L.C.*, 786 F.3d at 408. They argue only that they felt “threatened” by the report, which led them to agree to enter into a settlement. That cannot create an injury that creates standing to sue under RICO.

***B. Plaintiffs have not pleaded facts that Ms. Young engaged in a “racketeering activity.”***

Even in Plaintiffs’ Response, Plaintiffs fail to assert Ms. Young engaged in a pattern of “racketeering activities” sufficient to trigger the RICO statute. Under Rule 9(b), predicate RICO acts must be pleaded under the heightened pleading requirements of Rule 9(b), which requires a plaintiff to plead “with particularity.” FED. R. CIV. P. 9(b). Plaintiffs have made no assertion of any predicate acts of Ms. Young they claim constitute RICO predicate acts.<sup>1</sup> Alleging simply that Ms. Young represented Mr. Lester and that Mr. Lester prepared the report is insufficient. That allegation alone can never rise to the level of mail fraud, wire fraud, or violations of the Hobbs Act. Further, that allegation can never constitute a “pattern” of racketeering acts by Ms. Young. Plaintiffs fail to allege “the particulars of time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.” *Tel-Phonic*, 975 F.2d at 1139. Nor have they pled what Ms. Young obtained by making the alleged misrepresentation.

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<sup>1</sup> As shown in Ms. Young’s Motion to Dismiss, Plaintiffs’ wire fraud, mail fraud, and Hobbs Act claims fail, because they cannot be asserted as private causes of action. Plaintiffs do not dispute this.

**IV. Plaintiffs' Complaint remains too implausible to state a valid claim for relief.**

Plaintiffs try to argue their Complaint is plausible because “Defendants . . . cannot[] point to the record in any proceeding where **Plaintiffs have been on the losing end of any fully litigated state court determinations**. . . .” Response at ¶ 18. Plaintiffs completely miss the mark.

Plaintiffs' attempts to re-litigate as RICO claims issues decided in state court fail. If Plaintiffs desired to challenge determinations made in state court, there are appellate processes for that. Plaintiffs also ignore that Ms. Young **was not party to the underlying proceedings**. Whether Plaintiffs were on the “winning” or “losing end” of any determination in state court has nothing to do with Ms. Young, who merely acted as the attorney for Temporary Administrator Lester. Thus, Plaintiffs' Complaint remains too implausible to state a claim against Ms. Young.

**V. Plaintiffs' references to a prior lawsuit are irrelevant.**

Plaintiffs repeatedly reference a prior suit in this district, *Curtis v Brunsting*, No. 4:12-cv-0592, which was remanded to state court. But Plaintiffs' references make no sense and are irrelevant. That matter was remanded to Harris County **at Plaintiff Curtis's own request**. See Order Granting Unopposed Motion to Remand by Candace Louise Curtis, *Curtis v Brunsting*, No. 4:12-cv-0592 (DKT. 112) (S.D. Tex. May 15, 2014). Plaintiff Curtis cannot relitigate as some kind of fraudulent act something she requested from the Court. Second, Plaintiffs' references to that matter are also irrelevant to its claims against Ms. Young. Neither Ms. Young nor her state court client, Temporary Administrator Lester, had any involvement in the prior federal court matter—they were not parties to that matter, they never acted as attorneys in that matter, and they never appeared in that matter.

**VI. Conclusion**

For the reasons stated above and in Ms. Young's Motion to Dismiss, this Court should dismiss Plaintiffs' claims against Ms. Young with prejudice.

Dated: October 11, 2016

Respectfully submitted,

*/s/ Robert S. Harrell*

---

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above Certificate of Interested Parties has been served on October 11, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

*/s/ Robert S. Harrell*

---

Robert S. Harrell

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.* §  
§  
VS. §  
§ Civil Action No. 4:16-cv-01969  
CANDACE KUNZ-FREED, *ET AL.* §  
§  
§

**DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA  
COMSTOCK & TONY BAIAMONTE'S CERTIFICATE OF INTERESTED  
PARTIES**

Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte file this Certificate of Interested Parties pursuant to the Court's July 6, 2016 Order, ¶ 2 [Dkt. No.

3]. Persons or entities with an interest in the outcome of this case are as follows:

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**Dated: October 12, 2016.**

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 12<sup>th</sup> day of October, 2016, via ECF.

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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

DATA ENTRY  
PICK UP THIS DATE

PROBATE COURT 4

CAUSE NO. 412,249 - 401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

\*\*\*\*\*

CAUSE No. 412,249 - 402

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

AGREED ORDER TO CONSOLIDATE CASES

On this day came to be considered the oral Motion to Consolidate Cases seeking to have the pleadings assigned to Cause Number 412,249-402 consolidated into Cause Number 412,249-401. The Court finds that the actions involve the same parties and substantially similar facts, and that they should be consolidated and prosecuted under Cause Number 412,249-401. It is, therefore,

ORDERED that Cause Number 412,249-402 is hereby consolidated into Cause Number 412,249-401. It is further,

ORDERED that all pleadings filed under or assigned to Cause Number 412,249-402 be moved into Cause Number 412,249-401.

SIGNED on this 16 day of March, 2015.

Clemetine Buter  
JUDGE PRESIDING

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03092015:0815:P0003

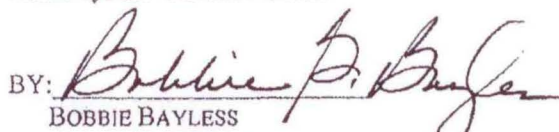
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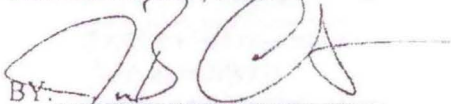
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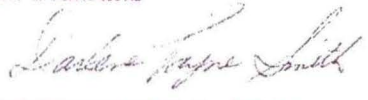


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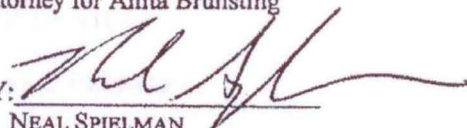
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**DATA ENTRY**  
**PICK UP THIS DATE**

PROBATE COURT 4

CAUSE NO. 412,249 - 401

IN RE: ESTATE OF

NELVA E. BRUNSTING,

DECEASED

§  
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IN THE PROBATE COURT

NUMBER FOUR (4) OF

HARRIS COUNTY, TEXAS

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CAUSE NO. 412,249 - 402

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NELVA E. BRUNSTING,

DECEASED

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IN THE PROBATE COURT

NUMBER FOUR (4) OF

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SIGNED on this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JUDGE PRESIDING

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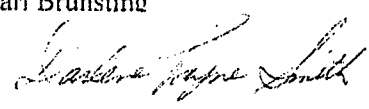
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Attorney for Amy Brunsting

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**Subject:** Fw: Fw: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249  
**From:** Candace Curtis <occurtis@sbcglobal.net>  
**Date:** 6/24/2016 8:43 AM  
**To:** Rik Munson <blowintough@att.net>

sick, sick, sick

be sure to read down to where Drina and Bobbie are talking about forwarding it to me and deleting the rest of the email...

On Wednesday, March 25, 2015 6:23 PM, Drina Brunsting <drinabrunsting@sbcglobal.net> wrote:

FYI--Judge Butts' email to the attorneys:

Sent: Wednesday, March 25, 2015 3:19 PM  
Subject: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249

Dear Attorneys,

As you know, we met together on Monday, March 23rd for a status conference. At that status conference we discussed: 1) the district court case and whether a consensus could be reached that it should be transferred to Probate Court 4 (no consensus was obtained); 2) the Motion to Compel (modified order signed); and 3) Carl Brunsting's Application to Resign and the appointment of a successor personal representative.

This email is to discuss the appointment of a successor personal representative considering the fact that Carl Brunsting must resign. As you all know, the Will of Nelva Brunsting provides that Amy and then Candace shall serve as alternate executors to Carl. Normally, Amy would be appointed so long as she was qualified. However, Carl in both his individual capacity and in his capacity as the Executor of the Estate has filed suit against Anita, Amy, Carole, and Candace (Petition for Declaratory Judgment, for an Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, Together with Request for Disclosures, filed April 9, 2013 and as amended) in Probate Court 4. Consequently, it would likely be argued that Amy is unsuitable to serve given the conflict of interest, as she would have to pursue (or choose not to pursue), as successor Executrix, a claims filed against her individually and as trustee of several trusts. Though Candace is named as a defendant in the case pending in Probate Court 4, she appears to be a defendant only because her rights may be affected. In an effort to address the need for the appointment of a successor personal representative, short-circuit the process of sorting out claims of disqualification, and efficiently proceed with the administration of the estate, may I suggest that you all agree on the appointment of an independent third party as the successor personal representative?

Even if all agree that the appointment of an independent third party as successor administrator (or independent administrator) is advisable, the matter of paying such appointee remains difficult, as I understand the Estate of Nelva Brunsting contains little if any liquid assets. It was suggested that the assets of the Brunsting Family Living Trust, originally formed in 1996, (or its progeny) could be

17-20360.2676

used to fund the appointment of a third party administrator. In the Restatement of such trust, signed in 2005, on page 8-4, Art. VIII, Sec. D, Part 1, the Trustee is specifically authorized to pay "expenses of administering the surviving Founder's estate." The Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement ("QBD"), signed by Nelva E. Brunsting in 2010, appears to ratify the Trustee's authority to pay the administration expenses of the surviving Founder's estate, as such QBD did not appear to amend such provisions of the Restatement and provided at the bottom of page 36 that, "All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, and that certain Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated June 15, 2010 are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby." However, I do not have a copy of the document mentioned above in red; so, I cannot confirm that it did not amend the Trustee's authority to pay administration expenses of the surviving Founder's estate. At any rate, unless such authority was edited by the document mentioned in red, it seems clear that the Trustee may pay the administration expenses of the estate of Nelva Brunsting.

Considering that the Trustee seems to have the discretionary power to pay administration expenses directly, as far as I can see, all the talk about deemed distributions to children to pay such expenses and considerations related to spend thrift provisions (addressed by Ms. Thornton) and special needs provisions (which I brought up not knowing whether or not it could be an issue) may be moot.

I was informed that Ms. Wylie would not be an acceptable choice as administrator as far as Carl or Ms. Bayless is concerned. Ms. Bayless suggested both Fatima Breland and Sharon Stodghill as agreeable persons to serve as administrator. I am confident that both of these attorneys would make excellent administrators. It is my suggestion that the case proceed as follows:

1. The Trustee(s) agree to pay court approved fees and expenses of administrator (even if the administration is independent, the court is amenable to reviewing and approving fees if this will give the Trustee(s) more comfort in making disbursements from the trust).
2. The parties agree on the appointment of a particular person to serve as administrator and decide whether or not such person should serve independently, or the parties agree that the court shall appoint an independent third party administrator (dependent or independent).
3. The administrator would, among other things, respond to discovery requests, prepare an accounting, and evaluate and perhaps pursue claims in district court.

Thank you all for your consideration of this analysis and my suggestions. Please do not consider any of the statements herein to be an advanced ruling or finding.

Very truly yours,

Christine Butts  
Judge, Harris County Probate Court 4  
201 Caroline, 7th Floor  
Houston, Texas 77002  
(713)368-6767  
<http://www.co.harris.tx.us/probate/crt4/default.aspx>  
[christine.butts@prob.hctx.net](mailto:christine.butts@prob.hctx.net)

When you do the reply, just erase everything until you get down to Judge Butts' email.

17-20360.2677

----- Original Message -----

From: Drinabrunsting

To: Bobbie Bayless

Sent: Wednesday, March 25, 2015 7:51 PM

Subject: Re: Fw: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249

I would like for Candy to be able to read this but I dont want to forward your email. Should I cut and paste her email or leave Candy out?

Sent from my Samsung Epic™ 4G Touch

Bobbie Bayless <[bayless@baylessstokes.com](mailto:bayless@baylessstokes.com)> wrote:

Just in Nelva's estate--not in the trusts.

----- Original Message -----

From: Drinabrunsting

To: Bobbie G Bayless

Sent: Wednesday, March 25, 2015 7:01 PM

Subject: RE: Fw: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249

Where did she get the notion that there are no liquid assets?

Sent from my Samsung Epic™ 4G TouchBobbie G Bayless <[bayless@baylessstokes.com](mailto:bayless@baylessstokes.com)> wrote:We finally got this email from the judge about appointing an independent person and paying for their services.

----- Original Message -----

From: Butts, Christine (Probate Courts)

To: [bayless@baylessstokes.com](mailto:bayless@baylessstokes.com) ; [brad@mendellawfirm.com](mailto:brad@mendellawfirm.com) ; [nspielman@grifmatlaw.com](mailto:nspielman@grifmatlaw.com) ;

Darlene Smith ([dsmith@craincaton.com](mailto:dsmith@craincaton.com)) ; Jason Ostrom ([jason@ostromsain.com](mailto:jason@ostromsain.com)) ;

[nicole@ostromsain.com](mailto:nicole@ostromsain.com)

Cc: Comstock, Clarinda (Probate Courts)

Sent: Wednesday, March 25, 2015 3:19 PM

Subject: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249

Dear Attorneys,

As you know, we met together on Monday, March 23rd for a status conference. At that status conference we discussed: 1) the district court case and whether a consensus could be reached that it should be transferred to Probate Court 4 (no consensus was obtained); 2) the Motion to Compel (modified order signed); and 3) Carl Brunsting's Application to Resign and the appointment of a successor personal representative.

17-20360.2678

This email is to discuss the appointment of a successor personal representative considering the fact that Carl Brunsting must resign. As you all know, the Will of Nelva Brunsting provides that Amy and then Candace shall serve as alternate executors to Carl. Normally, Amy would be appointed so long as she was qualified. However, Carl in both his individual capacity and in his capacity as the Executor of the Estate has filed suit against Anita, Amy, Carole, and Candace (Petition for Declaratory Judgment, for an Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, Together with Request for Disclosures, filed April 9, 2013 and as amended) in Probate Court 4. Consequently, it would likely be argued that Amy is unsuitable to serve given the conflict of interest, as she would have to pursue (or choose not to pursue), as successor Executrix, a claims filed against her individually and as trustee of several trusts. Though Candace is named as a defendant in the case pending in Probate Court 4, she appears to be a defendant only because her rights may be affected. In an effort to address the need for the appointment of a successor personal representative, short-circuit the process of sorting out claims of disqualification, and efficiently proceed with the administration of the estate, may I suggest that you all agree on the appointment of an independent third party as the successor personal representative?

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1. The Trustee(s) agree to pay court approved fees and expenses of administrator (even if the administration is independent, the court is amenable to reviewing and approving fees if this will

17-20360.2679

give the Trustee(s) more comfort in making disbursements from the trust).

2. The parties agree on the appointment of a particular person to serve as administrator and decide whether or not such person should serve independently, or the parties agree that the court shall appoint an independent third party administrator (dependent or independent).

3. The administrator would, among other things, respond to discovery requests, prepare an accounting, and evaluate and perhaps pursue claims in district court.

Thank you all for your consideration of this analysis and my suggestions. Please do not consider any of the statements herein to be an advanced ruling or finding.

Very truly yours,

Christine Butts  
Judge, Harris County Probate Court 4  
201 Caroline, 7th Floor  
Houston, Texas 77002  
(713)368-6767  
<http://www.co.harris.tx.us/probate/crt4/default.aspx>  
[christine.butts@prob.hctx.net](mailto:christine.butts@prob.hctx.net)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Curtis, et al

Plaintiffs

v

Kunz-Freed, et al

Defendants

§  
§  
§  
§  
§  
§

Civil Action No. 4:16-cv-01969

---

**ORDER**

Upon due consideration, the Rule 12(b)(1) and 12(b)(6) Motion to Dismiss filed by Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte, on October 7, 2016, Docket entry 53, should be Denied.

It is SO ORDERED

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Alfred H Bennet  
United Stated District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS AND RICK §  
WAYNE MUNSON, §

Plaintiffs, §

V. §

CIVIL ACTION NO. 4:16-CV-01969

CANDACE KUNZ-FREED, ALBERT §  
VACEK, JR., BERNARD LYLE §  
MATHEWS III, NEAL SPIELMAN, §  
BRADLEY FEATHERSTON, STEPHEN §  
A. MENDEL, DARLENE PAYNE SMITH, §  
JASON OSTROM, GREGORY LESTER, §  
JILL WILLARD YOUNG, CHRISTINE §  
RIDDLE BUTTS, CLARINDA §  
COMSTOCK, TONI BIAMONTE, BOBBY §  
BAYLESS, ANITA 'BRUNSTING, AND §  
AMY BRUNSTING, §

Defendants. §

**MOTION TO STAY RULE 26(F) CONFERENCE AND ALL DISCOVERY**  
**PENDING RESOLUTION OF MOTIONS TO DISMISS**

Defendants<sup>1</sup> file this motion respectfully requesting that the Court stay all discovery and other proceedings in this action, including the Rule 26(f) conference and initial pretrial and scheduling conference, until the Court rules on the Motions to Dismiss filed by Defendants. Each of the Motions to Dismiss on file with the Court has the potential to resolve the entire case and obviate the need for discovery altogether.

Pursuant to the Federal Rules of Civil Procedure, a court has discretion to stay discovery “for good cause shown.” FED. R. CIV. P. 26(c). A district court may limit discovery when a dispositive motion would preclude the need for discovery, saving the parties time and expense.

<sup>1</sup> “Defendants” refer to each undersigned Defendant that has been served and appeared in Case No. 4:16-cv-00733 as of October 13, 2016, except for Amy Brunsting.



*See Ingram Corp. v. J. Ray McDermott & Co.*, 698 F.2d 1295, 1304 n.13 (5th Cir. 1983) (holding it was not an abuse of discretion for district court to fully stay discovery in the early stages of the dispute when claims and defenses presented threshold legal issues). And this is particularly true for motions to dismiss under Rule 12(b)(6), which are decided solely by reference to the complaint and proper attachments. *See Landry v. Air Line Pilots Ass'n Int'l AFL-CIO*, 901 F.2d 404, 436 (5th Cir. 1990) (affirming entry of protective order where discovery was unnecessary to resolve pending dispositive motion).

In this case Plaintiffs have filed a 62-page Complaint with hundreds of pages of attachments alleging RICO, fraud, and other fiduciary duty claims against dozens of Defendants. *See* Dkt. No. 1. Most of the Defendants have filed Motions to Dismiss seeking the dismissal of all of Plaintiffs' claims, and additional Motions to Dismiss are expected to be on file in the near future. *See* Dkt. Nos. 19, 20, 23, 25, 26, 30, 35, 36, 39,40, and 53. Discovery is not necessary to resolve any of the Motions to Dismiss, which will be decided solely by reference to the Complaint and its attachments. *See Landry*, 901 F.2d at 436. And even if the pending Motions do not resolve all of the claims asserted, they are very likely to define and narrow the scope of discovery. *See Sai v. Dep't of Homeland Sec.*, 99 F. Supp. 3d 50, 58 (D.D.C. 2015) ("Both threshold motions raise significant issues, and their resolution will likely define the scope of discovery, if any.").

Thus, Defendants submit there is good cause to stay all discovery pending the outcome of the Motions to Dismiss and respectfully request that the Court stay all discovery, including the Rule 26(f) conference and the initial pretrial and scheduling conference, until the Court rules on the pending Motions to Dismiss.



Dated: October 13, 2016

Respectfully submitted,

/s/ Cory S. Reed

Zandra E. Foley  
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Texas Bar No. 24032085  
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zfoley@thompsoncoe.com  
Cory S. Reed  
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Thompson Coe Cousins & Irons, LLP  
One Riverway, Suite 1400  
Phone 713-403-8200  
Fax 713-403-829

*Attorneys for Defendants Candace Kuntz-Freed and Albert Vacek, Jr.*

/s/ Laura Beckman Hedge

Laura Beckman Hedge  
Assistant County Attorney  
Attorney-in-charge  
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Facsimile: (713) 755-8924

*Attorney for Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte*

/s/ Bobbie G. Bayless

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*Attorney for Defendant Bobbie G. Bayless*

/s/ Martin S. Schexnayder

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Facsimile: (713) 343-9201  
*Attorney for Defendant Neal Spielman*

*/s/ Robert S. Harrell*

---

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Rafe A. Schaefer  
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Telephone: (713) 651-5151  
Facsimile: (713) 651-5246  
*Attorney for Defendant Jill Willard Young*

*/s/ Stephen A. Mendel*

---

Stephen A. Mendel  
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1155 Dairy Ashford, St 104  
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Telephone: (713) 759-3213  
Facsimile: (713) 759-3214  
*Attorney for Defendants Stephen A. Mendel  
and Bradley Featherston*

*/s/ Jason B. Ostrom*

---

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Stacy L. Kelly  
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stacy@ostrommorris.com  
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6363 Woodway Dr., Suite 300  
Houston, TX 77057-1714  
Telephone: (713) 863-8891  
Facsimile: (713) 589-5513  
*Attorneys for Defendant Jason B. Ostrom*

*/s/ Anita Brunsting*

---

Anita Brunsting  
203 Bloomingdale Circle  
Victoria, Texas 77904  
akbrunsting@suddenlink.net  
*Pro se Defendant*

**CERTIFICATE OF CONFERENCE**

On October 13, 2016 at 9:19 a.m., Rik Munson, spokesperson for Plaintiffs, stated Plaintiffs were unopposed to the proposed Motion to Stay the Rule 26(f) Conference and all discovery pending resolution of the motions to dismiss. On October 13, 2016 at 11:14 a.m., Rik Munson stated that Plaintiffs are now opposed. An attempt was made to contact Defendant Amy Brunsting, however at the time of this filing, Defendant Amy Brunsting has not expressed her position. In light of her pending Motions to Dismiss, it is presumed by the undersigned that she is unopposed.

/s/ Cory S. Reed

**Cory S. Reed**

**CERTIFICATE OF SERVICE**

I certify that on the 13th day of October, 2016, a true and correct copy of the foregoing was served via the Court's ECF system, which constitutes service on all parties.

/s/ Cory S. Reed

**Cory S. Reed**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.* §  
§  
VS. §  
§ Civil Action No. 4:16-cv-01969  
CANDACE KUNZ-FREED, *ET AL.* §  
§  
§

**DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE’S ADOPTION AND JOINDER IN JILL WILLARD YOUNG’S MOTION TO STRIKE PLAINTIFFS’ “ADDENDUM OF MEMORANDUM IN SUPPORT OF RICO COMPLAINT”**

TO THE HONORABLE JUDGE ALFRED H. BENNETT:

Defendants Honorable Judges Christine Riddle Butts and Clarinda Comstock and substitute Court Reporter Tony Baiamonte (collectively, “Harris County Defendants”) hereby file this Adoption and Joinder in Jill Willard Young’s Motion to Strike Plaintiffs’ “Addendum of Memorandum in Support of RICO Complaint” and would respectfully show the Court as follows:

**1. Adoption of arguments raised in the Motion to Strike [Doc. 38].**

In the interest of justice and judicial economy, and pursuant to FED. R. CIV. P. 10(c), the Harris County Defendants hereby adopt and incorporate by reference as if fully set forth herein, the arguments and authority contained in Jill Young’s Motion to Strike [Doc. 38]. This Court should strike Plaintiffs’ Addendum [Doc. 26], because it is not a valid supplemental or amended Complaint under FED. R. CIV. P. 15. Plaintiffs appear to concede they are not amending their Complaint, while at the same time attempting to incorporate facts from other pleadings in support of their Complaint [Doc. 26, ¶ 7]. Plaintiffs attempt, by this Addendum, to incorporate facts stated

in a Motion for Sanctions and a Motion for Relief under FED. R. CIV. P. 60 filed in a *closed* federal court file. *Id.*<sup>1</sup> This is not a proper pleading recognized by the Federal Rules of Civil Procedure. Accordingly, this Addendum should be stricken.

**2. The Addendum does not challenge the merits of the Harris County Defendants' Motion to Dismiss.**

Assuming *arguendo* the Court allows the Addendum in support of Plaintiffs' Complaint, it does not state any facts that would support a claim against the Harris County Defendants. Indeed, the facts contained in the Motion for Relief attached to the Addendum merely recite the facts previously complained of in the Complaint. Plaintiffs complain about being ordered to mediation with "another crony" [Doc. 26, ¶¶ 43, 99] and delay created by removing summary judgment motions from the docket [*Id.*, ¶¶ 39-42]. Plaintiffs' pleadings (Addendum included) fail to confer subject matter jurisdiction and fail to state a claim against the Harris County Defendants.

**CONCLUSION & PRAYER**

The Addendum filed is an improper pleading and should be stricken. Even assuming the Addendum is considered a supplement to Plaintiffs' Complaint, it does not change the fact that Plaintiffs have failed to establish the Court has subject matter jurisdiction or that they have properly stated a claim against the Harris County Defendants.

For the reasons set forth above, the Harris County Defendants request the Court grant the Motion to Strike the Plaintiffs' Addendum [Doc. 26], and award the Harris County Defendants such other and further relief, at law or in equity, to which they may show themselves to be justly

---

<sup>1</sup> *Candace Louise Curtis v. Anita Kay Brunsting*, *closed* Case No. 4:12-cv-00592 (J. Hoyt), [Doc. 112].

entitled.

**Dated: October 13, 2016.**

Respectfully Submitted,

*/s/ Laura Beckman Hedge*

**Laura Beckman Hedge**

Assistant County Attorney

**ATTORNEY-IN-CHARGE**

Texas State Bar No. 00790288

Federal Bar No. 23243

[laura.hedge@cao.hctx.net](mailto:laura.hedge@cao.hctx.net)

1019 Congress, 15<sup>th</sup> Floor

Houston, Texas 77002

Telephone: (713) 274-5137

Facsimile: (713) 755-8924

**ATTORNEY FOR DEFENDANTS, JUDGE  
CHRISTINE RIDDLE BUTTS, JUDGE  
CLARINDA COMSTOCK & TONY  
BAIAMONTE**

**OF COUNSEL:**

VINCE RYAN,  
HARRIS COUNTY ATTORNEY

**CERTIFICATE OF CONFERENCE**

The undersigned certifies that on October 12, 2016, I emailed the Plaintiffs to inquire as to whether they would withdraw their Addendum. On October 13, 2016, Rik Munson responded and did not agree to withdraw it; therefore the relief sought in this Motion is necessary.

*/s/ Laura Beckman Hedge*

Laura Beckman Hedge

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 13<sup>th</sup> day of October, 2016, via ECF.

Candace Louise Curtis  
218 Landana Street  
American Canyon, CA 94503

Jason Ostrom  
Ostrom Morris LLP  
6363 Woodway Drive, Suite 300  
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Rik Wayne Munson  
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American Canyon, CA 94503

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Houston, Texas 77056

Martin Samuel Schexnayder  
Winget, Spadafora & Schwartzberg LLP  
Two Riverway, Suite 725  
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Houston, Texas 77098

Anita Brunsting  
203 Bloomingdale Circle  
Victoria, Texas 77904

Amy Brunsting  
2582 Country Ledge Drive  
New Braunfels, Texas 78132

/s/ Laura Beckman Hedge  
Laura Beckman Hedge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.* §  
§  
VS. §  
§ Civil Action No. 4:16-cv-01969  
CANDACE KUNZ-FREED, *ET AL.* §  
§  
§

**ORDER**

The Court, having considered the various Defendants’ Motions to Strike the Plaintiffs’ Addendum of Memorandum in Support of RICO Complaint [Doc. 26] and the applicable law, finds the relief requested to be in order and therefore GRANTS the Motions. The Plaintiff’s Addendum [Doc. 26] is hereby STRICKEN.

It is so ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Alfred H. Bennett  
United States District Judge



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States District Court  
Southern District of Texas  
FILED  
OCT 11 2016

CANDACE LOUISE CURTIS  
Plaintiff,

§  
§  
§  
§  
§  
§  
§

*David J. Bradley, Clerk of Court*

Civil Action No. 4:12-cv-00592

v

The Honorable Kenneth Hoyt

ANITA KAY BRUNSTING, et al  
Defendants

Opposed Motion

Curtis, et al

Plaintiffs

§  
§  
§  
§  
§  
§  
§

Civil Action No. 4:16-cv-01969

v

The Honorable Alfred Bennett

Kunz-Freed, et al

Defendants

Rule 42(a) Courtesy Copy

**PLAINTIFF’S MOTION FOR CONSOLIDATION OF RELATED CASES PURSUANT  
TO 28 U.S.C. §1367, RULE 42(A) OF THE FEDERAL RULES OF CIVIL PROCEDURE  
AND LOCAL RULE 7.6 WITH SUPPORTING MEMORANDUM**

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1. Above named Plaintiff respectfully moves this Court to order consolidation of the following cases pursuant to 28 U.S.C. §1367, Rule 42(a) of the Federal Rules of Civil Procedure and Local Rule 7.6:

a. Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, Civil Action No. 4:12-CV-00592 (TXSD Filed 2/27/2012) currently pending before the Honorable Kenneth Hoyt, and

b. Civil Action No. 4:16-cv-01969 currently pending before the Honorable Alfred H. Bennett (TXSD filed 7/5/2016)

2. Plaintiff moves for consolidation of pre-trial proceedings and trial, but not consolidation for the purposes of judgment and appeal. The two cases are appropriate for consolidation for the following reasons:

3. The two cases share common parties. Candace Curtis is a Plaintiff in both federal suits and Amy and Anita Brunsting are Defendants in both suits.

4. The later suit is the cumulative product of events occurring in the course of litigating the earlier matter and although the remedies requested and the jurisdictions upon which the authorities of the Court have been invoked are divergent, all the facts flow from common acts and events.

5. The two cases involve common questions of law and fact because both arise from the same factual situation; namely, the rupture and looting of the Brunsting family of trusts and injuries resulting from the Defendants' efforts to evade accountability; and thus the two cases also involve common questions of law.

6. Through a series of awkward circumstances, the earlier diversity matter was remanded to Harris County Probate Court No. 4. The probate court experience produced evidence of a sinister design, resulting in the necessity for Plaintiff to again seek remedy in this Court and, thus, Plaintiff filed a separate action into the Southern District of Texas, Case No. 4:16-cv-01969, in

concert with Federal Rule of Civil Procedure Rule 11(b) motion for sanctions and with Federal Rule of Civil Procedure 60(b) and (d) motion for vacatur in the above titled Court.

7. While the earlier suit was a simple breach of fiduciary seeking disclosures and accounting, the later filed case is a Racketeer Influenced Corrupt Organization (RICO) suit brought under federal question jurisdiction, implicating the Probate Court's officers' participation in the conduct of an enterprise through a pattern of racketeering activity.

8. Judicial convenience and economy will be enhanced by consolidation of the actions.

9. Consolidation will result in one trial under one judge, which will bind all plaintiffs and defendants for all purposes. This will save time and avoid unnecessary costs to the Defendants, to the Plaintiffs in both actions, and to the witnesses who would otherwise be required to testify in two cases.

10. Consolidation will not delay final disposition of any matter.

11. Consolidation of these two cases will promote the uniformity of decision and eliminate any potential for conflicting rulings, provide for judicial economy and the convenience of witnesses and parties, and will promote the expeditious disposal of all matters.

#### **HISTORY AND NATURE OF THE PROCEEDINGS**

12. 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.

13. Plaintiff Candace Curtis filed a Pro se Petition in the United States District Court for the Southern District of Texas, Houston Division, on February 27, 2012, claiming breach of fiduciary, seeking disclosures and a full, true, complete accounting.<sup>1</sup>

14. Plaintiff Curtis complaint was dismissed under the probate exception to federal diversity jurisdiction and Curtis appealed. The Fifth Circuit reversed and Ordered remand on January 9, 2013.

15. On January 29, 2013, attorney Bobbie Bayless filed suit against Nelva Brunsting's trust attorneys, Candace Kunz-Freed, Albert Vacek Jr. and Vacek & Freed P.L.L.C., in the Harris County District Court on behalf of Carl Brunsting as executor of the estate of Nelva Brunsting<sup>2</sup> raising claims only related to the Brunsting trusts then in the custody of a federal court.

16. On April 9, 2013, this Honorable Court issued an Order enjoining Defendants Amy and Anita Brunsting from spending trust funds or liquidating trust assets without the Court's prior approval.

17. Also on April 9, 2013, Bobbie Bayless filed suit in Harris County Probate Court No. 4, on behalf of Carl Brunsting individually (412249-401) and as executor of the estate of Nelva Brunsting (412249) naming federal Plaintiff Curtis a "Nominal Defendant" in both suits.

18. Not only did Bayless advance claims exclusively related to the trusts already in the custody of the federal Court, she claimed the breaches of fiduciary against the beneficiaries of the Brunsting trusts were claims belonging to the estate of Nelva Brunsting. That theory was disposed of in the Fifth Circuit in *Curtis v Brunsting* 710 F.3d 406. The "Trust(s)" is the only heir in fact to the estate and assets in the trusts are not property of the estate of Nelva Brunsting.

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<sup>1</sup> No. 4:12-CV-00592; Candace Louise Curtis v. Anita Kay Brunsting; USDC for the Southern District of Texas, Houston Division

<sup>2</sup> No. 2013-05455; Carl Henry Brunsting as Executor of the Estate of Nelva Brunsting v. Candace Freed and Vacek & Freed P.L.L.C.; 164TH Judicial District Court of Harris County, Texas.

19. At paragraph 1, page 2 of *Curtis v Brunsting* 710 F.3d 406:

*In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust (“the Trust”) for the benefit of their offspring. At the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively “the Brunstings’ Wills”) appear to include pour-over provisions, providing that all property in each estate is devised and bequeathed to the Trust. Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust.*

20. Under the wills Carl Brunsting has no standing to bring claims against trustees as heir or executor of an estate. He only has standing to bring claims individually as a trustee or beneficiary of the trust and that trust was in the custody of the federal court.

21. In *Curtis v Brunsting* the Fifth Circuit explained the doctrine of comity by citing to the Supreme Court’s clarification of the “distinctly limited scope” of the probate exception,<sup>3</sup> explaining:

*[W]e comprehend the ‘interference’ language in Markham as essentially a reiteration of the guiding principle that, when one court is exercising in rem jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent’s estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.<sup>4</sup>*

22. In or about November of 2013, Pro se Plaintiff Curtis retained the services of Houston Attorney Jason Ostrom. On May 15, 2014, Attorney Jason Ostrom caused this Honorable Court to issue an Order for Remand of *Curtis v Brunsting* to the custody of Harris County Probate Court No. 4 (412,249-402) for consolidation with the claims of Carl Brunsting (412,249-401).

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<sup>3</sup> *Marshall v Marshall* 546 U.S. 293, 310

<sup>4</sup> *Marshall v Marshall* 546 U.S. 293, 311–12

23. On July 5, 2016, Plaintiff Curtis, along with her domestic partner Rik Munson, both individually and as private attorneys general on behalf of the public trust, filed a RICO suit into the United States District Court for the Southern District of Texas, Houston Division (No. 4:16-cv-01969), accusing the Harris County Probate Court and its officers of public corruption conspiracies involving schemes and artifices to deprive Plaintiff Curtis, the People of Texas, and others, of the honest services of an elected public official.

24. The record will show the Probate Court has refused to resolve any substantive matter on the merits and the reason is clearly that no court can assume in rem jurisdiction over a res in the custody of another court. Thus, the probate court never had jurisdiction over the Brunsting trust, which renders the Order for remand to the state probate court void ab initio.

25. Rather than dismiss and return Curtis v Brunsting to the federal court, the RICO Defendants chose a less honorable course, forcing Plaintiff Curtis to respond accordingly.

26. On August 3, 2016, Plaintiff Curtis filed a F.R.C.P. Rule 11(b) motion for sanctions and F.R.C.P. Rule 60(b) and (d) motions for vacatur of the remand to state court, on the ground that the remand was obtained by fraud upon Plaintiff Curtis and upon the Court, thus vitiating the application to amend the original petition that facilitated the remand in the first instance.

27. Plaintiffs respectfully request this Honorable Court take Judicial Notice of the complaint, motions to dismiss and Plaintiffs' replies in the closely related proceedings pursuant to Federal Rules of evidence §201.<sup>5</sup>

### **STAGE OF THE PROCEEDINGS**

28. The RICO suit is in the opening phase and the initial conference is set for October 28, 2016 at 9:00 a.m. before the Honorable Alfred Bennett.

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<sup>5</sup> Case 4:16-cv-01969 TXSD Motions to dismiss Dkt 19, 20, 23, 25 and replies Dkt 33, 34, and 41

29. The earlier breach of fiduciary matter, Candace Curtis v. Anita and Amy Brunsting 4:12-cv-00592, is ripe for F.R.C.P. Rule 12(c) relief on the unresolved summary and declaratory judgment pleadings. Those motions have not been answered and the probate court refused to set the motions for hearing. A proper determination on the merits of those unresolved motions will be necessary to support the racketeering conspiracy and predicate act claims arising under the later filed RICO suit.

30. Plaintiff hereby incorporates by reference the Rule 11<sup>6</sup> and 60<sup>7</sup> motions referred to in item 18 supra, and the federal civil RICO complaint referred to in item 17 supra, as if fully restated herein, and further asks this Honorable Court to take Judicial notice of the relevant public records.

**MEMORANDUM IN SUPPORT OF RULE 42(A) MOTION**

31. Above named Plaintiff has moved this Court, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, to consolidate the following cases: Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, No. 4:12-CV-00592 (TXSD Filed 2/27/2012) and Curtis, et al. v Kunz-Freed, et al, No. 4:16-cv-01969 (TXSD Filed 07/05/16).

32. Plaintiffs' motion requests consolidation for the limited purposes of pre-trial proceedings and trial only, it does not request consolidation for the purposes of judgment or rights to appeal.

33. Rule 42(a) of the Federal Rules of Civil procedure provides:

*Rule 42. Consolidation; separate trials.*

*(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it*

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<sup>6</sup> Case 4:12-cv-00592 Document 120 Filed in TXSD on 08/05/16

<sup>7</sup> Case 4:12-cv-00592 Document 115 Filed in TXSD on 08/03/16



*may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.*

34. The purpose of Rule 42(a) "is to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties." *Wright & A. Miller, Federal Practice and Procedure, § 2381 (1971)*.

35. Local Rule 7.6 and Federal Rule of Civil Procedure 42(a) requires the motion be filed in the earlier Court and the above Court is the earlier Court. However, Federal Rule of Civil Procedure 42(b) prevents consolidation, when doing so would pollute diversity and deprive the Court of jurisdiction.

36. The earlier matter was filed under diversity with the allegation that Defendants were acting in secret and were uniquely in exclusive possession of all of the information relating to the case.

37. Plaintiff Curtis submitted a First Amended Complaint in the above Court on April 29, 2013, seeking to amend the claim to federal question jurisdiction based upon newly discovered evidence involving fraudulent securities transfers. That amendment was properly rejected by the Court due to Plaintiff's failure to provide a certificate of conference as required by local rule.

**BOTH ACTIONS INVOLVE COMMON QUESTIONS OF LAW AND FACT**

38. Rule 42(a) permits a district court to consolidate separate actions when they involve "a common question of law or fact." Fed.R.Civ.P. 42(a).

39. Even if there are some questions that are not common, consolidation is not precluded. *Batazzi v. Petroleum Helicopters, Inc., 664 F.2d 49, 50 (5th Cir. 1981)*; *See Central Motor Co. v. United States, 583 F.2d 470 (10th Cir. 1978)*.

40. Common questions of law and fact abound in these cases, as both stem from the same (long con) conspiracy and the later controversy is based upon evidence evolving out of Defendants' continued attempts to foreclose remedy in the trust suit case, aided and abetted by the state court and its officers.

41. It was the process of seeking remedy and Defendants' continued efforts to obstruct justice and evade accountability, that has produced a clear picture of a larger mosaic involving a pattern of racketeering activity targeting familial wealth.

42. Although the lawsuits were filed at separate times and in separate forums, and although multiple actions were improperly brought in state courts, all of it is, in fact, only one continuous event and therefore, it necessarily follows that the matter is particularly appropriate for consolidation.

#### **A COURT HAS BROAD DISCRETION IN ORDERING CONSOLIDATION**

43. A court has broad discretion in determining whether consolidation is practical. *Atlantic States Legal Foundation Inc. v. Koch Refining Co.*, 681 F. Supp 609, 615 (D. Minn. 1988). In exercising this discretion, a court should weigh the time and effort consolidation would save, with any inconvenience or delay it would cause. *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985); *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984). See also *Kramer v. Boeing Co.*, 134 F.R.D. 256 (D. Minn. 1991).

44. Consolidation offers efficiency and convenience in this case. Consolidation will result in one trial which will bind all plaintiffs and defendants. This will save time and avoid unnecessary costs to the defendants, the plaintiffs, this Court, and the witnesses who would otherwise be required to testify in both cases.

45. Consolidation will not delay the disposition of this case. In fact, it will minimize delays. The cases are at different stages of the discovery process, but this does not bar consolidation. (*United States v. City of Chicago*, 385 F. Supp. 540, 543 (N.D. Ill. 1974).

46. The earlier case was filed under diversity, but evidence discovered in the course of pursuing remedy has produced racketeer influenced corrupt organization claims under federal question jurisdiction and the record will show No. 4:12-cv-00592 has been brought back to the federal court in direct response to the probate court's unwillingness to ensure Plaintiff's right to be heard and blatant refusal to resolve any matter on the merits.

47. Consolidation is necessary to the ends of justice and for complete resolution of all matters for all parties and, whereas, the rules will not allow all of the related cases and necessary parties to be consolidated under diversity jurisdiction, all of the related cases and necessary parties can and should be consolidated under federal question jurisdiction pursuant to 28 U.S.C. §1367.

48. Thus, whether the economy and efficiency of the Court will best be served by transferring the federal question suit to this Honorable Court or by transferring the diversity case to Judge Bennett's Honorable Court, Plaintiffs' do not presume to suggest, but do believe that justice can only be served by consolidation of all related matters under one roof for all purposes.

### **CONCLUSION**

49. Jurisdiction of the probate court at the point in time when its jurisdiction was invoked, is a proper subject of inquiry under Rule 60. "Courts can always consider questions as to subject matter jurisdiction whenever raised and even sua sponte." *U.S. v. White*, 139 F.3d 998 cert den 119 S.Ct 343, 525 U.S. 393, 142 L.Ed.2d 283 (1998).

50. The remand Order is void ab initio for want of jurisdiction in the state court. Want of, and acts excess of, subject matter jurisdiction can never be cured after the fact. Furthermore,

Plaintiff Curtis was named a nominal defendant in the estates probate suit and simply cannot be consolidated with a plaintiff that has named her a defendant in the same lawsuit.

**STANDARD OF REVIEW**

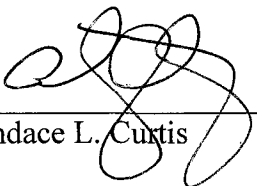
51. Rule 60(b) motions are reviewed for abuse of discretion. *American Bankers Ins. Co. v. Northwestern Nat'l Ins. Co.*, 198 F.3d 1332, 1338 (11th Cir. 1999); *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307, 1316 (11th Cir. 2000).

52. However, motions under Rule 60(b)(4), on the ground that a judgment is void are reviewed de novo. *Burke v. Smith*, 252 F.3d 1260,1263 (11th Cir. 2001).

WHEREFORE, Petitioner respectfully requests the motion for consolidation be granted.

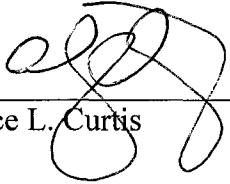
Respectfully submitted,

October 5, 2016

  
\_\_\_\_\_  
Candace L. Curtis

**CERTIFICATE OF CONFERENCE**

I certify that I have communicated with Defendants and they are opposed to the relief requested herein.

  
\_\_\_\_\_  
Candace L. Curtis

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on this 5th day of October, 2016, on the following via email and deposit in USPS Priority Mail:

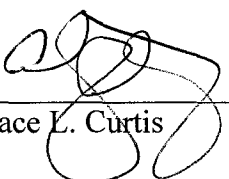
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Attorney for Anita Brunsting

I hereby certify that a true and correct courtesy copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on all parties this 5th day of October, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

  
\_\_\_\_\_  
Candace L. Curtis

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS	§	
Plaintiff	§	
	§	Civil Action No. 4:12-cv-00592
v	§	
	§	The Honorable Kenneth Hoyt
ANITA KAY BRUNSTING, et al	§	
Defendants	§	

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

**ORDER FOR CONSOLIDATION**

Upon consideration, the Motion for Transfer and Consolidation for pre-trial proceedings and trial, but not consolidation for the purposes of judgment and appeal (Doc. No. \_\_\_), filed by Plaintiff in Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, Civil Action No. 4:12-CV-00592, is hereby Granted.

The following actions are hereby consolidated for pre-trial proceedings and trial only: Civil Action No. 4:12-cv-00592 Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, (Filed TXSD 2/27/2012) and Civil Action No. 4:16-cv-01969 Curtis et al., v Kunz-Freed et al (Filed TXSD 7/05/2016).

All depositions, interrogatory responses, materials produced in response to requests for production, and responses to requests for admissions in any of these actions may be used in any

other action consolidated by this Order. All notices, requests, responses, motions and other filings relating to pretrial proceedings must be served on all counsel in each of these actions and bear the case caption for each action that has been consolidated pursuant to this order.

SO ORDERED

Date: \_\_\_\_\_, 2016

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The Honorable Kenneth Hoyt  
United States District Judge

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 Defendant Steven Mendel’s Motions to Dismiss (Dkt 36) Pursuant to Federal Rules of Civil Procedure 12(b)(6)**

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**I. INTRODUCTION**

1. 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 at 18 U.S.C. §§1961-1968 and the right of claims provided at 18 U.S.C. §1964(c). (Dkt 1)

2. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26) as a factual supplement incorporated into the RICO complaint by reference in response to Defendants Albert Vacek, Jr. and Candace Kunz-Freed's September 7, 2016 motions to dismiss (Dkt 19 and 20) claiming a want of specific factual allegations and other affirmative defenses.
3. On September 30, 2016, Defendant Steven Mendel filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6), (Dkt 36).
4. Mr. Mendel's motion also states that it is filed on behalf of Defendant Bradley Featherston. However, Mr. Featherston has refused to accept service and has not filed his waiver.

## II. THE ISSUES

- A. Defendant Steven Mendel advances the Texas doctrine of attorney immunity;
- B. States that he never had an attorney-client relationship with either of the plaintiffs;
- C. States that he only served as attorney in the defense of co-trustee Anita Brunsting involving a "*related probate case pending in Harris County Probate Court No. 4, under C.A. No. 412249-401, Estate of Nelva Brunsting, Deceased*";
- D. States that the allegations are vague, conclusory and fail to provide him with sufficient notice;
- E. That Mr. Mendel is current counsel for Co-Trustee Anita Brunsting;
- F. That it is impossible for him and Mr. Featherston to have been involved in a sham mediation because no mediation occurred.
- G. Mendel, like Anita and Amy Brunsting, introduces a new appellation for the "extortion instrument" not previously found in any pleadings called a Qualified Beneficiary Trust or "QBT".

### III. SUMMARY OF THE ARGUMENT

#### Jurisdiction

5. Each Defendant's motion to dismiss has thus far argued that the case before the court arises from a "probate matter" involving administration of an estate.

6. Plaintiffs challenge any claim of state court jurisdiction over Brunsting trust related matters. All of these Defendants' claims, including immunity, turn on inquiry into subject matter jurisdiction.

#### Metamorphosis

7. Plaintiff Candace Louise Curtis began this journey in the Southern District of Texas February 27, 2012 (4:12-cv-592). From there it evolved into a Fifth Circuit Appeal (12-20164) and returned to the Southern District of Texas January 9, 2013 (704 F.3d 406).

8. From there, Defendant Jason Ostrom arranged a remand to Harris County Probate Court No. 4, (first as 412249-402, then as 412249-401). Once in the probate court the Curtis v Brunsting trust litigation was mysteriously transformed into the "Estate of Nelva Brunsting" (Exhibit 1 and Dkt 34-9) and thereafter completely dissolved into the abyss like the docket control order and the scheduled trial that disappeared just as mysteriously.

### IV. CURTIS V BRUNSTING SURVIVED THE PROBATE EXCEPTION, IS NOT A PROBATE MATTER AND HAS NOTHING TO DO WITH THE ADMINISTRATION OF ANY ESTATE

9. The Fifth Circuit Court of Appeals in *Curtis v Brunsting* 704 F.3d 406, 409-410, held,

*No. 12-20164*

*In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust ("the Trust") for the benefit of their offspring. At*

*the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively “the Brunstings’ Wills”) appear to include pour-over provisions, providing that all property in each estate is devised and bequeathed to the Trust.*

*Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust.*

*HN6 Assets placed in an inter vivos trust generally avoid probate, since such assets are owned by the trust, not the decedent, and therefore are not part of the decedent's estate. In other words, because the assets in a living or inter vivos trust are not property of the estate at the time of the decedent's death, having been transferred to the trust years before, the trust is not in the custody of the probate court and as such the probate exception is inapplicable to disputes concerning administration of the trust.*

*HN7 Any property held in a revocable living trust is not considered a probate asset. Avoidance of probate perhaps is the most publicized advantage of the revocable living trust. Assets in a living trust are not subject to probate administration*

10. Curtis v Brunsting has been held not to be litigation related to the Estates of Elmer or Nelva Brunsting. Plaintiff Curtis is a beneficiary of inter vivos trusts and not an heir to either Estate, to which “The Trust” is the only heir in fact (Dkt 41-2 and 41-3).

### **Immunity**

11. All immunity defense claims turn on the question of subject matter jurisdiction.

12. Mendel claims he only served as an attorney in the defense of “co-trustee” Anita Brunsting, in litigation involving a “*probate case pending in Harris County Probate Court No. 4, under C.A. No. 412249-401, Estate of Nelva Brunsting, Deceased*” and, thus, claims the protection of the Texas Attorney Immunity Doctrine.

13. While refusing resolution on the merits, these Defendants, in concert, attempted to intimidate Plaintiff Curtis into agreeing to mediate, to avoid rendering unfavorable determinations that would have subjected the Court's want of jurisdiction to scrutiny.

14. The effort to avoid the obvious want of jurisdiction in the probate court, and the deliberate attempts to imposter jurisdiction while avoiding determination on the merits, cannot rationally be denied as is firmly evidenced in the transcript of March 9, 2016. (Dkt 26-16)

15. Defendants portray this conduct as judicial and litigious, but it is neither and the conduct is evidenced by the various, self-authenticating, court records.

16. Defendants have attempted to overturn the federal Fifth Circuit after being on the losing end of a fully litigated federal appellate determination and have since attempted to erase the federal court rulings and the federal injunction, by subterfuge.

17. "The Trust" was inarguably under the in rem jurisdiction of a federal Court when related claims were filed in state courts in Harris County Texas in the name of the Estates of Elmer and Nelva Brunsting. (Dkt 34-5 and 34-7)

18. Mr. Mendel does not provide any exhibits to support his claims and Plaintiffs are unaware of any instance in which Mr. Mendel or anyone associated with his firm filed an appearance, filed a motion or filed a responsive pleading in "Curtis v Brunsting".

19. Defendants can only show they filed motions and pleadings in the "Estate of Nelva Brunsting" and even when cases are consolidated for all purposes they do not lose their separate identities. What happened to Curtis v Brunsting after the remand to state probate court?

**“Curtis v Brunsting” vs. “Estate of Nelva Brunsting”**

20. There are neither trustees nor beneficiaries involved in any “Estate” litigation and there are neither heirs nor executors nor inheritance expectancies involved in any “trust” related litigation. The alleged co-trustees only exist in the context of “the trust” and, as it relates to the estate, the trust is the only heir in fact.<sup>1</sup>

21. As previously shown (Dkt 41, ln 25) Candace Curtis’ breach of fiduciary lawsuit against Anita and Amy Brunsting filed in the federal court on February 27, 2012, involves only the Brunsting trusts Curtis v Brunsting 704 F.3d 406, 409-410 (Dkt 26-17). Defendant Mendel cannot show where he ever responded to a Curtis v Brunsting motion (Dkt, 26-11, 26-14) even though all they ever addressed in the “estate of Nelva Brunsting” pleadings were the money cow trusts (Dkt 26-5, 6, 8, 9, 10, 13, 20).

22. The pleadings filed by Jason Ostrom in the probate court all bear the heading of “Estate of Nelva Brunsting” except notices of the federal pleadings and each of those bears an “Estate of Nelva Brunsting” cover page.

**Jurisdiction**

23. Because the trust res was under the in rem jurisdiction of a federal court when the estate lawsuit was filed in Harris County Probate 4, none of the Trust related claims were properly placed before that court.

24. As noted, the trust is the only heir to either estate and Carl Brunsting has no individual standing to bring any estate claims other than to challenge the wills, which he did not.

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<sup>1</sup> Dkt 41-2 and 41-3 Wills of Elmer and Nelva Brunsting

25. When we strip away Trust related claims from Bayless' "Estate" complaint nothing remains of the estate lawsuit. All of Bayless probate court claims involve the Trust and nothing but the Trust.

26. Even the District Court suit against Freed was filed in a court that could not take cognizance of a res in the custody of the federal Court and although an argument could validly be made against Vacek and Freed in the name of Elmer and Nelva Brunsting's Estates, they would none-the-less need to have been brought in the court having jurisdiction over the res. The question of whether or not the heir-in-fact Trust was the real party in interest and not the Estates would also need to be resolved.

27. A proper consolidation motion would have Curtis v Brunsting at the top in the heading, with the later filed cases each listed separately below that, one atop the other. Defendants instead chose to play the trust buster game of dissolving the distinctions between trust and estate.

28. They claim there was no conspiracy, but how do they explain the inarguable existence of public records evidencing these facts?

29. Want of subject matter jurisdiction in the probate court over any trust related matters strips these defendants of their attorney immunity defense and their conduct is subject to scrutiny in these proceedings, unclothed in the a priori illusion of legitimacy.

#### **Notice and Meaningful Opportunity to Be Heard**

30. The cornerstone of Due Process is fundamental fairness. Inherent in the notion of fairness is the right to know the nature and cause of an action, to be apprised of the claims and to have a meaningful opportunity to defend by way of answer or explanation. This is the essence of Rule

12(b)(6). It is not necessary that Defendant understand the law or the elements of a RICO claim, but need only be apprised of the facts that Plaintiff relies upon for their claim.

31. In his Rule 12(b)(6) motion Mendel claims the complaint fails to apprise him of sufficient facts to provide him with notice, while at the same time claiming to act as counsel for opposing litigants with extensive knowledge of contrary facts.

32. It is difficult to conceive of how Mr. Mendel could have insufficient notice of facts when Plaintiffs, in response to motions making similar claims, simply point to public records in the very same actions Mr. Mendel claims to have been involved in as an attorney.

### **Creative Pleading and Something Called a “QBT”**

33. Mr. Mendel’s Rule 12(b)(6) Motion, like Anita and Amy Brunsting’s, introduces for the first time in any pleadings, in any related action in any court, over a period of nearly five years, introduces something they call a “Qualified Beneficiary Trust” (QBT) allegedly drafted by Defendant Albert Vacek, Jr.

34. Defendants do not provide exhibits in support of this claim of facts and Docket entries 30, 35 and 36 are the only pleadings to be found in any court containing reference to a “QBT”.

35. Plaintiffs’ RICO complaint defines the “extortion instrument” at Claim number 24 paragraph 133, as “*the heinous 8/25/2010 “Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement” (hereinafter the “8/25/2010 QBD” or “Extortion Instrument”)*”.

36. One of the three versions of the 8/25/2010 QBD was filed by Defendant Anita Brunsting’s Counsel Bradley Featherston in the Estate of Nelva Brunsting 412249-401, on



December 8, 2014, and is included in the Addendum to Plaintiffs' RICO complaint with the other versions, Dkt 26-20 at E1349-E1386.

37. Plaintiffs' demand these Defendants produce this "QBT" and certify it for whatever it is they are claiming it to be and, while they are at it, Plaintiffs' demand they produce the 8/25/2010 QBD, the instrument referred to by Defendants Amy, Anita, Brad and Neal, in their joint June 26, 2015 no-evidence motion for partial summary judgment, and qualify it as evidence for whatever they claim it to be as well.

### **Intimidation with the Extortion Instrument**

38. As stated in the Addendum, on June 26, 2015 Defendants Anita and Amy Brunsting, through their attorneys, Bradley Featherston and Neal Spielman, filed a "No-Evidence Motion for Partial Summary Judgment" (DKT 26-5) involving an instrument called "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" or "QBD".

39. Plaintiff Curtis responded by filing an "Answer with Motion and Demand to Produce Evidence" (Dkt 26-11). As the Addendum states, Defendants tried to make good on their "no-contest clause" extortion threats when they filed their Joint No-Evidence Motion for Partial Summary and Declaratory Judgement (Dkt 26-5) and then removed their no-evidence motion from calendar, with their tail between their legs, when Plaintiff Curtis filed her answer and demand to produce the archetype of the instrument. (Dkt 26-11).

40. Suddenly there is no more docket control order, no more dispositive motion hearings and no more trial date, allegedly because of an "emergency Motion" over the "dissemination" of illegal wiretap recordings by Anita Brunsting's counsel Bradley Featherston.

41. Neal Spielman and Stephen Mendel then show up on March 9, 2016 (Dkt 26-16 Transcript) waiving the Gregory Lester/Jill Willard Young report in the air (Dkt 26-9) and talking about how the no contest clause in the illicit QBD instrument had been held to have been validly drafted by Vacek & Freed, (according to the Gospel of Jill Willard and Gregory Lester), and that Plaintiffs Candace Curtis and Carl Brunsting would take nothing if the court were to rule on the no contest clause. It is literally impossible to view any of that as an estate matter.

42. Mr. Mendel was personally present at the September 10, 2015 hearing on Gregory Lester's application for authority to retain Jill Young and was personally present at the March 9, 2016 hearing scheduled as a result of Plaintiff Curtis request to have dispositive motions placed back on the hearing calendar (Dkt 26-15 Request for Hearing).

43. The only thing indisputable in that transcript of hearing (Dkt 26-16) is that every effort was made to pretend the court had jurisdiction, to avoid setting dispositive motions, to avoid producing the extortion instrument and determination on the merits, to avoid joinder of closely related cases, and to attempt intimidation to cause Plaintiff Curtis to think she needed to get out her check book to pay for a mediation to avoid taking nothing under the "no contest clause" of the heinous "QBD" extortion instrument Defendants refuse to produce. (Dkt 26-16)

44. It was Carole Brunsting and not Plaintiff Curtis who cancelled the scheduled mediation (Exhibit 2)

45. The Defendants have had almost five years to produce their precious "QBD" and after having refused or otherwise failed to do so, it has somehow become a "QBT".

46. The United States Attorney's Criminal Resource Manual CRM 2403 defines Extortion by Force, Violence, or Fear as follows:

*In order to prove a violation of Hobbs Act extortion by the wrongful use of actual or threatened force, violence, or fear, the following questions must be answered affirmatively:*

- 1. Did the defendant induce or attempt to induce the victim to give up property or property rights?*
- 2. Did the defendant use or attempt to use the victim's reasonable fear of physical injury or economic harm in order to induce the victim's consent to give up property?*

47. Both of these inquiries are answered by the transcript of the March 9, 2016 status conference, set because of Plaintiffs Curtis' request for setting. (Dkt 26-15)

48. Defendants Anita and Amy Brunsting and now Stephen Mendel have all filed motions to dismiss under Rule 12(b)(6), (Dkt 30, 35, 36) claiming they "believe" the instrument referred to as the extortion instrument is some Qualified Beneficiary Trust or "QBT".

### **Mediation**

49. The chronology of events provided in the Addendum to Plaintiffs' complaint (Dkt 26) beginning at Item VIII, ln. 62, pg. 12, shows the sequence of events compelling Plaintiffs to bring claims involving impartial forum, access to the court and other due process, civil rights, fraud and related racketeering claims.

50. As the Complaint makes clear in Claims 16-21, illegal wiretap recordings were disseminated by certified mail (July 2015), among counsel for the parties to the Brunsting related lawsuits, after Defendants filed their June 26, 2015 no evidence motion (Dkt 26-5). There was no perceivable legal relationship between those recordings and any substantive matter then pending.

51. Dissemination of the recordings was none-the-less used as the excuse for suspending the litigation after Defendants had set their no-evidence motion for hearing and after Bayless had set her summary judgment motion for hearing, but were then used as an excuse to remove summary

judgement hearings and trial, without notice, without hearing and without an order, after Plaintiff Curtis filed her Answer and Demand to Produce Evidence (Dkt 26-11).

52. Suddenly, an emergency motion involving dissemination of irrelevant and illegally obtained private telephone communications replaces meritorious resolution of the controversy, and there is no evidentiary support for any scheduling changes in the record.

### **Wiretap Recordings**

53. All three Defendants, Anita, Amy and Mendel offer a completely different version of the facts regarding wiretap recordings from that contained in the Complaint, as verified by the probate court record. As with all of the contrary factual assertions made by these Defendants, they do not provide any form of affidavit or exhibits in support of their claims.

54. Plaintiff Curtis' wiretap brief gives the lie to these claims (Exhibit 3 attached) as does Defendant Anita and Amy Brunsting's reply to Carl Brunsting's Emergency Motion for a Protective Order (Dkt 26-8). The other exhibits in the record relating to the wiretap recordings are Dkt 26-6-Carl Brunstings motion for protective order and, Dkt 26-12- transcript of protective order hearings.

### **V. DEFENDANT DISPLAYS A PENCHANT FOR ARGUING HIS OWN MISSTATEMENTS**

55. Defendant Mendel misstates the Complaint and then makes facially-compelling arguments against the fallacy of his own claims (Dkt 36 Pg. 1, Ln. 1.2):

*“By way of example and not as a limitation, Mr. Featherston is alleged to have engaged in illegal wiretapping”*

56. Mr. Mendel does not quote any part of the Complaint nor does he reference any particular provisions of the Complaint with specificity. The claims relating to wiretap activity are numbered 16-21. Claims 16-19 specifically allege “manipulation” occurring in February of 2015 regarding four different recording segments, while claims 20 and 21 allege “in Concert Aiding and Abetting: Spoliation, Destruction and/or Concealing Evidence”.

57. While Mendel would lead the Court to believe the Complaint alleges Featherston was involved in the recordings themselves, the Complaint makes no such claim and no such claim is necessary to a claim of aiding and abetting.

58. The act of placing those recordings in the U.S. Mail amounts to participation, as those recordings were used in a conspiracy to deprive Plaintiff Curtis of the honest services of a court.

59. The RICO allegations include statements such as that contained in claim 21 at paragraph 129:

*Implicit in the assertion the recordings were relevant and the content admissible, Defendants claimed to possess personal knowledge that: “(1) the recording device was capable of recording the events offered in evidence; (2) the operator was competent to operate the device; (3) the recording is authentic and correct; (4) changes, additions, or deletions have not been made in the recording; (5) the recording has been preserved in a manner that is shown to the court; (6) the speakers on the tape are identified; and (7) the conversation elicited was made voluntarily and in good faith, without any kind of inducement.”*

60. Mendel however, at paragraph 1.2, refers to such statements as vague, speculative, and conclusory and based upon inference, which more accurately describes the motion to dismiss than the complaint.

61. Another example of Mendel’s proclivity for arguing his own misstatements is paragraph 127 as follows:

*On or about July 1, 2015, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, for the purpose of executing or attempting to execute the scheme and artifice to defraud and deprive, Defendants Anita Brunsting and Bradley Featherston, aided and abetted by persons known and unknown to Plaintiffs and aiding and abetting persons known and unknown to Plaintiffs, did unlawfully, willfully and knowingly cause illegal wiretap recordings of private telephone conversations between Carl Brunsting and his wife Drina Brunsting, to be delivered by certified mail to Plaintiff Curtis and the third party attorneys for parties in multiple pending lawsuits, in violation of 18 U.S.C. §2511(1)(c) and Texas Penal Code 16.02. The illegal wiretap recordings selectively disseminated on CD-ROM, are believed to have been made on or about March and April 2011. The CD contained items which were Bates numbered 5814 to 5840. Included among those items were the following four audio recordings:<sup>2</sup>*

62. One is curious to know where Mendel gets the notion Featherston is “*alleged to have engaged in illegal wiretapping*”? Dissemination of illegally obtained wiretap recordings violates the wiretap laws, and is the actual participation Mr. Featherston is accused of.

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

63. 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**

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

65. Plaintiff Curtis’ beneficial interest is property, not an inheritance or expectancy.

66. 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

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<sup>2</sup> Excerpted from Carl Brunstings Motion for Protective Order filed July 17, 2015.

lifetime of a grantor. The trust was also in the custody of the federal Court when all of the state court actions were filed.

## VI. STANDARD OF REVIEW

67. Rule 12(b)(1) permits the dismissal of an action for the lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "If [a federal] court determines at any time that it lacks subject-matter jurisdiction, [it] must dismiss the action." Fed. R. Civ. P. 12(h)(3); *see also Berkshire Fashions, Inc. v. M V. Hakusan II*, 954 F.2d 874, 880 n.3 (3rd Cir.1992) (citing *Rubin v. Buckman*, 727 F.2d 71, 72 (3d Cir. 1984)) (reasoning that "[t]he distinction between a Rule 12(h)(3) motion and a Rule 12(b)(1) motion is simply that the former may be asserted at any time and need not be responsive to any pleading of the other party.") Since federal courts are considered courts of limited jurisdiction, absent jurisdiction conferred by statute, they lack the power to adjudicate claims. *See, e.g., Stockman v. Fed Election Comm'n*, 138 F.3d 144, 151 (5th Cir. 1998) (citing *Veldhoen v. United States Coast Guard*, 35 F.3d 222, 225 (5th Cir. 1994)). Therefore, the party seeking to invoke the jurisdiction of a federal court carries "the burden of proving subject matter jurisdiction by a preponderance of the evidence." *Vantage Trailers, Inc. v. Beall Corp.*, 567 F.3d 745, 748 (5th Cir. 2009) (citing *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 533 F.3d 321, 327 (5th Cir. 2008); *see also Stockman*, 138 F.3d at 151).

68. In this case, jurisdiction is challenged under both Rule 12(b)(1), and the lack of sufficient factual allegations under Rule 12(b)(6). Federal Rule of Civil Procedure 12(b)(6) authorizes a defendant to move to dismiss for "failure to state a claim upon which relief may be granted." Fed. R. Civ. P. 12(b)(6). Under the demanding strictures of a Rule 12(b)(6) motion, "[t]he plaintiff's complaint is to be construed in a light most favorable to the plaintiff, and the

allegations contained therein are to be taken as true." *Oppenheimer v. Prudential Sec., Inc.*, 94 F.3d 189, 194 (5th Cir. 1996) (citing *Mitchell v. McBryde*, 944 F.2d 229, 230 (5th Cir. 1991)). Dismissal is appropriate only if, the "[f]actual allegations [are not] enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965, 167 L.Ed.2d 929 (2007).

69. In light of Federal Rule of Civil Procedure 8(a)(2), "[s]pecific facts are not necessary; the [factual allegations] need only 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007) (per curiam) (quoting *Twombly*, 550 U.S. at 555, 127 S.Ct. at 1964. Evenso, "a plaintiffs obligation to provide the 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555, 127 S. Ct. at 1964- 65 (citing *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L.Ed.2d 209 (1986).

70. Therefore, "[t]o survive a motion to dismiss, 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, 129 S. Ct. 1937, 1949, 173 L. Ed.2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570, 127 S. Ct. at 1974). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556, 127 S. Ct. at 1955). "But where the well-pleaded facts do not permit the court to infer more than the mere



possibility of misconduct, the complaint has to alleged-but it does not have to 'show -'that the pleader is entitled to relief.'" Ashcroft, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

71. Nevertheless, when considering a 12(b)(6) motion to dismiss, the Court's task is limited to deciding whether the plaintiff is entitled to offer evidence in support of his or her claims, not whether the plaintiff will eventually prevail. Twombly, 550 U.S. at 563, 1969 n.8 (citing Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed.2d 90 (1974)); see also Jones v. Greninger, 188 F.3d 322,324 (5th Cir. 1999).

## VII. CONCLUSION

72. The Honorable Kenneth Hoyt stated at the injunction hearing April 9, 2013 that all that was needed to wrap the trust litigation up was to distribute the assets, and he was correct.

73. Defendants Anita and Amy Brunsting refuse to honor any of the duties of the office while their attorneys use the 8/25/2010 QBD to threaten Plaintiff Curtis and her disabled brother Carl Brunsting with loss of property rights for bringing action to protect those rights and compel specific performance. Each of these Defendant attorneys fully intended to line their own pockets with filthy lucre at the expense of Plaintiff Curtis, her sister Carole, and her disabled brother Carl.

74. Probably the most alarming aspect of all this is that in a situation where the probate court actually had jurisdiction the exact conduct complained of here would all too often be granted Judicial and Texas Attorney Immunity without resort to the canons to consider whether such conduct is in fact judicial or litigious.

Wherefore, Plaintiffs move this Honorable Court for an Order denying the Motion to Dismiss (Dkt 36) filed by Defendant Stephen Mendel, September 30, 2016.

Respectfully submitted October 14, 2016,

/s/ Candace L. Curtis  
Candace L. Curtis

/s/ Rik W. Munson  
Rik W. Munson

### **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, 14 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Rik W. Munson  
Rik W. Munson

The purpose for creating an inter vivos trust is to keep attorneys from stealing assets under the usual probate charade. These attorneys with the blessings of the Probate Court have tried to erase those distinctions hoping to convert assets of the trust into assets involved in a controversy over the administration of an estate.

DV

FILED  
2/5/2015 2:47:28 PM  
Stan Stanart  
County Clerk  
Harris County**DATA-ENTRY  
PICK UP THIS DATE****PROBATE COURT 4**

CAUSE NO. 412,249

IN RE: ESTATE OF

§

IN THE PROBATE COURT

NELVA E. BRUNSTING,

§

NUMBER FOUR (4) OF

DECEASED

§

HARRIS COUNTY, TEXAS

§

**PLAINTIFF'S APPLICATION FOR PARTIAL DISTRIBUTION**

TO THE HONORABLE PROBATE COURT:

COMES NOW, Plaintiff, Candace Louis Curtis, and files this Application for Partial Distribution of Trust Funds and in support thereof would show the Court as follows:

1.

Plaintiff is a beneficiary under the Brunsting Family Trust, which is currently the subject of multiple lawsuits pending in this Court, one of which was transferred to this Court from the Federal Court where it had originally begun. That transfer was subject to a Temporary Injunction that had been ordered by the Federal Court that enjoined the distribution of Trust Funds without a court order. *See Ex. A, Injunction.*

2.

Plaintiff has a right to receive funds from this Trust as necessary for her health, education, maintenance and support. The Trust is currently subject to litigation because of the Trustees' misdeeds, and those Trustees are enjoined from exercising their discretion. *See Ex. A, Injunction.* There is no allegation that Plaintiff has breached her fiduciary duty to the Trust and thus no possibility that she will have to disgorge ill-gotten gains back to the Trust. The only question surrounding Plaintiff's ultimate distribution is how much money she will ultimately receive after the Defendant Trustees are found guilty of breaching their duties.

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3.

Because no Trustee can exercise discretion in favor of Plaintiff and make a distribution of her funds to her, Plaintiff moves this Court to make a partial distribution of her share of the Trust to her in the amount of \$40,000.00. Plaintiff's interest in the Trust is well in excess of \$40,000.00. Based upon the most recent bank statements available to Plaintiff, the total cash held by the Trust is \$695,805.63, which makes Plaintiff's 1/5 share equal to \$139,161.13. That value does not include real property or stocks which are held in addition to that cash. That value also does not include property improperly distributed to or on behalf of Defendants Anita, Amy or Carole Brunsting and which Plaintiffs anticipates will be ordered restored to the Trust. Plaintiff needs this distribution for her maintenance and support and requests that the Court authorize and order the same.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Candace Curtis respectfully prays that her Application for Partial Distribution of Trust Funds be granted, that the Trustee be ordered to distribute to Candace Curtis the sum of \$40,000.00 out of the Brunsting Family Trust, and for such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

  
\_\_\_\_\_  
Candace Curtis

02062015:1143:P0071

OF COUNSEL:

ostrommorris, PLLC

BY: 

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

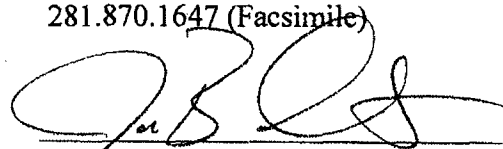
I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Texas Rule of Civil Procedure 21a on the following on the 5<sup>th</sup> day of February, 2015:

Ms. Bobbie Bayless  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224  
713.522.2218 (Facsimile)

Ms. Darlene Payne Smith  
1401 McKinney, 17<sup>th</sup> Floor  
Houston, Texas 77010  
713.752.8640  
713.425.7945 (Facsimile)

Mr. Bradley Featherston  
1155 Dairy Ashford Street, Suite 104  
Houston, Texas 77079  
281.759.3213  
281.759.3214 (Facsimile)

Mr. Neal Spielman  
1155 Dairy Ashford, Suite 300  
Houston, Texas 77079  
281.870.1124  
281.870.1647 (Facsimile)

  
Jason B. Ostrom/R. Keith Morris

02062015:1143:P0072

# Exhibit A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

TRUE COPY I CERTIFY  
ATTEST:

DAVID J. BRADLEY, Clerk of Court  
By M. Flores  
Clerk

CANDACE LOUISE CURTIS,

Plaintiff,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

§  
§  
§  
§  
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§  
§

CIVIL ACTION NO. 4:12-CV-592

**MEMORANDUM AND ORDER**  
**PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

Before the Court is the *pro se* plaintiff's, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendants', Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiff's renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiff's motion for a temporary injunction should be granted.

**II. BACKGROUND**

**A. Procedural Background**

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust ("the Trust"). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a



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recovery of legal fees and damages. The Court denied the plaintiff's request for a temporary restraining order and for injunctive relief. However, concurrent with the Court's order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendants' argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiff's case.

The plaintiff gave notice and appealed the Court's dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Court's dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiff's renewed motion for injunctive relief that is now before the Court.

***B. Contentions of the Parties***

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to "provide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting." According to the plaintiff,



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the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiff's request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Court's power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

### III. STANDARD OF REVIEW

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The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway*, 489 F.2d at 572-73.

### IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

02062015:1143:P0076

presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.<sup>1</sup> At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment.

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<sup>1</sup> It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

02062015:1143:PO077

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19<sup>th</sup> day of April, 2013.



Kenneth M. Hoyt  
United States District Judge

02062015:149:P007B

CAUSE NO. 412,249

IN RE: ESTATE OF  
NELVA E. BRUNSTING,  
DECEASED

§  
§  
§  
§

IN THE PROBATE COURT  
NUMBER FOUR (4) OF  
HARRIS COUNTY, TEXAS

ORDER GRANTING PARTIAL DISTRIBUTION OF TRUST FUNDS

On this day came to be considered the Application for Partial Distribution of Trust Funds filed by Candace Louis Curtis, and the Court is of the opinion and finds that it should be granted.

It is, therefore,

ORDERED that the Trustee of the Brunsting Family Trust pay to Candace Curtis the sum of \$40,000.00 within seven days of this Order. It is further,

ORDERED that this distribution shall be recorded as a partial distribution of the total value of Candace Curtis's share of the Brunsting Family Trust.

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JUDGE PRESIDING

APPROVED AS TO FORM:

ostrommorris, PLLC

BY: 

JASON B. OSTROM  
(TBA #24027710)  
jason@ostrommorris.com  
R. KEITH MORRIS, III  
(TBA #24032879)  
keith@ostrommorris.com  
6363 Woodway, Suite 300  
Houston, Texas 77057  
713.863.8891  
713.863.1051 (Facsimile)

Attorneys for Plaintiff

---

**Subject:** Re: Automatic reply: Cause No. 412249101 and 413249401

---

**From:** Bobbie G Bayless (bayless@baylessstokes.com)

---

**To:** cbrunsting@sbcglobal.net; steve@mendellawfirm.com; nspielman@grifmatlaw.com; occurtis@sbcglobal.net; zfoley@thompsoncoe.com;

---

**Date:** Tuesday, July 5, 2016 8:56 AM

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Carole--it isn't clear from your email, but are you asking to reset this to another date? If so, we need to try to see about getting on Judge Davidson's calendar with another date asap.

----- Original Message -----

**From:** [Carole Brunsting](#)  
**To:** [Bobbie G Bayless](#) ; [Steve Mendel](#) ; [Neal Spielman](#) ; [Candace Curtis](#) ; [Foley, Zandra](#)  
**Sent:** Monday, July 04, 2016 9:22 PM  
**Subject:** Re: Automatic reply: Cause No. 412249101 and 413249401

All

As much as I want to get this case resolved I cannot make the mediation next week. The company I work for was purchased by Schlumberger a couple of months ago and it has caused a lot of changes. Last week we were informed of a company meeting that involves our division on the 12th and my boss strongly suggested I be there as they are going to begin to consolidate the finance departments.

Very sorry to have to do this but I don't really have a choice over the timing.

Thanks  
Carole

On Wednesday, June 29, 2016 3:31 PM, Bobbie G Bayless <[bayless@baylessstokes.com](mailto:bayless@baylessstokes.com)> wrote:

FYI--I got this automatic reply when I sent the email to Zelda Russell.

----- Original Message -----

**From:** [Zelda Russell](#)  
**To:** [Bobbie G Bayless](#)  
**Sent:** Wednesday, June 29, 2016 3:23 PM  
**Subject:** Automatic reply: Cause No. 412249101 and 413249401

I will be out of the office from Monday, June 27, 2016 - Monday, July 4, 2016 returning Tuesday, July 5 16, 2016. If you need to schedule a mediation, please email me and I will reply upon my return to the office on Wednesday, July 5, 2016. Judge Davidson's calendar is full for the month of July. If you need to cancel a mediation, please email Judge Davidson at [mdljudge@yahoo.com](mailto:mdljudge@yahoo.com).

Thank you,  
Zelda

17-20360.2736

DV

FILED  
8/10/2015 12:00:00 AM  
Stan Stanart  
County Clerk  
Harris County

NO. 412,249-401

PROBATE COURT 4

CANDACE LOUISE CURTIS

IN PROBATE COURT

*Plaintiff,*

V.

NUMBER FOUR (4) OF

ANITA KAY BRUNSTING, ET AL

*Defendants.*

HARRIS COUNTY, TEXAS

**RESPONSE TO DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S  
MOTION FOR PROTECTIVE ORDER**

The Court has raised very valid issues regarding the questions before it, and has asked to be briefed. Plaintiff Curtis therefore submits the following analysis of the questions raised and, although seemingly complex at first view, the matter is really quite simple. There is only one primary premise and thus the first principles require answer to only one inquiry, which is whether or not the interception and dissemination of the challenged electronic communications was lawful.

Plaintiff will respectfully show that the greater weight of un rebutted presumptions falls in favor of the illegality of the recordings, and that judicial discretion would best be exercised with caution, as the Court cannot allow dissemination without proof of the legality of the recordings without also becoming a principal to the crime of dissemination.<sup>1</sup>

**Summary of the Argument**

1. The recordings are evidence of illegally intercepted electronic communications, a second degree felony<sup>2</sup> in Texas with a moderate severity level.
2. Illegally intercepted electronic communications may not be received in evidence nor exchanged under the pretext of discovery in any civil action, as unauthorized possession or dissemination of illegally intercepted electronic communications is a second degree felony which, as noted, the Court would be unwise to participate in.

<sup>1</sup> Collins v. Collins, 904 S.W.2d 792 (Tex. App. 1995)

<sup>2</sup> Texas [Penal] Code Annotated Sections 12.33, 12.35, 16.01 (West 1997); 1997 Tex. Gen. Laws 1051; Texas [Civil Practice and Remedies] Code Annotated Sections 123.002, 123.004 (West 1997); Texas Code of Criminal Procedure Annotated Article 18.20 (West 1997).



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3. The burden of bringing forth evidence is on the proponents of the legality and admissibility of the recorded wiretap conversations, as the presumption that intercepted electronic communications found in the possession of third parties, meaning persons not privy to the conversations, are presumed unlawful and the burden of showing that the challenged recordings meet one of the statutory exceptions is upon the Defendant disseminators.
4. The Court is without discretion and no agreement is necessary. Under the circumstances here, the Court must issue a protective order, even if only temporary, pending resolution of the issue of whether or not interception and dissemination of the challenged electronic communications was lawful.
5. The attached exhibits in a chronology of relevant events reveals that the recordings are the fruit of an illicit conspiracy targeting Carl and Drina that did not involve Nelva Brunsting and, Defendants' unanimous claims are defeated in their own words uttered at or about the time of the recordings, as hereinafter more fully appears.

#### Texas Authority on Admissibility

The admissibility of evidence illegally obtained is tempered by Tex.R.Civ.Evid. 402, which provides in pertinent part that, "[a]ll relevant evidence is admissible, except as otherwise provided ... by statute." Consequently, before the recordings can be held to be inadmissible, the Plaintiff(s) must show their exclusion is required under either the federal or state statute. Section 2511(1) of the federal wiretap statute<sup>3</sup> prohibits the use or disclosure of communications by any person except as provided by statute. *Gelbard v. United States*, 408 U.S. 41, 51-52, 92 S.Ct. 2357, 2363, 33 L.Ed.2d 179 (1972) (witness could not be forced to disclose testimony from illegal wiretap to grand jury).

Section 123.002 of the state wiretap statute states that a party has a cause of action against any person who "divulges information" that was obtained by an illegal wiretap. TEX.CIV.PRAC. & REM.CODE § 123.002.

Section 123.004 states that a party whose communication is intercepted may ask the court for an injunction prohibiting the "divulgence or use of information obtained by an interception." TEX. CIV.PRAC. & REM.CODE § 123.004.

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<sup>3</sup> Title III of the Omnibus Crime Control and Safe Streets Act of 1968, more commonly known as the "Wiretap Act," is found at 18 U.S.C. §§ 2510-2522.

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Although the Texas wiretap statute does not specifically provide for the exclusion of illegally obtained "communications," the provisions for a cause of action for divulging wiretap information and the injunctive remedies provided in section 123.004 are sufficient to rebut the presumption of admissibility under rule 402.

Because the tapes were illegally obtained under the federal and state statutes, the trial court should not allow their dissemination, or admit them into evidence, under the exception provided at Tex.R.Civ.Evid. 402.

The recorded conversations are not admissible because the criminal statute dealing with the use of the intercepted communications criminalizes their dissemination, and the civil statute provides a method to prevent dissemination.

*To permit such evidence to be introduced at trial when it is illegal to disseminate it would make the court a partner to the illegal conduct the statute seeks to proscribe. Gelbard, 408 U.S. at 51, 92 S.Ct. at 2362-63; Turner, 765 S.W.2d at 470.*

#### Exceptions

In addition to the numerous governmental or agency exceptions to the general rule, it is not unlawful to intercept any form of wire, oral or electronic communications between others if one of the persons is a party to the communication or one of the parties has given their consent to the interception. Tex. Civ. Prac. & Rem. Code §123.001(2); Tex. Pen. Code §16.02(c)(3)(A); 18 U.S.C §2511(2)(c); Kotrla v. Kotrla, 718 S.W.2d 853, 855 (Tex. App. - CorpusChristi 1986); See also, Hall v. State, 862 S.W.2d 710(Tex. App. - Beaumont 1993, no writ); Turner v. PV International Corporation , 765 S.W.2d 455, 469-71(Tex. App. - Dallas 1988, writ denied per curiam, 778S.W.2d 865 (Tex. 1989).

#### Interception, Possession, and Dissemination

The Right to Privacy is the Controlling Presumption

The right to privacy is held in such high esteem that the U.S. Congress and the Texas Legislature have both made it a felony to illegally intercept, possess or disseminate electronic communications. There are very limited exceptions none of which apply here.

The mandatory but rebuttable presumptions are that the participants to these phone conversations had a reasonable expectation of privacy; that the right has been violated and; that the burden of showing the interception of those electronic communications meets one of the statutory exceptions is upon persons who were themselves not a party to the private electronic



08/12/2015 10:20: P0205

communications, but who we find to be in possession of and disseminating the challenged recordings.

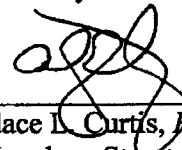
Defendants have produced no evidence tending to show that the intercepted electronic communications meet any of the lawful exceptions and the ball is in their court. If the wiretap recordings cannot be shown by the Defendants to meet one of the statutory exceptions, the recordings are prima facie unlawful, regardless of any alleged motives for their interception.

While no more than the foregoing law and fact summary is essential to the disposition of the singular issue before the Court, it seems necessary to address Defendants' unanimously disingenuous assertions and thus Plaintiff does so with the attached Memorandum.

The attached memorandum on the matter of context and color, with attached exhibits, is hereby incorporated by reference as if fully restated herein.

Plaintiff Curtis respectfully submits the following proposed order.

Respectfully submitted,



---

Candace L. Curtis, *Pro se*  
218 Landana Street  
American Canyon, California 94503  
[ocurtis@sbcglobal.net](mailto:ocurtis@sbcglobal.net)  
925-759-9020

#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 9<sup>th</sup> day of August 2015, to the following via email:

Attorneys for Anita Kay Brunsting

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09/12/2015 10:20: P0206

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attorney-in-fact for Carl Henry Brunsting:

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[bayless@baylessstokes.com](mailto:bayless@baylessstokes.com)

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Houston, Texas 77010  
[dsmith@craincaton.com](mailto:dsmith@craincaton.com)

  
CANDACE L. CURTIS

2020:0201:51020:P0207

No. 412,249-401

IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

TEMPORARY PROTECTIVE ORDER

On August 3, 2015 the Court heard and considered CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER and Defendants' response thereto.

At issue are recordings of intercepted electronic communications between Plaintiff Carl Henry Brunsting and his wife Drina.

After hearing on the merits and reviewing briefs submitted by the parties, the Court is of the opinion that the recordings in point are "Protected Communications" as that term is defined at 18 U.S.C. §§2510(1) & 2510(12) and that a protective order is necessary to protect privacy rights pending disposition of the pending questions at issue.

IT IS THEREFORE ORDERED that any person or entity subject to this Order-including without limitation the parties to this action, their representatives, agents, experts and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order -shall adhere to the following terms, upon pain of contempt and any other applicable civil or criminal penalties:

1. No person or entity shall, in response to a request for discovery or subpoena issued in this action, produce any Protected Communication for any third party or person absent further order of this Court.
2. To the extent a Protected Communication is or has already been produced in response to a request for discovery or subpoena issued in this action, any recipient of such production shall (a) immediately surrender any and all documents that contain or

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reflect a Protected Communication to real party in interest Carl Henry Brunsting through his Counsel of Record and (b) destroy any copies made of such Protected Communication, as well as any derivative materials that reflect a Protected Communication on any medium of storage whatsoever.

3. Any party to this action that issues a request for discovery or subpoena calling for the production of a Protected Communication shall simultaneously provide the recipient of the discovery request or subpoena with a copy of this Protective Order. To the extent a party to this action has already issued such a request or subpoena, such party shall provide a copy of this Protective Order to the recipient within three (3) business days of the entry of this Order.

4. Any person who receives a request for discovery or subpoena in this action calling for the production of a Protected Communication shall, without revealing the substance or content of a Protected Communication, provide both the issuing party and the Court with a general description of that Protected Communication so that the issuing party can make an application to this Court for production of that Protected Communication, and that Plaintiff Carl Henry Brunsting can respond to that application.

IT IS FURTHER ORDERED that on or before \_\_\_\_\_, sworn affidavits are to be provided by Defendants Anita Brunsting, Amy Brunsting, and Carole Brunsting, stating any personal knowledge with regard to every recording made since July 1, 2010 within the following categories:

- All audio or video recordings of meetings, conversations, telephone messages, or other communications with Elmer, Nelva, or any of the Brunsting Descendants concerning Brunsting Issues,
- All audio or video recordings of Nelva's execution of any documents.
- All audio or video recordings of evaluations of Nelva's capacity,
- All other audio or video recordings of any Brunsting family member, and
- All investigations made of any Brunsting family member, including any surveillance logs or reports.

08/11/2015 10:20: P0209

The sworn affidavits shall identify every party involved in making the recordings and specify the date, location, and means used to make the recordings, the current location of all original recordings and all copies of all recordings, all parties to whom the contents of recordings have been disclosed, and all uses which have been made of the recordings.

IT IS SO ORDERED!

Signed August, \_\_\_\_\_, 2015.

\_\_\_\_\_  
Christine Butts, Judge  
Harris County Probate Court No. 4

08112015:1020:P0210

NO. 412,249-401

CANDACE LOUISE CURTIS

*Plaintiff,*

V.

ANITA KAY BRUNSTING, ET AL

*Defendants.*§  
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IN PROBATE COURT

NUMBER FOUR (4) OF

HARRIS COUNTY, TEXAS

**MEMORANDUM OF FACTS SUPPORTED BY DEFENDANTS' OWN DISCLOSURES**

Plaintiff Candace Louise Curtis respectfully submits for the perusal of the Court this memorandum of facts adding to the inquiry context and color revealing the true nature of the intentions behind the unlawful interception and dissemination of the private electronic communications at issue.

**Statement of the Issue**

Recordings of private electronic telephone conversations between plaintiff Carl Brunsting and his wife Drina Brunsting have been disseminated to all of the parties to the present lawsuits. These recordings, if any, were requested by Plaintiff Brunsting to be produced by the Defendants in the Petition for Deposition Before Suit filed by Carl Brunsting March 9, 2012, when there were no other parties, however, the recordings were not disclosed until July 5, 2015.

Plaintiff Carl Henry Brunsting, along with his wife and attorney in fact Drina Brunsting, challenged the recordings as the product of the illegal interception of electronic communications, in violation of state and federal wiretap laws, and thus seek protective orders.

In DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER Defendants unanimously assume the following postures:

1. *It is certainly understandable that Drina has such opposition to the recordings because it proves that Nelva was planning for Drina and Carl's divorce and that Nelva felt Carl's medical condition made him unable to serve as a trustee.*
2. *On information and belief, all audio recordings came from an answering machine which Carl either intentionally set up to record the calls and/or which triggered in accordance with its own operation. Either way, one-if not both-participants had full knowledge that he/she was being recorded.*
3. *Drina provides no evidence that both parties to the conversations did not consent to the recordings, which is a prerequisite to the relief sought.*



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### A Recital of Known Facts

1. There are known recordings of private phone communications between Carl and Nelva and between Carl and his wife Drina, which are the object of the application for protective order.
2. The recordings were disseminated by Defendant Anita Brunsting, who is not a party to any of the disclosed communications.
3. We have a claim by Carl Henry Brunsting and his wife Drina that the recordings were illegally obtained.
4. We have a unanimous response from all three Defendants asserting upon information and belief that the recordings were legally obtained but answers to interrogatories on the subject indicate that none of them know anything individually.
5. The question of admissibility hinges upon the legality of the interception and dissemination of the communications.
6. A presumption that the right of privacy has been violated is primary and stands unrebutted by competent evidence to the contrary.
7. The burden of proof as to the legality of the acquisition and dissemination of the recordings is on the proponent of the assertions that the recordings were obtained legally and are therefore admissible.
8. The proponent of the legitimacy and admissibility of the recordings objects that declaring the facts necessary to qualify the recordings as legally obtained evidence before dissemination is somehow onerous, but at the same time want carte blanche to disseminate the recordings to persons not privy to the conversations under the auspices of discovery and disclosure.
9. Unless the recordings can be qualified as legally obtained they are inadmissible and cannot be disseminated lawfully.
10. There are questions as to the recordings' origins and Defendants file a joint motion claiming the existence of specific facts while taking no individual responsibility for personal knowledge.
11. Anita Brunsting, through her counsel Brad Featherston, disseminated the recordings and, thus, Anita Brunsting would have at least some personal knowledge regarding the chain of custody and control, and both now share in the culpability and attendant civil liability.
12. Assertions that the recordings were made on an answering machine would indicate personal knowledge by one if not all of the Defendants.

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13. An assertion that the recordings were authorized by Carl Brunsting requires evidentiary support from the proponent of the claim, and there has been none.
14. Assertions that Carl Brunsting installed and activated the Answering Machine are inconsistent with the Defendants' emails of the same date of the purchase of the voice recorder showing they were conspiring to get guardianship over Carl.
15. Carl was both incompetent and the proper subject of Defendants' intended guardianship effort or he was competent to install and activate the "Answering Machine" that Defendants insist he made the recordings on. Both of these things cannot be true.
16. In the Bates stamped disclosures there is a receipt for a signal activated SONY digital voice recorder purchased four days before the first dated recording on the disseminated CD. When combined with the attached email and other exhibits talking about getting guardianship over Carl, continuing the Private Investigator over the weekend, knowing where Carl and Drina were and what they were doing at that very point in time, and all of these events in the same time period as other documented activities, provides a presumption that the circumstances and intentions surrounding the acquisition of the recordings are not what Defendants claim, as hereinafter more fully appears.

The hierarchy of presumptions is as follows:

1. The participants to a private telephone conversation have a reasonable expectation of privacy against electronic eavesdropping.
2. The waiver of a known right must be a knowing and intelligent act done with sufficient knowledge of the relevant circumstance and likely consequences, and it must be both a voluntary and an overt act.
3. There is no affirmative evidence of such waiver.
4. Unless rebutted the presumption that the recordings were illegally obtained is not only controlling but the prudent course.

#### **The True Context and Color**

The only probative value these recordings could possibly have is in the fact of their very existence. Defendants argue that the content of the challenged recordings adds context and color to the events of the time showing that Nelva was preparing for Carl's alleged divorce. As in all other instances Defendants fail to provide anything but claims of Nelva's intentions based upon the strength of the honor and integrity of their word alone.

Despite all the posturing and game playing the evidence will show the Defendants are intractably disingenuous and that they illegally intercepted the private electronic communications as part of a conspiracy to steal the family inheritance. That conspiracy involved attempts to have



Nelva declared incompetent and to gather what they thought would be evidence to support guardianship over Carl.

The evidence will further show Defendants stalked Nelva through her email and banking activities online, in addition to tapping her phone and recording every conversation involving anyone who spoke with Nelva on the phone, including Plaintiff Curtis in California.

Candace Freed took her instructions from ANITA despite her claims it was Nelva who was making the requests for changes to the trust. (Exhibit A)

The October 25, 2010 phone conference called for by Candace Freed excluded Carl and Nelva and was ultimately about having Nelva declared incompetent, which they failed to achieve by mid-November. The “law firm” did not keep an audio recording of that conference.

There is no evidence Nelva even knew of these changes before Plaintiff Curtis’ 10/26/2010 phone call, after which Nelva sent Candace her hand written note repudiating the alleged 8/25/2010 QBD.

Defendant Carole Brunsting sent an email about overhearing Nelva’s conversation on the phone with Candace Freed. (Exhibit B)

Freed sends a follow up email regarding the failed attempt at getting Nelva declared incompetent on Nov. 17, 2010, apparently referring to this same conversation. (Exhibit C)

Despite Defendant Amy Brunsting’s claims of not being involved before Nelva’s death, Amy and Anita corresponded with Candace Freed December 23, 2010 and on several other dates prior to Nelva’s demise. (Exhibit D)

On March 8, 2011 Anita emails Carole, Amy and Candace bragging about reminding Nelva she was no longer trustee and no longer had access to the trust. (Exhibit E)

March 17, 2011 Tino (Nelva’s caregiver) buys a Sony Digital Voice Recorder, (Brunsting 004570) which shows one ICD-PX312 digital voice recorder purchased by Tino at Best Buy in Houston. (Exhibit F)

March 17 and 18, 2011 emails mention the PI and talk about getting guardianship over Carl. (Exhibit G 1-3)

March 21, 2011 is the record date of first wiretap .wav file (received from Brad on CD 7/5/2015) (See Carl Brunsting Petition for Protective Order)

On March 24 and 25, 2011 there are large trust-prohibited transfers of Exxon Mobil and Chevron Stocks labeled as “gifts”. (See Report of Special Master)

On March 29, 2011 Amy and Anita communicated with Freed (Exhibit D)

08/11/2015 10:20: P0214

April 22, 2011 is the record date of second .wav file (received from Brad 7/5/2015) (See Carl Brunsting Petition for Protective Order)

Then on May 11, 23 and 25, and on June 14 and 15, there are more large trust-prohibited transfers of Exxon Mobil and Chevron Stocks. (Report of Special Master)

July 27, 2011 Anita corresponds with Freed (Exhibit D)

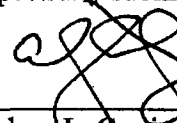
August 16, 2011 Anita corresponds with Freed (Exhibit D)

September 20, 2011 Amy and Anita correspond with Freed (Exhibit D)

February 27, 2015 is the record date of the third and fourth .wav files (received from Brad 7/5/2015) (See Carl Brunsting Petition for Protective Order), indicating these two recordings had been excerpted from a master storage disk containing even more undisclosed recordings.

There is an overwhelming volume of evidence clearly showing more of the same pernicious intent, but since the matter before the Court is limited to the singular question of the legality of Protected Communications, Plaintiff Curtis will not respond to the plethora of Defendants' extemporaneous expressions of disingenuous, self-serving bias, and otherwise irrelevant assertions.

Respectfully submitted,



Candace L. Curtis, *Pro se*  
218 Landana Street  
American Canyon, California 94503  
[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)  
925-759-9020

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 9<sup>th</sup> day of August 2015, to the following via email:

**Attorneys for Anita Kay Brunsting**

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[brad@meddellawfirm.com](mailto:brad@meddellawfirm.com)

09/12/2015 10:20:15 AM

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attorney-in-fact for Carl Henry Brunsting:

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Attorneys for Carole Ann Brunsting

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[dsmith@craincaton.com](mailto:dsmith@craincaton.com)

  
\_\_\_\_\_  
CANDACE L. CURTIS

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EXHIBIT

A

UNOFFICIAL COPY

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### PM TRUST REVIEW MEETING

Signing Date & Time	
Wed. Aug. 4th	
2:pm.	
Fee:	_____
Paid:	_____ Mail: _____

Client Name: Brunsting, Nelva

Date: 07/30/10 Estate Size: 2 mil±

IRA: Husband - N/A Wife - \_\_\_\_\_

Current Address/Phone: 13630 Pinerock Hwy TX 77079

Date of Trust/Restatement: \_\_\_\_\_ Previous Amendments? Yes.

Subtrust Funding Done previously? Yes. DT & ST.

AMENDMENT:  QBD(PAT)  Other  Instr Ltr  HCPOA

ApptSUCCTee/HIPAA  ExtPOA  COT  POA  DIR

Anita Kay Riley & Army Ruth... Co-tees  
or Successors of them. Then Trust

Distribution Change (QBD):

PAT QBD

IF PAT QBD then:

Each beneficiary Trustee of Own Trust:  yes  no

except for Carl, Anita & Armie as Co-tees for Carl  
(except they have rt to name Carl as army)  
Distribution of PAT: need to Low Succ Tee

Same as LT except need language  
about the last amend (QBD) use early distr.

V&F 000687

17-20360.2752

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\_\_\_\_ Specific Distribution:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_ Ultimate Distribution:

\_\_\_\_\_  
\_\_\_\_\_

**HEALTH CARE DOCUMENTS:**

1<sup>ST</sup> Agent: Carol

2<sup>nd</sup> Agent: Anita

3<sup>rd</sup> Amy

IRA TRUST: \_\_\_\_ yes \_\_\_\_ no For whom? \_\_\_\_ husband \_\_\_\_ wife

Trustees upon disability of Trustor or spouse: \_\_\_\_\_

Each beneficiary Trustee of own trust? \_\_\_\_ yes \_\_\_\_ no

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SS# of Surviving Spouse/Beneficiaries: \_\_\_\_\_

V&F 000688



09/11/2015 10:20: P0219

**FUNDING:**

Real Estate \_\_\_\_\_

Which property has NO MORTGAGE? \_\_\_\_\_

\_\_\_\_\_ Recording HS Deed

\_\_\_\_\_ Apply for HS Exemption

Tax-deferred Assets \_\_\_\_\_

\_\_\_\_\_ Bank & Brokerage Accounts

\_\_\_\_\_ Safe Deposit Box

\_\_\_\_\_ Life Insurance

\_\_\_\_\_ Stocks and Bonds

\_\_\_\_\_ Oil & Gas Interests

\_\_\_\_\_ Motor Vehicles

\_\_\_\_\_ Credit Union Accounts

\_\_\_\_\_ Sole Proprietorship Assets

\_\_\_\_\_ Partnership Interests

\_\_\_\_\_ Promissory Notes & Mortgages

\_\_\_\_\_ CDs

\_\_\_\_\_ Annuities

**Additional Documents:** \_\_\_\_\_

**NOTES:**

Needs new DFPDA order

Anita

Carol

Amy

Any Name Changes for children? \_\_\_\_\_ Any children Predecease? No.

If Yes, who: \_\_\_\_\_

V&F 000689

08112015:1020:P0220

**FEES:**

QUOTED: \$ \_\_\_\_\_ (Plus Expenses)

AMOUNT REC'D: None DATE: \_\_\_\_\_

BALANCE DUE: \_\_\_\_\_

DOCUBANK? \_\_\_\_\_

Cost per QBD 1200.

Hipaa Pkg 250 - med POA  
D.F.P.O.A. 150.-  
Appl. of Succ TEE  
New Card.

courtesy discount \$150.-  
Cuy

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08112015:1020:P0221

Anita - called  
Carl has encephlytus  
amendments to trust

Anita + Annice as Co.tees

change list under ME

Carl  
Anita  
Annice

financial P.O.A

Anita  
Carl  
Annice

Amend to trust / PAT's w/ Annice  
to correct Supp Needs to be  
Co.tees.  
sp needs?

V&F 000691

**From:** Anita Brunsting  
**To:** Candace Freed  
**Sent:** 10/6/2010 8:19:06 PM  
**Subject:** Brunsting Family Trust

Candace,

I spoke to mom tonight and she agreed to resign as trustee and appoint me as trustee. I told her that you would be contacting her to re-explain things and make sure she understood what was happening.

If you have any questions, my cell is 361-550-7132.

Thanks,  
Anita

08/12/2015:1020:P0222

V&F 001277

17-20360.2757

001 2015:1020:P0228

**EXHIBIT**

**B**

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08/12/2015:1020:P0224

**From:** Carole Brunsting <cbrunsting@sbcglobal.net>  
**Sent:** Thursday, October 28, 2010 9:00 AM  
**To:** Candace Curtis  
**Subject:** Re: One more

Candy,  
The more I think about this the whole key is Carl. When I was listening to Mother's call with Candace, Mother told Candace that Carl was trustee, not Anita and was not following the changes Candace was telling her she had made to have Carl removed.. Legally, I wonder if what Candace did was right without consulting Carl or his power of attorney since Carl has always been present at all meetings.

--- On Thu, 10/28/10, Candace Curtis <occurtis@sbcglobal.net> wrote:

From: Candace Curtis <occurtis@sbcglobal.net>  
Subject: Re: One more  
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>  
Date: Thursday, October 28, 2010, 10:34 AM

Candace DOES know she fucked up. That's why she had such a nasty attitude towards both you and I. Anita is smug and Amy plays dumb.

I hope Carl goes home today! If he does I hope the sun is shining. 10 minutes smiling into the sunshine + coffee + the Beatles = a sharper, happy Carl. I have a strong feeling that he will recover in leaps and bounds ALL ON HIS OWN, with support from his wife and family. The fact that Daddy is looking over us gives me strength. I can feel him stronger than ever before.

My suggestion is that when Dr. White finds Mother competent the following should happen:

1. You need to complete your time-line to demonstrate that due to various factors (badgering, low oxygen, Carl's illness, her illness, pneumonia, general stress and worry due to all of this), Mother was incompetent and under extreme duress when she signed everything she signed, particularly the Power of Attorney. We can compose a letter to Candace for Mother to sign, demanding that she wants to have papers drawn up to revoke anything she agreed to between the first of July and now.
2. As Mother gathers strength over the next few weeks she will go to her MD Anderson appointments, etc. and move towards treatment and recovery. I want to stress nutrition, adequate good sleep, and stress-free living.
3. In the meantime she can sell what she needs to, to pay for Robert or Tino or whoever Drina needs to assist her with Carl (if she even needs someone - Carl may recover a lot in a few weeks at home). The cost will be minimal compared to the \$100k shithead got to buy her house.

Going forward, Mother will have to tell Candace IN WRITING what she wants done with the trust. You can help her compose the letters. There can be no question when it's in writing. You can assist Mother in reviewing the paperwork before she signs (at home - at her leisure), to make sure all her wishes have been incorporated. This should never be done under the pressure and duress she was subjected to. Mother can take as much time as she needs to read and understand that everything will be as she wants it to be.

08/11/2015:1020:P0225

The fair and equitable solution in my mind is:

Make all five of us successor co-trustees and require a majority to make any change whatsoever. Then, if Mother steps down there will be no shenanigans. Everything will be transparent and we'll all know everything everyone else knows. That way when Anita wants to sell the farm, or move away from Edward Jones, she can put it up for a vote among us. All five of us are intelligent people and none of us can honestly say we have NEVER made a wrong choice in our lives. This way Mother will be at peace to live out her life, and she will die knowing that she has not pitted one against the other, or given control of one over the other, or played favorites, or been bullied into doing something she didn't really want to do, or would not have done in the first place.

Now this may go AGAINST the norm, or what Candace and her ilk would recommend, but fuck them. They are attorneys who get paid to do what their clients want them to do and they love having to draw up documents. Fees, fees, fees, \$\$\$\$\$\$\$\$\$\$\$\$\$

If Anita succeeds in her agenda and becomes trustee, we should have her competency tested just to show her what it feels like. If everything stays the way it is right now, that's the first thing I'm going to do when the day comes that she's in charge of me. Na, Na, Na, Na, Na, Na, Na.

Love you,

C

---

**From:** Carole Brunsting <cbrunsting@sbcglobal.net>  
**To:** occurtis@sbcglobal.net  
**Sent:** Wed, October 27, 2010 9:32:06 PM  
**Subject:** One more

And do not overlook an exploration of the family's motives in requesting a competency evaluation, she cautioned. Do family members have reason for wanting their oddly behaving relative to be declared incompetent?

This is from an article about not rushing to declare an elderly person incompetent. Mother passes the smell test and I have to make sure Tino does not let her out of the house without her clothes being ironed and SEE!!! MOTHER MADE THE APPOINTMENT TO GET HER HAIR DONE!!! CANDY THAT IS IT!!! MOTHER DOES CARE ABOUT HER APPEARANCE!! She will not go out without her makeup on and I have to get her a nail file all the time. Mother also called Edward Jones on her own and sold \$10K so she would have enough money to live on.

She was temporarily incompetent when she was too low on oxygen and if they made her walk to Candace's office I know for a fact her levels were too low because Dr. White joked about it. Tino did not take her so she had to walk from the parking lot to the office. She did not understand what she was signing because she was too short of breath and I can prove that. Candane has to know she F\*\*\*ed up.

--- On Wed, 10/27/10, Carole Brunsting <cbrunsting@sbcglobal.net> wrote:

**From:** Carole Brunsting <cbrunsting@sbcglobal.net>  
**Subject:** Found this  
**To:** occurtis@sbcglobal.net

Date: Wednesday, October 27, 2010, 10:38 PM

There are any number of situations that may cause you to question the competency of a family member to make sound life decisions, such as when:

- An elderly person suddenly changes a will or trust in a manner that is significantly different from all previous wills or trusts, which could result in will litigation if not appropriately handled during the elder's life.
- A family member has suspicion that the elderly person is being unduly influenced by others

Anita is unduly influencing Mother and now Amy has piled on. Mother never would have made these changes on her own. This was all done by the hand of Anita who put herself in charge of everything.

08/12/2015: 10:20: P0226

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08/12/2015 10:20: P0227

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08/12/2015 10:20: P0228

**Subject:** Fw: Nelva Brunsting  
**From:** Candace Curtis <occurtis@sbcglobal.net>  
**Date:** 3/11/2015 6:24 PM  
**To:** Rik Munson <blowintough@att.net>

On Wednesday, November 17, 2010 2:38 PM, Candace Freed <candace@vacek.com> wrote:

Amy and Family, Thank you for the update on your mom, Nelva Brunsting. The purpose of the conference call and the suggestion that Ms. Brunsting be evaluated was based solely on conversations that I had with Ms. Brunsting and to let you all know that I had concerns based on those conversations. If she has been evaluated by her physician and you as a family are comfortable with his or her diagnosis, then you have addressed the concerns that I had. I appreciate your letting me know the opinion of the doctor. I hope your mom is doing well and she continues to improve.

Please let me know if I can be any further assistance.

Very truly Yours,

*Candace L. Kunz-Freed*  
*Attorney at Law*

*Vacek & Freed, PLLC*  
14800 St. Mary's Lane, Suite 230  
Houston, Texas 77079  
Phone: 281.531.5800  
Toll-Free: 800.229.3002  
Fax: 281.531.5885  
E-mail: candace@vacek.com  
www.vacek.com

*We have moved! Our new office address is as shown above.* We are one exit west of our old office building. Exit Dairy Ashford. Turn south on Dairy Ashford. St. Mary's Lane is a side street one block south of I-10 Katy Freeway. Turn west on St. Mary's Lane. Our building is in the northwest corner of the four-way stop.

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DEFENDANTS' PRIVILEGE LOG

Case No.	Date	Author	Recipient	Form/Type	Subject	Privilege
V&F ① 002054 - V&F 002057	1/27/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F ② 002058 - V&F 002060	7/27/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F ③ 002061 - V&F 002066	12/08/11	Candace L. Kuntz-Freed	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F ④ 002067 - V&F 002070	12/23/10	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication  Attorney Work Product
V&F ⑤ 002071 - V&F 002072	3/29/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication  Attorney Work Product

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Case No.	Date	Author	Recipient	Document	Subject	Category
V&F 002073 - V&F 002075 (6)	9/20/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002076 (7)	11/29/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002077 - V&F 002078 (8)	12/28/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002079 (9)	1/12/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 0020890 (10)	1/31/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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Case No.	Date	Firm	Person	Document	Description	Category
V&F 002081 (11)	2/14/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002082 - V&F 002085 (12)	2/14/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002086 - V&F 002089 (13)	3/20/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002090 - V&F 002093 (14)	3/29/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002094 (15)	4/12/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product



V&F 002095 - V&F 002096	(16) 1/24/11	Anita Brunsting	Candace L. Kunz-Freed	Email	Email string between attorney and client regarding stock valuation.	Attorney-Client Communication
V&F 002097	(17) 1/27/11	Summer Peoples	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002098	(18) 7/27/11	Summer Peoples	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002099	(19) 8/16/11	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002100	(20) 12/8/11	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002101 - V&F 002102	(21) 12/20/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding life insurance proceeds.	Attorney-Client Communication
V&F 002103 - V&F 002104	(22) 12/20/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding life insurance proceeds.	Attorney-Client Communication

V&F 002105 - V&F 002106	(23) 12/28/11	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication  Attorney Work Product
V&F 002107	(24) 1/03/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Communication between attorney and client regarding title of the Buick.	Attorney-Client Communication
V&F 002108	(25) 1/05/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding Trust Information Sheets.	Attorney-Client Communication
V&F 002109 - V&F 002112	(26) 1/09/12	Candace L. Kunz-Freed	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Email string between attorney and client regarding distribution of trust funds.	Attorney-Client Communication
V&F 002113 - V&F 002114	(27) 1/22/12	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding notice to beneficiaries.	Attorney-Client Communication
V&F 002115 - V&F 002116	(28) 1/23/12	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding notice to beneficiaries.	Attorney-Client Communication

Case No.	Date	Author	Recipient	Medium	Subject	Category
V&F 002117 - V&F 002118	29 1/23/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding trust accounting.	Attorney-Client Communication
V&F 002119 - V&F 002121	30 1/24/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding trust documents.	Attorney-Client Communication
V&F 002122 - V&F 002123	31 1/24/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding trust accounting.	Attorney-Client Communication
V&F 002124 - V&F 002125	32 1/31/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding Farmland LLC.	Attorney-Client Communication
V&F 002126 - V&F 002127	33 1/31/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002128	34 2/14/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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Case No.	Date	From	To	Document	Subject	Category
V&F 002129 (35)	2/15/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding estate planning documents.	Attorney-Client Communication
V&F 002130 - V&F 002132 (36)	2/28/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Ruth Brunsting, and Summer Peoples	Email	Attorney communications to client regarding promissory note.	Attorney-Client Communication Attorney Work Product
V&F 002133 - V&F 002139 (37)	3/02/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Ruth Brunsting, and Bernard Mathews	Email	Attorney communications to client regarding trust value report.	Attorney-Client Communication Attorney Work Product
V&F 002140 - V&F 002142 (38)	3/06/12	Amy Ruth Brunsting	Candace L. Kunz-Freed	Email	Communication between attorney and client regarding promissory note.	Attorney-Client Communication Attorney Work Product
V&F 002143 - V&F 002148 (39)	3/14/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Communication between attorney and client regarding promissory note.	Attorney-Client Communication Attorney Work Product



V&F	Date	Client	Attorney	Method	Description	Category
V&F 002149 (40)	3/20/12	Summer Peoples	Amy Ruth Brunsting, Anita Kay Brunsting, and Chip Mathews	Email	Attorney communications to client regarding request for will.	Attorney-Client Communication
V&F 002150 - V&F 002151 (41)	3/20/13	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002152 (42)	3/22/12	Anita Kay Brunsting	Candace L. Kunz-Freed, Chip Mathews, and Amy Ruth Brunsting	Email	Attorney communications to client regarding December of 2011 accounting.	Attorney-Client Communication
V&F 002153 (43)	3/22/12	Anita Kay Brunsting	Candace L. Kunz-Freed	Email	Attorney communications to client regarding accounting.	Attorney-Client Communication
V&F 002154 - V&F 002155 (44)	3/27/12	Anita Kay Brunsting	Chip Mathews, Amy Brunsting, Candace L. Kunz-Freed	Email	Email string between attorney and client regarding accounting.	Attorney-Client Communication
V&F 002156 - V&F 002158 (45)	3/28/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Brunsting, and Chip Mathews	Email	Email string between attorney and client regarding asset lists.	Attorney-Client Communication

V&F 002159	(46) 3/28/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Brunsting, and Bernard Mathews	Email	Attorney communications to client regarding asset lists.	Attorney-Client Communication
V&F 002160 - V&F 002161	(47) 3/29/12	Anita Kay Brunsting	Candace L. Kunz-Freed	Email	Email string between attorney and client regarding assets and expenses.	Attorney-Client Communication  Attorney Work Product
V&F 002162 - V&F 002163	(48) 3/29/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication  Attorney Work Product
V&F 002164 - V&F 002166	(49) 3/30/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Ruth Brunsting, and Bernard Mathews	Email	Email string between attorney and client regarding asset list.	Attorney-Client Communication
V&F 002167	(50) 4/12/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication  Attorney Work Product

Case Number	Date	Name	Relationship	Document	Subject	Category
V&F 002168 - V&F 002183 (5)		Candace L. Kunz-Freed		Chart	Attorney notes/history of representation	Attorney-Client Communication Attorney Work Product
V&F 002184 - V&F 002191 (6)	11/22/11			Document	Authorization for Release of Protected Health Information	Attorney Work Product
V&F 002192 (7)	11/22/11			Document	Authorization for Release of Information	Attorney Work Product

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EXHIBIT

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Print

**From:** Candace Curtis (occurtis@sbcglobal.net)  
**To:** occurtis@sbcglobal.net;  
**Date:** Sat, February 18, 2012 11:29:12 AM  
**Cc:**  
**Subject:** Fw: New Development

----- Forwarded Message -----

**From:** Anita Brunsting <akbrunsting@suddenlink.net>  
**To:** Candace Curtis <occurtis@sbcglobal.net>; Amy <at.home3@yahoo.com>; Carole Brunsting <cbrunsting@sbcglobal.net>  
**Sent:** Tue, March 8, 2011 7:15:32 PM  
**Subject:** RE: New Development

I got the same TM from Tino. I hesitate to promise them anything in writing about money. Rather than a monthly payment, I would rather grant them a certain amount each year, but only through the direct payment of their bills - for example; mom could gift Carl \$13,000/year, but only if they send me the bill statements to pay directly, and only for bills for living/medical expenses - when the trust has paid \$13,000 in bills for the year, that's the end of the money for that year. We could ask them to sign for this money against his inheritance, but then we'd have another form that we'd have to get them to sign (probably notarized), and as we don't know if she's had Carl declared incompetent, the validity of any form he signs might be questionable.

I do like the idea of a letter telling Drina that she may have no contact w/ mom (physical, verbal, visual, phone or electronic means) and she is not to enter mom's house. She can bring Carl to visit mom, but she must remain outside the house - any violation of this letter will be considered harassment and the police will be called if she does not comply. I would also like to add in the letter that Carl's inheritance will be put into a Personal Asset Trust for his care and living expenses - I think this information might be enough to tip her hand.

I would also like to ask Candace, what this letter would do for us legally - like if we did end up calling the police would the letter lend any credence to our case?

I won't do anything until we can come upon an agreement as what to do - I can also write this letter in the role of mom's power of attorney (which she signed last year).

I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care. I told her to "just say No" to Carl or Drina if they brought up the trust or money and to refer them to me. I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts - she seems fine w/ everything, and expressed no desire to put Carl back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/ Drina, not Carl. Mom begrudgingly admits to knowledge of the unpleasantness of this whole situation and Drina's past behavior since Carl has been ill, but I think she is really naive regarding the lengths to which Drina may go through to get Carl's inheritance.

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08/12/2015:1020:P0242

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# TIME SHEET

Employee Name: Justino VAGUERA Title: \_\_\_\_\_Week: March 15 - March 19

Date	Start Time	End Time	Regular Hrs.	Total Hrs.
3-15 Tue	8:30 am	12:00 am	15.30	
3-16 Wed	12:00 am	2:00 pm	14.	
	4:00 pm	12:00 am	8	
3-17 Thur	12:00 am	9:30 am	9:30	
3-18 <del>Wed</del>	6:30 pm	12:00 am	5:30	
3-18 <del>Wed</del> Frid	12:00 am	6:00 pm	18	
WEEKLY TOTALS:			70 1/2	

Employee Signature: [Signature]Date: 3-18

Supervisor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

$$\begin{array}{r} 70.5 \\ \times 15.00 \\ \hline = 1057.50 \end{array}$$

$$\begin{array}{r} \text{Groceries \& Food} = 126.26 \\ \text{Best Buy Digital Voice Recorder} = 64.94 \\ \hline 191.20 \end{array}$$

$$\text{Total} = 1248.70$$



08112015:1020:P0244

WELCOME TO BEST BUY #216  
HOUSTON, TX 77024  
713)647-6004

Keep your receipt!



Val #: 0422-1045-6045-3089

0216 003 2499 03/17/11 18:22 00005044

1792142 ICDPX312 59.99  
ICDPX312 DIGITAL VOICE RECORD  
ITEM TAX 4.95  
6094193 RZ SILVER 0.00 M  
REWARD ZONE PREMIER SILVER  
MEMBER ID 0323918420

SUBTOTAL 59.99  
SALES TAX AMOUNT 4.95  
TOTAL 64.94

XXXXXXXXXX0307  
FAUSTINO VAQUERA JR  
APPROVAL 132943  
REFERENCE NUMBER: 0216003

DEBIT 64.94

ALEX,  
THANKS FOR SHOPPING AT BEST BUY TODAY!  
YOUR REWARD ZONE BALANCE AS OF 03/08/11  
POSTED POINTS: 153  
Go to MyRZ.com FOR MORE INFO

Congratulations! As an added benefit of  
being a Reward Zone program Premier  
Silver member, you may return eligible  
products up to 45 days from purchase date.

Dear Valued Customer,

To help keep prices low, you'll find...

Receipt is void if not printed on this receipt.  
Receipt is void if not printed on this receipt.

THE SHACK THANKS YOU.

RADIOSHACK 01-8020  
Kroger Plaza Sc  
14356 Memorial Dr  
Houston, TX 77079-6704  
(281) 486-9429

Order: 057559 03/17/2011 08:14P Term #002

Helped By: 001 (MAR)  
Entered By: 001 (MAR)

4200223 3' 1/8" M-N PATCH CABLE 1 8.39

Subtotal 8.39  
Tax 0.25# 0.69  
Total 9.08

Credit Card 9.08

Change Due 0.00

Acct# XXXXXXXXXXXX0307 M  
Card Type 01  
Tran# 12887146  
Auth# 161235 9.08  
Host Captured Y

The card holder identified hereon may apply the total  
amount shown on this receipt to the appropriate account  
to be paid according to its current terms.

I agree to pay above total according to card issuer  
agreement.

Your name, address and the original sales receipt are  
required for all refunds. Sales and returns are  
subject to the terms and conditions identified  
on the back.

Shop online 24/7 at  
[www.radioshack.com](http://www.radioshack.com)

08112015:1020:P0245

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EXHIBIT  
G

08/11/2015 10:20: P0246

---

**From:** Amy Tschirhart <at.home3@yahoo.com>  
**Sent:** Wednesday, August 18, 2010 12:58 PM  
**To:** Anita Brunsting; Carole Brunsting; Candy Curtis  
**Subject:** CPA's advice

Hi,

I talked to the CPA who does my taxes today and asked her what she would recommend. She told me that Drina should talk to an attorney who specializes in debt created by medical bills. Medical bill debt is treated differently than other debt. I did a quick check on the internet and there are several in Houston.

She said that creditors cannot touch Drina's house or cars. She also recommended not paying any of the medical bills right now. She said to wait until the dust settles, then talk with each company about a payment plan, possibly as little as \$10 a month. She told me that in all likelihood, they would eventually write off her debt as a loss. She said Drina should definitely not touch any retirement or inheritance, or borrow anything against them.

I called Drina today and told her what Darlene said. She said her father had been telling her the same things. I tried to emphasize that she should not be paying any bills right now, but I don't know if she really understood why. She is overly concerned with her credit score rating. Darlene said that is not that important because they own their house and cars and are not as reliant on credit compared to younger people.

Anyhow, I know that Drina is in a hard spot right now, but I honestly think that keeping her from accessing any of Carl's inheritance would be in her best interest. It would be a waste to spend it on medical bills and they will need the money in the future. I don't think that is going to sit well with Drina because she's going to see it as us being tight-fisted with the money. I strongly suggest that if any of us talk to her, we do it as nicely as we can. Acknowledge that the debt is so huge it is unpayable in her lifetime. Encourage her to seek a professional to find the best way to deal with it. Remind her that we want the best for her and Carl in their future and that we are thinking of their best interests.

Love,  
Amy

09/12/2015: 1020: P0247

**From:** Carole Brunsting <cbrunsting@sbcglobal.net>  
**Sent:** Friday, March 18, 2011 11:59 AM  
**To:** Anita Brunsting; Amy Tschirhart; Candace Curtis  
**Subject:** Re: atty for guardianship

I think that Drina has always projected her own family issues onto ours. She was completely distanced from her own family until a year ago when her brother passed away and now she talks about the relationship with her dad like they have been close forever which has not been the case.

She must have had some very bad things happen to her in her childhood and slowly but surely she twisted Carl's mind to go along with everything she did and said. I think you are right that this will have to play itself out to see what she does. She has been waiting for the day she and Carl get the "big" trust payout and then it will be see you later chumps!

--- On Fri, 3/18/11, Candace Curtis <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)> wrote:

**From:** Candace Curtis <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)>  
**Subject:** Re: atty for guardianship  
**To:** "Anita Brunsting" <[akbrunsting@suddenlink.net](mailto:akbrunsting@suddenlink.net)>, "Carole Brunsting" <[cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)>, "Amy Tschirhart" <[at.home3@yahoo.com](mailto:at.home3@yahoo.com)>  
**Date:** Friday, March 18, 2011, 1:49 PM

The Brunsting family has never been very demonstrative of their love for one another, but I chalk that up to being Dutch. What I cannot seem to wrap my arms around is the extreme coldness of Drina and Marta. They have always been limp when hugged and hugging is one of the best things in the world. One power hug and all my cares fly out the window. I believe it must be a genetic brain chemical imbalance in Drina's family. She has spent her life with Carl trying to distance HIM from his family and turn him into a cold fish like her. How did she ever get pregnant in the first place? Maybe we should try to get some DNA from Marta and Carl and do a paternity test. Wouldn't it be something if he wasn't her father????????? LOL

Frankly, as long as the trust is safe, we should probably just let nature take its course and sooner or later we will get Carl out of their clutches and into ours. He might be pissed off for awhile, but I have some small faith that once he can reason better he will see that we only seek what is best for him in the long run BECAUSE WE LOVE HIM. Once he is able to reason and be reasoned with, and has regained some control of his life, if he chooses to go back to his moron wife and their moron spawn, I will mourn him as if he were dead. Until such time I will assume that, somehow, at some point in his recovery, he will realize how miserable the bitch has made his life. He might see that all she has ever cared about is money and how to avoid having to go out and earn some.

If asked, Carl would probably say no to coming out here to live with us, even though it might be the very best thing for him. He should never feel like he has been "dumped" on anyone. I think he would have a lot more stimulation out here. He does love the Bay Area and after a short time he might gain some real incentive to get well.

---

**From:** Anita Brunsting <[akbrunsting@suddenlink.net](mailto:akbrunsting@suddenlink.net)>  
**To:** Carole Brunsting <[cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)>; Candace Curtis <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)>; Amy Tschirhart <[at.home3@yahoo.com](mailto:at.home3@yahoo.com)>

**Sent:** Fri, March 18, 2011 8:59:24 AM

**Subject:** atty for guardianship

Ok, I think I may have found an atty who could handle the guardianship issue. She was recommended to me by the Burgower firm that Amy's lawyer had given her - the Burgower firm does not do guardianship cases. This atty's name is Ellen Yarrell; her offices are in the Galleria area; she charges an initial consult fee of \$350 for 1 hr of her time, and probably requires a retainer of \$2000. Her paralegal (Elizabeth) said that she's handled cases like this before (where an impaired person has been divorced by their spouse). I asked about the expense and she said that Yarrell could give us a better idea after the consult and it depends on whether the guardianship would be contested (so that depends on whether we fight Drina now, or wait to see if she'll divorce him and then we're facing Marta (if she pursues it)). I got the feeling that "expensive" meant more like \$50,000 not \$1 million.

I thought of another plus on our side if Drina divorces him - Drina will probably expect him to come live w/ mother - so if he's w/ us and not his daughter that lends more credence to our side for guardianship (possession is 9/10's of the law?).

I also talked to mom last night and told her what was going on. I asked her if she was ok w/ using her money to pay for Carl's legal fees and of course she said yes.



00112015:1020:P0249

**From:** Carole Brunsting <cbrunsting@sbcglobal.net>  
**Sent:** Friday, March 18, 2011 8:41 AM  
**To:** Anita Brunsting; Amy Tschirhart; Candace Curtis  
**Subject:** Re: guardianship assessment form

They are there right now according to the PI. And Michael took him on Wednesday.

--- On **Fri, 3/18/11, Candace Curtis** <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)> wrote:

**From:** Candace Curtis <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)>  
**Subject:** Re: guardianship assessment form  
**To:** "Anita Brunsting" <[akbrunsting@suddenlink.net](mailto:akbrunsting@suddenlink.net)>, "Carole Brunsting" <[cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)>, "Amy Tschirhart" <[at.home3@yahoo.com](mailto:at.home3@yahoo.com)>  
**Date:** Friday, March 18, 2011, 10:33 AM

Do you know if he went to therapy at all this week?

---

**From:** Anita Brunsting <[akbrunsting@suddenlink.net](mailto:akbrunsting@suddenlink.net)>  
**To:** Candace Curtis <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)>; Carole Brunsting <[cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)>; Amy Tschirhart <[at.home3@yahoo.com](mailto:at.home3@yahoo.com)>  
**Sent:** Fri, March 18, 2011 8:26:05 AM  
**Subject:** RE: guardianship assessment form

we're continuing the pi over the weekend or unless it looks like she's headed toward Beaumont - will also use him through next week. \$750 is for the lawyer's (Cole) initial consult not a dr. If she divorces him then someone needs to sue for guardianship - Marta would be considered next in line by the law, but if she doesn't sue for it then I don't think she'd be considered. If Drina gets him to sign divorce papers that give him any less than 50% of their assets then a guardian can countersue her to recover those.

---

**From:** Candace Curtis [<mailto:occurtis@sbcglobal.net>]  
**Sent:** Friday, March 18, 2011 10:20 AM  
**To:** Anita Brunsting; Carole Brunsting; Amy Tschirhart  
**Subject:** Re: guardianship assessment form

\$750 an hour FOR WHAT? The woman is abusing him and negligent in his care. Have they been out even one time this week? Last I heard, Monday and Tuesday there was no activity other than a visit from Marta. APS said that once they confirmed she was following doctor's orders, they closed the case. If the instructions were 3 times a week and he hasn't been, or only goes once or twice, SHE IS NEGLIGENT, and they better reopen it or start a new one. Let me know if you want me to call.

Any doctor who has seen Carl would most likely say NO to all of the questions. I would, just based on past phone conversations with Carl.

What if Drina files for divorce? Would that be abandonment? Would the trust even be an issue if SHE divorces him?

09112015:1029:PO250



If I could have anything I wanted for Carl, I would have him assessed by the neuropsychologists at the place I found in Houston. I don't know if he could handle long periods of testing, but he has got to get some cognitive brain function back OR HE WILL NEVER EVEN BECOME CLOSE TO WHOLE AGAIN. It's a good sign that his behavior has improved, but is it because she beats him with a stick and mentally assaults him to get him to act right?

Maybe guardianship is the wrong approach. Maybe we should go after Drina and have her declared incompetent to care for him, or criminally negligent for not obtaining proper rehabilitation. There has to be a reason why she doesn't want her husband of almost 30 years to recover.

Let me know if he will be staying at Mother's again over the weekend. If so, we might want to extend the PI over the weekend so we can see what the hell she does. The more "evidence" we can amass, the better.

Love you guys,

C

---

**From:** Anita Brunsting <[akbrunsting@suddenlink.net](mailto:akbrunsting@suddenlink.net)>  
**To:** Carole Brunsting <[cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)>; Candace Curtis <[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)>; Amy Tschirhart <[at.home3@yahoo.com](mailto:at.home3@yahoo.com)>  
**Sent:** Thu, March 17, 2011 2:18:05 PM  
**Subject:** guardianship assessment form

Just thought you'd find this interesting, this is the form that we'd have to have a physician use to assess Carl and possible a MHMR psychologist as well. I just thought it would give you an idea as to what they're looking for - Carl definitely fits the bill -

Just fyi, you may have already known this.

Anita



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.* §  
§  
VS. §  
§ Civil Action No. 4:16-cv-01969  
CANDACE KUNZ-FREED, *ET AL.* §  
§  
§

**DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE’S REPLY TO PLAINTIFFS’ RESPONSE TO DEFENDANTS’ MOTION TO DISMISS COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) and (6)**

TO THE HONORABLE JUDGE ALFRED H. BENNETT:

Defendants, the Honorable Judges Christine Riddle Butts and Clarinda Comstock and substitute Court Reporter Tony Baiamonte (collectively, “Harris County Defendants”) file this Reply to Plaintiffs’ Response to their Motion to Dismiss and would respectfully show the Court as follows:

**Plaintiffs fail to controvert the facts that belie jurisdiction**

Plaintiffs contend the “only facts under consideration” in the subject Motion to Dismiss are *judicial acts* -- those taken by Judge Comstock in deciding “what gets set for hearing and when, and what does not find it way to the calendar.” [Doc. 57, ¶¶ 33-34]. Instead of addressing the complete lack of subject matter jurisdiction by this Court, Plaintiffs instead contend the probate court had no subject matter jurisdiction over the underlying probate proceeding. [Doc. 57, ¶¶ 37-38; 41-42]. *Plaintiff Curtis* sought remand of her prior federal suit *to the state probate court*. Plaintiffs then attempt to bootstrap this nonsensical argument to render immunity void in the

present case.

Plaintiff Munson's response to his lack of standing is he was "compelled to combat this public corruption at great personal expense in time and resources." [Doc. 57, ¶ 51]. This does not confer standing.

Lacking any evidence of any conspiracy or any injury, Plaintiffs contend the "mere fact of the attempt to extort is sufficient." [Doc. 57, ¶ 52]. This argument, unsupported by any legal authority likewise fails.

**Failure to be "satisfied" with a response is not actionable**

In response to the argument that Plaintiffs have failed to state a claim against substitute Court Reporter Tony Baiamonte, Plaintiffs contend that "Munson spoke with Mr. Baiamonte and *was not satisfied with the answer* to inquiries regarding unavailability of a transcript for September 10, 2015." [Doc. 57, ¶ 66] (emphasis added). Apparently, Mr. Baiamonte was sued for the singular reason that he "promised to reply with an email" and when that was not received, he was "added to this complaint." [Doc. 57, ¶ 67]. Not only are the claims against Mr. Baiamonte frivolous, they are certainly sanctionable.

**Conclusion & Prayer**

Plaintiffs wrongly believe that following a "form" is all they need to do to meet the stringent requirements of a RICO claim. [Doc. 57, ¶ 83]. Plaintiffs have not met the legal standard to bring a claim under RICO or any other state law. Harris County Defendants are entitled to dismissal as a matter of law, because the claims against the Honorable Judges are barred by judicial, official and governmental immunity. Likewise, the claims against Tony Baiamonte are barred by governmental, qualified and official immunity.

Harris County Defendants are entitled to dismissal on these additional grounds: (1) the 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.

Plaintiffs have failed to present any facts, argument or legal authority to refute these grounds for dismissal and the Harris County Defendants pray the Court grant their Motion to Dismiss the Plaintiffs' Verified Complaint for Damages [Doc. 1] with prejudice, sanction the Plaintiffs for filing a frivolous and groundless lawsuit, and award the Harris County Defendants such other and further relief, at law or in equity, to which they may show themselves to be justly entitled.

**Dated: October 17, 2016.**

Respectfully Submitted,

/s/ Laura Beckman Hedge

**Laura Beckman Hedge**

Assistant County Attorney

**ATTORNEY-IN-CHARGE**

Texas State Bar No. 00790288

Federal Bar No. 23243

[laura.hedge@cao.hctx.net](mailto:laura.hedge@cao.hctx.net)

1019 Congress, 15<sup>th</sup> Floor

Houston, Texas 77002

Telephone: (713) 274-5137

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**ATTORNEY FOR DEFENDANTS, JUDGE  
CHRISTINE RIDDLE BUTTS, JUDGE  
CLARINDA COMSTOCK & TONY  
BAIAMONTE**

**OF COUNSEL:**

VINCE RYAN,  
HARRIS COUNTY ATTORNEY

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 17<sup>th</sup> day of October, 2016, via ECF.

Candace Louise Curtis  
218 Landana Street  
American Canyon, CA 94503

Jason Ostrom  
Ostrom Sain LLP  
5020 Montrose Blvd., Suite 310  
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Rik Wayne Munson  
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Amy Brunsting  
2582 Country Ledge Drive  
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/s/ Laura Beckman Hedge  
Laura Beckman Hedge

**ENTERED**

October 18, 2016

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**CANDICE LOUISE CURTIS, *ET AL.***

**VS.**

**CANDACE KUNZ-FREED, *ET AL.***

§  
§  
§  
§  
§  
§  
§

**Civil Action No. 4:16-cv-01969**

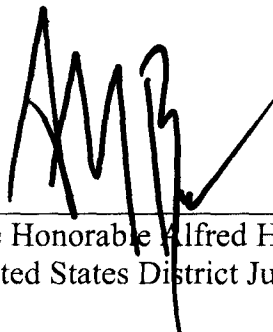
**ORDER**

The Court, having considered the Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte’s Unopposed Amended Motion for Leave to File Motion to Dismiss In Excess of Page Limit (“Motion”), finds the relief requested to be in order and therefore GRANTS the Motion.

It is so ORDERED.

**OCT 18 2016**

Date



The Honorable Alfred H. Bennett  
United States District Judge

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 DEFENDANT JILL WILLARD YOUNG, ALBERT VACEK JR, CANDACE KUNZ-FREED, CHRISTINE BUTTS, CLARINDA COMSTOCK AND TONY BAIAMONTES' MOTIONS TO STRIKE**

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## I. Introduction

1. 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 at 18 U.S.C. §§1961-1968 and the right of claims provided at 18 U.S.C. §1964(c). (Dkt 1)
2. On September 14, 2016, Defendant Jill Willard Young filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6). (Dkt 25)
3. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26) as a factual supplement to the RICO complaint. (Dkt 1).
4. On October 3, 2016 Defendant Jill Willard Young filed a Motion to Strike (Dkt 38) the Addendum to Plaintiffs' Complaint (Dkt 26).
5. On October 4, 2016 Defendants Albert Vacek, Jr. and Candace Kunz-Freed (Hereafter V&F) filed a Memorandum (Dkt 42) joining in Defendant Jill Willard Young's Motion to Strike the Addendum to Plaintiffs' Complaint.
6. On October 14, 2016 Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte filed a Motion to Strike the Addendum to Plaintiffs' Complaint (Dkt 60).

## II. The Issues Presented

7. In this Motion Defendant Jill Willard Young claims:



- a. The Addendum has no legal effect;
- b. The “Addendum” does not change the merits of Ms. Young’s Motion to Dismiss;
- c. Plaintiffs’ Addendum, like the Complaint, is too implausible to state a valid claim for relief;
- d. Plaintiffs’ Addendum fails to state facts sufficient to assert a RICO claim against Ms. Young;
- e. Plaintiffs’ Addendum cannot avoid the Texas Attorney Immunity Doctrine.

### **III. Plaintiffs’ Reply to Motions to Strike**

8. Federal Rule of Civil procedure 12(f) allows the Court to strike a pleading that is redundant, immaterial, impertinent, or contains scandalous matter.
9. Plaintiff’s Addendum was properly filed as an appendage to the original complaint within twenty-one days of the filing of motions requiring a reply, as authorized by Federal Rule of Civil Procedure 15(a)(1).
10. The Addendum contains a short description of the chronology of the probate docket and copies of: unresolved motions from the probate court record, the preliminary federal injunction, motions and pleadings from the federal court, A Fifth Circuit opinion in this case, and transcripts of hearings. Every paragraph is numbered and every exhibit is labeled and paginated.
11. Defendants’ challenge to Plaintiffs’ Addendum are based entirely upon semantics and a desire to superimpose Defendants preferred definitions of the instrument over the declarations

provided by the instrument's authors. That definition is provided by the instrument itself (Dkt 26) at page one lines 4-6 as follows:

4. *Plaintiffs, in response to these challenges, herein incorporate by reference the attached Motions as Memorandums of Points and Authorities in support of the above-referenced complaint, as if those motions had been fully set forth within the original complaint.*

5. *The following motions are presented as Memorandums, to supplement the Rule 8(a) sufficient complaint.*

6. *Plaintiffs hereby incorporate these motions as memorandums under authority of Federal Rule 15(a), for the purpose of satisfying the heightened factual pleading standards of Rule 9(b).*

12. Line four of the Addendum tells us that the Addendum is incorporated into the Complaint by reference as if fully expressed therein. This expression satisfies the "adoption" provisions of Federal Rule of Civil Procedure 10(c), which reads as follows:

*c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.*

13. By definition, an "Addendum" is a thing to be added. To the extent that it is added it is an amendment authorized by Rule 15(a)(1) and, by its own language, it is an appendage that incorporates but does not alter the portions of the Complaint that precede it.

14. Federal Rule of Civil Procedure 10 governs the "form of pleadings." The Rule seeks to provide a standardized and "easy mode" of pleadings, to facilitate notice to an opposing party, judicial review of the sufficiency of the pleadings, and efficient case management. *See, e.g. Stanard v. Nygren*, 658 F.3d 792, 797 (7th Cir. 2011);

15. Federal Rule of Civil Procedure 10(b) requires paragraphs to be numbered. Defendant's Motions to Strike, is an improper attempt to continue to argue the Federal Rule of Civil

Procedure 12(b) motions already filed and answered, contains redundant, immaterial, impertinent, and scandalous allegations without a single specific reference to any numbered paragraph or exhibit, does not contain numbered paragraphs, violates Rule 12(f) and fails to comport to the pleading requisites of Federal Rule of civil Procedure 10(b).

16. The Addendum is an adopted public record, contains a motion pending in a related case, and exhibits public record pleadings from matters in the various courts that are relevant, on point, and which Plaintiffs continually refer to in answers to Defendants Rule 12 motions to dismiss.

17. These Defendants claim they participated in those proceedings in a capacity that affords them some form of immunity from civil suit.

18. Defendants' Motions to strike do not challenge the 22 exhibits attached to the Addendum as not being what the Addendum claims, but simply seek to argue their own interpretation. There are also exhibits attached to the motions and thus subsumed within the Docket 26 exhibits themselves.

19. First Defendants claim the Complaint lacks sufficient factual matter to provide adequate notice of the claims and then, when facts are added to the Complaint by way of supplement, Defendants complain and proceed to rehash their Rule 12(b) arguments under the pretext of a Rule 12(f) motion to strike.

20. The probate court Defendants have adequate notice and the record will also show that in their pleadings V&F quoted from pleadings in the probate court and responded to pleadings in that Court (Exhibit 1) as non-parties and are also fully apprised of the facts upon which the RICO complaint relies.

#### **IV. Docket Entry Twenty-Six**

21. Docket 26, pages 3-26 provides a chronology of specific docket events supported by exhibits, including transcripts, motions and pleadings.
22. The Addendum of Memorandum which Defendants seek to attack tells the story of these Defendants' efforts to game the judicial process and contains only public records exhibits from the actions these Defendants claim to have been involved in.
23. Every one of Plaintiffs' replies to Defendants' Rule 12 Motions (Dkt 33, 34, 41, 45, 57 and 62), have shown the relevance of the Addendum by constant reference to Docket entry 26.

#### **V. Defendants claim the Addendum has no legal effect**

24. This is not a Rule 12(f) related argument. The Addendum adds detail to the Complaint's factual allegations.
25. The Addendum of Memorandum includes a Motion for Vacatur of the void remand order that directly addresses the Defendants' claims of immunity.
26. Jurisdiction is a foundational issue which must be addressed before any other question, and the proper court to vacate a void order or judgment is the court that entered it.
27. Thus, for all intents and purposes, the Addendum also acts as a form of estoppel in this Court, as it raises a foundational issue that must be resolved before all others.

#### **VI. The "Addendum" does not change the merits of Ms. Young's Motion to Dismiss**

28. This is a Rule 12(b) and not a Rule 12(f) related argument.
29. Ms. Young's motion to dismiss alleges Plaintiffs failed to plead adequate facts to place her on notice of the claims against her. Ms. Young's motion contained only one exhibit.
30. In response, Plaintiffs merely attached exhibits from the public record with explanations of the significance of each of those exhibits in relation to Ms. Young's "participation".

31. In Ms. Young's Rule 12(b)(6) Motion she included as an exhibit only the Order appointing Gregory Lester. She did not exhibit her application for Gregory Lester's authority to retain her firm, she did not exhibit the order granting Gregory Lester authority to retain Jill Young and she did not include the report she "assisted" Gregory Lester in producing.

32. Thus, while claiming lack of notice as to her part in the charade, she fails to exhibit what does connect her and asks this Court to strike what is, in essence, a public record.

**VII. Plaintiffs' Addendum is too implausible to state a valid claim for relief**

33. This appears to be a Rule 12(f) argument that the Addendum is immaterial.

34. These Defendants appear to like using words without comprehending what they actually mean. The 28-page Motion for Vacatur contains a statement of chronology supported with reference to the public record and contains excerpts from a March 9, 2016 hearing, supported by an official transcript also attached as an exhibit. The list of exhibits can be found at page 31.

35. Plaintiffs' answers to Defendants' Rule 12 Motions exhibit documents and records these Defendants had a duty to be familiar with and cannot claim ignorance of.

36. Basically the Defendants are asking the Court to strike the facts contained in the public record, placed before it in the form of an Addendum of Memorandum, and to look elsewhere for the same information under a lengthy request for judicial notice of external records containing the same exhibits, allegedly for the "convenience of the Court".

37. Defendants do not challenge the Addendum's exhibits as not being what they are represented to be, but instead claim the Addendum is vague, implausible and fails to raise a RICO claim.

38. Ultimately, Defendants ask the Court to strike fact and listen to “We Say” while viewing the Addendum in a vacuum where the Complaint is considered a separate instrument when in fact they combine to make one Complaint under Rules 10(c) and 15(a)(1).

39. What the 27-page Addendum tells the reader is that Plaintiff Curtis could not get an evidentiary hearing set in state court while being bullied with a false instrument in order to coerce an agreement for illicit reasons.

### **VIII. Plaintiffs’ Addendum Cannot Avoid Texas’s Attorney Immunity Doctrine**

40. This is not a proper subject for a motion to strike and is an improper attempt to continue arguing the previous Rule 12(b)(1) motions already filed and answered.

41. Defendants’ Texas Attorney Immunity claims fail at the threshold question of probate court jurisdiction. Prevailing on a claim that the probate court could assume jurisdiction over the Brunsting trusts in this case, would require reversing a unanimous Fifth Circuit Court of Appeals Opinion in the base case and the Supreme Court opinion the Circuit Court relied upon for their decision.

42. Defendants perpetually seek to avoid the unanimous opinion of the Fifth Circuit Court of Appeals in this case, that no court can take jurisdiction over a res in the custody of another court.

43. The fact that a federal Court issued an injunction regarding the Brunsting trusts the very day probate claims were filed, effectively disposes of any argument that the probate Court could assume subject matter jurisdiction over the Brunsting Trusts.

44. Where there is no subject matter jurisdiction there is no court and no judge and where there is no judge and no court there is no litigation. Judgements entered without or in excess of jurisdiction are nullities, subject to vacatur under both direct and collateral attack. Neither doctrine of laches nor statutes of limitations apply to judgments void for want of jurisdiction and

the very question is so fundamental that it does not come under the “Not Pressed Not Passed Upon Below Rule” and can even be raised for the first time on appeal.

45. The jurisdiction issue is pivotal. None of the motions in this RICO suit can be properly resolved without addressing the want of jurisdiction in the probate court.

46. Unless Defendants overcome centuries of precedent and the Fifth Circuit Opinion “in this case”, Defendants’ immunity claims fail on Plaintiffs’ challenge to probate court jurisdiction over any Brunsting trust related matter.

47. All of these attorneys argue that they have been involved as attorneys in “Estate litigation” yet all the “Estate” pleadings ever mention is the trust and some of these Defendants claim to represent co-trustees, while they all claim to be involved in a probate case. This question was resolved in Plaintiff Curtis favor by the Fifth Circuit Court of Appeals and the entire notion of probate jurisdiction over the Brunsting trusts is fraud.

48. When all claims related to the Brunsting Trusts are removed from Bayless Probate Court Petition and the Gregory Lester, Jill Willard Young “Report” on the efficacy of the estate claims, nothing remains of either.

## **IX. Memorandum**

### **Federal Rule of Civil Procedure Rule 15: Amended and Supplemental Pleadings**

49. Rule 15 allows a party to amend its pleading after it has been filed with the court. In keeping with the flexibility of the federal rules, Rule 15 is generous. The policy is that by allowing the parties to “fix” their pleadings as they go along, the merits of the case will more readily be resolved. The parties will not waste precious time and resources squabbling over the mechanics of amending their pleadings. However, Rule 15’s flexibility must also be balanced with fairness concerns for the opposing party. The need to amend generally arises when a party



has made an inadvertent omission or mistake in its pleading. In that case, if the party realizes its mistake fairly quickly, the amendment will generally be allowed under the rule. But, a party may also learn of new information and want to amend its pleading to add a new party or claim accordingly. Whether an amendment is allowed in that situation often turns on whether the statute of limitations for the underlying action has run. If it has, the rule requires more complex analysis to determine whether the amendment will be allowed. If it is, the new pleading will “relate back” to the original date of filing.

50. Rule 15 has four main sections. The first section, 15(a) sets out when and how a party can amend its pleading before trial; The second section, 15(b) allows the parties to amend the pleadings during and after trial; The third section, 15(c) prescribes when a party can amend to add a new claim or party even after the statute of limitations has run; Finally, the fourth section, 15(d) explains when a party can add claims that arise out of an event that occurred after the original pleading was filed.

51. Federal Rule 15(a)(1) allows a party to amend its pleading within 21 days after a responsive pleading requiring a reply and Rule 12(b) motions are just such motions. Not only was the Addendum filed as a Rule 15(a)(1) “Addendum”, the RICO complaint itself is little more than a Rule 15(d) amendment to the original petition filed in 4:12-cv-592.

52. Defendants’ Motion to Strike is an improper attempt at a second Rule 12(b) Motion to Dismiss. In her first such motion, (Dkt 25) Ms. Young admits to participation in the production of the Gregory Lester “Report of Temporary Administrator”, but denies that the “report” is part of any conspiracy targeting the Brunsting Trusts under the pretext of estate litigation.

53. Defendant Jill Young asserted on the first page of her unnumbered Rule 12 motion (Dkt 25),

*In reality, their Complaint is a bizarre, conspiracy-theory-laden attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court.*

54. Defendant Young did not support her claim with an exhibit or with specific reference to any state court determinations and none of the Defendants can point to such an event. Thus, while making knowingly disingenuous claims, Defendants seek to avoid the facts in the record.

#### **X. In the Custody of a Federal Court**

55. Plaintiff Candace Curtis and Plaintiff Munson are cohabitant partners. Plaintiff Candace Curtis filed her original petition in the TXSD February 27, 2012 (4:12-cv-592). That Petition was dismissed under the Probate Exception to federal Diversity Jurisdiction. The Fifth Circuit Court of appeals reversed and remanded back to TXSD on January 9, 2013<sup>1</sup>. The Brunsting trusts are not an asset of either “Estate” and are not subject to probate administration.

56. The Harris County District Court suit was filed January 29, 2013, raising only issues relating to the Trust then in the custody of the federal Court.

57. The state probate court suit was filed April 9, 2013, raising only issues relating to the Brunsting Trust, then in the custody of the federal Court, which is the same day Plaintiff Curtis obtained a federal injunction regarding the same Trust.

58. The probate suit raises no issues other than trust issues. Munson ended up in the hospital in a coma and Plaintiff Candace Curtis retained the assistance of a Houston attorney, Jason Ostrom, who had the federal case remanded to the probate court with no opposition from Defendants’ counsel.

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<sup>1</sup> Curtis v Brunsting 704 F.3d 406

### **XI. Reality Check**

59. Anita Brunsting, with her silent partner Amy Brunsting, plotted and planned to steal the family trust. If not for Anita's over exuberant efforts none of the lawsuits would have been necessary. However, Anita Brunsting would have had to find another way except for the excellent assistance of Candace Kunz-Freed.

60. Candace Kunz-Freed had a fiduciary duty to Nelva Brunsting and if Nelva had asked for improper trust changes Freed had an obligation to inform Nelva that the changes she requested were not authorized under the law of the trust. There is no evidence Nelva requested those changes, but there is plenty of evidence that Anita did.

61. Without the illicit papers drafted by Candace Freed, Anita Brunsting would not have had the ability to run amok and none of the injuries and none of the litigation would have been possible.

62. If Defendant Bobbie Bayless had honorable intentions she would have filed Carl's Joinder as a beneficiary of the Trusts and that would have polluted diversity, causing a remand to the Harris County District Court where Plaintiff Curtis' suit would appear as the lead case on the Title Page. Instead Bayless filed two state court lawsuits in the name of the Estates of Elmer and Nelva Brunsting, raising only issues relating to the Trust in the custody of a federal court. If not for the illicit meddling of Bobbie Bayless and her sham state court litigation, all trust related litigation would have been resolved and everyone would have their property and gone on with their lives.

63. If Jason Ostrom had honorable intentions he would have moved for summary and declaratory judgment in the federal Court, but instead chose to facilitate a remand to a state probate court with no subject matter jurisdiction.

64. Once in probate court Ostrom immediately abandoned the Curtis v Brunsting litigation and began filing papers under the heading “Estate of Nelva Brunsting” asking for distributions from the trust to pay his “fees” while knowing full well the estate does not own any trust assets.

65. If not for Jason Ostrom’s attempt to participate in Bayless’ sham litigation, this case would have been resolved long ago.

66. The state probate Court had a duty to look to jurisdiction and the first place one looks for probate jurisdiction is in the Will of the Testator. The state Probate Court in looking to the Wills would have seen that the only heir in fact to either Estate is “the trust” and not being property of an “Estate” the Probate Court had a duty to dismiss trust related claims for want of jurisdiction.

67. When the remand was received by the state court the Order included reference to the federal injunction in place and all of the Defendants were aware of that injunction. The Notice of Injunction and Report of Master should have made it abundantly clear the probate court was without the jurisdiction to take cognizance of a trust in the custody of a federal court, on the very day a federal injunction was issued. Unfortunately all these Defendants were looking at was the money cow and like business as usual, were not really looking at the case with any other eyes.

68. What else would explain the absolute refusal of the probate court to set any evidentiary hearings and refusal to enter any orders at all?

69. This effort to coerce and intimidate Plaintiff Curtis with a fraudulent no contest clause threat to property interests on March 9, 2016, was an obvious effort to avoid the complete absence of jurisdiction.

70.

## **XII. Conclusion**

71. Defendants reargue their claims of want of adequate notice, failure to state a claim, and challenge TO federal subject matter jurisdiction relying upon the various claims of immunity. None of these are Rule 12(f) arguments and while using noise words to condemn the Complaint (Dkt 1) and the Addendum (Dkt 26), Defendants to cite no paragraph numbers or exhibit numbers and refuse to number their pleadings to allow Plaintiffs to adequately and properly reply.

72. Defendants claim to have been involved in the very proceedings that Plaintiffs cite to as evidence in support of their claims, and Defendants, while claiming ignorance of facts, ask the Court to strike what is, in effect, the public record, containing the very facts they claim lack of notice of.

73. The Addendum of Memorandum is a proper supplement to the Complaint authorized by Federal Rule of Civil Procedure 15(a)(1) and 10(c) and Defendants' arguments are a non sequitur.

Wherefore, Plaintiffs respectfully move this Honorable Court for an Order denying Defendants' Motions to Strike (Dkt 38, 42, and 60).

Respectfully submitted, October 18, 2016

/s/ Candace L. Curtis

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Candace L. Curtis

/s/ Rik W. Munson

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Rik W. Munson

**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 18th day of October, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis

---

Candace L. Curtis

/s/ Rik W. Munson

---

Rik W. Munson

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Curtis, et al

Plaintiffs

v

Kunz-Freed, et al

Defendants

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§  
§

Civil Action No. 4:16-cv-01969

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**ORDER**

Upon due consideration, Defendants' Rule 12(f) Motions to Strike, filed on October 3,, 2016, by Defendant Jill Willard Young (Dkt 38), October 4, 2016, by Defendants Albert Vacek Jr. & Candace Kunz-Freed (Dkt 42) and the Motion to Strike filed by Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte (Dkt 60) October 14, 2016, should be Denied.

It is SO ORDERED

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Alfred H Bennet  
United Stated District Judge



**DATA-ENTRY**  
**PICK UP THIS DATE**

PROBATE COURT 4

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FILED  
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 Harris County

CAUSE NO. 412,249

ESTATE OF § IN THE PROBATE COURT  
 NELVA E. BRUNSTING, § §  
 DECEASED § § §  
 § NUMBER FOUR OF  
 § HARRIS COUNTY, TEXAS

**NON-PARTY'S CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC f/k/a  
 THE VACEK LAW FIRM, PLLC'S OPPOSED MOTION FOR CONTINUANCE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Non-parties Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC (collectively referred to as "V&F") and files this Opposed Motion for Continuance:

On or around February 9, 2016, *pro se* Party Candace Curtis filed a Motion to Transfer Cause from District Court to Probate Court # 4 ("the Motion"). On or around March 2, 2016, Curtis filed a memorandum in support of her motion.

In her motion and memorandum, Ms. Curtis is requesting that the civil lawsuit pending in Harris County District Court, filed by Carl Brunsting as Independent Executor for Estates of Elmer H. Brunsting and Velva Brunsting against V&F, be transferred to this Court. As this Court is aware, V&F is opposed to such a transfer. Because Ms. Curtis' Motion directly affects V&F and its defense of the claims brought against it, V&F is entitled to participate in the hearing on the Motion. The suit against V&F in the District Court has been pending since 2013, and V&F feels strongly that it is unnecessary, inappropriate, and a large waste of judicial resources and time to transfer the suit at this juncture.

V&F has been informed that a hearing on the Motion is set for March 9, 2016 at 2:30 p.m. Zandra Foley, lead counsel for V&F, has informed all parties she is unavailable on March 9, 2016 to attend the hearing on the Motion. Ms. Foley will be in mediation that day which has

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been set since January in Cause No. 2015-43077, Harris County District Court. Ms. Foley has attempted to work with Ms. Curtis to move the date of the hearing, but Ms. Curtis has refused to do so. As lead counsel for V&F, it is critical that Ms. Foley be able to appear and argue at the hearing on this important Motion. There is no pressing emergency reason why the hearing must be heard on March 9, 2016, and resetting the hearing will not prejudice any party.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, the Non-parties Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC respectfully request that this Court enter an order resetting the hearing on the Motion to a date and time convenient to the Court and all parties.

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

By: Zandra E. Foley  
Zandra E. Foley  
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Cory S. Reed  
State Bar No. 24076640  
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Email: [zfoley@thompsoncoe.com](mailto:zfoley@thompsoncoe.com)  
Email: [creed@thompsoncoe.com](mailto:creed@thompsoncoe.com)

**COUNSEL FOR NON-PARTY  
CANDACE L. KUNZ-FREED AND  
VACEK & FREED, PLLC f/k/a  
THE VACEK LAW FIRM, PLLC**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing instrument in accordance with the *TEXAS RULES OF CIVIL PROCEDURE* on the 4th day of March, 2016 to the following counsel of record:

Candace Curtis  
218 Landana St.  
American Canyon, California 94503

Darlene Payne Smith  
Crain, Caton & James, P.C.  
1401 McKinney 17th Floor  
Houston, Texas 77010

Stephen A. Mendel  
Bradley E. Featherston  
Then Mendel Law Firm, L.P.  
1155 Dairy Ashford, Ste. 104  
Houston, Texas 77079

Neal Spielman  
Griffin & Matthews  
1155 Dairy Ashford, Ste. 300  
Houston, Texas 77079

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

Zandra E. Foley  
Zandra E. Foley

**CERTIFICATE OF CONFERENCE**

I certify that I sent an email to all parties to Cause 412,249 regarding the relief requested in this Motion for Continuance. Candace Curtis indicated that she is opposed to moving the hearing on her Motion to Transfer. I did not hear from any other party as of the filing of this motion.

Zandra E. Foley  
Zandra E. Foley

09072016:1228:PO030

CAUSE NO. 412,249

ESTATE OF

NELVA E. BRUNSTING,

DECEASED

§  
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§  
§  
§

IN THE PROBATE COURT

NUMBER FOUR OF

HARRIS COUNTY, TEXAS

ORDER

Today the Court consider Non-party's Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC (collectively referred to as "V&F") Opposed Motion for Continuance. The Court, after examining the motion, is of the opinion that the Opposed Motion for Continuance should be **GRANTED**.

It is therefore **ORDERED** that the hearing on Candace Curtis' Motion to Transfer Cause from District Court to Probate Court #4 be postponed and continued. Thus, the new hearing setting is \_\_\_\_\_.

SIGNED this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
JUDGE PRESIDING

UNOFFICIAL COPY

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS &  
RIK WAYNE MUNSON

§  
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§

VS.

CIVIL ACTION NO. 4:16-cv-01969

CANDACE KUNZ-FREED,  
ALBERT VACEK, JR., ET AL

**JOINT DISCOVERY/CASE MANAGEMENT PLAN**  
**UNDER RULE 26(f)**  
**FEDERAL RULES OF CIVIL PROCEDURE**

**1. State when the parties conferred as required by rule 26(f), and identify the counsel who conferred.**

Response: The parties conferred via email regarding this joint case management plan during the period of October 13, 2016, through October 17, 2016. There was no conference regarding this joint case management plan. Plaintiff and Defendants were unable to come to a meeting of the minds and Defendants had difficulty coming to any kind of consensus among themselves. This is not a joint plan. Plaintiffs apologize to the court but don't know what else to do.

The participants to this plan are:

- A. Candace L. Curtis, Pro Se Plaintiff.
- B. Rik Wayne Munson, Pro Se Plaintiff.
- C. Anita Brunsting, Pro Se Defendant.
- D. Amy Ruth Brunsting, Pro Se Defendant.
- E. Cory S. Reed, counsel for defendants Candace Kuntz-Freed and Albert Vacek Jr.
- F. Robert S. Harrell, counsel for Jill Willard Young.
- G. Laura Beckman Hedge, counsel for:
  - (1) Defendant Christine Riddle Butts.
  - (2) Defendant Clarinda Comstock.

(3) Defendant Tony Biamonte

H. Stephen A. Mendel, Pro Se Defendant  
I. Bradley E. Featherston, Pro Se Defendant  
J. Bobbie Bayless, Pro Se Defendant.

K. Darlene Payne Smith, Pro Se Defendant.

L. Stacy L. Kelly, counsel for

(1) Gregory Lester

(2) Jason B. Ostrom

N. Neal E. Spielman,

**2. List the cases related to this one that are pending in any state or federal court with the case number and court.**

Response: A. Plaintiffs allege C.A. No. 4:12-592, *Candace Louise Curtis v. Anita Katy Brunsting, Et Al*; In the U.S. District Court for the Southern District of Texas is the base case and that the present matter is an extension of the earlier case and nothing less.

B. Defendants disagree and believe the only related case is C.A. No. 412,249-401, *Estate of Nelva Brunsting, Deceased*, Probate Court No. 4, Harris County, Texas.

**3. Briefly describe what the case is about.**

Response: Plaintiff allege a racketeering conspiracy that includes acts of aiding and abetting RICO predicate acts, obstructing justice and other civil and other rights violations designed to bust and loot the Brunsting trusts by preventing resolution on the merits and attempting to force agreement by coercion and duress that would include violating the trust to obtain fees for fake litigation in a court without subject matter jurisdiction over any Brunsting trust related matters. All Defendants are being sued in their individual capacities only.

Defendants allege that the suit is against eleven (11) attorneys, two (2) judges, and a court reporter protected by various forms of immunity

**4. Specify the allegation of federal jurisdiction.**

Response: Federal question based on plaintiffs' RICO Complaint.

**5. Name the parties who disagree and the reasons.**

Response: Defendants contend that the Plaintiffs failure to state a claim on which relief can be granted means there are no facts that support federal question jurisdiction, or jurisdiction on any other basis.

**6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.**

Response: None anticipated at this time.

**7. List anticipated interventions.**

Response: None anticipated at this time.

**8. Describe class-action issues.**

The Five Brunsting beneficiaries and their remaindermen are a limited private class.

Defendants disagree

**9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.**

Response: The parties will make initial disclosures within fourteen (14) days after the Court issues a scheduling order.

**10. Describe the proposed agreed discovery plan, including:**

**A. Responses to all the matters raised in Rule 26(f).**

- 1) Discovery should be completed within one hundred and twenty (120) days after **resolution of the base case.** (Defendants don't believe there is a base case.)
- 2) Discovery will be limited to:
  - a) Facts that prove or disprove any claim or cause of action in any related matter once the dispute over what those matters are and are not, has been resolved.
  - b) Opinions of experts, if any.



- 3) The parties will preserve hard copies and/or electronic copies of documents that relate in whole or in part to any issue in the case, and regardless of any claim of privilege or work product doctrine. The documents will be preserved through the date of trial or until this case is dismissed.
- 4) The parties will preserve any recordings of any communications by, among, or between themselves and the decedent, Nelva Brunsting, if such recordings relate in whole or in part to any issue in the case, and regardless of any claim of privilege or work product doctrine. The recordings will be preserved through the date of trial or until this case is dismissed.
- 5) Parties agree that oral depositions will be limited as follows:
  - (a) No more than four (4) hours per plaintiff.
  - (a) No more than four (4) hours per defendant.
- 6) Interrogatories will be limited to twenty five (25) questions per party, inclusive of any subparts. Interrogatories, including subparts, in excess thereof shall require leave of Court.
- 7) Requests for production shall not exceed \_\_\_\_\_ (\_\_) requests. Requests in excess thereof shall require leave of Court.
- 8) Requests for admissions shall not exceed \_\_\_\_\_ (\_\_) requests. Requests in excess thereof shall require leave of Court.

**B. When and to whom the plaintiff anticipates it may send interrogatories.**

Plaintiffs will serve interrogatories on the following persons within forty-five (45) days after the Court issues a scheduling order:

- 1) Anita Brunsting.
- 2) Candace Kuntz-Freed.
- 3) Albert Vacek, Jr.
- 4) Amy Ruth Brunsting.
- 5) Neal E. Spielman.
- 6) Stephen A. Mendel.
- 7) Bradley Featherston.
- 8) Darlene Payne Smith.
- 9) Jason B. Ostrom.
- 10) Gregory Lester.
- 11) Jill Willard Young.
- 12) Bobbie Bayless.
- 13) Hon. Christine Riddle Butts.
- 14) Hon. Clarinda Comstock.

15) Tony Biamonte.

**C. When and to whom the defendant anticipates it may send interrogatories.**

Defendants will serve interrogatories on the following persons within fifteen (15) days after the Court issues a scheduling order:

- 1) Candace L. Curtis.
- 2) Rik Wayne Munson.

**D. Of whom and by when the plaintiff anticipates taking oral depositions.**

Plaintiffs will take oral depositions of the following persons within one hundred eighty (180) days after the Court issues a scheduling order:

1. Gregory Lester
2. Jill Willard Young
3. Candace Kunz-Freed,
4. Anita Brunsting,
5. Amy Brunsting,
6. Neal Spielman,
7. Jason Ostram,
8. Bobbie Bayless,
9. Clarinda Comstock
10. Christine Butts
11. Drina Brunsting, attorney in fact for Carl Brunsting

Plaintiff would expect Depositions to trail dispositive hearings in the base case and under no circumstances are these Defendants to be allowed to torment Carl Brunsting. Carl resigned as executor due to a lack of capacity and these defendants pleadings admit to Carl's lack of capacity. Plaintiffs will seek a protective Order. Defendants already had their deposition of Carl Brunsting and Plaintiffs are adamantly opposed to any repeat of such a horrible inhuman event.

**E. Of whom and by when the defendant anticipates taking oral depositions.**

Defendants will take oral depositions of the following persons within one hundred twenty (120) days after the Court issues a scheduling order:

- 1) Candace L. Curtis.
- 2) Rik Wayne Munson.
- 3) Carole Brunsting.

**F. When the plaintiff (or other party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B), and when the opposing party will be able to designate responsive experts and provide their reports.**

- 1) Plaintiffs will designate any experts and provide the required reports within thirty (30) days after the Court issues a scheduling order.
- 2) Defendants do not anticipate the need for any expert testimony in this matter, other than testimony on attorneys' for sanctions for the frivolous filing. Such experts will be designated within sixty (60) days after the Court issues a scheduling order.

**G. List expert depositions the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).**

Neither plaintiffs nor defendants anticipate the need for expert depositions at this time. Should the need arise, any such depositions will be completed within one hundred twenty (120) days after the Court issues a scheduling order.

**H. List expert depositions the opposing party anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).**

Neither plaintiffs nor defendants anticipate the need for expert depositions at this time. Should the need arise, any such depositions will be completed within one hundred twenty (120) days after the Court issues a scheduling order.

**11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.**

Response: None.

**12. Specific the discovery beyond initial disclosures that has been undertaken to date.**

Response: None.

**13. State the date the planned discovery can be reasonably completed.**

Response: Within one hundred twenty (120) days after the Court issues a scheduling order.

**14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.**

Response: None. The defendants do not intend to settle.

**15. Describe what each party has done or agreed to do to bring about a prompt resolution.**

Response: None. The defendants do not intend to settle.

**16. From the attorneys' discussion with the client, state the alternative dispute resolution techniques that are reasonably suitable, and state when such a technique may be effectively used in this case.**

Response: None. The defendants do not intend to settle.

**17. Magistrate judges may now hear jury and non-injury trials. Indicate the parties' joint position on a trial before a magistrate judge.**

Response: Defendants object to a trial before a magistrate judge.

**18. State whether a jury demand has been made and if was made on time.**

Response: Plaintiffs' made jury demand in their original complaint.

**19. Specify the number of hours it will take to present the evidence in this case.**

Plaintiff's Response. Will be more easily determined by the number of issues remaining after 12(c) motions for remedy on the pleadings as soon as the base case has been resolved by the same method.

Defendants Response: Eighty (80) hours.

**20. List pending motions that could be ruled on at the initial pretrial and scheduling conference.**

Plaintiff's Response:

The Rule 60 Motion for vacatur of the void remand order (Dkt 26 this court, Dkt 115-119 in the base case) to Harris County Probate Court No. 4 issued May 14, 2014 in base case 4:12-cv-592 (Dkt106). Plaintiff's challenge to probate court jurisdiction over Brunsting trust matters is dispositive and must be resolved before any Rule 12 Motions can be considered.

Plaintiffs' Motion for Consolidation of related cases (Dkt 43) should also be resolved before any substantive issues are addressed

Defendants Response:

A. Rule 12(b)(6) Motions:

- 1) Defendants' Candace Kunz-Freed and Albert Vacek Jr.'s Motion to Dismiss for Failure to State a Claim [Docket No. 19].
  - 2) Bobbie G. Bayless' Motion to Dismiss for Failure to State a Claim [Docket No. 23].
  - 3) Defendant Jill Willard Young's Rule 12(b)(6) Motion to Dismiss [Docket No. 25].
  - 4) Defendant Anita Brunsting's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' failure to State a Claim [Docket No. 30].
  - 5) Defendant Amy Brunsting's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' failure to State a Claim [Docket No. 35].
  - 6) Defendants Mendel's & Featherston's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' failure to State a Claim [Docket No. 36].
  - 7) Defendant Neal Spielman's Motion to Dismiss for Plaintiffs' failure to State a Claim [Docket No. 39].
  - 8) Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock & Tony Biamonte's Motion to Dismiss Complaint Pursuant to FED. R. CIV. P. 12(b)(1) and (6) [Docket No. 53].
- B. Defendant Jill Willard Young's Motion to Strike Plaintiffs' "Addendum of Memorandum in Support of RICO Complaint," [Docket No. 38].

[REMAINDER OF PAGE LEFT BLANK]

C. Rule 12(b)(1) Motion:

- 1) Defendants' Candace Kunz-Freed and Albert Vacek Jr.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction [Docket No. 20].
- 2) Defendant Neal Spielman's Motion to Dismiss Based on Lack of Subject Matter Jurisdiction [Docket No. 40].
- 3) Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock & Tony Biamonte's Motion to Dismiss Complaint Pursuant to FED. R. CIV. P. 12(b)(1) and (6) [Docket No. 53].

D. Plaintiff's Motion for Consolidation of Related Cases Pursuant to 28 U.S.C. § 1637, Rule 42(A) of the FED. R. CIV. P. and Local Rule 7.6 with Supporting Memorandum [Docket No. 43].

**21. List other motions pending.**

Response: None.

**22. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the court at the conference.**

Plaintiff Response: There is a Fifth Circuit Opinion, 704 F.3d 406 and a federal injunction issued April 9, 2013 in 4:12-cv-592 that directly relate to this case. The injunction remains active and is an issue directly related to the case before this Court.

Defendants say: none.

**23. Certify that all parties have filed Disclosure of Interested Parties as directed in the Order for Conference and Disclosure of Interested Parties, listing the date of filing for original and any amendments.**

- Response:
- A. Rik Wayne Munson and Candace Louise Curtis, plaintiffs, Plaintiffs' Certificate of Interested Parties [Docket No. 6, filed July 20, 2016].
  - B. Jason B. Ostrom, defendant, Certificate of Interested Parties [Docket No. 16, filed August 24, 2016].
  - C. Bobbie G. Bayless, defendant, Disclosure of Interested Parties [Docket No. 21, filed September 7, 2016].

- D. Candace Kunz-Freed and Albert Vacek Jr., defendants, Certificate of Interested Parties [Docket No. 22, filed September 7, 2016].
- E. Anita Brunsting, defendant, Certificate of Interested Parties [Docket No. 29, filed September 12, 2016].
- F. Amy Brunsting, defendant, Certificate of Interested Parties [Docket No. 32, filed September 16, 2016].
- G. Stephen A. Mendel and Bradley E. Featherston, defendants, Certificate of Interested Parties [Docket No. 37, filed September 30, 2016].
- H. Neal Spielman, defendant, Certificate of Interested Parties [Docket No. 44, filed October 6, 2016].
- I. Jill Willard Young, defendant, Certificate of Interested Parties [Docket No. Parties, document 46, October 6, 2016].

**24. List the names, bar numbers, addresses and telephone numbers of all counsel.**

Response: For the Court's convenience, the list of persons below includes the Pro Se parties:

A. Pro Se Plaintiffs:

- 1) Candace L. Curtis  
Plaintiff, Pro Se  
218 Landana Street  
American Canyon, CA 94503  
925-759-9020
- 2) Rik Wayne Munson  
Plaintiff, Pro Se  
218 Landana Street  
American Canyon, CA 94503  
925-349-8348

B. Plaintiffs Represented by Counsel: None.

C. Pro Se Defendants:

- 1) Anita Brunsting  
Defendant, Pro Se  
203 Bloomingdale Circle



A Co-Trustee  
Victoria, Texas 77904  
361-550-7132

- 2) Amy Ruth Brunsting  
Defendant, Pro Se  
2582 Country Ledge  
A Co-Trustee  
New Braunfels, Texas 78132

D. Defendants Represented by Counsel:

- 1) Laura B. Hedge (SBN 00790288)      Def. Hon. Christine Riddle Butts  
Harris County Attorney's Office      Def. Hon. Clarinda Comstock  
1019 Congress, 15<sup>TH</sup> Floor      Def. T. Biamonte, court reporter  
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- 2) Cory S. Reed (SBN 24076640)      Def. Candace Kuntz-Freed  
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- 3) Robert S. Harrell (SBN 09041350)      Defendant Jill Willard Young  
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[SIGNATURE BLOCKS TO FOLLOW]

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

**DEFENDANTS’ OBJECTION TO PLAINTIFFS’ RULE 26(F) PLAN**

On October 18, 2016, Plaintiffs filed a “Joint Discovery/Case Management Plan Under Rule 26(f) Federal Rules of Civil Procedure,” [DKT. 66] purporting to set out Plaintiffs’ and Defendants’ positions following the Rule 26(f) conference. But Defendants’ did not agree to such joint filing. Instead, the document was filed unilaterally by Plaintiffs without advance notice of *what*<sup>1</sup> or *when* they would be filing.

Crucially, the document does not accurately state Defendants’ position. Far from agreeing that the parties should make initial disclosures and conduct discovery following the Rule 26(f) conference, Defendants have objected (and continue to object) to any discovery taking place in this matter until the Court rules on the Motions to Dismiss filed by Defendants. *See* Defendants’ Motion to Stay Rule 26(f) Conference and All Discovery Pending Resolution of Motions to Dismiss [DKT. 59]. Defendants have also requested the Court to stay all proceedings in this matter, including the Rule 26(f) conference, pending resolution of the Motions to Dismiss filed by Defendants. *See id.*

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<sup>1</sup> Defendants believe Plaintiffs filed a draft Rule 26(f) plan, which was circulated by one of the defendants among the parties for review and comment on October 14, 2016. But before all parties’ comments could be received and assembled, the Plaintiffs unilaterally filed the draft plan. Defendants did not consent to such filing, nor did Plaintiffs inform Defendants that they would be making such a filing.

In sum, Defendants object to Plaintiffs' characterization of their filing as a "joint" plan. Defendants also object to Plaintiffs' filing of a document purporting to state Defendants' "positions." Defendants' positions have been accurately asserted in Defendants' Motion to Stay, and Plaintiffs' unilateral statements to the contrary should be disregarded by this Court.

Dated: October 13, 2016

Respectfully submitted,

*/s/ Cory S. Reed*

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*Attorneys for Defendants Candace Kuntz-  
Freed and Albert Vacek, Jr.*

*/s/ Bobbie G. Bayless*

---

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*Attorney for Defendant Bobbie G. Bayless*

*/s/ Laura Beckman Hedge*

---

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Riddle Butts, Judge Clarinda Comstock and  
Tony Baiamonte*

*/s/ Martin S. Schexnayder*

---

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*/s/ Robert S. Harrell*

---

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*Attorney for Defendant Jill Willard Young*

*/s/ Stephen A. Mendel*

---

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Facsimile: (713) 759-3214  
*Attorney for Defendants Stephen A. Mendel  
and Bradley Featherston*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above filing has been served on October 19, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

*/s/ Robert S. Harrell*

---

Robert S. Harrell

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>CANDACE LOUISE CURTIS &amp; RIK WAYNE MUNSON</b>	§ § §	
<b>VS.</b>	§	<b>CIVIL ACTION NO. 4:16-cv-01969</b>
	§	<b>(Alfred H. Bennett)</b>
<b>CANDACE KUNZ-FREED, ALBERT VACEK, JR, ET AL</b>	§ §	

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**UNOPPOSED MOTION TO SUBSTITUTE COUNSEL FOR STEPHEN A. MENDEL  
AND BRADLEY E. FEATHERSTON**

---

COMES NOW the undersigned counsel, Stephen A. Mendel, and on behalf The Mendel Law Firm, L.P., asks this Court to substitute Adraon D. Greene and David C. Deiss of the law firm of Galloway, Johnson, Tompkins, Burr & Smith, P.C. as counsel of record for Stephen A. Mendel and Bradley E. Featherston (“Mendel and Featherston”), and to allow Stephen A. Mendel of The Mendel Law Firm, L.P. to withdraw as the attorney of record for Mendel and Featherston. Mendel and Featherston represent that this substitution will in no way delay the progress of this matter. Substituting counsel’s contact information is as follows:

Adraon D. Greene  
Fed. I.D. No. 25029  
State Bar No. 24014533  
[agreene@gallowayjohnson.com](mailto:agreene@gallowayjohnson.com)  
David C. Deiss  
Fed. I.D. No. 33627  
State Bar No. 24036460  
[ddeiss@gallowayjohnson.com](mailto:ddeiss@gallowayjohnson.com)  
GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH  
1301 McKinney St., Suite 1400  
Houston, Texas 77010  
Telephone: (713) 599-0700  
Facsimile: (713) 599-0777



**CONCLUSION**

For these reasons, undersigned counsel asks this Court to grant this Motion to Substitute Adraon D. Greene as the attorney in charge for Stephen A. Mendel and Bradley E. Featherston and to allow Stephen A. Mendel to withdraw as counsel.

Respectfully submitted,

/s/ Stephen A. Mendel  
Stephen A. Mendel (13930650)  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, TX 77079  
Tel.: 281-759-3213  
Fax.: 281-759-3214  
ATTORNEYS FOR DEFENDANTS,  
STEPHEN A. MENDEL AND  
BRADLEY E. FEATHERSTON

**CERTIFICATE OF CONFERENCE**

I certify that Adraon D. Greene has conferred with Plaintiffs on my behalf and Plaintiffs are unopposed to the filing of this Motion to Substitute Counsel.

/s/ Stephen A. Mendel  
Stephen A. Mendel

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of October, 2016, a copy of the above and foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants. I also certify that I have forwarded this filing by regular U.S. Mail, postage pre-paid, this same day to all non-CM/ECF participants.

/s/ Stephen A. Mendel  
Stephen A. Mendel

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>CANDACE LOUISE CURTIS &amp; RIK WAYNE MUNSON</b>	§	
	§	
	§	
<b>VS.</b>	§	<b>CIVIL ACTION NO. 4:16-cv-01969</b>
	§	<b>(Alfred H. Bennett)</b>
	§	
<b>CANDACE KUNZ-FREED, ALBERT VACEK, JR, ET AL</b>	§	

**ORDER ON MOTION TO SUBSTITUTE COUNSEL FOR STEPHEN A. MENDEL AND  
BRADLEY E. FEATHERSTON**

After considering the Unopposed Motion to Substitute Counsel for Stephen A. Mendel and Bradley E. Featherston, the Court

GRANTS the Motion to Substitute, and

ORDERS the withdrawal of Stephen A. Mendel and The Mendel Law Firm, L.P. as counsel of record for Stephen A. Mendel and Bradley E. Featherston. Further, the Court

ORDERS the following counsel be substituted as attorney in charge for Stephen A. Mendel and Bradley E. Featherston:

Adraon D. Greene  
Attorney-in-Charge  
[agreene@gallowayjohnson.com](mailto:agreene@gallowayjohnson.com)  
David C. Deiss  
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GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH  
1301 McKinney St., Suite 1400  
Houston, Texas 77010

SIGNED on \_\_\_\_\_, 2016.

---

HON. ALFRED H. BENNETT

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 DEFENDANT NEAL SPIELMAN’S MOTIONS 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. Before the Court are motions to dismiss filed by Defendant Neal Spielman. Docket entry 39 is a Rule 12(b)(6) Motion and docket entry 40 is a Rule 12(b)(1) Motion.

2. Plaintiffs incorporate and adopt by this reference the Complaint (Dkt 1 and 26), the previously filed Rule 12 Motions, Dkts 19, 20, 23, 25, 30, 35, 36, 38 and 53 and Plaintiffs’ replies thereto, Dkt 33, 34, 41, 45, 62, 57 and 65, as if fully restated herein.

3. Plaintiffs further request this Honorable Court take judicial notice of the following related public records:

- a. Curtis v Brunsting C.A. 4:12-cv-592 TXSD 2/27/2012
- b. Carl Henry Brunsting Executor for the Estates of Elmer and Nelva Brunsting v. Candace Freed & Vacek & Freed, Harris Co. District Court CA No. 2013-05455;
- c. Carl Henry Brunsting Executor for the Estates of Elmer and Nelva Brunsting CA No, 2012-14538 164TH Judicial District Court of Harris County, Texas;
- d. Carl Henry Brunsting Individually and as Executor for the Estates of Elmer and Nelva Brunsting, Harris Co. Probate No. 4 CA No 412248, 412249, 412249-401, 412249-402

**II. CHRONOLOGICAL HISTORY**

4. Plaintiffs incorporate by reference the “Standards of Review”, “Contextual Summary”, “History of the Controversy”, and “History of the Litigation” (Dkt 33 sections I, II, III and IV) from Plaintiffs’ response to Motions to Dismiss by Defendants Vacek & Freed, (Dkt 19 & 20) as if fully restated herein. In short:

5. Curtis v Brunsting 4:12-cv-0592 was filed in the United States District Court for the Southern District of Texas on February 27, 2012 under diversity jurisdiction, was dismissed under the “Probate Exception” to federal diversity jurisdiction March 8, 2012 and went to the Fifth Circuit for review.

6. The Fifth Circuit held that Curtis v Brunsting 4:12-cv-0592 is a lawsuit related only to the Brunsting inter vivos trusts, not property of any estate but the heir in fact, and does not come within the purview of the probate exception to federal diversity jurisdiction, *Curtis v Brunsting* 710 F.3d 406 (Jan 2013).

7. A remand to Harris County Probate Court No. 4 was facilitated by Defendant Jason Ostrom and Plaintiff Curtis now returns the matter to the federal Court with a separate complaint.

### **III. ISSUES RAISED**

Defendant argues:

- A. Plaintiffs are involved in a bitterly contested “Probate Matter” involving a dispute between the Brunsting siblings over the administration of their late parents' estate. (Dkt 39 & 40 Pages 1 unnumbered paragraphs 2);
- B. Plaintiffs’ claims are incomprehensible conspiracy theories;
- C. Plaintiff is avoiding a court ordered mediation;
- D. Plaintiffs’ claims are barred by Attorney Immunity;
- E. Plaintiffs fail to plead particular acts of fraud;
- F. Plaintiffs fail to plead particular conduct of the Defendant;
- G. Plaintiffs lack Privity with Defendant;
- H. Plaintiffs lack proper standing;

#### IV. PLAINTIFF'S REPLY

##### The Probate Matter

8. Defendant Spielman begins both motions with an identical summary in which he states:

*“This case stems from “conspiracy” claims and other allegations against lawyers, judges, and court personnel involved in a bitterly contested probate matter in Harris County Probate Court No. 4. The Plaintiffs “claims,” which are nearly incomprehensible...”*

9. In his BACKGROUND section he states:

*“Plaintiffs’ suit arises from a case pending in Harris County Probate Court Number 4, Cause No. 412.249-401, Carl Henry Brunsting et al. v. Anita Kay Brunsting, et al., (“the Probate Matter”). The Probate Matter involves a dispute between the Brunsting siblings over the administration over their late parents’ estate”.*

10. Given that both motions are built entirely upon this erroneous factual ground it is unnecessary to address the supporting authorities.

11. The record will show the case before the Court involves claims against Defendants in their individual capacities, arises out of a probate court, and does not arise from a controversy over the administration of any “estate”.

12. These matters were res judicata before any state court actions were even filed.<sup>1</sup>

13. Claims were first filed in Harris County Probate No. 4 April 9, 2013, the same day a federal judge issued an injunction against Anita and Amy Brunsting to preserve and prevent wasting of assets of the Brunsting trusts then in the custody of a federal court. (Dkt 26-2, 26-7, 33-5, 34-6)

14. The claims filed in Harris County courts by Defendant Bayless were filed on January 29, 2013 and April 9, 2013. The Harris County District Court suit No. 2013-05455 is styled:

---

<sup>1</sup> Curtis v Brunsting 704 F.3d 406

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

15. Like Defendant Bayless, (Dkt 23) Defendant Spielman states in the opening sentence of his Rule 12(b)(1) motion that the “Probate Matter” is styled “*Carl Henry Brunsting et al. v. Anita Kay Brunsting, et al.,*” (“*the Probate Matter*”). The Harris County Probate suit (412249-401) is actually styled as Docket entry 34 Exhibits 5 and 7 show:

*CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting”*

16. It is important to note that federal Plaintiff Candace Louise Curtis is named a “Nominal Defendant” in Bayless, exclusively trust related Probate Court suit, filed on the same day Plaintiff Curtis obtained a protective Order in the federal Court regarding the same Trust.

17. Both state court petitions raise only issues related to the Brunsting trusts and both state court actions were filed while the Brunsting trust res was in the custody of a federal court.

18. The Fifth Circuit noted that the wills of both decedents (Dkt 41-3 and 41-4), bequeathed everything to one heir and that the only heir in fact to either estate was “the trust”.

## **The Trust Matter**

*Curtis v. Brunsting*

*United States Court of Appeals for the Fifth Circuit*

*January 9, 2013, Filed No. 12-20164*

*Reporter*

*704 F.3d 406; 2013 U.S. App. LEXIS 524; 2013 WL 104918*

*Procedural Posture*

*Plaintiff, the beneficiary of a trust, sued defendant co-trustees of the trust, for breach of fiduciary duty, extrinsic fraud, constructive fraud, and intentional infliction of emotional distress. The United States District Court for the Southern District of Texas dismissed the case for lack of subject matter jurisdiction, concluding that the case fell within the probate exception to federal diversity jurisdiction. The beneficiary appealed.*

*Overview*

*The court found that the case was outside the scope of the probate exception under the first step of the inquiry because the trust was not property within the custody of the probate court. Because the assets in a living or inter vivos trust were not property of the estate at the time of decedent's death, having been transferred to the trust years before, the trust was not in the custody of the probate court and as such the probate exception was inapplicable to disputes concerning administration of the trust. The record also indicated that there would be no probate of the trust's assets upon the death of the surviving spouse. Finding no evidence that the trust was subject to the ongoing probate proceedings, the case fell outside the scope of the probate exception.*

*Outcome*

*The district court below erred in dismissing the case for lack of subject-matter jurisdiction.*

**Defendant's Challenges D, E and F**

D. Plaintiffs' Claims Are Barred by "Attorney Immunity" Doctrine;

E. Plaintiffs Fail to Plead Particular Acts of Fraud;

F. Plaintiffs Fail to Plead Particular Conduct of the Defendant;

19. The United States Attorney's Resource Manual at CRM 2403 defines Extortion by Force, Violence, or Fear as follows:

*In order to prove a violation of Hobbs Act extortion by the wrongful use of actual or threatened force, violence, or fear, the following questions must be answered affirmatively:*

- 1. Did the defendant induce or attempt to induce the victim to give up property or property rights?*
- 2. Did the defendant use or attempt to use the victim's reasonable fear of physical injury or economic harm in order to induce the victim's consent to give up property?*

20. Defendant Spielman's performance on March 9, 2016 (Dkt 26 and exhibit 26-16) inarguably answers these inquiries in the affirmative. Plaintiffs' allegations regarding Mr. Spielman are articulated in the Complaint with the specificity required by rule 9(b).

21. Mr. Spielman's specific threats of injury to property rights if Curtis did not mediate a settlement agreement, using a knowingly false instrument, is conduct entirely foreign to the



duties of an attorney and the mere attempt constitutes the tort and crime of extortion whether successful or not.

### **Failure to State a Claim**

22. Defendant Spielman claims to have been involved in the very actions described above and claims to have been representing Defendant Amy Brunsting in a “Probate Matter”.

23. Plaintiff points only to the record of those proceedings in answer to each motion to dismiss and Defendant Spielman cannot claim to have been both counsel and ignorant of the facts contained in those records.

24. If it is the interpretation of those fact records that Defendant Spielman wishes to argue, a motion to dismiss for failure to state a claim is neither the proper vehicle nor the proper stage of the proceedings for arguing his contrary facts.

### **Plaintiffs Lack Privity with Defendant Spielman**

25. The impregnable citadel of Privity. Privity is a legal expression defining a close, mutual, or successive relationship to the same right of property or the power to enforce a promise or warranty.

26. While the Doctrine of Privity is an important concept in contract law, a deliberate intent to defraud is not a good faith error in judgement and like the Attorney Immunity Doctrine, the Privity Doctrine is intended to preserve the integrity of the client professional relationship and in the case of an attorney, to provide confidence in one’s ability to be a zealous advocate for his client's position. The protection of the Doctrine of Privity does not apply as an impunity shield for conduct that is both tortious and criminal resulting in injuries to third parties.

27. Because Privity is actually a term to summarize a conclusion that one party was precluded, it may exist for the purpose of determining one legal question but not another

depending on the circumstances and legal doctrines at issue." *Meza v. General Battery Corp.*, 908 F.2d 1262 (5th Cir. 1990).

## V. STANDING

### **Plaintiff Candace Louise Curtis**

28. Defendant's challenge to Plaintiff Curtis' standing relies entirely upon erroneous juristic concepts, wayward fact assertions and misplaced logic.

29. Rights are of two divisions. First are those annexed to the persons of men called *Jura personarum* or the rights of men and second is the right to control external objects over which man may obtain a dominion and this is called *Jura rerum* or the right of things<sup>2</sup>. Property is not the thing itself but the interest one acquires in dominion and control over the thing.

30. Plaintiff Curtis is a *cestui que trust*, also known as a beneficiary. Her property interest is a one-fifth part of the undiminished *res* of *inter vivos* trusts as a matter of equity.

31. A beneficial interest in the assets of an *inter vivos* trust is property and not inheritance expectancy. The concerted effort to deprive Plaintiff Curtis of the enjoyment of her very tangible trust property, continuing for a period of five years, is an injury in fact.

32. Plaintiff Curtis began this journey with no legal education of any kind but knew full well by the time that her mother passed that her sisters, Defendants Anita and Amy Brunsting, had been plotting and were actively engaged in trying to deprive her and her disabled brother Carl Brunsting of beneficial interests in the Brunsting trust *res*. It now appears Carole Brunsting was also intended to be deprived of her interest in the trust *res* as well.

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<sup>2</sup> See Blackstone's Commentaries on the Laws of England, Book the First, Chapter I, Part III, Pg 134.

**Plaintiff Rik Wayne Munson**

33. Defendant Spielman stood before the Probate Court on March 9, 2016 talking about his fees (Dkt 26-16 pg 14 ln 20) and how “*Ms. Curtis Pro se status and her, her need to be a lawyer and her failure to appreciate what it costs, what the costs of this lawsuit are, is...*” (Dkt 26-16 page 15). Later (p. 17) Spielman talks about how it would be an insult to respond to the Motions Plaintiff Curtis filed ... “*and all of the money that that's going to cost...*” and now claims to have been an attorney participating in those proceedings, immune from consequences for his mens rea motivated acts.

34. It is interesting that Mr. Spielman spoke about the cost of this litigation, as if somehow Plaintiff Curtis does not understand the war of attrition he and his co-defendants thought they would play to deprive her of her property rights.

35. Plaintiff Curtis and Plaintiff Munson have been co-habitant partners for ten years.

36. Munson’s tireless labor and effort to defend his household is the only thing that has protected Plaintiff Curtis’ property interests from the intended hijacking.

**VI. TANGIBLE PROPERTY IS NOT THE THING ITSELF**

37. Mankind is born into the world possessing only those rights inherited from nature and it is through the institution and the natural order of family that man develops into an independent and autonomous person with knowledge and ability to defend those rights.

38. The knowledge, experience, skill and labor of a man are the only property man owns in nature by which they can obtain a dominion over other things, including those required by the necessities of life and which directly affect the quality of living in a society.

39. Munson has assisted Plaintiff Curtis in obtaining a favorable appellate opinion (Dkt 34-4) and an injunction (Dkt 26-2) and continues to help protect Plaintiff Curtis’ property rights while

also advancing matters of public interest. It is an insult that Defendants consider their worth so high and Plaintiff Munson's so low as to discount that knowledge, experience and the labor devoted to defending against their unholy assault as other than a property interest, rendering such activities and use of resources meaningless.

40. Munson, like Plaintiff Curtis has suffered personal injury as direct and proximate result of the intentional manipulation of the judicial process, multiplication of litigation and superficial pomposity of these Defendants' pretense of legitimacy.

41. The interference began when Defendant Bobbie Bayless filed her exclusively trust related claims in state courts in the name of the Estates of Elmer and Nelva Brunsting, knowing full well the Brunsting trusts were under the exclusive jurisdiction of a federal Court.

42. Munson's time is valuable and the application of his knowledge, experience and labor to these five years of litigation is and has been invaluable to Plaintiff Curtis' protection of her property rights. That effort has cost Munson invaluable and irreplaceable life property interests by diverting valuable time, energy and attention away from other life pursuits.

43. Our families and the communities in which we live have a property interest in the honest services of our public officials and licensed practitioners. There is no valid legal theory that shows public policy interests are not in any way implicated, or that public policy is not wounded by the conduct complained of before this Court.

44. Each Defendant has participated in the jurisdictional sham and the attempted extortion/mediation diversion scheme, using the Bayless vehicle to insinuate their personal interests into the private Brunsting controversy.

## VII. IMMUNITY

45. Refusal to provide government services to the public without a transfer of wealth from the private to the public sector are neither judicial nor litigious, but the very definition of public corruption.

46. Defendants appear before this Honorable Court attempting to sell their illicit “Probate Matter” wares, claiming the protection of the judicial and litigation immunity privileges when, as a matter of law, they have been engaged in neither activity.

47. Where there is no subject matter jurisdiction, there is no court and where there is no court there is no judge and no litigation. Claims of attorney and other immunities in this case rely upon facts not in evidence and Plaintiffs demand what they could never get in Harris County Probate Court, an evidentiary hearing with findings of fact and conclusions of law after hearing.

48. For these reasons the conduct of Defendant Spielman, as exemplified by the public record, is not conduct protected by any doctrines of immunity, and reference to a “*Probate Matter*” is a fraud upon this Court.

49. Defendant’s different view of the significance of facts contained in the public records in point is not plausible. Defendant does not support contrary claims with any form of competent evidence and such claims are thus not properly raised under Rules 12(b)(1) or 12(b)(6).

## VIII. CONCLUSION

50. As the case in point shows, citizens who resort to the courts to enforce rights vindicate wrongs and settle their differences, are all too often confronted by judges and attorneys with an attitude that demonstrates no regard for individual rights or the rules of law.

51. These same individuals now come before this Court claiming entitlement and asking this Court to grant them the very thing they themselves refuse others, the due process and protection of law.

52. One is loath to contemplate the dangers and likely costs of continuing to deny remedy in the face of the present pandemic of public corruption, for the only remedy left to ordinary people would be governed not by reason, but by necessity.

Wherefore, Plaintiffs respectfully request this honorable court deny the Motions to Dismiss, Docket entries 39 and 40, filed by Defendant Neal Spielman on October 3, 2016, and hold Defendant to answer.

Respectfully submitted,

/s/ Candace L. Curtis

Candace L. Curtis

/s/ Rik W. Munson

Rik W. Munson

**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 24th day of October, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis  
Candace L. Curtis

/s/ Rik W. Munson  
Rik W. Munson

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

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**ORDER**

Upon due consideration, Defendants Rule 12(b)(1) and 12(b)(6) Motions to Dismiss filed on October 3, 2016, by Defendant Neal Spielman in the above styled cause (Dkt 39 and 40), should be Denied.

It is SO ORDERED

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Alfred H Bennet  
United Stated District Judge



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

CANDACE LOUISE CURTIS, ET AL.,

Plaintiffs,

v.

CANDACE KUNZ-FREED, ET AL.,

Defendants.

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Civil Action No. 4:16-cv-01969

**DEFENDANT JILL WILLARD YOUNG’S OPPOSITION TO  
PLAINTIFFS’ MOTION TO CONSOLIDATE**

Plaintiffs’ Motion to Consolidate (the “Motion”) asks this Court to consolidate this matter into case number 4:12-cv-0592, a closed case formerly pending before Judge Hoyt. But Plaintiffs’ Motion should be denied because a pending matter cannot be consolidated into a closed case, especially one that involves no common questions of law or fact.

**I. Consolidation Should be Denied Because the “Prior Case” Is Closed.**

Plaintiffs ask this Court to consolidate this matter into case number 4:12-cv-0592, before Judge Hoyt. But case number 4:12-cv-0592 is closed, and it has been closed since May 15, 2014.

A Motion to Consolidate a pending matter into a closed matter should be denied. *See* Order Denying Motion for Leave to File Motion to Consolidate, *EP-Team, Inc. v. Aspen Infrastructure, Ltd.*, No. H-07-2549 [DKT. 17] (S. D. Tex. Jan. 10, 2008). In *EP-Team*, a court in this District was asked to consolidate a matter into an earlier-filed case that was closed. *Id.* The court denied consolidation, stating, “This case, Civil Action No. 07-2549, is the earlier case and **it is closed, therefore, the Court cannot consolidate anything with it.**” *Id.* (emphasis

added); *see also* *Clarke v. Dir., TDCJ-CID*, No. 4:09-CV-404, 2012 WL 4120430, at \*1 & \*5 (E.D. Tex. Sept. 19, 2012) (denying a motion to consolidate because the “corresponding case” was “closed”); *Hamilton v. United Healthcare of Louisiana, Inc.*, CIV.A. 01-585, 2003 WL 22779081, at \*2 n.3 (E.D. La. Nov. 21, 2003) (determining that “consolidation **was done in error**” because the first-filed case “was closed” prior to consolidation) (emphasis added). And the “prior matter” is closed because Plaintiff Candace Curtis *herself* requested the court remand the matter to Harris County. *See* Order Granting Unopposed Motion to Remand by Candace Louise Curtis, *Curtis v Brunsting*, No. 4:12-cv-0592 (DKT. 112) (S.D. Tex. May 15, 2014).

Thus, Plaintiffs’ Motion to Consolidate should be denied.

## **II. The Closed Case and This Pending Matter Should not Be Consolidated.**

In determining whether to consolidate, Courts consider five factors:

(1) whether the actions are pending before the same court, (2) whether common parties are involved in the cases, (3) whether there are common questions of law and/or fact, (4) whether there is risk of prejudice or confusion if the cases are consolidated, and if so, is the risk outweighed by the risk of inconsistent adjudications of factual and legal issues if the cases are tried separately, and (5) whether consolidation will conserve judicial resources and reduce the time and cost of trying the cases separately.”

*Zolezzi v. Celadon Trucking Services, Inc.*, No. Civ.A.H-08-3508, 2009 WL 736057, at \*1 (S.D. Tex. Mar. 16, 2009) (citing *In re Enron Corp. Securities, Derivative & “ERISA” Litigation*, Civ. A. Nos. H-01-3624, H-04-0088, H-04-0087, H-03-5528, 2007 WL 446051, at \*1 (S.D. Tex. Feb.7, 2007)). Here, those factors overwhelmingly show that the two matters should not be consolidated.

First, the actions are not **pending** before the same court. Indeed, as shown above, the “prior case” is not pending at all—it is closed.

Second, although some of the parties to the two matters are common between the two cases, several are not. As an example, Defendant Young is not a party to the prior case; nor is

Defendant Lester. Judge Butts and Judge Comstock were not parties to the prior matter, either. And Jason Ostrom, who appears on the docket sheet as counsel for Plaintiff Curtis in the now-closed “prior case,” *has now been sued* by Plaintiffs in this case.

Third, there are not common questions of law or fact. This matter involves RICO assertions made by Plaintiffs, who make the novel contention that a state probate court is a conspiracy called the “Harris County Tomb Raiders” and the “Probate Mafia,” who “transfer wealth” from estates by engaging in “poser advocacy.” There are *no* questions of law or fact in the closed matter, because it has been remanded to state court. But even if the Court looked to the questions of law and fact in the state court matter, those questions relate merely to estate law—not alleged federal RICO statutes and criminal conspiracies.

Fourth, there is an extraordinary risk of confusion that would result from consolidation of the cases. As examples, in the RICO case, many of the probate court litigants, the attorneys, and the judges are all Defendants, who are all more-or-less aligned in opposing Plaintiffs’ RICO allegations. But in the probate matter itself, the parties share no such affinities. Certainly, it would be confusing for a fact-finder to be asked to determine, on the one hand, whether Plaintiff Curtis’s own counsel was involved in the criminal enterprise “Probate Mafia,” when that counsel also previously represented the Plaintiff in the closed federal court matter.

Fifth, consolidation will not conserve judicial resources since the prior matter is closed.

Thus, Plaintiffs’ Motion should be denied.

### **III. Conclusion**

For the above-stated reasons, Plaintiffs’ Motion should be denied.

Dated: October 25, 2016

Respectfully submitted,

*/s/ Robert S. Harrell*

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ATTORNEYS FOR DEFENDANT JILL  
WILLARD YOUNG

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above document has been served on October 25, 2016, in accordance with the Federal Rules of Civil Procedure.

*/s/ Robert S. Harrell*

---

Robert S. Harrell

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§ § §	
VS.	§	CIVIL ACTION NO. 4:16-cv-01969 (Alfred H. Bennett)
CANDACE KUNZ-FREED, ALBERT VACEK, JR, ET AL	§ § §	

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DEFENDANTS MENDEL’S & FEATHERSTON’S JOINDER  
IN JILL WILLARD YOUNG’S MOTION TO STRIKE PLAINTIFFS’  
ADDENDUM OF MEMORANDUM IN SUPPORT OF RICO COMPLAINT

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TO THE HONORABLE JUDGE ALFRED H. BENNETT:

Defendants Stephen A. Mendel and Bradley E. Featherston (collectively the “Mendel & Featherston Defendants”) hereby file this Adoption and Joinder in Jill Willard Young’s Motion to Strike Plaintiffs’ Addendum of Memorandum in Support of RICO Complaint (“Addendum”) and would respectfully show the Court as follows:

I.  
THE COURT SHOULD STRIKE PLAINTIFFS’ ADDENDUM

1. In the interests of justice and judicial economy, and pursuant to Federal Rule of Civil Procedure 10(c), the Mendel & Featherston Defendants hereby adopt and incorporate by reference, as if recited herein the arguments and authority contained in Jill Willard Young’s Motion to Strike [Doc. 38]. The Court should strike Plaintiffs’ Addendum, because it is not a valid pleading under the Federal Rules of Civil Procedure.

2. More importantly, the Court should dismiss Plaintiffs’ claims against the Mendel & Featherston Defendants. The Addendum does not affect the merits of the Mendel & Featherston Defendants’ Motions to Dismiss as none of the allegations against the Mendel &

Featherston Defendants form the basis for a valid complaint or support a RICO claim against the Mendel & Featherston Defendants.

3. Plaintiffs' claims should be dismissed because they have not adequately pleaded a violation of the RICO Act. Even assuming that Plaintiffs' Addendum is considered to be a supplement to Plaintiffs' Complaint, it does not change the fact that Plaintiffs have failed to meet the required pleading standards.

**II.**  
**PRAYER**

WHEREFORE PREMISES CONSIDERED, Defendants Stephen A. Mendel and Bradley E. Featherston hereby request that the Court strike Plaintiffs' Addendum.

Respectfully submitted,

*/s/ David C. Deiss* \_\_\_\_\_

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**BURR & SMITH**

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Tel.: (713) 599-0700

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**ATTORNEYS FOR DEFENDANTS,  
STEPHEN A. MENDEL AND  
BRADLEY E. FEATHERSTON**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 27<sup>th</sup> day of October, 2016, via ECF.

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American Canyon, CA 94503  
***Plaintiff, Pro Se***

Rik Wayne Munson  
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***Plaintiff, Pro Se***

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**Defendant Jill Williard Young**  
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**Defendants Christine Riddle Butts,  
Clarinda Comstock, Toni Biamonte**  
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**Defendant**

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Houston, Texas 77079

*/s/ David C. Deiss* \_\_\_\_\_

Adraon D. Greene  
David C. Deiss



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

CANDACE LOUISE CURTIS, ET AL.,

Plaintiffs,

v.

CANDACE KUNZ-FREED, ET AL.,

Defendants.

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Civil Action No. 4:16-cv-01969

**DEFENDANT JILL WILLARD YOUNG’S MOTION FOR SANCTIONS**

On July 5, 2016, Plaintiffs filed a frivolous, 64-page “Verified Complaint” consisting of facially preposterous criminal accusations, blatant mischaracterizations of fact, and boilerplate recitations of law in the Complaint that are plainly insufficient to survive dismissal. On September 15, 2016, Defendant Young filed her Motion to Dismiss.<sup>1</sup> And on September 27, 2016, Defendant Young sent Plaintiffs a letter, informing them that, in accordance with the safe-harbor procedure of Federal Rule of Civil Procedure 11, she would be filing this Motion for Sanctions on October 19, 2016, if Plaintiffs did not dismiss their Complaint against her with prejudice. But Plaintiffs have ignored Ms. Young’s letter and Motions.

Plaintiffs’ frivolous pleadings meaninglessly and wrongfully denigrate the reputation of Ms. Young, a prominent, hard-working Houston lawyer. Despite opportunities to nonsuit their meritless suit, Plaintiffs have refused to do so. Thus, Plaintiffs should be required to reimburse Ms. Young’s attorney’s fees pursuant to Federal Rule of Civil Procedure 11.<sup>2</sup>

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<sup>1</sup> Ms. Young incorporates by reference the arguments and authorities asserted in her Motion to Dismiss.

<sup>2</sup> Ms. Young will file proof of the amount of attorneys’ fees in the event the motion is granted.

## ARGUMENT AND AUTHORITIES

Filing a RICO action in federal court is not a proper substitute for appealing an unfavorable ruling, nor is it an appropriate means of seeking revenge against opposing and court-appointed counsel. See *Chapman & Cole v. Itel Container Int'l B.V.*, 865 F.2d 676, 685 (5th Cir. 1989) (“[I]t should be noted that an attorney’s responsibility to conduct a reasonable pre-filing investigation is **particularly important in RICO claims.**”) (emphasis added). Because the claims asserted by Plaintiffs are both legally and factually frivolous, Ms. Young should be awarded attorneys’ fees and costs under Fed. R. Civ. P. 11.

### **I. The Rule 11 Standard**

Under Fed. R. Civ. P. 11(b), by presenting the Court a signed pleading, an “unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances” that:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Fed. R. Civ. P. 11(b)(1)-(3). “Compliance with these affirmative duties is measured as of the time that the document is signed.” *Childs v. State Farm Mut. Auto. Ins. Co.*, 29 F.3d 1018, 1024 (5th Cir. 1994). And whether a pleading meets this requirements is measured “by an objective, not subjective, standard of reasonableness under the circumstances.” *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 873 (5th Cir. 1988).

“[I]f, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.” Fed. R. Civ. P. 11(c)(1); *see also* Fed. R. Civ. P. 11 Advisory Committee Notes (“Even though it is the attorney whose signature violates the rule, it may be appropriate under the circumstances of the case to impose a sanction on the client.”).

**II. Plaintiffs have violated Fed. R. Civ. P. 11(b)(2) by filing legally frivolous claims.**

Plaintiffs have ignored longstanding attorney immunity doctrines, have alleged six causes of action for which they have no private cause of action, and failed to plead facts showing even the most basic elements of their RICO “claim.”

**A. *Plaintiffs ignore attorney immunity.***

Plaintiffs have ignored long-established immunity doctrines that protect attorneys from suit by opposing parties and non-clients. Indeed, the affirmative defense of immunity is apparent on the face of the Complaint.

Under Texas law, it is settled that “attorneys are immune from civil liability . . . ‘for actions taken in connection with representing a client in litigation.’” *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)). The only exceptions to this rule of immunity are if an attorney engages in conduct that is “entirely foreign to the duties of an attorney,” or if the conduct “does not involve the provision of legal services and would thus fall outside the scope of client representation.” *Id.* at 482 (quoting *Poole v. Hous. & T.C. Ry. Co.*, 58 Tex. 134, 137 (1882)). However, a plaintiff cannot evade attorney immunity by simply “labeling an attorney’s conduct ‘fraudulent.’” *Id.* at 483 (quoting *Alpert*, 178 S.W.3d at 406).

In this case, Plaintiffs have not pled any facts showing Ms. Young, who served as counsel for the Temporary Administrator in the underlying lawsuit, took any actions outside the normal discharge of her duties in representing her client. *See Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 348 (5th Cir. 2016) (attorney’s conduct in sending a letter, participating in discovery, and communicating with SEC about client were “classic examples of an attorney’s conduct in representing his client”).

***B. Plaintiffs plead claims for which there exists no private right of action.***

Plaintiffs allege three causes of action for “honest services,” along with causes of action for wire fraud, fraud under 18 USC § 1001, and violation of the Hobbs Act. *See* Complaint, at ¶¶ 121–123. But those are criminal causes of action that cannot be pursued by a private plaintiff. *See* Motion to Dismiss [DKT. 25], at pp. 13–16.

***C. Plaintiffs’ accusations are baseless and delusional.***

Plaintiffs accuse Ms. Young of what can best be described as fictional acts--being a member of a secret society and “cabal” known as the “Harris County Tomb Raiders,” which Plaintiffs also call “The Probate Mafia.” *See, e.g.*, Complaint, at ¶¶ 57, 58, 89. Plaintiffs allege the members of this purported shadow organization engage in “Poser Advocacy,” supposedly an “exploitation opportunity” to “hijack” “familial wealth.” *Id.* at ¶¶ 95–99. Not surprisingly, Plaintiffs do not even try to accompany their made-up story with supporting facts. The reality is unavoidable—their complaint is a bizarre attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court.

Less fantastical efforts to concoct a federal claim against judges and opposing attorneys have been routinely dismissed. *See, e.g., Freeman v. Texas*, No. H-08-2050, 2008 WL 4155346, at \*2 (S.D. Tex. Sept. 2, 2008) (Rosenthal, J.) (dismissing RICO claims against probate judges, attorneys, and clerks for failure to plead a racketeering activity). And other courts in this Circuit

have held that almost identical allegations made by pro se litigants should be dismissed *and* were sanctionable. *See Whitehead v. White & Case, LLP*, 12-CV-0399, 2012 WL 1795151, at \*2 (W.D. La. Apr. 19, 2012), *report and recommendation adopted*, 12-CV-0399, 2012 WL 1795148 (W.D. La. May 16, 2012) (dismissing a pro se plaintiff's conspiracy claims against judges, magistrate judges, attorneys and law firms, as "frivolous and vexatious" and sanctioning the pro se plaintiff).

Thus, Plaintiffs' allegations fail to satisfy Rule 11. Specifically, Plaintiffs' Complaint against Ms. Young—devoid of any allegation of actual wrongdoing—can only be brought for improper purposes, like harassment or to needlessly increase the cost of litigation. Plaintiffs' Complaint is in no way warranted by existing law, and Plaintiffs' contentions completely lack any sort of factual or evidentiary support. *See* Fed. R. Civ. P. 11(b)(1)-(3). Ms. Young has also specifically informed Plaintiffs multiple times of the legal defects in their Complaint and the authority showing Plaintiffs' arguments are meritless, both in Ms. Young's filing of her Motion to Dismiss and by serving this Motion for Sanctions on Plaintiffs twenty-one days before filing it with the Court. But Plaintiffs have refused to dismiss their Complaint against Ms. Young. This, too, means sanctions are necessary. *See also Taylor v. C.I.R.*, 350 Fed. Appx. 913, 915 (5th Cir. 2009) ("Sanctions on pro se litigants are appropriate if they were warned that their claims are frivolous and they were aware of 'ample legal authority holding squarely against them.'").

### **CONCLUSION**

Plaintiffs have filed a frivolous and facially-deficient lawsuit, and Ms. Young respectfully requests that the Court require Plaintiffs and their attorneys to pay her attorneys' fees in defending this suit and pursuing the relief requested herein.

Dated: October 27, 2016

Respectfully submitted,

*/s/ Robert S. Harrell*

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ATTORNEYS FOR DEFENDANT JILL  
WILLARD YOUNG

**CERTIFICATE OF CONFERENCE**

I certify that on September 27, 2016, I conferred with counsel for Plaintiffs about the relief requested in this Motion. Counsel for Plaintiffs declined to dismiss the claims against Ms. Young, requiring the submission of this Motion to the Court.

*/s/ Robert S. Harrell*

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Robert S. Harrell

**CERTIFICATE OF SERVICE**

I certify that on September 27, 2016, pursuant to Fed. R. Civ. 11(c)(2) and Fed. R. Civ. P. 5, I served copies of this Motion for Sanctions on Plaintiffs. I also certify that a true and correct copy of the above Motion for Sanctions has been served on October 27, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

*/s/ Robert S. Harrell*

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Robert S. Harrell

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

CANDACE LOUISE CURTIS, ET AL.,

Plaintiffs,

v.

CANDACE KUNZ-FREED, ET AL.,

Defendants.

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Civil Action No. 4:16-cv-01969

**ORDER ON DEFENDANT JILL WILLARD YOUNG’S MOTION FOR SANCTIONS**

Before the Court is the Motion for Sanctions filed by Defendant Jill Willard Young (the “Motion”). The Motion is **GRANTED**. Pursuant to Fed. R. Civ. P. 11, the Court enters the following findings:

1. Plaintiffs have violated Fed. R. Civ. P. 11(b)(2) by filing legally frivolous claims against Defendant Young.
2. Plaintiffs have refused to dismiss their claims against Defendant Young, despite being afforded a 21 day “safe harbor,” pursuant to Fed. R. Civ. P. 11(c).
3. Plaintiffs’ Complaint and “Addendum” fail to satisfy Rule 11 because:
  - a. They were filed for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
  - b. The claims, defenses, and other legal contentions are not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and



- c. The factual contentions have no evidentiary support nor will they likely have evidentiary support after a reasonable opportunity for further investigation or discovery.
4. Defendant Young will have 30 days to submit evidence, which may be by affidavit, of the reasonable and necessary attorneys' fees for legal services provided on this matter.
5. Should Defendant Young successfully defend an appeal of this case, reasonable and necessary attorneys' fees will include \$30,000 for handling an appeal to the Fifth Circuit Court of Appeals, \$15,000 for reviewing and responding to a Petition for Writ of Certiorari to the U.S. Supreme Court, and \$25,000 in the event a Petition for Writ of Certiorari is granted but the Court of Appeals judgment is upheld.

**SO ORDERED.**

Date: \_\_\_\_\_, 2016.

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ALFRED H. BENNETT  
UNITED STATES DISTRICT JUDGE

OCT 28 2016

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:16-cv-01969

David J. Bradley, Clerk of Court

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Bradley E. Featherston, Featherston Tran PLLC  
was received by me on *(date)* 10/08/2016.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* Bradley E. Featherston, personally by hand \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* Featherston Tran PLLC at  
10035 Magnolia Way, Houston, Tx 77070 at 5:50 pm on *(date)* 10/18/2016; or


I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 10/22/2016

  
\_\_\_\_\_  
*Server's signature*

Andrew L. Garza Certified Texas Process Server  
*Printed name and title*

15950 Dallas Pkwy, Ste 400  
Dallas Texas 75248  
(972) 242-1782  
*Server's address*

Additional information regarding attempted service, etc:

AO 140 (Rev. 10/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

ORIGINAL

Curtis et al.,

Plaintiffs

v.

Kunz-Freed et al.,

Defendants

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: Defendant's name and address: Bradley E. Featherston
Featherdston Tran P.L.L.C.
20333 State Highway 249 suite 200
Houston, Texas 77070

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) -- or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) -- you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,

whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

DAVID J. BRADLEY

Date: AUG 17 2016

[Signature]
Judge, Clerk, or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:16-cv-01969

United States Courts  
Southern District of Texas  
FILED

OCT 28 2016

David J. Bradley, Clerk of Court

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Bernard Lyle Matthews III  
was received by me on *(date)* 10/08/2016.

I personally served the summons on the individual at *(place)* Bernard Lyle Matthews III  
at 3423 Blue Cypress Dr., Spring, Tx 77388 at 8:24 pm on *(date)* 10/18/2016; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 10/22/2016

 SCH 4491 Exp. 12/31/17  
*Server's signature*

Andrew L. Garza Certified Texas Process Server  
*Printed name and title*

15950 Dallas Pkwy, Ste 400  
Dallas Texas 75248  
(972) 242-1782  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas



ORIGINAL

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Bernard Lyle Mathews III  
2000 S. Dairy Ashford Rd, Suite 520  
Houston, Texas 77077

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,

whose name and address are: Candace Louise Curtis  
218 Landana St.  
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

United States Courts  
Southern District of Texas  
FILED

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:16-cv-01969

OCT 28 2016

**PROOF OF SERVICE**

David J. Bradley, Clerk of Court

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Darlene Payne-Smith  
was received by me on *(date)* 10/08/2016.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* Frank DePaolo  
31014 Becky Lane, Magnolia, Tx 77354, a person of suitable age and discretion who resides there,  
on *(date)* 10/20/2016, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 10/22/2016



SCH 4491 Exp. 12/31/17

*Server's signature*

Andrew L. Garza Certified Texas Process Server  
*Printed name and title*

15950 Dallas Pkwy, Ste 400  
Dallas Texas 75248  
(972) 242-1782

*Server's address*

Additional information regarding attempted service, etc:

delivered by hand at 6:25 pm

AO 440 (Rev. 09/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

ORIGINAL

Curtis et al.,

Plaintiffs

v.

Civil Action No. 4:16-cv-01969

Kunz-Freed et al.,

Defendants

SUMMONS IN A CIVIL ACTION

To: Defendant's name and address: Dariene Payne Smith
1401 McKinney, 17TH Floor
Houston, Texas 77010

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) -- or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) -- you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,

whose name and address are: Candace Louise Curtis
218 Landana St
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

DAVID J. BRADLEY

Date:

AUG 17 2016

[Handwritten Signature]

Signature of Clerk or Deputy Clerk

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

Candace Louise Curtis, et al.

v.

Case Number: 4:16-cv-01969

Candace Kunz-Freed, et al.

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**NOTICE OF SETTING**

**TAKE NOTICE THAT A PROCEEDING IN THIS CASE HAS BEEN SET FOR  
THE PLACE, DATE AND TIME SET FORTH BELOW.**

**Before the Honorable**

Alfred H Bennett

**PLACE:** Courtroom 8C  
United States District Court  
515 Rusk Avenue  
Houston, Texas 77002

**DATE:** 12/9/2016

**TIME:** 10:00 AM

**TYPE OF PROCEEDING:** Motion Hearing  
Motion to Dismiss for Failure to State a Claim – #19  
Motion to Dismiss – #20  
Motion to Dismiss for Failure to State a Claim – #23  
Motion to Dismiss for Failure to State a Claim – #25  
Motion for Miscellaneous Relief – #28  
Motion to Dismiss for Failure to State a Claim – #30  
Motion to Dismiss for Failure to State a Claim – #35  
Motion to Dismiss for Failure to State a Claim – #36  
Motion to Dismiss – #39  
Motion to Dismiss – #40

Date: October 28, 2016

David J. Bradley, Clerk

17-20360.2867



**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

Candace Louise Curtis, et al.

v.

Case Number: 4:16-cv-01969

Candace Kunz-Freed, et al.

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**NOTICE OF SETTING**

**TAKE NOTICE THAT A PROCEEDING IN THIS CASE HAS BEEN SET FOR  
THE PLACE, DATE AND TIME SET FORTH BELOW.**

**Before the Honorable**

Alfred H Bennett

**PLACE:** Courtroom 8C  
United States District Court  
515 Rusk Avenue  
Houston, Texas 77002

**DATE:** 12/12/2016

**TIME:** 10:00 AM

**TYPE OF PROCEEDING:** Motion Hearing  
Motion to Dismiss for Failure to State a Claim – #19  
Motion to Dismiss – #20  
Motion to Dismiss for Failure to State a Claim – #23  
Motion to Dismiss for Failure to State a Claim – #25  
Motion to Dismiss for Failure to State a Claim – #30  
Motion to Dismiss for Failure to State a Claim – #35  
Motion to Dismiss – #39  
Motion to Dismiss – #40  
Motion to Dismiss for Failure to State a Claim – #53

Date: October 28, 2016

David J. Bradley, Clerk

17-20360.2868

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS,  
RIK WAYNE MUNSON

Plaintiffs,

VS.

CANDACE KUNZ-FREED, ALBERT §  
VACEK, JR., BERNARD LYLE §  
MATHEWS III, NEAL SPIELMAN, §  
BRADLEY FEATHERSTON, STEPHEN §  
MENDEL, DARLENE PAYNE SMITH, §  
JASON OSTROM, GREGORY LESTER §  
JILL WILLARD YOUNG, CHRISTINE §  
RIDDLE BUTSS, CLARINDA §  
COMSTOCK, TONI BIAMONTE, §  
BOBBY BAYLESS, ANITA §  
BRUNSTING AND AMY BRUNSTING §

C.A. No. 4:16-cv-01969

**DEFENDANT JASON OSTROM'S**  
**MOTION TO DISMISS COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendant Jason Ostrom (“Mr. Ostrom”) files this Rule 12 Motion to Dismiss and shows the following:

**I.**  
**INTRODUCTION**

Plaintiffs’ pro se Complaint (*D.E. #1*) purports to assert almost fifty “claims” against more than fifteen defendants, who are lawyers, judges, and other legal professionals who practice in Harris County Probate Court Number 4. Plaintiffs in this case are Candace Curtis, a disgruntled sibling in a probate case and Rik Munson, her alleged “domestic partner” and paralegal who claims to have assisted Curtis in her ongoing litigation against her siblings.

The allegations related to Mr. Ostrom are minimal. The information identifying Mr. Ostrom as a defendant is contained in paragraphs 1, 15, 55, 56 and 59 of the Complaint. (*D.E.# 1*). Paragraph 55 of the Complaint alleges that Mr. Ostrom is an attorney who has practiced in Harris County Probate Courts. Paragraph 56 alleges, without any facts to support it, that Mr. Ostrom and the other named defendants have engaged in a criminal enterprise somehow being conducted through Harris County Probate Court Number 4. Paragraph 59 makes a similar allegation, again without any factual support. A majority of the events Plaintiffs' complain about, occurred after Mr. Ostrom was discharged by Plaintiff. The Complaint asserts no factual content sufficient to maintain any cause of action against Mr. Ostrom. (*D.E.#1*).

In response to Motions to Dismiss under Federal Rule of Civil Procedure 12(b)(6) filed by some Defendants, Plaintiffs filed their Addendum of Memorandum in Support of RICO Complaint. (*D.E. #26*). Rather than provide any specifics about how a frivolous 59-page complaint states a RICO claim against Mr. Ostrom, Plaintiffs have instead come forward with a 25-page Addendum that still does not state a claim. (*D.E.# 26*). Although the Addendum is replete with inaccuracies, it has not changed or added any additional factual allegations to support RICO claims. All the Addendum does is describe a handful of events and then conclude without explanation that the events constitute a RICO predicate act. Because the Addendum does nothing to cure the problems found in Plaintiffs' Original Complaint, the Court should grant this Motion and dismiss all claims against Mr. Ostrom.



**II.**  
**STANDARDS OF REVIEW FOR PLEADING CONSTRUCTION**

In a Rule 12(b)(6) motion, the Court accepts all factual allegations in the pleadings as true and examines whether the allegations state a claim sufficient to avoid dismissal.<sup>1</sup> This standard of construction presupposes well-pleaded facts; a court does not accept conclusory allegations, unwarranted factual inferences, or legal conclusions as true.<sup>2</sup> It is appropriate to consider the exhibits attached to a complaint for purposes of a Rule 12(b)(6) motion.<sup>3</sup> A Court should grant a Rule 12(b)(6) motion when it appears that no relief could be granted under any set of facts that could be proven consistent with the allegations.<sup>4</sup> Similarly, 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.<sup>5</sup>

**III.**  
**STATEMENT OF FACTS DERIVED EXCLUSIVELY FROM PLAINTIFFS'**  
**ORIGINAL COMPLAINT AND ADDENDUM**

It is evident from the Original Complaint that Plaintiffs have underlying litigation in Probate Court Number Four with various attorneys and opposing parties. It is also evident from the Original Complaint that Plaintiffs are dissatisfied with the status of those proceedings. Beyond this, it has been extremely cumbersome to locate any specific allegations against Mr. Ostrom. In an effort to provide some clarity for the Court regarding the claims against Mr. Ostrom, Mr. Ostrom opens with a statement of facts derived exclusively from the Original Complaint and Addendum.

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<sup>1</sup> *Guilbeaux v. Grand Casinos, Inc.*, 114 F.3d 1181 (5<sup>th</sup> Cir. 1997); *Kansa Reins Co. v. Congressional Mortgage Corp.*, 20 F.3d 1362, 1366 (5<sup>th</sup> Cir. 1994).

<sup>2</sup> *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5<sup>th</sup> Cir. 2007).

<sup>3</sup> *U.S. ex rel. Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370 (5<sup>th</sup> Cir. 2004).

<sup>4</sup> *Century Sur. Co. v. Blevins*, 799 F.3d 366, 371 (5<sup>th</sup> Cir. 2015).

<sup>5</sup> *Jackson v. City of Beaumont Police Dept.*, 958 F.2d 616, 619 (5<sup>th</sup> Cir. 1992).

**A. FACTS INVOLVING MR. OSTROM.**

Following the hearing on October 2, 2013, Plaintiff Curtis hired Mr. Ostrom on November 27, 2013.<sup>6</sup> Mr. Ostrom then assisted in remanding the case back to Harris County Probate Number 4.<sup>7</sup> Plaintiffs state in their Addendum that the matter was remanded to Harris County Probate Court Number 4 pursuant to a stipulation that in turn for the remand, Defendants agreed the federal injunction issued by this Court would remain in full force and effect.<sup>8</sup> Plaintiffs then argue that once they were back in state court, Defendants immediately ignored the injunction.<sup>9</sup> However, Plaintiffs contradict their own statement by acknowledging that Probate Court Number 4 entered an Order modifying the federal injunction.<sup>10</sup> Obviously the federal injunction was not being ignored.

Plaintiffs complain of two actions taken by Mr. Ostrom. First, that Mr. Ostrom filed an application for distribution without Plaintiff Curtis's consent.<sup>11</sup> Attached to this Motion as Exhibit A is a letter from Mr. Ostrom to Plaintiff Curtis wherein he discusses the fact that she was aware of the application for distribution and indeed agreed to another application for distribution being filed.<sup>12</sup>

Secondly, Plaintiffs complain that Mr. Ostrom filed an amended complaint in the probate court raising questions as to the competency of a very lucid Nelva Brunsting.<sup>13</sup> Attached to this motion as Exhibit B is a copy of the Plaintiff's Second Amended Petition that Plaintiffs are referring to.<sup>14</sup> Nowhere within the Second Amended Petition does Mr. Ostrom raise the issue of

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<sup>6</sup> Plaintiffs' Addendum at paragraph 32.

<sup>7</sup> Plaintiffs' Addendum at paragraph 33.

<sup>8</sup> Plaintiffs' Addendum paragraph 3.

<sup>9</sup> Plaintiffs' Addendum paragraph 4.

<sup>10</sup> Plaintiffs' Addendum paragraph 42.

<sup>11</sup> Plaintiffs' Addendum paragraph 50.

<sup>12</sup> Exhibit A.

<sup>13</sup> Plaintiffs' Addendum paragraph 55.

<sup>14</sup> Exhibit B.



Nelva's capacity.<sup>15</sup> Mr. Ostrom was then discharged as Plaintiff Curtis's attorney on or about March 28, 2015.

**IV.**  
**THE COURT SHOULD DISMISS THE PLAINTIFFS'**  
**CLAIMS AGAINST MR. OSTROM.**

**A. PLAINTIFFS HAVE NOT ADEQUATELY PLEADED THE NECESSARY PREDICATE ACTS.**

Based on virtually no specific allegations of a criminal enterprise beyond dissatisfaction with the public proceedings in the underlying case, the Plaintiffs have asserted two RICO claims against Mr. Ostrom. Plaintiffs have brought their RICO action under 18 U.S.C. §1962(c) AND 18 U.S.C. §1962(d).

To avoid dismissal for failure to state a claim, a plaintiff must articulate how each defendant engaged in a prohibited pattern of racketeering activity or "predicate acts."<sup>16</sup> The only facts cited by Plaintiffs regarding Mr. Ostrom are found in the Addendum paragraphs 50, 51, and 55. To successfully plead a RICO claim under §1962(c), Plaintiffs must plead specific facts, that if true, would establish that each predicate act was in fact committed by Mr. Ostrom.<sup>17</sup> Plaintiffs fail to meet this standard.

With respect to Mr. Ostrom, Plaintiffs have listed four federal crimes that appear in 18 U.S.C § 1961(l)'s definition of racketeering activity. However, to successfully plead a RICO claim under § 1962(c), Plaintiffs must do more than simple list the predicate act crimes necessary to establish a pattern of racketeering activity. Plaintiffs must also plead specific facts that, if true, would establish that each predicate act was in fact committed by Mr. Ostrom.<sup>18</sup> Plaintiffs' Complaint fails to meet this standard. For most of the identified predicated acts,

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<sup>15</sup> *Id.*

<sup>16</sup> *Cadle Co. v. Schultz*, 779 F. Supp. 392, 396 (N.D. Tex. 1991)

<sup>17</sup> *Elliott v. Foufas*, 867 F.2d 877, 880 (5<sup>th</sup> Cir. 1989).

<sup>18</sup> *Id.* at 880.

Plaintiffs simply identify the statute, provide a general description of the conduct it prohibits, and then asserts that Mr. Ostrom violated the statute. However, these allegations are baseless on their face and a far cry from the truth. Accordingly, Plaintiffs' claims must be dismissed.

**B. THE PLAINTIFFS HAVE NOT STATED A RICO CLAIM UNDER SECTION 1962(c).**

As to the claims under § 1962(c), the Plaintiffs did not allege with the requisite factual specificity (or beyond merely conclusory statements) any predicate acts committed by Mr. Ostrom. Similarly, the Plaintiffs did not allege and the law would not sustain any assertion that Mr. Ostrom conducted, controlled, or participated in an enterprise under the standard set forth by the Supreme Court in *Reves*.<sup>19</sup>

**1. Plaintiffs have failed to adequately plead with particularity their fraud-based predicate acts as required by Federal Rule 9(b).**

Most of Plaintiffs' predicate acts are, at their core, allegations of fraudulent behavior. Because all of Plaintiffs' allegations are fundamentally grounded in fraud, "rule 9(b) applies and the predicate acts alleged must be plead with particularity."<sup>20</sup>

Underpinning the heightened pleading requirement for fraud claims is the federal courts' determination that "defendants are not required to guess what statements were made in connection with a plaintiffs claim and how and why they are fraudulent."<sup>21</sup> Thus, Plaintiffs' fraud allegations must specifically refer to the "time, place, and contents of the false representations, as well as the identity of the person making the representation and what the person obtained thereby."<sup>22</sup> When

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<sup>19</sup> 507 U.S. 170, 185, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993).

<sup>20</sup> *Walsh v. America's Tele- Network Corp.*, 195 F. Supp. 2d 840, 846 (E.D. Tex. 2002) (citing *Williams v. WMXTechs., Inc.*, 112 F.3d 175, 177 (5th Cir. 1997)); FED. R. CIV. P. 9(b) ("In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.").

<sup>21</sup> *Allstate Insurance Company v. Benhamou*, No. 4:15-CV-00367, 2016 WL 3126423, at \*17 (S.D. Tex. June 2, 2016).

<sup>22</sup> *Tel-Phonic Servs., Inc. v. TBS Int'l, Inc.*, 975 F.2d 1134, 1138 (5th Cir. 1992); *Skidmore Energy, Inc. v. KPMG LLP*, No. CIV.A.3:03CV2138-B, 2004 WL 3019097, at \*3 (N.D. Tex. Dec. 28, 2004).



pleading a claim for mail or wire fraud, Plaintiffs must specify the content of the alleged communications and how those communications advanced the alleged scheme to defraud the Plaintiffs.<sup>23</sup>

Here, Plaintiffs have failed to allege the contents of any of the purported false representations made by Mr. Ostrom, or how they advanced the alleged scheme to defraud Plaintiffs, flaws that are fatal to their claims. Moreover, as stated above, Plaintiffs offer no real factual support for their obstruction of justice, mail and wire-fraud allegations, or truly any of their claims. Given these fatal defects, the Court should dismiss Plaintiffs' RICO action.

**2. Plaintiffs have failed to plead reliance in connection with their fraud related claims.**

RICO cases based upon fraud require a showing of detrimental reliance by the plaintiff.<sup>24</sup> This requirement, the Fifth Circuit has determined, is consistent with the Supreme Court's admonition in *Holmes* that federal courts employ traditional notions of proximate cause when assessing the nexus between a plaintiffs' injuries and the underlying RICO violation.<sup>25</sup> But, despite this firmly established requirement, Plaintiffs in this case have asserted no allegations-indeed, not even a conclusory allegation-detailing how they purportedly relied upon Mr. Ostrom's allegedly fraudulent conduct. Accordingly, Plaintiffs' RICO claims, most of which are fraud-based, should be dismissed.

**C. PLAINTIFFS HAVE FAILED TO PLEAD A COGNIZABLE RICO ENTERPRISE**

**1. Plaintiffs Enterprise Allegations Are Too Vague and Conclusory**

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<sup>23</sup> *Elliott*, 867 F.2d at 882; *Old Time Enterprises*, 862 F.2d at 1218; *Tel-Phonic Servs.*, 975 F.2d at 1138.

<sup>24</sup> *Summit Properties, Inc. v. Hoechst Celanese Corp.*, 214 F.3d 556, 562 (5th Cir. 2000) (dismissing RICO claims where plaintiff failed to allege reliance in connection with fraud-based predicate acts)

<sup>25</sup> See *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 279 (1992); *Sandwich Chef of Texas, Inc. v. Reliance Nat'l Indemnity Ins. Co.*, 319 F.3d 205,219 (5th Cir. 2003); *In re MasterCard International, Inc.*, 313 F.2d 257, 263 (5th Cir. 2002) (noting that district court's reliance analysis was "particularly compelling").



An enterprise is defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."<sup>26</sup> The Fifth Circuit requires that "[i]n order to avoid dismissal for failure to state a claim, a plaintiff must plead specific facts, not mere conclusory allegations, which establish the existence of an enterprise."<sup>27</sup> To establish an "association in fact" enterprise under 18 U.S.C. § 1961(4) a plaintiff must show "evidence of an ongoing organization, formal or informal, and ... evidence that the various associates function as a continuing unit."<sup>28</sup>

The Supreme Court in *Turkette* stated that the "enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct."<sup>29</sup> The Fifth Circuit has enumerated the requirements of an enterprise as requiring that it "(1) must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization and (3) its members must function as a continuing unit shown by a hierarchical or consensual decision making structure."<sup>30</sup>

"[T]wo individuals who join together for the commission of one discrete criminal offense have not created an "association-in-fact" enterprise, even if they commit two predicate acts during the commission of this offense, because their relationship to one another has no continuity."<sup>31</sup> However, "if the individuals associate together to commit several criminal acts, their relationship gains an ongoing nature, coming within the purview of RICO."<sup>32</sup>

Plaintiffs have provided virtually no facts concerning the alleged enterprise, how it

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<sup>26</sup> 18 U.S.C. § 1961(4); *see also Elliott*, 867 F.2d at 881.

<sup>27</sup> *Elliott*, 867 F.2d at 881.

<sup>28</sup> *Atkinson v. Anadarko Bank & Trust Co.*, 808 F.2d 438, 440-41 (5th Cir. 1987) (quoting *U.S. v. Turkette*, 452 U.S. 576, 583 (1981)).

<sup>29</sup> 452 U.S. at 583.

<sup>30</sup> *Landry v. Air Line Pilots Ass'n Int'l*, 901 F.2d 404, 433 (5th Cir. 1990).

<sup>31</sup> *Montesano et al. v. Seafirst Commercial Corp. et al.*, 818 F.2d 423, 426-27 (5th Cir. 1987).

<sup>32</sup> *Ocean Energy II, Inc. v. Alexander & Alexander, Inc.*, 868 F.2d 740, 749 (5th Cir. 1989) (quoting *Montesano*, 818 F.2d at 427).

operated, how decisions were made, what conduct beyond the alleged predicate acts they purportedly engaged in, how the operations of the individuals were carried out, or how they went about accomplishing their purported goals. Instead, Plaintiffs allege the text book elements of an enterprise characterized with inflammatory exaggerations and baseless conclusions.

Plaintiffs fail to allege any specific facts that would demonstrate a conspiracy of any kind-when it began, who was actually a part of such conspiracy or any facts suggesting that any defendant had actual knowledge that any of the seemingly harmless acts were done in furtherance of some secret conspiracy. In the absence of these, or any other supporting facts, Plaintiffs' pleadings are simply insufficient.

Given RICO's "draconian" penalties and the fact that the very pendency of a RICO suit can be stigmatizing and costly, Plaintiffs should be required to satisfy their pleading obligations.<sup>33</sup> Hence, to avert dismissal under Rule 12(b)(6), a civil RICO complaint must, at a bare minimum, state facts sufficient to portray (i) specific instances of racketeering activity within the reach of the RICO statute; and (ii) a causal nexus between that activity and the harm alleged.<sup>34</sup> Plaintiffs have failed to meet even this "bare minimum" requirement. Therefore, this case should be dismissed.

## **2. Plaintiffs alleged enterprise lacks continuity.**

Because the RICO Act was enacted to address continuing threats of racketeering activities, the alleged RICO enterprises must meet certain "continuity" requirements.<sup>35</sup> Specifically, "[a]n

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<sup>33</sup> See *Fitzgerald v. Chrysler Corp.*, 116 F.3d 225, 228 (7th Cir. 1997) (characterizing RICO's penalties as "draconian"); *Miranda v. Ponce Federal Bank*, 948 F.2d 41, 44 (1st Cir. 1991) (characterizing RICO cases as "stigmatizing" and "costly").

<sup>34</sup> *Miranda*, 948 F.2d at 44-45 (emphasis added) (affirming dismissal of RICO claims where the pleadings "though copious, [were] vague and inexplicit").

<sup>35</sup> See, e.g., *Delta Truck*, 855 F.2d at 242-43 ("The concept of continuity as a means of controlling the scope of RICO has also been incorporated into the enterprise element of section 1962.").



association-in fact enterprise (1) must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization and (3) its members must function as a continuing unit as shown by a hierarchical or consensual decision making structure."<sup>36</sup> These requirements limit the application of the RICO Act, and serve to prevent an overly-broad application to general commercial conduct that was never really the intended focus of the Act.<sup>37</sup>

Here, the purported enterprise fails to meet RICO's "continuity" requirement on all three levels. First, nothing in the Complaint even remotely suggests that the alleged enterprise is an ongoing organization that maintains operations that are separate and apart from the alleged predicate acts. Second, there are no facts in the Complaint suggesting that the enterprise is an ongoing organization, or that the various enterprise members function as a continuing unit. Lastly, there are no allegations of any hierarchical or consensual decision making structure. The absence of factual support for these key allegations is fatal, and thus, Plaintiffs have failed to meet the pleading standard for a cognizable enterprise.

**D. PLAINTIFFS HAVE FAILED TO ADEQUATELY PLEAD A PATTERN OF RACKETEERING ACTIVITY.**

Plaintiffs have also failed to plead facts sufficient to show a "pattern of racketeering activity," an element comprised of (1) the predicate acts and (2) a pattern of such acts.<sup>38</sup> To properly allege a "pattern" of predicate acts, Plaintiffs must plead both that the acts are related to each other and that those acts either constitute or threaten long-term criminal activity, thereby reflecting "continuity."<sup>39</sup> When used in discussion of predicate acts, the term "continuity" has a meaning that differs from the "continuity" requirement imposed on RICO enterprises, even though

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<sup>36</sup> *Crowe v. Henry*, 43 F.3d 198, 205 (5th Cir. 1995).

<sup>37</sup> *Delta Truck*, 855 F.2d at 242-43.

<sup>38</sup> See *In re Burzynski* 989 F.2d 989 733, 741-42 (5th Cir. 1993) (citing *Delta Truck*, 855 F.2d at 242-43).

<sup>39</sup> *HJ, Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989).

the label is the same. Establishing continuity in this context requires facts sufficient to show that the predicate acts "amount to or threaten continuous racketeering activity."<sup>40</sup> Such continuity may refer "either to a closed period of repeated conduct or to past conduct that by its nature projects into the future with a threat of repetition."<sup>41</sup>

Here, Plaintiffs alleges several times throughout their Complaint that Mr. Ostrom engaged in a "pattern of racketeering." However, their conclusory allegations fail to set forth the necessary pattern of predicate acts and the supporting facts to establish that they amount to or threaten continuous racketeering activity.

**E. THE PLAINTIFFS HAVE NOT STATED A RICO CLAIM UNDER SECTION 1962(d).**

To prove a RICO conspiracy, the Plaintiffs must establish (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense.<sup>42</sup> A RICO conspiracy thus has RICO-specific requirements—an agreement by at least two conspirators to engage in a pattern of racketeering.<sup>43</sup> Mere association with the enterprise is not actionable; agreement is essential.<sup>44</sup> Further, if a plaintiff fails to properly plead a RICO claim under §§ 1962(a), (b), or (c), it correspondingly fails to properly plead a conspiracy claim under § 1962(d).<sup>45</sup>

The Court should dismiss the § 1962(d) claim because the Plaintiffs failed to state a claim under §§ 1962(a-c). As a result, the conspiracy claims fail under controlling Fifth Circuit authority.<sup>46</sup> The Court should additionally dismiss the claim because the Plaintiffs have not

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<sup>40</sup> *In re Burzynski*, 989 F.2d at 742-43 (finding no continuity where the acts complained of had ended and, thus, did not threaten long-term criminal activity).

<sup>41</sup> *Id.* (quoting *HJ., Inc.*, 492 U.S. at 241).

<sup>42</sup> *TruGreen Landcare, L.L.C. v. Scott*, 512 F.Supp.2d 613, 625 n.11 (N.D. Tex. 2007) (Fitzwater, J.) (quoting *United States v. Delgado*, 401 F.3d 290, 296 (5th Cir. 2005)).

<sup>43</sup> *Id.*

<sup>44</sup> *Baumer*, 8 F.3d at 1344.

<sup>45</sup> *N. Cypress Med. Ctr. Operating Co*, 781 F.3d at 203.

<sup>46</sup> *Id.*



alleged any specific facts detailing an agreement to commit a RICO offense, what the agreement was, how it was reached, and when it was entered.<sup>47</sup> These types of missing details are necessary to state a claim under § 1962(d). As explained in *Twombly*, allegations that a defendant acted in ways consistent with a conspiratorial agreement, but also equally well explained by legitimate economic incentives, do not suffice to show illegality.<sup>48</sup> So too, unsupported conclusory allegations are not entitled to be assumed true, and dismissal is proper when a conspiracy allegation does not plausibly suggest an illicit accord because the conduct could be compatible with or explained by, lawful, unchoreographed free-market behavior.”<sup>49</sup> Because the Plaintiffs have failed to state a claim upon which relief may be granted, the Court should grant this Motion to Dismiss.

**1. Plaintiffs’ claims should be dismissed because Plaintiffs’ allegations do not satisfy RICO’s proximate cause standard.**

To recover damages under the RICO Act, Plaintiffs must prove that they suffered an injury to their "business or property by reason of a statutory violation. 18 U.S.C. § 1964(c). The "by reason of" language of RICO has been interpreted by the Supreme Court and to require a showing that the violation was the "but for" cause and "proximate" cause of the injury.<sup>50</sup> That is, a plaintiff must allege facts which show that, "but for" defendant's conduct, the plaintiff would not have suffered the injuries claimed.<sup>51</sup> A plaintiff must also allege facts which show that its alleged injuries were a foreseeable consequence of the defendant's conduct.<sup>52</sup>

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<sup>47</sup> *Lewis v. Sprock*, 612 F.Supp. 1316, 1325 (N.D. Cal. 1985); *Lui Ciro, Inc. v. Ciro, Inc.*, 895 F.Supp. 1365 (D. Hawaii 1995).

<sup>48</sup> *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-57, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

<sup>49</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 680, 129 S.Ct. 1937, 1950, 173 L.Ed.2d 868 (2009).

<sup>50</sup> *Z-Tel Communications, Inc. v. SBC Communications, Inc.*, 331 F.Supp.2d 513, 559 (E.D. Tex. 2004)(citing *Holmes*, 503 U.S. at 279).

<sup>51</sup> *Ocean Energy II. V. Alexander & Alexander, Inc.*, 868 F.2d 740, 744 (5th Cir. 1989).

<sup>52</sup> *Navigant Consulting, Inc. v. Wilkinson*, 508 F.3d 277,289 (5th Cir. 2007).

More plainly stated, a RICO plaintiff "only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the [RICO] violation."<sup>53</sup>

Thus, to avoid a Rule 12(b)(6) dismissal, Plaintiffs must allege the existence of a "direct relation between the injury asserted and the injurious conduct alleged."<sup>54</sup> These allegations must include specific facts; conclusory and generalized allegations are insufficient.<sup>55</sup> "When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiffs' injuries."<sup>56</sup>

The United States Supreme Court emphasized RICO's proximate-cause requirement in *Anza v. Ideal Steel Supply Corp.* In explaining its conclusion, the Supreme Court identified circumstances that emphasized the lack of the necessary causal connection. One such circumstance was the difficulty the trial court would have accurately ascertaining damages. The "less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiffs' damages attributable to the violation, as distinct from other independent factors."<sup>57</sup> If the case were allowed to go forward, the court reasoned, the trial court would be faced with the difficult task of accurately ascertaining the plaintiff's damages.<sup>58</sup>

Clearly, the allegations in the Complaint are insufficient to properly plead a violation of the RICO Act because they are vague, conclusory and generalized. Nevertheless, just like in *Anza*, Plaintiffs have alleged a similar disjunctive causation pattern with respect to their claims against Mr. Ostrom. There is not a direct relation between the injury asserted and the injurious conduct alleged as anticipated by *Anza*. At a minimum, the necessary causal link is missing. Because

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<sup>53</sup> *Sedima*, 473 U.S. at 496.

<sup>54</sup> See, e.g., *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 452 (2006), 1996 (2006); *Old Time Enterprises*, 862 F.2d at 1219.

<sup>55</sup> *Fernandez-Montez v. Allied Pilots Ass'n*, 987 F.2d 278,284 (5th Cir. 1993).

<sup>56</sup> *Anza*, 547 U.S. at 452.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*



Plaintiffs have failed to allege facts necessary to meet the Supreme Court's high proximate-causation standard, this case should be dismissed.

**V.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Mr. Ostrom respectfully prays that this Court GRANT this Motion to Dismiss, dismiss all of the Plaintiffs' claims against Mr. Ostrom with prejudice, and award Mr. Ostrom all such other relief to which he may be justly entitled.

Respectfully submitted,

ostrommorris, PLLC

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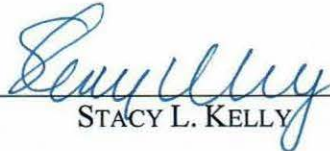
713.863.8891

713.863.1051 (Facsimile)

**ATTORNEYS FOR JASON O. OSTROM**

**CERTIFICATE OF SERVICE**

I hereby certify that on Monday, October 31, 2016, a true and correct copy of the foregoing instrument was served on all known counsel of record through the Court's CM/ECF system, which constitutes service on all parties in accordance with the Federal Rules of Civil Procedure.

  
STACY L. KELLY



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January 13, 2015

Ms. Candace Curtis

*Via Email; [occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)*


Re: Cause No. 412,249; *In Re: Estate of Nelva E. Brunsting, Deceased*; in the Probate Court Number Four (4) of Harris County, Texas

Dear Ms. Curtis:

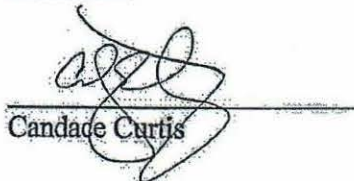
As you know, we asked the Court to order a distribution of funds out of the Brunsting Family Trust in order to pay the outstanding balance on your account with us. Unfortunately, Anita opposed our application and the Court denied it. The Judge did say, however, that she would entertain an Application for Partial Distribution of your share of the Trust. We could file that on your behalf with your authorization and your agreement that you would direct the distribution to us for payment on your account. The Application would not mention our fees, and there is no guarantee that the Court would grant this Application either – in spite of the fact that she recommended it during the hearing. However, it is currently the best option that I know of to address your outstanding account balance, which needs to be reduced in order for us to continue preparing for trial – a trial that seems necessary in light of the positions that your sisters took in mediation.

If you want to discuss this approach I am happy to have a telephone conference with you; please contact Mica DeScioli to set that up. Otherwise, if you would like for us just to proceed with asking the Court for this relief and not waste time discussing it further, simply sign this letter and return it to us, and we will get the Application prepared and filed.

Sincerely,

  
Jason B. Ostrom

AGREED:

  
Candace Curtis



CAUSE NO. 412,249

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED PETITION

TO THE HONORABLE PROBATE COURT:

COMES NOW, Plaintiff, Candace Louis Curtis, and files this Second Amended Petition and for cause of action would show as follows:

I. PARTIES

Plaintiff, Candace Louis Curtis is a citizen of the State of California.

Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has made an appearance and can be served through her counsel of record.

Defendant Amy Ruth Brunsting is a citizen of the State of Texas, who has made an appearance and can be served through her counsel of record.

Defendant is Carole Ann Brunsting, is a citizen of the State of Texas who has made an appearance and can be served through her counsel of record.

Necessary Party is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas who has made an appearance and can be served through her counsel of record.

II. JURISDICTION AND VENUE

This Court had jurisdiction pursuant to Sections 32.002(c) and 32.005 of the Texas Estates Code, Chapter 37 of the Texas Civil Practice and Remedies Code, and Chapter 115 of the Texas Property Code. Venue is proper pursuant to Section 33.002.





### III. BACKGROUND

Elmer and Nelva Brunsting created the Brunsting Family Trust, and placed essentially all of their assets into this Trust, of which they were the trustees. The Trust became irrevocable and not subject to amendment upon Elmer's death in 2009, at which time Nelva became the sole trustee of the two trusts into which the Family Trust was divided: the Decedent's Trust and the Survivor's Trust. She also became the sole beneficiary of the Survivor's Trust and the primary beneficiary of the Decedent's Trust.

In 2010, Defendants Anita and Amy began taking steps to control the Trust assets and garner a larger share than their siblings. To that end, they caused Nelva to execute a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment in June of 2010 in which she exercised her power of appointment over all the property held in the Nelva E. Brunsting Survivor's Trust as well as in the Elmer H. Brunsting Decedent's Trust. The June exercise of Power of Appointment went on to ratify and confirm all the other provisions of the Trust. Two months later, they caused Nelva to execute a second Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment, in which she attempted to exercise the very same power of appointment she had exercised in June without revoking the prior exercise – instead she ratified and confirmed the June 2010 Power of Appointment. This second Qualified Beneficiary Designation purports to remove Candy and Carl as the trustees of their own trusts, while not subjecting Amy and Anita to that same fate, and contains paragraphs of self-serving no-contest provisions.

Seemingly because the future power she had obtained for herself was insufficient, Anita had Nelva resign as Trustee in December of 2010, in Anita's favor. As Trustee, Anita made numerous transfers that far exceeded the scope of her powers. She conveyed to Carole 1,325 shares of Exxon stock out of the Decedent's Trust, and gave 1,120 shares of Exxon to Amy out of the Survivor's

Trust, plus 270 shares of Chevron stock (held in the names of Amy's children). To herself she transferred 160 shares of Exxon, plus 405 shares of Chevron (270 shares she placed in the name of her children). Anita also paid herself thousands of dollars in the form of gifts, fees and reimbursements, and did the same for both Amy and Carole.

Carole not only received hundreds of thousands dollars worth of stock and cash distributions, she also had access to a bank account that Anita funded with Trust monies and used that bank account for her own purposes. She routinely charged this Trust account for her personal groceries, gasoline, and other expenses despite not being a present income beneficiary of the Trust.

#### IV. CAUSES OF ACTION

Breach of Fiduciary Duty. Defendants Anita Brunsting and Amy Brunsting are Co-Trustees of the Trust and owed to Plaintiff a fiduciary duty, which includes : (1) a duty of loyalty and utmost good faith; (2) a duty of candor; (3) a duty to refrain from self-dealing; (4) a duty to act with integrity of the strictest kind; (5) a duty of fair, honest dealing; and (6) a duty of full disclosure. Defendants have violated this duty by engaging in self-dealing, by failing to disclose the existence of assets to Plaintiff, by failing to account to Plaintiffs for Trust assets and income, by failing to place Plaintiff's interests ahead of their own, and by making distributions that deviate from the strict language of the Trust. Defendants Anita breached this duty during Nelva's life by engaging in self-dealing and taking actions not permitted by the terms of the Trust, and thus is liable to the Estate and derivatively to Plaintiff for these breaches. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest and costs of court.

Fraud. Defendants Anita Brunsting and Amy Brunsting made misrepresentations of material facts with the intent that Plaintiff rely upon them, and Plaintiff did rely upon such misrepresentations to her detriment. Such misrepresentations included statements regarding the Trust, Trust assets, and



her right to receive both information and Trust assets. On information and belief, Defendants made fraudulent misrepresentations to Nelva Brunsting upon which she relied to her detriment and to the ultimate detriment of her Estate. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest both on behalf of herself, and on behalf of the Estate of Nelva Brunsting, Deceased.

Constructive Fraud. Constructive fraud exists when a breach of a legal or equitable duty occurs that has a tendency to deceive others and violate their confidence. As a result of Defendants' fiduciary relationship with Plaintiff and with Nelva Brunsting, Defendants owed Plaintiff and Nelva Brunsting legal duties. The breaches of the fiduciary duties discussed above and incorporated herein by reference constitute constructive fraud, which caused injury to both Nelva Brunsting's Estate and Plaintiff. Plaintiff seeks actual damages, as well as, punitive damages individually and on behalf of Nelva Brunsting's Estate.

Money Had and Received. Defendants Anita, Amy and Carole have taken money that belongs in equity and good conscience to the Trust and derivatively to Plaintiff, and have done so with malice and through fraud, in part by representing that transfers to them were valid reimbursements. Plaintiff seeks her actual damages, exemplary damages, pre- and post-judgment interest and court costs.

Conversion. Defendants Anita, Amy and Carole have converted assets that belong to Plaintiff as beneficiary of the Brunsting Family Trust, assets that belong to the Brunsting Family Trust, and assets that belonged to Nelva Brunsting and that should be a part of her Estate. Defendants have wrongfully and with malice exercised dominion and control over these assets, and has damaged Plaintiff, the Brunsting Family Trust, as well as the Estate of Nelva Brunsting by so doing. Plaintiff seeks actual damages, exemplary damages, pre- and post-judgment interest and court

costs, both individually and on behalf of the Decedent's Estate.

Tortious Interference with Inheritance Rights. A cause of action for tortious interference with inheritance rights exists when a defendant by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received. Defendants Amy, Anita, and Carole, herein breached their fiduciary duties and converted funds that would have passed to Plaintiff through the Brunsting Family Trust, and in doing so tortiously interfered with Plaintiff's inheritance rights. Plaintiff seeks actual damages as well as punitive damages.

Declaratory Judgment Action. The Brunsting Family Trust was created by Nelva and Elmer Brunsting, and became irrevocable upon the death of Elmer Brunsting. After his death, Nelva executed both the June and August Qualified Beneficiary Designations and Exercises of Testamentary Power of Appointment ("Modification Documents"), which attempted to change the terms of the then-irrevocable Trust. The Modification Documents fail because they attempted to change the terms of the Trust. Assuming without admitting that the June Modification Document is a valid Power of Appointment, then the August Modification Document fails because Nelva had already effectively appointed all of the Trust property in June; she never revoked that Power of Appointment, but actually affirmed it. Upon information and belief, Nelva did not understand what she was signing when she signed the Modification Documents, and signed them as a result of undue influence and/or duress. Plaintiff seeks a declaration that the Modification Documents are not valid, and further that the *in terrorem* clause contained therein is overly broad, against public policy and not capable of enforcement. Plaintiff further seeks a declaration as to her rights under the Brunsting Family Trust. Plaintiff contends and will show that she has brought her action in good faith.

Declaratory Judgment Action. The Family Trust Agreement governed all of the rights and



powers that Anita held as Trustee. Those rights and powers did not allow her to transfer out the shares of Exxon and Chevron stock. Her duties as a Trustee prevented her from distributing Trust Assets to some beneficiaries to the detriment and for the purpose of harming other beneficiaries. Plaintiff seeks a declaration that the distributions of Chevron Stock and Exxon Stock to Amy, Anita and Carole are void because Anita as Trustee exceeded the scope of her power in making those gifts.

Unjust Enrichment. Defendants Amy, Anita and Carole have all been unjustly enriched by their receipt of Chevron Stock, Exxon Stock, and cash from the Trust. None were entitled to the distributions of stock, and a majority of the cash transfers were for purposes not authorized under the scope of the Trust Agreement nor of the purposes they alleged to be for. Plaintiff seeks a declaration that the Defendants were unjustly enriched, and seeks the imposition of a constructive trust on the remaining Chevron Stock and Exxon Stock that remains in their possession, as well as on any cash or proceeds from the sale of said stock and on any cash distributions from the Trust.

Conspiracy. Upon information and belief, Defendants Anita, Amy and Carole all conspired to make improper withdrawals and distributions from the Trust, to decrease Plaintiff's inheritance and interest in the Trust, to enrich themselves at the expense of the Trust and other beneficiaries, and to conceal the impropriety of their actions. They should be found jointly and severally liable for the decrease in the Trust, and should be required to disgorge their ill-gotten gains.

Demand for Accounting. Plaintiff seeks a formal accounting from Defendants in compliance with the Texas Property Code.

#### V. JURY DEMAND

Plaintiff hereby makes her demand for a jury trial in this matter.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial in this matter, she will take judgment for her actual and exemplary damages, actual and exemplary damages will be awarded to her and to the Estate of Nelva Brunsting, that pre- and post-judgment interest and costs of court will be assessed against the Defendants, and that she be granted such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

ostrommorris, PLLC

BY: 

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Attorneys for Plaintiff



CERTIFICATE OF SERVICE

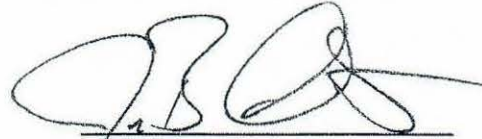
I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Texas Rule of Civil Procedure 21a on the following on the 11<sup>th</sup> day of February, 2015:

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Jason B. Ostrom/  
R. Keith Morris, III

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS, §  
RIK WAYNE MUNSON §

Plaintiffs, §

C.A. No. 4:16-cv-01969

VS. §

CANDACE KUNZ-FREED, ALBERT §  
VACEK, JR., BERNARD LYLE §  
MATHEWS III, NEAL SPIELMAN, §  
BRADLEY FEATHERSTON, STEPHEN §  
MENDEL, DARLENE PAYNE SMITH, §  
JASON OSTROM, GREGORY LESTER §  
JILL WILLARD YOUNG, CHRISTINE §  
RIDDLE BUTSS, CLARINDA §  
COMSTOCK, TONI BIAMONTE, §  
BOBBY BAYLESS, ANITA §  
BRUNSTING AND AMY BRUNSTING §

**ORDER**

Pending before the Court is Jason Ostrom’s Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(6). After having considered the Motion, the Court hereby **GRANTS** Defendant’s Motion to Dismiss Complaint. It is therefore,

**ORDERED** that all claims asserted against Jason Ostrom are dismissed.

It is so **ORDERED**.

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Alfred H. Bennett  
United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.* §  
§  
VS. §  
§ Civil Action No. 4:16-cv-01969  
CANDACE KUNZ-FREED, *ET AL.* §  
§  
§

**DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA  
COMSTOCK & TONY BAIAMONTE’S RESPONSE TO PLAINTIFFS’  
MOTION FOR CONSOLIDATION**

TO THE HONORABLE JUDGE ALFRED H. BENNETT:

Defendants, the Honorable Judges Christine Riddle Butts and Clarinda Comstock and substitute Court Reporter Tony Baiamonte (collectively, “Harris County Defendants”) file this Response to Plaintiffs’ Motion for Consolidation [Doc. 61] and would respectfully show the Court as follows:

**Background**

On February 22, 2012, Plaintiff Curtis sued her siblings Anita and Amy Brunsting, claiming they breached fiduciary duties owed to her arising from their position as co-trustees of the Brunsting Family Trust (“Sibling Lawsuit”).<sup>1</sup> Upon motion by Curtis, the

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<sup>1</sup> See Curtis’ Original Petition [Doc. 1] filed in Case No. 4:12-cv-0592, *Candace Louise Curtis v. Anita Kay Brunsting, et al.* Harris County Defendants ask the Court to take judicial notice of this lawsuit and its pleadings.

Sibling Lawsuit was remanded to Harris County Probate Court 4.<sup>2</sup> The remand occurred on May 15, 2014. Curtis subsequently sought permission to e-file and was denied.<sup>3</sup>

Two years later, on July 5, 2016, Plaintiffs Curtis and paralegal Rik Munson filed this lawsuit, claiming the Harris County Defendants and lawyers representing various parties (including Curtis' former lawyer Jason Ostrom) were involved in some fictitious civil and criminal RICO conspiracy.

Plaintiffs now seek to consolidate the instant lawsuit with the Sibling Lawsuit -- however, not to consolidate it with the actual case that is pending in Probate Court 4, but to consolidate it in a federal court that has remanded and closed the case.

### **Argument & Authorities**

The Motion for Consolidation should be denied because a pending matter cannot be consolidated into a closed case, especially one that involves no common questions of law or fact. Further, the case to which they seek consolidation is currently pending before Probate Court 4 – with the judges being sued in this case.

#### **1. Consolidation should be denied because the “prior case” is closed.**

A motion to consolidate a pending matter into a closed matter should be denied. *See* Order Denying Motion for Leave to File Motion to Consolidate, *EP-Team, Inc. v. Aspen Infrastructure, Ltd.*, No. H-07-2549 [Doc. 17] (S. D. Tex. Jan. 10, 2008). In *EP-Team*, a

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<sup>2</sup> See Sibling Lawsuit, Doc. 112.

<sup>3</sup> See Sibling Lawsuit, Doc. 114, Order Denying Curtis Motion for Permission for Electronic Case Filing.

court in this District was asked to consolidate a matter into an earlier-filed case that was closed. *Id.* The court denied consolidation, stating, “This case, Civil Action No. 07-2549, is the earlier case and **it is closed, therefore, the Court cannot consolidate anything with it.**” *Id.* (emphasis added); *see also Clarke v. Dir., TDCJ-CID*, No. 4:09-CV-404, 2012 WL 4120430, at \*1 & \*5 (E.D. Tex. Sept. 19, 2012) (denying a motion to consolidate because the “corresponding case” was “closed”); *Hamilton v. United Healthcare of Louisiana, Inc.*, CIV.A. 01-585, 2003 WL 22779081, at \*2 n.3 (E.D. La. Nov. 21, 2003) (determining that “consolidation **was done in error**” because the first-filed case “was closed” prior to consolidation) (emphasis added). And the “prior matter” is closed because Plaintiff Curtis *herself* requested the court remand the matter to Probate Court 4. *See* Doc. 112 in the Sibling Lawsuit. Thus, Plaintiffs’ Motion for Consolidation should be denied.

**2. The Sibling Lawsuit and this lawsuit should not be consolidated.**

In determining whether to consolidate, Courts consider five factors:

(1) whether the actions are pending before the same court, (2) whether common parties are involved in the cases, (3) whether there are common questions of law and/or fact, (4) whether there is risk of prejudice or confusion if the cases are consolidated, and if so, is the risk outweighed by the risk of inconsistent adjudications of factual and legal issues if the cases are tried separately, and (5) whether consolidation will conserve judicial resources and reduce the time and cost of trying the cases separately.”

*Zolezzi v. Celadon Trucking Services, Inc.*, No. Civ.A.H-08-3508, 2009 WL 736057, at \*1 (S.D. Tex. Mar. 16, 2009) (citing *In re Enron Corp. Securities, Derivative & “ERISA” Litigation*, Civ. A. Nos. H-01-3624, H-04-0088, H-04-0087, H-03-5528, 2007 WL

446051, at \*1 (S.D. Tex. Feb.7, 2007)). Here, those factors overwhelmingly show that the two cases should not be consolidated.

First, the actions are not **pending** before the same court. Indeed, as shown above, the “prior case” is not pending at all — it is closed.

Second, although some of the parties to the two matters are common between the two cases, several are not. None of the Harris County Defendants were parties to the Sibling Lawsuit. With the exception of Amy and Anita Brunsting, none of the 11 other Defendants were parties to the Sibling Lawsuit either (Jill Young, Gregory Lester, Candace Kunz-Freed, Albert Vacek, Jr., Bernard Lyle Matthews, III, Neil Spielman, Bradley Featherston, Stephen Mendel, Darlene Payne Smith, Bobbie Bayless and her attorney in the Sibling Lawsuit, Jason Ostrom).

Third, there are not common questions of law or fact. This matter involves RICO assertions made by Plaintiffs, who make the novel contention that the Judges, Court Reporter and attorneys that practice in Probate Court 4, known as the “Harris County Tomb Raiders” and the “Probate Mafia,” are involved in an alleged conspiracy to “transfer wealth” from estates by engaging in “poser advocacy.” There are *no* questions of law or fact in the closed matter, because it has been remanded to state court. But even if the Court looked to the questions of law and fact in the state court matter, those questions relate merely to estate law—not alleged federal RICO statutes and criminal conspiracies.

Fourth, there is an extraordinary risk of confusion that would result from consolidation of the cases. As examples, in the RICO case, many of the probate court litigants, the attorneys, and the judges are all Defendants, who are all more-or-less aligned in opposing Plaintiffs' RICO allegations. But in the probate matter itself, many of the parties share no such affinities. Certainly, it would be confusing for a fact-finder to be asked to determine, on the one hand, whether Plaintiff Curtis's own counsel was involved in the criminal enterprise "Probate Mafia," when that counsel also previously represented the Plaintiff in the closed federal court matter.

Fifth, consolidation will not conserve judicial resources since the prior matter is closed.

### **Conclusion & Prayer**

The Motion for Consolidation should be denied because a pending matter cannot be consolidated into a closed case, especially one that involves no common questions of law or fact. For the reasons set forth above, the Harris County Defendants respectfully request the Court deny the Plaintiffs' Motion for Consolidation [Doc. 61] and award the Defendants such other and further relief to which this Court finds them to be justly entitled.

**Dated:           October 31, 2016.**

Respectfully Submitted,

/s/ Laura Beckman Hedge

**Laura Beckman Hedge**

Assistant County Attorney

**ATTORNEY-IN-CHARGE**

Texas State Bar No. 00790288

Federal Bar No. 23243

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Houston, Texas 77002

Telephone: (713) 274-5137

Facsimile: (713) 755-8924

**ATTORNEY FOR DEFENDANTS, JUDGE**

**CHRISTINE RIDDLE BUTTS, JUDGE**

**CLARINDA COMSTOCK & TONY**

**BAIAMONTE**

**OF COUNSEL:**

VINCE RYAN,  
HARRIS COUNTY ATTORNEY



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 31<sup>st</sup> day of October, 2016, via ECF.

Candace Louise Curtis  
218 Landana Street  
American Canyon, CA 94503

Jason Ostrom  
Ostrom Morris PLLC  
6363 Woodway Dr., Suite 300  
Houston, Texas 77057

Rik Wayne Munson  
218 Landana Street  
American Canyon, CA 94503

Cory S. Reed  
Thompson Coe Cousins Irons  
One Riverway, Suite 1600  
Houston, Texas 77056

Martin Samuel Schexnayder  
Winget, Spadafora & Schwartzberg LLP  
Two Riverway, Suite 725  
Houston, Texas 77056

Adraon D. Greene  
Galloway, Johnson, Tompkins, Burr &  
Smith  
1301 McKinney St., Suite 1400  
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Rafe A. Schaefer  
Norton Rose Fulbright US LLP  
1301 McKinney  
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Bobbie G. Bayless  
Bayless Stokes  
2931 Ferndale  
Houston, Texas 77098

Anita Brunsting  
203 Bloomingdale Circle  
Victoria, Texas 77904

Amy Brunsting  
2582 Country Ledge Drive  
New Braunfels, Texas 78132

/s/ Laura Beckman Hedge  
Laura Beckman Hedge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*

§

VS.

§

§

Civil Action No. 4:16-cv-01969

CANDACE KUNZ-FREED, *ET AL.*

§

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**ORDER**

The Court, having considered the Plaintiffs’ Motion for Consolidation [Doc. 61], the Responses filed by Defendants Christine Riddle Butts, Clarinda Comstock, Tony Baiamonte and Jill Young, and the applicable law, finds the relief requested should not be granted and therefore DENIES the Motion for Consolidation.

It is so ORDERED.

\_\_\_\_\_

Date

\_\_\_\_\_

The Honorable Alfred H. Bennett  
United States District Judge

**ENTERED**

November 02, 2016

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**CANDACE LOUISE CURTIS &  
RIK WAYNE MUNSON**

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**VS.**

**CIVIL ACTION NO. 4:16-cv-01969  
(Alfred H. Bennett)**

**CANDACE KUNZ-FREED,  
ALBERT VACEK, JR, ET AL**

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**ORDER ON MOTION TO SUBSTITUTE COUNSEL FOR STEPHEN A. MENDEL AND  
BRADLEY E. FEATHERSTON**

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After considering the Unopposed Motion to Substitute Counsel for Stephen A. Mendel and Bradley E. Featherston, the Court

GRANTS the Motion to Substitute, and

ORDERS the withdrawal of Stephen A. Mendel and The Mendel Law Firm, L.P. as counsel of record for Stephen A. Mendel and Bradley E. Featherston. Further, the Court

ORDERS the following counsel be substituted as attorney in charge for Stephen A.

Mendel and Bradley E. Featherston:

Adraon D. Greene  
Attorney-in-Charge  
[agreene@gallowayjohnson.com](mailto:agreene@gallowayjohnson.com)  
David C. Deiss  
[ddeiss@gallowayjohnson.com](mailto:ddeiss@gallowayjohnson.com)  
GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH  
1301 McKinney St., Suite 1400  
Houston, Texas 77010

SIGNED on 10/31/16, 2016.

  
\_\_\_\_\_  
HON. ALFRED H. BENNETT

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS, et al

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CIVIL ACTION NO. 4:16-cv-01969

vs.

CANDACE KUNZ-FREED, et al

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**MOTION TO DISMISS**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Defendant Bernard Lise Mathews, III, erroneously sued and served as “Bernard Lyle Mathews, III” (hereinafter referred to as “Mathews”) hereby files this Motion to Dismiss for Failure to State a Claim and for Lack of Subject Matter Jurisdiction and would respectfully show the Court the following:

**I. SUMMARY OF MOTION**

1. Plaintiffs do not have an actual case or controversy with Mathews. Plaintiffs cannot articulate any action traceable to Mathews, which has caused any injury under any of the theoretical approaches taken by Plaintiffs. Additionally, Mathews cannot be held liable to Plaintiffs. Accordingly, Mathews requests that this Court dismiss Plaintiffs' claim for failure to state a claim and for lack of subject matter jurisdiction.

**II. BACKGROUND**

2. Mathews handled only an Emergency Motion for Removal of Lis Pendens in the case

of Candace Curtis vs. Anita and Amy Brunsting; in Civil Action 4:12-cv-00592, also file in this District Court. The purpose of the motion was to seek relief from a *lis pendens* to permit the trustees to consummate a fair market sale of residential real property owned by the Brunsting Family Living Trust. A telephone conference with the Judge was held on the motion with Candace Curtis participating. At the conclusion of this hearing Judge Kenneth Hoyt, on his own motion, dismissed the underlying action for lack of jurisdiction.

3. Candace Curtis appealed this dismissal, but Anita and Amy Brunsting hired new counsel who handled the appeal, the subsequent remanded action, and various other matters. Mathews had no other involvement in this case, or any other legal proceedings involving any of the parties to this case. Although acting at various times as “Of Counsel” to the firm of Vacek & Freed, Mathews never had any role in designing, drafting, administering or enforcing the provisions of the Brunsting Family Trust. Mathews has had no contact with the plaintiff’s outside of the above-mentioned Motion, and has had no substantive contact with any of the co-defendants who are asserted to have engaged in various conspiracies in Plaintiff’s Verified Complaint for Damages. There are no factual allegations in the Complaint that would tie Mathews to any of the fanciful theories of liability. In essence, Mathews is just an unfortunate bystander caught in the net of craziness that is the *modus operandi* of Candace Curtis and her surrogate, Rik Munson.

### III. BASIS FOR MOTION TO DISMISS AND STANDARD OF REVIEW

4. Rule 12(b)(6) authorizes dismissal of an action for "failure to state a claim upon which relief can be granted" if the plaintiffs complaint lacks "direct allegations on every material

point necessary to sustain a recovery" or fails to "contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial." FED. R. Civ. P. 12(b)(6); *Campbell v. San Antonio*, 43 F.3d 973, 975 (5th Cir. 1995). Although a court is required to accept all well-pleaded facts as true, a court does not accept as true conclusory allegations, "unwarranted deductions of fact," or "legal conclusions masquerading as factual conclusions." See, e.g., *Tuchman v. DSC Communications*, 14 F.3d 1061, 1067 (5th Cir. 1994). A claim must be dismissed if the claimant can prove no set of facts that would entitle it to relief. *Campbell v. City of San Antonio*, 43 F.3d 973, 975 (5th Cir. 1995) "The court is not required to 'conjure up unpled allegations or construe elaborately arcane scripts to save a complaint." *Id.* For the reasons set forth in more detail below, Plaintiffs' claims should be dismissed because Plaintiffs have failed to state a claim upon which relief may be granted.

5. Rule 12(b)(1) permits the dismissal of an action for lack of subject matter jurisdiction when the district court lacks authority to hear the dispute. See generally, *U.S. v. Morton*, 467 U.S. 822 (1984). The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). To establish subject matter jurisdiction, a party must show that an actual case or controversy exists between himself and the party from whom relief is sought. Standing is an essential element in the determination of whether a true case or controversy exists. A motion to dismiss for lack of subject matter jurisdiction should be granted if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief.

Id.

IV.

ARGUMENTS AND AUTHORITIES

6. Mathews adopts the Arguments and Authorities set forth by all other Defendants in their Motions to dismiss on file herein, and adopts by reference that material as if set forth herein verbatim.

V. PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant Bernard Lilse Mathews, III, hereby requests that his Motion to Dismiss for Failure to State a Claim on all claims alleged by Plaintiffs be granted.

Respectfully submitted,

/s/

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**BERNARD LILSE MATHEWS, III**

Pro se

State Bar # 13187450

4606 FM 1960 West, Suite 400

Houston, Texas 77069

Telephone: (281) 580-8100

Facsimile: (281) 580-8104

e-mail: [texlawyer@gmail.com](mailto:texlawyer@gmail.com)

**Certificate of Service**

I certify that on the 6<sup>th</sup> day of November, 2016, a true and correct copy of the foregoing was served via the Court's ECF system on the Plaintiffs and all other parties of record.

/s/

---

Bernard Lilse Mathews, III



**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

Candace Louise Curtis, et al.

v.

Case Number: 4:16-cv-01969

Candace Kunz-Freed, et al.

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**NOTICE OF SETTING**

**TAKE NOTICE THAT A PROCEEDING IN THIS CASE HAS BEEN SET FOR  
THE PLACE, DATE AND TIME SET FORTH BELOW.**

**Before the Honorable**

Alfred H Bennett

**PLACE:** Courtroom 8C  
United States District Court  
515 Rusk Avenue  
Houston, Texas 77002

**DATE:** 12/15/2016

**TIME:** 11:00 AM

**TYPE OF PROCEEDING:** Motion Hearing

Date: November 4, 2016

David J. Bradley, Clerk



Paragraph 55 of the Complaint alleges that Mr. Lester is an attorney who has practiced in Harris County Probate Courts. Paragraph 56 alleges, without any facts to support it, that Mr. Lester and the other named defendants have engaged in a criminal enterprise somehow being conducted through Harris County Probate Court Number 4. Paragraph 59 makes a similar allegation, again without any factual support. The Complaint asserts no factual content sufficient to maintain any cause of action against Mr. Lester. (*D.E.#1*).

In response to Motions to Dismiss under Federal Rule of Civil Procedure 12(b)(6) filed by some Defendants, Plaintiffs filed their Addendum of Memorandum in Support of RICO Complaint. (*D.E. #26*). Rather than provide any specifics about how a frivolous 59-page complaint states a RICO claim against Mr. Lester, Plaintiffs have instead come forward with a 25-page Addendum that still does not state a claim. (*D.E.# 26*). Although the Addendum is replete with inaccuracies, it has not changed or added any additional factual allegations to support RICO claims. All the Addendum does is describe a handful of events and then conclude without explanation that the events constitute a RICO predicate act. Because the Addendum does nothing to cure the problems found in Plaintiffs' Original Complaint, the Court should grant this Motion and dismiss all claims against Mr. Lester.

## **II.** **STANDARDS OF REVIEW FOR PLEADING CONSTRUCTION**

In a Rule 12(b)(6) motion, the Court accepts all factual allegations in the pleadings as true and examines whether the allegations state a claim sufficient to avoid dismissal.<sup>1</sup> This standard of construction presupposes well-pleaded facts; a court does not accept conclusory allegations,

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<sup>1</sup> *Guilbeaux v. Grand Casinos, Inc.*, 114 F.3d 1181 (5<sup>th</sup> Cir. 1997); *Kansa Reins Co. v. Congressional Mortgage Corp.*, 20 F.3d 1362, 1366 (5<sup>th</sup> Cir. 1994).

unwarranted factual inferences, or legal conclusions as true.<sup>2</sup> It is appropriate to consider the exhibits attached to a complaint for purposes of a Rule 12(b)(6) motion.<sup>3</sup> A Court should grant a Rule 12(b)(6) motion when it appears that no relief could be granted under any set of facts that could be proven consistent with the allegations.<sup>4</sup> Similarly, 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.<sup>5</sup>

**III.**  
**STATEMENT OF FACTS DERIVED EXCLUSIVELY FROM PLAINTIFFS'**  
**ORIGINAL COMPLAINT AND ADDENDUM**

It is evident from the Original Complaint that Plaintiffs have underlying litigation in Probate Court Number Four with various attorneys and opposing parties. It is also evident from the Original Complaint that Plaintiffs are dissatisfied with the status of those proceedings. Beyond this, it has been extremely cumbersome to locate any specific allegations against Mr. Lester. In an effort to provide some clarity for the Court regarding the claims against Mr. Lester, Mr. Lester opens with a statement of facts.

**A. FACTS INVOLVING MR. LESTER.**

On July 23, 2015, the Honorable Christine Butts, Judge of Harris County Probate Court Number Four (4), entered its Order Appointing Temporary Administrator Pending Contest Pursuant to Texas Estates Code 452.051.<sup>6</sup> That Order appointed Gregory Lester as Temporary Administrator with limited powers.<sup>7</sup> The only powers conferred on Mr. Lester were the powers

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<sup>2</sup> *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5<sup>th</sup> Cir. 2007).

<sup>3</sup> *U.S. ex rel. Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370 (5<sup>th</sup> Cir. 2004).

<sup>4</sup> *Century Sur. Co. v. Blevins*, 799 F.3d 366, 371 (5<sup>th</sup> Cir. 2015).

<sup>5</sup> *Jackson v. City of Beaumont Police Dept.*, 958 F.2d 616, 619 (5<sup>th</sup> Cir. 1992).

<sup>6</sup> Exhibit A.

<sup>7</sup> *Id.*

to investigate all claims pending by all parties and file a report with the court regarding the merits of the claims.<sup>8</sup> The Order was only effective for 180 days.<sup>9</sup> Mr. Lester filed his Report of Temporary Administrator Pending Contest on January 14, 2016.<sup>10</sup>

Against Mr. Lester, Plaintiffs allege causes of action for:

- “18 U.S.C. §1962(d) the Enterprise;”<sup>11</sup>
- “The Racketeering Conspiracy 18 U.S.C. §1962(c);”<sup>12</sup>
- Three claims for “Honest Services 18 U.S.C. §1346 and 2;”<sup>13</sup>
- “Wire Fraud 18 U.S.C. §1343 and 2;”<sup>14</sup>
- “Fraud 18 U.S.C. §1001 and 2;”<sup>15</sup>
- “Theft/Hobbs Act Extortion Texas Penal Codes § 31.02 & 3.03 and 18 U.S.C. §1951(b)(2) and 2;”<sup>16</sup> and
- Three conspiracy claims for “Conspiracy to Obstruct Justice 18 U.S.C. §371;”<sup>17</sup> “Conspiracy Re: State Law Theft/Extortion – in Concert Aiding and Abetting;”<sup>18</sup> and “Conspiracy to Violate 18 U.S.C. §§ 242 and 2, & 42 U.S.C. §§983 and 1985.”<sup>19</sup>

But despite the many “claims”, Plaintiffs complain of only one specific action taken by Mr. Lester. Plaintiffs allege that Mr. Lester filed a “fictitious report into the Harris County Probate

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Exhibit B.

<sup>11</sup> *See* Complaint, at §IV, ¶¶ 35-58.

<sup>12</sup> *Id.* at ¶¶ 59-120.

<sup>13</sup> *Id.* at ¶¶ 121, 122, and 123.

<sup>14</sup> *Id.* at ¶ 123

<sup>15</sup> *Id.* at ¶123

<sup>16</sup> *Id.* at ¶123

<sup>17</sup> *Id.* at ¶123

<sup>18</sup> *Id.* at ¶132

<sup>19</sup> *Id.* at ¶159

Court No.4.”<sup>20</sup> Plaintiffs have asserted no factual content sufficient to maintain any cause of action against Mr. Lester. The Complaint should be dismissed with prejudice.

**IV.**  
**THE COURT SHOULD DISMISS THE PLAINTIFFS’**  
**CLAIMS AGAINST MR. LESTER.**

**A. PLAINTIFFS HAVE NOT ADEQUATELY PLEADED THE NECESSARY PREDICATE ACTS.**

Based on virtually no specific allegations of a criminal enterprise beyond dissatisfaction with the public proceedings in the underlying case, the Plaintiffs have asserted two RICO claims against Mr. Lester. Plaintiffs have brought their RICO action under 18 U.S.C. §1962(c) AND 18 U.S.C. §1962(d).

To avoid dismissal for failure to state a claim, a plaintiff must articulate how each defendant engaged in a prohibited pattern of racketeering activity or “predicate acts.”<sup>21</sup> Plaintiffs fail to meet this standard.

With respect to Mr. Lester, Plaintiffs have listed four federal crimes that appear in 18 U.S.C § 1961(l)'s definition of racketeering activity. However, to successfully plead a RICO claim under § 1962(c), Plaintiffs must do more than simple list the predicate act crimes necessary to establish a pattern of racketeering activity. Plaintiffs must also plead specific facts that, if true, would establish that each predicate act was in fact committed by Mr. Lester.<sup>22</sup> Plaintiffs' Complaint fails to meet this standard. For most of the identified predicated acts, Plaintiffs simply identify the statute, provide a general description of the conduct it prohibits, and then asserts that Mr. Lester violated the statute. However, these allegations are baseless on their face and a far cry from the truth. Accordingly, Plaintiffs' claims must be dismissed.

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<sup>20</sup> See Complaint, Paragraph 123.

<sup>21</sup> *Cadle Co. v. Schultz*, 779 F. Supp. 392, 396 (N.D. Tex. 1991)

<sup>22</sup> *Id.* at 880.

**B. THE PLAINTIFFS HAVE NOT STATED A RICO CLAIM UNDER SECTION 1962(c).**

As to the claims under § 1962(c), the Plaintiffs did not allege with the requisite factual specificity (or beyond merely conclusory statements) any predicate acts committed by Mr. Lester. Similarly, the Plaintiffs did not allege and the law would not sustain any assertion that Mr. Lester conducted, controlled, or participated in an enterprise under the standard set forth by the Supreme Court in *Reves*.<sup>23</sup>

**1. Plaintiffs have failed to adequately plead with particularity their fraud-based predicate acts as required by Federal Rule 9(b).**

Most of Plaintiffs' predicate acts are, at their core, allegations of fraudulent behavior. Because all of Plaintiffs' allegations are fundamentally grounded in fraud, "rule 9(b) applies and the predicate acts alleged must be plead with particularity."<sup>24</sup>

Underpinning the heightened pleading requirement for fraud claims is the federal courts' determination that "defendants are not required to guess what statements were made in connection with a plaintiffs claim and how and why they are fraudulent."<sup>25</sup> Thus, Plaintiffs' fraud allegations must specifically refer to the "time, place, and contents of the false representations, as well as the identity of the person making the representation and what the person obtained thereby."<sup>26</sup> When pleading a claim for mail or wire fraud, Plaintiffs must specify the content of the alleged communications and how those communications advanced the alleged scheme to defraud the Plaintiffs.<sup>27</sup>

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<sup>23</sup> 507 U.S. 170, 185, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993).

<sup>24</sup> *Walsh v. America's Tele- Network Corp.*, 195 F. Supp.2d 840, 846 (E.D. Tex. 2002) (citing *Williams v. WMXTechs., Inc.*, 112 F.3d 175, 177 (5th Cir. 1997)); FED. R. CIV. P. 9(b) ("In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.").

<sup>25</sup> *Allstate Insurance Company v. Benhamou*, No. 4:15-CV-00367, 2016 WL 3126423, at \*17 (S.D. Tex. June 2, 2016).

<sup>26</sup> *Tel-Phonic Servs., Inc. v. TBS Int'l, Inc.*, 975 F.2d 1134, 1138 (5th Cir. 1992); *Skidmore Energy, Inc. v. KPMG LLP*, No. CIV.A.3:03CV2138-B, 2004 WL 3019097, at \*3 (N.D. Tex. Dec. 28, 2004).

<sup>27</sup> *Elliott*, 867 F.2d at 882; *Old Time Enterprises*, 862 F.2d at 1218; *Tel-Phonic Servs.*, 975 F.2d at 1138.



Here, Plaintiffs have failed to allege the contents of any of the purported false representations made by Mr. Lester, or how they advanced the alleged scheme to defraud Plaintiffs, flaws that are fatal to their claims. Moreover, as stated above, Plaintiffs offer no real factual support for their obstruction of justice, mail and wire-fraud allegations, or truly any of their claims. Given these fatal defects, the Court should dismiss Plaintiffs' RICO action.

**2. Plaintiffs have failed to plead reliance in connection with their fraud related claims.**

RICO cases based upon fraud require a showing of detrimental reliance by the plaintiff.<sup>28</sup> This requirement, the Fifth Circuit has determined, is consistent with the Supreme Court's admonition in *Holmes* that federal courts employ traditional notions of proximate cause when assessing the nexus between a plaintiffs' injuries and the underlying RICO violation.<sup>29</sup> But, despite this firmly established requirement, Plaintiffs in this case have asserted no allegations-indeed, not even a conclusory allegation-detailing how they purportedly relied upon Mr. Lester's allegedly fraudulent conduct. Accordingly, Plaintiffs' RICO claims, most of which are fraud-based, should be dismissed.

**C. PLAINTIFFS HAVE FAILED TO PLEAD A COGNIZABLE RICO ENTERPRISE**

**1. Plaintiffs Enterprise Allegations Are Too Vague and Conclusory**

An enterprise is defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."<sup>30</sup> The Fifth Circuit requires that "[i]n order to avoid dismissal for failure to state a claim, a plaintiff must plead specific facts, not mere conclusory allegations, which establish the existence of an enterprise."<sup>31</sup> To

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<sup>28</sup> *Summit Properties, Inc. v. Hoechst Celanese Corp.*, 214 F.3d 556, 562 (5th Cir. 2000) (dismissing RICO claims where plaintiff failed to allege reliance in connection with fraud-based predicate acts)

<sup>29</sup> See *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 279 (1992); *Sandwich Chef of Texas, Inc. v. Reliance Nat'l Indemnity Ins. Co.*, 319 F.3d 205, 219 (5th Cir. 2003); *In re MasterCard International, Inc.*, 313 F.2d 257, 263 (5th Cir. 2002) (noting that district court's reliance analysis was "particularly compelling").

<sup>30</sup> 18 U.S.C. § 1961(4); see also *Elliott*, 867 F.2d at 881.

<sup>31</sup> *Elliott*, 867 F.2d at 881.

establish an "association in fact" enterprise under 18 U.S.C. § 1961(4) a plaintiff must show "evidence of an ongoing organization, formal or informal, and ... evidence that the various associates function as a continuing unit."<sup>32</sup>

The Supreme Court in *Turkette* stated that the "enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct."<sup>33</sup> The Fifth Circuit has enumerated the requirements of an enterprise as requiring that it "(1) must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization and (3) its members must function as a continuing unit shown by a hierarchical or consensual decision making structure."<sup>34</sup>

"[T]wo individuals who join together for the commission of one discrete criminal offense have not created an "association-in-fact" enterprise, even if they commit two predicate acts during the commission of this offense, because their relationship to one another has no continuity."<sup>35</sup> However, "if the individuals associate together to commit several criminal acts, their relationship gains an ongoing nature, coming within the purview of RICO."<sup>36</sup>

Plaintiffs have provided virtually no facts concerning the alleged enterprise, how it operated, how decisions were made, what conduct beyond the alleged predicate acts they purportedly engaged in, how the operations of the individuals were carried out, or how they went about accomplishing their purported goals. Instead, Plaintiffs allege the text book elements of an enterprise characterized with inflammatory exaggerations and baseless

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<sup>32</sup> *Atkinson v. Anadarko Bank & Trust Co.*, 808 F.2d 438, 440-41 (5th Cir. 1987) (quoting *U.S. v. Turkette*, 452 U.S. 576, 583 (1981)).

<sup>33</sup> 452 U.S. at 583.

<sup>34</sup> *Landry v. Air Line Pilots Ass'n Int'l*, 901 F.2d 404, 433 (5th Cir.1990).

<sup>35</sup> *Montesano et al. v. Seafirst Commercial Corp. et al.*, 818 F.2d 423, 426-27 (5th Cir. 1987).

<sup>36</sup> *Ocean Energy II, Inc. v. Alexander & Alexander, Inc.*, 868 F.2d 740, 749 (5th Cir. 1989) (quoting *Montesano*, 818 F.2d at 427).

conclusions.

Plaintiffs fail to allege any specific facts that would demonstrate a conspiracy of any kind-when it began, who was actually a part of such conspiracy or any facts suggesting that any defendant had actual knowledge that any of the seemingly harmless acts were done in furtherance of some secret conspiracy. In the absence of these, or any other supporting facts, Plaintiffs' pleadings are simply insufficient.

Given RICO's "draconian" penalties and the fact that the very pendency of a RICO suit can be stigmatizing and costly, Plaintiffs should be required to satisfy their pleading obligations.<sup>37</sup> Hence, to avert dismissal under Rule 12(b)(6), a civil RICO complaint must, at a bare minimum, state facts sufficient to portray (i) specific instances of racketeering activity within the reach of the RICO statute; and (ii) a causal nexus between that activity and the harm alleged."<sup>38</sup> Plaintiffs have failed to meet even this "bare minimum" requirement. Therefore, this case should be dismissed.

## **2. Plaintiffs alleged enterprise lacks continuity.**

Because the RICO Act was enacted to address continuing threats of racketeering activities, the alleged RICO enterprises must meet certain "continuity" requirements.<sup>39</sup> Specifically, "[a]n association-in fact enterprise (1) must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization and (3) its members must function as a continuing unit as shown by a hierarchical or consensual decision making structure."<sup>40</sup> These requirements limit the application of the RICO Act, and serve to prevent an overly-broad

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<sup>37</sup> See *Fitzgerald v. Chrysler Corp.*, 116 F.3d 225, 228 (7th Cir. 1997) (characterizing RICO's penalties as "draconian"); *Miranda v. Ponce Federal Bank*, 948 F.2d 41, 44 (1st Cir. 1991) (characterizing RICO cases as "stigmatizing" and "costly").

<sup>38</sup> *Miranda*, 948 F.2d at 44-45 (emphasis added) (affirming dismissal of RICO claims where the pleadings "though copious, [were] vague and inexplicit").

<sup>39</sup> See, e.g., *Delta Truck*, 855 F.2d at 242-43 ("The concept of continuity as a means of controlling the scope of RICO has also been incorporated into the enterprise element of section 1962.").

<sup>40</sup> *Crowe v. Henry*, 43 F.3d 198, 205 (5th Cir. 1995).

application to general commercial conduct that was never really the intended focus of the Act.<sup>41</sup>

Here, the purported enterprise fails to meet RICO's "continuity" requirement on all three levels. First, nothing in the Complaint even remotely suggests that the alleged enterprise is an ongoing organization that maintains operations that are separate and apart from the alleged predicate acts. Second, there are no facts in the Complaint suggesting that the enterprise is an ongoing organization, or that the various enterprise members function as a continuing unit. Lastly, there are no allegations of any hierarchical or consensual decision making structure. The absence of factual support for these key allegations is fatal, and thus, Plaintiffs have failed to meet the pleading standard for a cognizable enterprise.

**D. PLAINTIFFS HAVE FAILED TO ADEQUATELY PLEAD A PATTERN OF RACKETEERING ACTIVITY.**

Plaintiffs have also failed to plead facts sufficient to show a "pattern of racketeering activity," an element comprised of (1) the predicate acts and (2) a pattern of such acts.<sup>42</sup> To properly allege a "pattern" of predicate acts, Plaintiffs must plead both that the acts are related to each other and that those acts either constitute or threaten long-term criminal activity, thereby reflecting "continuity."<sup>43</sup> When used in discussion of predicate acts, the term "continuity" has a meaning that differs from the "continuity" requirement imposed on RICO enterprises, even though the label is the same. Establishing continuity in this context requires facts sufficient to show that the predicate acts "amount to or threaten continuous racketeering activity."<sup>44</sup> Such continuity may refer "either to a closed period of repeated conduct or to past conduct that by its nature projects into the future with a threat of repetition."<sup>45</sup>

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<sup>41</sup> *Delta Truck*, 855 F.2d at 242-43.

<sup>42</sup> See *In re Burzynski* 989 F.2d 989 733, 741-42 (5th Cir. 1993) (citing *Delta Truck*, 855 F.2d at 242-43).

<sup>43</sup> *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989).

<sup>44</sup> *In re Burzynski*, 989 F.2d at 742-43 (finding no continuity where the acts complained of had ended and, thus, did not threaten long-term criminal activity).

<sup>45</sup> *Id.* (quoting *H.J., Inc.*, 492 U.S. at 241).

Here, Plaintiffs alleges several times throughout their Complaint that Mr. Lester engaged in a "pattern of racketeering." However, their conclusory allegations fail to set forth the necessary pattern of predicate acts and the supporting facts to establish that they amount to or threaten continuous racketeering activity.

**E. THE PLAINTIFFS HAVE NOT STATED A RICO CLAIM UNDER SECTION 1962(d).**

To prove a RICO conspiracy, the Plaintiffs must establish (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense.<sup>46</sup> A RICO conspiracy thus has RICO-specific requirements—an agreement by at least two conspirators to engage in a pattern of racketeering.<sup>47</sup> Mere association with the enterprise is not actionable; agreement is essential.<sup>48</sup> Further, if a plaintiff fails to properly plead a RICO claim under §§ 1962(a), (b), or (c), it correspondingly fails to properly plead a conspiracy claim under § 1962(d).<sup>49</sup>

The Court should dismiss the § 1962(d) claim because the Plaintiffs failed to state a claim under §§ 1962(a-c). As a result, the conspiracy claims fail under controlling Fifth Circuit authority.<sup>50</sup> The Court should additionally dismiss the claim because the Plaintiffs have not alleged any specific facts detailing an agreement to commit a RICO offense, what the agreement was, how it was reached, and when it was entered.<sup>51</sup> These types of missing details are necessary to state a claim under § 1962(d). As explained in *Twombly*, allegations that a defendant acted in ways consistent with a conspiratorial agreement, but also equally well explained by legitimate

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<sup>46</sup> *TruGreen Landcare, L.L.C. v. Scott*, 512 F.Supp.2d 613, 625 n.11 (N.D. Tex. 2007) (Fitzwater, J.) (quoting *United States v. Delgado*, 401 F.3d 290, 296 (5th Cir. 2005)).

<sup>47</sup> *Id.*

<sup>48</sup> *Baumer*, 8 F.3d at 1344.

<sup>49</sup> *N. Cypress Med. Ctr. Operating Co*, 781 F.3d at 203.

<sup>50</sup> *Id.*

<sup>51</sup> *Lewis v. Sprock*, 612 F.Supp. 1316, 1325 (N.D. Cal. 1985); *Lui Ciro, Inc. v. Ciro, Inc.*, 895 F.Supp. 1365 (D. Hawaii 1995).

economic incentives, do not suffice to show illegality.<sup>52</sup> So too, unsupported conclusory allegations are not entitled to be assumed true, and dismissal is proper when a conspiracy allegation does not plausibly suggest an illicit accord because the conduct could be compatible with or explained by, lawful, unchoreographed free-market behavior."<sup>53</sup> Because the Plaintiffs have failed to state a claim upon which relief may be granted, the Court should grant this Motion to Dismiss.

**1. Plaintiffs' claims should be dismissed because Plaintiffs' allegations do not satisfy RICO's proximate cause standard.**

To recover damages under the RICO Act, Plaintiffs must prove that they suffered an injury to their "business or property by reason of a statutory violation. 18 U.S.C. § 1964(c). The "by reason of" language of RICO has been interpreted by the Supreme Court and to require a showing that the violation was the "but for" cause and "proximate" cause of the injury.<sup>54</sup> That is, a plaintiff must allege facts which show that, "but for" defendant's conduct, the plaintiff would not have suffered the injuries claimed.<sup>55</sup> A plaintiff must also allege facts which show that its alleged injuries were a foreseeable consequence of the defendant's conduct.<sup>56</sup> More plainly stated, a RICO plaintiff "only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the [RICO] violation."<sup>57</sup>

Thus, to avoid a Rule 12(b)(6) dismissal, Plaintiffs must allege the existence of a "direct relation between the injury asserted and the injurious conduct alleged."<sup>58</sup> These allegations must

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<sup>52</sup> *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-57, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

<sup>53</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 680, 129 S.Ct. 1937, 1950, 173 L.Ed.2d 868 (2009).

<sup>54</sup> *Z-Tel Communications, Inc. v. SBC Communications, Inc.*, 331 F.Supp.2d 513, 559 (E.D. Tex. 2004)(citing *Holmes*, 503 U.S. at 279).

<sup>55</sup> *Ocean Energy II. V. Alexander & Alexander, Inc.*, 868 F.2d 740, 744 (5th Cir. 1989).

<sup>56</sup> *Navigant Consulting, Inc. v. Wilkinson*, 508 F.3d 277,289 (5th Cir. 2007).

<sup>57</sup> *Sedima*, 473 U.S. at 496.

<sup>58</sup> *See, e.g., Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 452 (2006), 1996 (2006); *Old Time Enterprises*, 862 F.2d at 1219.

include specific facts; conclusory and generalized allegations are insufficient.<sup>59</sup> "When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiffs' injuries."<sup>60</sup> The United States Supreme Court emphasized RICO's proximate-cause requirement in *Anza v. Ideal Steel Supply Corp.* In explaining its conclusion, the Supreme Court identified circumstances that emphasized the lack of the necessary causal connection. One such circumstance was the difficulty the trial court would have accurately ascertaining damages. The "less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiffs' damages attributable to the violation, as distinct from other independent factors."<sup>61</sup> If the case were allowed to go forward, the court reasoned, the trial court would be faced with the difficult task of accurately ascertaining the plaintiff's damages.<sup>62</sup>

Clearly, the allegations in the Complaint are insufficient to properly plead a violation of the RICO Act because they are vague, conclusory and generalized. Nevertheless, just like in *Anza*, Plaintiffs have alleged a similar disjunctive causation pattern with respect to their claims against Mr. Lester. There is not a direct relation between the injury asserted and the injurious conduct alleged as anticipated by *Anza*. At a minimum, the necessary causal link is missing. Because Plaintiffs have failed to allege facts necessary to meet the Supreme Court's high proximate-causation standard, this case should be dismissed.

**F. PLAINTIFFS' CLAIMS FOR "HOBBS ACT," "WIRE FRAUD," "FRAUD UNDER 18 U.S.C. 51001," AND "HONEST SERVICES" FAIL BECAUSE THOSE STATUTES DO NOT CREATE PRIVATE CAUSES OF ACTION.**

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<sup>59</sup> *Fernandez-Montez v. Allied Pilots Ass'n*, 987 F.2d 278,284 (5th Cir. 1993).

<sup>60</sup> *Anza*, 547 U.S. at 452.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*



The Plaintiffs purport to assert claims against Mr. Lester for violation of the Hobbs Act, Wire Fraud, "Fraud under 18 U.S.C. 1001," and "Honest Services," but those acts do not create private causes of action. Thus, those claims should all be dismissed.

**1. The Hobbs Act does not create a private cause of action.**

The Hobbs Act does not create a private cause of action. *Moore v. Garner*, No. Civ.A. 6:04-CV-79, 2005 WL 1022088, at \*4 (E.D. Tex. 2005) ("Nor does the Hobbs Act create a private cause of action") (citing *Wisdom v. First Midwest Bank*, 167 F.3d 402, 408 (8th Cir. 1999)). This is settled law. *See, e.g., Campbel v. Austin Air Systems, Ltd.*, 423 F. Supp. 2d 61, 72 (W.D.N.Y. September 29, 2005) ("[F]ederal courts have consistently found that the Hobbs Act does not support a private cause of action."); *Barge v. Apple Computer*, No. 95 CIV. 9715 (KMW), 1997 WL 394935, at \*1 (S.D.N.Y. July 15, 1997), *affd*, 164 F.3d 617 (2nd Cir. 1998) ("[C]ourts that have considered this question have consistently found that the Hobbs Act does not support a private cause of action."); *John's Insulation, Inc. v. Siska Constr. Co., Inc.*, 774 F. Supp. 156, 163 (S.D.N.Y. 1991) ("There is no implied private cause of action under the Hobbs Act.").

Thus, Plaintiffs' Hobbs Act claim against Mr. Lester fails.

**2. The Wire Fraud statute does not create a private cause of action.**

The wire fraud statute does not create a private cause of action. *See Thompson v. Wells Fargo Bank, N.A.*, CV H-15-598, 2016 WL 164114, at \*3 (S.D. Tex. Jan. 14, 2016) (Rosenthal, J.) (citing *Napper v. Anderson, Hensley, Shields, Bradford & Pritchard*, 500 F.2d 634, 636 (5th Cir. 1974) for its holding that there is "no private cause of action under the mail-and wire fraud statutes, 18 U.S.C. 1341 and 1343"); *see also Morse v. Stanley*, ICV230, 2012 WL 1014996, at \*2 (E.D. Tex. Mar. 23, 2012) ("18 U.S.C. 1343 is a criminal statute pertaining to wire fraud and does

not provide Plaintiff with a private cause of action."); *Benitez v. Rumage*, CIV.A. c-11-208, 2011 WL 3236199, at \*1 (S.D. Tex. July 27, 2011) (the wire fraud statute "do[es] not provide a private cause of action").

Thus, Plaintiffs' Wire Fraud act claim against Mr. Lester fails.

**3. The claim for "Fraud under 18 U.S.C. 91001" is not a private cause of action.**

Plaintiffs' claim for "Fraud 18 U.S.C. 1001" fails, as well, because that statute does not create a private cause of action. *See Thompson v. Wells Fargo Bank, N.A.*, CV H-15-598, 2016 WL 164114, at \*3 (S.D. Tex. Jan. 14, 2016) (Rosenthal, J.) ("The Thompsons assert causes of action under 18 U.S.C. 1001, 1010, 1014, 1341, 1343, and 1344. These federal criminal statutes do not provide a private cause of action.") (emphasis added). Again, this is settled law. *See Blaze v. Payne*, 819 F.2d 128, 130 (5th Cir. 1987) ("Finding no congressional intent to create a private right of action under 1001 (b), Blaze has failed to state a claim upon which relief could be granted, and the district court's grant of summary judgment was proper."); *Grant v. CPC Logistics Inc.*, 3:12-CV-200-L BK, 2012 WL 601149, at \*1 (N.D. Tex. Feb. 1, 2012), report and recommendation adopted, 3:12-CV-200-L, 2012 WL 601128 (N.D. Tex. Feb. 23, 2012) ("Federal courts have repeatedly held that violations of criminal statutes, such as 18 U.S.C. 1001, 1505 and 1621, do not give rise to a private right of action.") (emphasis added); *Parker v. Blake*, CIV. A. 08-184, 2008 WL 4092070, at \*3 (W.D. La. Aug. 29, 2008) ("Section 1001 provides criminal penalties for persons convicted of fraud or false statements during the course of certain dealings with the federal government As above, this criminal statute, were it applicable to allegations made by plaintiff still would not create a private civil cause of action or entitlement to monetary relief thereunder."); *Doyon v. U.S.*, No. A-07-CA977-SS, 2008 WL 2626837, at \*4 (W.D. Tex. June 26, 2008) (holding that there is "no private cause of action under 18 U.S.C. 1001 ").

Thus, Plaintiffs' claim for "Fraud 18 U.S.C. 1001" fails.

**4. The claim for "Honest Services" is not a private cause of action.**

Plaintiffs allege three claims for "honest services," based on 18 U.S.C. 1346.<sup>63</sup> But 18 U.S.C. §1346 does not create a private cause of action either. *See Eberhardt v. Braud*, 16-CV-3153, 2016 WL 3620709, at \*3 (C.D. 111. June 29, 2016) ("Plaintiff attempts to bring a private right of action under 18 U.S.C. 1346 and 18 U.S.C. §1951, but those criminal statutes do not contain an express or implied private right of action."); *Alford v. S. Gen. Ins.*, 7:12-CV-00273-BR, 2013 WL 1010584, at \*2 (E.D.N.C. Mar. 14, 2013) (holding that a "claim for honest services fraud under 18 U.S.C. 1346" must be dismissed "pursuant to Rule 12(b)(6) because a private right of action for a violation of that law does not exist"); *Hooten v. Greggo & Ferrara Co.*, CIV. 10-776-RGA, 2012 WL 4718648, at \*6 (D. Del. Oct. 3, 2012) ("18 U.S.C. 1341 and 1346 . . . are found in the federal criminal code. Neither §1341 or 1346 allow for a private cause of action.").

Thus, Plaintiffs' three claims against Mr. Lester for "Honest Services" fail.

**5. Plaintiffs rely on impermissible collective pleading.**

"A complaint does not satisfy the requirements of *Iqbal* and *Twombly* by lumping together all defendants, while providing no factual basis to distinguish their conduct."<sup>64</sup> And the pleading requirements of Rule 9(b) likewise demand specific and separate allegations against each defendant.<sup>65</sup>

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<sup>63</sup> See Complaint at ¶¶121-123.

<sup>64</sup> *In re Parkcentral Glob. Litig.*, 884 F. Supp. 2d 464, 471 (N.D. Tex. 2012) ("It is impermissible to make general allegations that lump all defendants together; rather, the complaint must segregate the alleged wrongdoing of No. 1 from another.").

<sup>65</sup> See *Dimas v. Vanderbilt Mortg & Fin., Inc.*, No. C-10-68, 2010 WL 1875803, at \*8 (S.D. Tex. May 6, 2010) ("[W]hile the Complaint makes several general allegations of fraud, it often fails to specify the role each Defendant played in the alleged scheme."); *Unimobil 84, Inc. v. Spurney*, 797 F.2d 214, 217 (5th Cir. 1986) (affirming dismissal of fraud claim for not stating with particularity "what representations each defendant made").

Here, Plaintiffs offer no individualized allegations about any wrongful conduct they allege against Mr. Lester. Instead, Plaintiffs' vague and fanciful pleadings are lobbed at all Defendants, with no discernible specific or separate allegations for Mr. Lester. This is insufficient to state a claim.

V.  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Mr. Lester respectfully prays that this Court GRANT this Motion to Dismiss, dismiss all of the Plaintiffs' claims against Mr. Lester with prejudice, and award Mr. Lester all such other relief to which he may be justly entitled.

Respectfully submitted,

ostrommorris, PLLC

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ATTORNEYS FOR GREGORY A. LESTER

**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2016, a true and correct copy of the foregoing instrument was served on all known counsel of record through the Court's CM/ECF system, which constitutes service on all parties in accordance with the Federal Rules of Civil Procedure.

  
STACY L. KELLY

No. 412,249

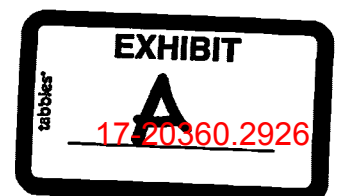
IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER APPOINTING TEMPORARY ADMINISTRATOR PENDING CONTEST  
PURSUANT TO TEXAS ESTATES CODE 452.051

On March 23, 2015, the Court heard and approved Carl Henry Brunsting's Application to Resign as Independent Executor. On July 21, 2015 the Court heard and considered CARL HENRY BRUNSTING'S APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND CANDACE LOUISE CURTIS' APPLICATION FOR APPOINTMENT AS SUCCESSOR PERSONAL REPRESENTATIVE; Anita Kay Brunsting's OBJECTION TO CANDACE CURTS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE; AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR, RESPONSE TO CARL BRUNSTING'S APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND OBJECTION TO CANDACE CURTIS'S APPLICATION FOR APPOINTMENT AS SUCCESSOR EXECUTOR; Carl Brunsting's OBJECTION TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR; and Candace Curtis' RESPONSE TO OBJECTIONS TO APPLICATION FOR APPOINTMENT AND OBJECTION TO AMY BRUNSTINGS APPLICATION FOR APPOINTMENT.

The Court finds that the Court has jurisdiction and venue over Decedent's Estate; that it is in the best interest of the Estate that a personal representative be immediately appointed; and that the parties have reached an agreement regarding the appointment of a Temporary Administrator Pending Contest with limited powers, which was announced on the record at said hearing, the terms of which are substantially as follows:

1. GREG LESTER would be a suitable temporary representative, is not disqualified from acting as such, and should be appointed Temporary Administrator



Pending Contest of this Estate with limited powers to evaluate all claims filed against 1) Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC, 2) Anita Kay Brunsting f/k/a Anita Kay Riley, Individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust and the Anita Kay Brunsting Personal Asset Trust; and 3) Amy Ruth Brunsting f/k/a Amy Ruth Tschirhart, Individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Tschirhart Personal Asset Trust; and 4) Carole Ann Brunsting, Individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust. Greg Lester, Temporary Administrator Pending Contest will report to the Court regarding the merits of these claims on or before the expiration of this Order. This Order shall expire 180 days after the date that it is signed.

2. Amy Brunsting and Anita Brunsting, as the Successor Co-Trustees of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, and the Nelva E. Brunsting Survivor's Trust agree to advance funds to the Estate of Nelva E. Brunsting (the "Estate") to pay all court approved fees and expenses of the Temporary Administrator Pending Contest.

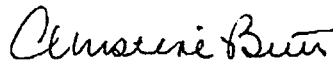
3. The Temporary Administrator Pending Contest has the authority to seek a continuance in the "District Court Case" in which the Estate is a plaintiff, of the hearing on the Motion for Summary Judgment current scheduled for July 31, 2015 and to seek continuance of the October, 2015 trial setting in that matter.

4. Amy Brunsting and Candace Louise Curtis each agree to a qualified declination to serve as Successor Independent Executor of the Estates of Nelva E. Brunsting and Elmer H. Brunsting, pursuant to the respective wills filed in each Estate, during the pendency of the Temporary Administration of this Estate.



IT IS THEREFORE ORDERED that Greg Lester is hereby appointed Temporary Administrator Pending Contest of this Estate and shall give a cash Bond in the amount of \$100.00 (On Hundred Dollars), conditioned as required by law; that the Temporary Administration shall continue until the expiration of 180 days after the date of this Order, or as may be further ordered by this court; that the Clerk of this Court shall issue Letters of Temporary Administration when the Temporary Administrator has qualified according to law; and that the Temporary Administrator shall have the powers enumerated by the agreement of the parties as restated above.

Signed July 23, 2015.

  
\_\_\_\_\_  
Christine Butts, Judge  
Harris County Probate Court No. 4

DV

PROBATE COURT 4

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County Clerk  
Harris County

No. 412,249

IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

**REPORT OF TEMPORARY ADMINISTRATOR PENDING CONTEST**

On July 24, 2015 an Order of this Court, signed by Judge Christine Butts on July 23, 2015, was filed in the above styled and numbered case. In this Order the Court stated that Greg Lester was appointed Temporary Administrator Pending Contest of this estate. The Court directed that Greg Lester will report to the Court regarding the merits of the claims in this case on or before the expiration of this Order. The Order will expire on or about January 20, 2016, which is 180 days after the date that the Order was signed.

**BACKGROUND**

**The Brunsting Family**

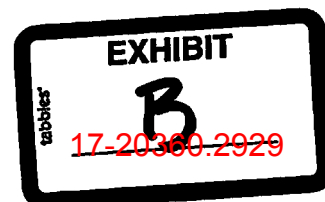
Nelva and Elmer Brunsting were married and had five (5) children: Candace Louise Curtis ("Candace"), Carol Ann Brunsting ("Carol"), Carl Henry Brunsting ("Carl"), Amy Ruth Tschirhart ("Amy") and Anita Kay Riley ("Anita").

**The Brunsting Family Living Trust**

Elmer Brunsting and Nelva Brunsting ( herein referred to as "Settlers") created the Brunsting Family Living Trust (the "Trust") on October 10, 1996. The Trust was subsequently restated in its entirety on January 12, 2005. A copy of the Restatement of the Brunsting Family Living Trust ("Restatement") is attached hereto as the first exhibit.

The Trust could be amended during the lifetime of the original Settlers. However, once a Settlor dies, the Trust could not be amended except by court order.

Each Settlor could provide for a different disposition of their share of the Trust by executing a qualified beneficiary designation for that person's share alone.



**Trustees of the Brunsting Family Living Trust**

The initial trustees of the Trust were Elmer Brunsting and Nelva Brunsting. The Restatement provided that if both original Co-Trustees failed or ceased to serve, then Carl Henry Brunsting and Amy Ruth Tschirhart would serve as Co-Trustees.

Each original Trustee has the right to appoint successor trustees to serve in the event the original Trustee ceases to serve by death, disability, or for any reason, and may specify any conditions on the succession and service as may be permitted by law. The Restatement also provided that the original Trustees may each remove any trustee they have individually named as their respective successor.

On September 6, 2007, a First Amendment to the Restatement to the Brunsting Family Living Trust was executed by Settlers which changed the succession of successor trustees, a copy of which is attached hereto as the second exhibit. This document appointed Carl Henry Brunsting and Candace Louise Curtis as successor co-trustees if both original Trustees fail or cease to serve. If either Carl Henry Brunsting or Candace Louise Curtis should fail or cease to serve, then the remaining successor trustee would serve alone. If neither successor co-trustee is able or willing to serve, then The Frost National Bank shall serve as the sole successor trustee. The First Amendment effectively removed Amy Ruth Tschirhart as the successor co-trustee and substituted Candace Louise Curtis in her place and stead.

Elmer Brunsting died on April 1, 2009, and after her husband's death, Nelva Brunsting served alone as the original trustee.

On December 21, 2010, Nelva Brunsting exercised her right to designate a successor trustee. Nelva Brunsting executed an Appointment of Successor Trustee, a copy of which is attached hereto as the third exhibit. The Appointment of Successor Trustee stated that if Nelva Brunsting resigned as Trustee, then Anita Kay Brunsting would serve as successor trustee, Amy Ruth Tschirhart would serve as the second successor, and The Frost National Bank as the third successor. If Nelva Brunsting fails or ceases to serve as trustee because of her death or disability, then Anita Kay Brunsting and Amy Ruth Tschirhart would serve as successor co-trustees.

On the same date, on December 21, 2010, Nelva Brunsting also exercised her right to resign as Trustee. Specifically, Nelva Brunsting resigned as Trustee of the Trust, the Nelva Brunsting Survivor's Trust and Elmer Brunsting's Decedent's Trust and appointed Anita Kay Brunsting as trustee of the aforementioned Trusts.

**Split of Brunsting Family Living Trust into the Survivor's Trust and the Decedent's Trust**

After Elmer Brunsting's death on April 1, 2009, the Trust split into two trusts—the Nelva Brunsting Survivor's Trust (the "Survivor's Trust") and the Elmer Brunsting Decedent's Trust

(the "Decedent's Trust"). Nelva Brunsting, as the original Trustee, served as Trustee over both the Survivor's and Decedent's Trusts.

There is no power of appointment related to the Trust which was exercised by Elmer Brunsting prior to his death on April 1, 2009.

Pursuant to the Restatement, the beneficiary of the Survivor's Trust, Nelva Brunsting, had an unlimited and unrestricted general power of appointment over the entire principal and any accrued but undistributed income of the Survivor's Trust. This general power of appointment was very broad, and granted the survivor the power to appoint the Survivor's Trust to anyone, outright or in trust, in equal or unequal proportions.

The Decedent's Trust would terminate at the surviving Settlor's death or on the death of Nelva Brunsting. Pursuant to the Restatement, the survivor had a limited testamentary power of appointment to appoint the undistributed principal and income to the descendants of the Settlor only. While Nelva Brunsting (as the surviving Settlor) was restricted to only appointing the assets to her descendants, the assets of the Decedent's Trust could be appointed by Nelva Brunsting (as the surviving Settlor) to her descendants in any proportion and on terms and conditions as the survivor elects.

**Nelva Brunsting's June 15, 2010 Qualified Beneficiary Designation and Exercise of Power of Appointment**

On June 15, 2010, Nelva Brunsting executed a Qualified Beneficiary Designation and Exercise of Power of Appointment under Living Trust Agreement, a copy of which is attached hereto as the fourth exhibit. This document exercised Nelva Brunsting's general power of appointment over the Survivor's Trust and her limited power of appointment over the Decedent's Trust.

Specifically, Nelva Brunsting's exercise appointed the Survivor's Trust and Decedent's Trust to be distributed equally among Nelva and Elmer Brunsting's five (5) children: Candace Louise Curtis, Carol Ann Brunsting, Carl Henry Brunsting, Amy Ruth Tschirhart and Anita Kay Riley. This document also expressed Nelva Brunsting's intent that upon the death of Nelva Brunsting, any funds advanced to Nelva Brunsting's descendants would be deducted from that particular descendant's share of assets received from the Survivor's Trust and Decedent's Trust.

**Nelva Brunsting's August 25, 2010 Qualified Beneficiary Designation and Exercise of Power of Appointment**

On August 25, 2010, Nelva Brunsting executed a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement, a copy of which is attached hereto as the fifth exhibit. This document appears to have superseded the June 15,

### 2010 Qualified Beneficiary Designation and Exercise of Power of Appointment under Living Trust Agreement.

In this document, Nelva Brunsting exercised her general power of appointment over the Survivor's Trust and her limited power of appointment over the Decedent's Trust. The document stated that the Trustee would pay the balance of both the Survivor's and Decedent's Trust equally to each of her five (5) children: Candace Louise Curtis, Carol Ann Brunsting, Carl Henry Brunsting, Amy Ruth Tschirhart and Anita Kay Riley, and such assets would be held in a separate Personal Asset Trust for the benefit of each of her children. With the exception of Carl and Candace, each descendant would be the trustee of their own Personal Asset Trust. Specifically, Amy Ruth Tschirhart, Anita Kay Brunsting and Carol Ann Brunsting would each be the trustee of their own Personal Asset Trust. Anita Kay Riley and Amy Ruth Tschirhart were appointed the co-trustees of the Personal Asset Trust for Carl Henry Brunsting and the Personal Asset Trust for Candace Louise Curtis. The document also detailed the administrative provisions relating to the Personal Asset Trusts for Nelva and Elmer Brunsting's descendants.

The major change that resulted from the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement was that Carl Henry Brunsting and Candace Louis Curtis could not elect to be the individual trustee of their own Personal Asset Trusts. The August 25, 2010 document also provided different administrative provisions for the trusts created for the descendants than those provided under Article X of the Restatement.

Notably, the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement contained a no contest clause which provided a lengthy list of prohibited actions that would fall under such no contest clause. The no contest clause provided that any beneficiary who took such prohibited actions would forfeit their share and be treated as if they predeceased Nelva and Elmer Brunsting.

### **The Death of Nelva Brunsting**

Nelva Brunsting died on November 11, 2011, and the Survivor's Trust and Decedent's Trust terminated and were to pass to the Personal Asset Trusts for Candace Louise Curtis, Carol Ann Brunsting, Carl Henry Brunsting, Amy Ruth Tschirhart and Anita Kay Riley. As detailed above, these Personal Asset Trusts were created pursuant to Nelva Brunsting's August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement.

## CLAIMS

### The Probate Court Claims Filed by Carl Henry Brunsting and Candace Louise Curtis

Carl Henry Brunsting and Candace Louise Curtis have filed claims against Anita Kay Brunsting, Amy Ruth Brunsting (previously Tschirhart) and Carole Ann Brunsting in the Estate of Nelva E. Brunsting, Deceased, pending in Harris County Probate Court Number Four (4) under Cause Number 412,249 (hereinafter referred to as the "Probate Court Claims").

Carl Henry Brunsting and Candace Louise Curtis' Probate Court Claims are twofold. First, individual tort claims have been asserted against Anita Kay Brunsting, Amy Ruth Brunsting (previously Tschirhart) and Carole Ann Brunsting for actions taken either in their fiduciary capacity or purported actions taken which have harmed Carl and Candace. The second category of Carl and Candace's Probate Court Claims relate to requests for declaratory relief in construing the Brunsting Family Living Trust.

The Probate Court Claims that include individual tort claims against Anita Kay Brunsting, Amy Ruth Brunsting and Carole Ann Brunsting contain multiple questions of fact, which are within the province of the jury. Specifically, Carl Henry Brunsting asserted the following tort claims:

1. Breach of fiduciary duty
2. Conversion
3. Tortious interference with inheritance rights
4. Constructive Trust over Trust assets
5. **Fraud, specifically, misrepresentation of facts to Decedent (it is questionable whether Carl and Candace have standing to pursue these claims)**
6. Civil Conspiracy
7. Demand for accounting of the Trusts and non-probate accounts
8. Liability of Anita Kay Brunsting, Amy Ruth Brunsting and Carole Ann Brunsting under Texas Property Code § 114.031
9. Removal of Trustees
10. Request for Receivership



The Probate Court Claims asserted by Candace Louise Curtis are as follows:

1. Breach of fiduciary duty
2. Fraud resulting from misrepresentation of material facts to Candace
3. Constructive fraud
4. Money had and received
5. Conversion
6. Tortious interference with inheritance rights
7. Unjust enrichment

8. Civil Conspiracy
9. Demand for accounting of the Trusts and non-probate accounts

As a result of the above Probate Court Claims containing questions of fact within the province of the jury, the Temporary Administrator has refrained from evaluating such claims.

The questions of law presented in both Carl Henry Brunsting and Candace Louise Curtis' requests for declaratory relief contained in the Probate Court Claims are as follows:

1. Was Nelva Brunsting's December 21, 2010 Resignation of Original Trustee and Appointment of Successor Trustee valid?
2. Were the June 15, 2010 and August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement an inappropriate alteration of the terms of the Trust?
3. Did the June 15, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement appoint all of the Trust property?
4. Did the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement revoke the June 15, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement?
5. Is the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement effective?
6. Do the pleadings filed by Carl and Candace violate the No Contest Clause and is the No Contest Clause void as against public policy?

Based on the powers granted to Nelva Brunsting in the Restatement, Nelva Brunsting appears to have appropriately exercised her right to resign as the original Trustee of the Trust on December 21, 2010, and appointed the successor trustee, Anita Kay Brunsting.

While the Restatement provided that the Trust could not be amended after the death of Nelva or Elmer Brunsting, this did not preclude Nelva Brunsting from exercising her general and limited power of appointments over the Survivor's Trust and Decedent's Trust. Specifically, it appears that Nelva Brunsting appropriately exercised her general power of appointment over the Survivor's Trust and her limited power of appointment over Decedent's Trust by appointing the assets to her five (5) children in trust by and through the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement. The August 25, 2010 document appears to have superseded and replaced the June 15, 2010 Qualified Beneficiary



Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement. The Restatement granted Nelva Brunsting the power to appoint such assets in trust and place terms and conditions upon such assets as she desired, including her choice to designate trustees of the Personal Asset Trust of Carl Henry Brunsting and Candace Louise Curtis.

### **NO CONTEST CLAUSE PROVISIONS**

Any claim by Carl Henry Brunsting and Candace Louise Curtis that Nelva Brunsting lacked capacity and/or was subject to undue influence when she executed the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement are questions of fact that are within the province of the jury. However, the no contest clauses in the Qualified Beneficiary Designation and in the Restatement must be considered.

Section "A." of "MISCELLANEOUS PROVISIONS" of the Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement is a no contest clause that would disinherit any person who, among other things, makes the claims stated above. The provisions of this no contest clause include language that the no contest clause applies even if a court finds that the judicial proceedings in question originated in good faith and with probable cause. This Court will have to rule on the validity of this provision.

Article XI, Section C., of the Restatement is also a no contest provision. The provisions of this no contest clause are similar in result to those stated above in the Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement. Therefore, a successful claim that Nelva Brunsting lacked capacity would still be subject to the no contest provisions of the Restatement. In this event the Court would have to rule on the validity of this provision of the Restatement. In both documents the provision is well written.

A decision by the Court upholding either no contest provision might resolve all other issues.

### **The Lawsuit of Carl Henry Brunsting in the District Court Proceeding**

Carl Henry Brunsting, in his capacity as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting, filed claims against Defendants Candace L. Kunz-Freed, Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC (collectively the "Defendants"). These claims of Carl Henry Brunsting were filed in the 164<sup>th</sup> District Court of Harris County, Texas (hereinafter referred to as the "District Court Claims").

Carl Henry Brunsting asserted the following District Court Claims against Defendants in his live pleading, Plaintiff's Third Amended Petition:

1. Negligence
2. Negligent misrepresentation
3. Breach of fiduciary duty
4. Aiding and abetting

5. Fraud
6. Conspiracy
7. Deceptive Trade Practices Act (“DTPA”) violations

Carl Henry Brunsting also pled tolling, fraudulent concealment and the discovery rule. Carl Henry Brunsting sought damages of actual damages, forfeiture of fees, treble damages and punitive damages, in addition to his attorney’s fees.

Carl Henry Brunsting’s District Court Claims center around the changes Nelva Brunsting made by and through the June 15, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement and the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement.

In response to Plaintiff’s District Court Claims, Defendants filed a Motion for Traditional and No–Evidence Summary Judgment on the following bases:

1. Carl Henry Brunsting improperly fractured his legal malpractice claims against Defendants;
2. Carl Henry Brunsting’s DTPA claim is barred by the professional services exemption; and
3. Carl Henry Brunsting’s negligent misrepresentation claim and DTPA claim fail because Carl Henry Brunsting admits he is not aware of any misrepresentations made by Defendants.

Defendants also moved for a No-Evidence Summary Judgment on the basis that Carl Henry Brunsting has no evidence supporting one or more of the elements on the claims he has asserted.

A Notice of Vacancy of Party and Motion to Abate Proceeding was filed by counsel for Carl Henry Brunsting. Carl Henry Brunsting has filed a resignation as executor of the aforementioned estates. Until a successor executor is appointed, there is no plaintiff to pursue the action against Defendants and no plaintiff to respond to Defendants’ summary judgment motions. The issue of who will serve as the successor executor of the Estate of Nelva E. Brunsting and the Estate of Elmer Brunsting must be resolved prior to resolving the claims against Defendants.

A Motion to transfer the district court matter to the probate court where both estates are pending has also been filed, but not yet ruled upon.

### **DAMAGES**

Actual damages, of course, are disputed. However, the actual distributions from the Trust after Nelva resigned until shortly after she died seemed to be reasonably well documented. Previously an independent investigation resulted in a listing of the payments made from the trust.

This **REPORT OF MASTER** that was prepared in the case filed in the Southern District of Texas federal court case has the details of the Trust's income, expenses and distributions of stock. A copy of this report is attached hereto as the sixth exhibit.

From this and from changes in the assets of the trust during the period in question the damages can be determined and are basically in three categories.

#### Transfers of Stock

2,765 shares of Exxon Mobil stock were transferred as follows:

	1, 120	Amy
	160	Anita
	160	Candace
	<u>1, 325</u>	Carol
TOTAL	2,765	

675 shares of Chevron stock were transferred as follows:

	135	Anita
	135	Amy's daughter
	135	Amy's son
	135	Anita's daughter
	<u>135</u>	Anita's son
TOTAL	675	

It is easy to see that these distributions of stock were not evenly distributed to the five siblings. I have been told that the distributions were in fact early distributions of the recipients share from their future trusts. This could be resolved by giving those siblings that did not receive an equal amount at the time of the distributions an equivalent amount of money to settle the dispute. Of course the issue is further complicated by the fact that the value of the two stocks has changed since the time of the distributions. The proper way to determine the amount to be distributed might be to use the value of the stock on the date of the original distributions or the value on the date that money is paid to the damage sibling, whichever is greater.

#### Payments To/For Family

Approximately \$108,000 were paid to or for the benefit of Amy, Anita and Carol or disputed expenses including approximately \$41,000 of trustees' fees and approximately \$36,000 of legal fees.

#### Payments To Carol for Nelva's Care

Approximately \$160,000 was paid to Carol during the period in question. I was told that Carol was the primary sibling responsible for Nelva's care.

### **SUMMARY OF DAMAGES**

It seems unwise to have made the stock distributions. However, this can be resolved by equalizing the distributions to all the siblings. The issue of trustees' fees can be resolved by comparing the fees to those that are considered as reasonable fees in similar circumstances. The legal fees are obviously justified and will surely increase. The amounts paid to Carol can be examined but should be liberally considered as attributed to Nelva's care and maintenance.

### **CONCLUSIONS**

All of the legal actions taken by Nelva were within her authority under the broad provisions of the Restatement. Unless Nelva is found to have been incompetent at the time that her legal actions were taken all of the changes made in these documents apply in these proceedings.

If Nelva was incompetent at the time that she took these legal actions then a successor trustee would have been appointed under the terms of the Restatement. No claim of her being incompetent was made at that time.

Furthermore, if Nelva had been incompetent the plaintiff in the District Court case would likely have to show that the defendants knew that she was incompetent. For this and other reasons the case should be moved to the Probate Court.

There are damages for the unequal distribution of the shares of Exxon Mobil and Chevron stock. There may be damages for some of the expenditures for trustees' fees and for payments to Carol. These matters should be resolved by agreement. This may require mediation. The considerable legal fees involved in a trial far outweigh the expenses of a mediation and any compromises made by the parties at the mediation.

### **RECOMMENDATIONS**

1. Remove the District Court case to the Probate Court. It is important that there not be different results for the same or similar issues that are in the cases currently in the Probate Court.
2. Require mediation. Point out the huge savings that will result from a mediation versus a trial. Possibly, inform the parties that the Court will rule on the no contest clause first if the matter is not settled in the mediation. Since this ruling could go either way both sides would have considerable incentive to settle. A ruling in favor of the no contest clause would essentially make the matters moot and the plaintiffs would take nothing and lose their inheritance.



IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS AND RIK  
WAYNE MUNSON,

*Plaintiffs,*

vs.

CANDACE KUNZ-FREED, ET AL.,

*Defendants.*

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Civil Action No. 4:16-cv-01969

**DEFENDANT DARLENE PAYNE SMITH'S MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION AND FAILURE TO STATE A CLAIM**

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Civil Action No. 4:16-cv-01969

**DEFENDANT DARLENE PAYNE SMITH’S MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION AND FAILURE TO STATE A CLAIM**

Pursuant to FED. R. CIV. P. 12(b)(1) and (6), Defendant Darlene Payne Smith (the “Defendant” or “Smith”) files her Motion to Dismiss the Verified Complaint for Damages (the “Complaint”) of Plaintiffs Candace Louise Curtis (“Curtis”) and Rik Wayne Munson (“Munson”) (collectively, the “Plaintiffs”) for Lack of Subject Matter Jurisdiction and Failure to State a Claim, and would respectfully show the Court the following:

**I.  
INTRODUCTION**

This is the most recent in a series of lawsuits<sup>1/</sup> involving the Brunsting siblings, all of which emanate from a state court probate proceeding, *In re: Estate of Nelva E. Brunsting*, which is pending under Cause No. 412.249 in Probate Court No. 4, Harris County, Texas (the “Brunsting

<sup>1</sup> In addition to the core probate proceeding, Curtis has previously filed a similar action against her sister, and others, in the Southern District of Texas (Case No. 4:12-cv-00592; *Candace Louise Curtis v. Anita Kay Brunsting, et al.*), which was ultimately remanded to the Probate Court No. 4 upon agreement of the parties. Curtis’ brother, Carl, has filed both a malpractice suit in Harris County District Court against his now-deceased parents’ estate planning counsel (Cause No. 2013-05455; *Carl Henry Brunsting, et al. v. Candace L. Kunz-Freed, et al.*) and a separate lawsuit against Curtis and the other Brunsting siblings in Harris County Probate Court No. 4 (Cause No. 412.249-401; *Carl Henry Brunsting, et al. v. Anita Kay Brunsting, et al.*). For a more detailed account of the Brunsting siblings’ litigation history, Defendant incorporates by reference the factual recitations contained in pages 2-7 of defendants Candace Kunz-Freed and Albert Vacek, Jr.’s Motion to Dismiss for Lack of Subject Matter Jurisdiction [ECF No. 20].



Probate Case”). Curtis is one of five sibling-beneficiaries in the Brunsting Probate Case and Munson is Curtis’s domestic partner and paralegal. Defendant Smith is a probate attorney who previously represented one of the other sibling-beneficiaries (*i.e.*, Carole Brunsting) in the Brunsting Probate Case. *See* Complaint (“Compl.”) at ¶¶32, 213 & 215. Defendant withdrew as counsel in early 2016.

Apparently dissatisfied with the rulings and administration of Harris County Probate Court Number 4, Plaintiffs have taken out their frustration by suing each Judge (*i.e.*, the Hon. Christine Riddle Butts and Hon. Clarinda Comstock) and lawyer (*i.e.*, Defendant Smith, Candace Kunz-Freed, Albert Vacek, Jr., Bernard Lyle Mathews, III, Neal Spielman, Bradley Featherston, Stephen A. Mendel, Jason Ostrom, Gregory Lester and Jill Willard Young) who has had any contact with the Brunsting Probate Case, as well as certain Probate Court No. 4 administrative personnel (*i.e.*, substitute court reporter Tony Baiamonte). Plaintiffs purport to assert claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1691 *et seq.* (“RICO”) premised on 40 alleged “predicate acts” by some or all of this group of probate practitioners, Judges and court personnel, who Plaintiffs caustically describe as the “Harris County Tomb Raiders” or “Probate Mafia.”<sup>2/</sup>

Plaintiffs also purport to assert “non-predicate act” claims for civil damages against Defendant Smith (collectively, the “Non-Predicate Act Claims”) for (1) “Conspiracy to violate 18 USC §§242 and 2, & 42 U.S.C. §§1983 and 1985,” (2) “Aiding and Abetting Breach of Fiduciary, Defalcation and Scierter,” (3) “Aiding and Abetting Misapplication of Fiduciary, Defalcation and Scierter,” and (4) “Tortious Interference with Inheritance Expectancy.” *See* Compl. at ¶¶159-166.

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<sup>2</sup> Plaintiffs allege that the “Harris County Tomb Raiders” or “Probate Mafia” is a “secret society” of probate practitioners, court personnel, probate judges, and other elected officials who are running a “criminal theft enterprise,” or “organized criminal consortium,” designed to “judicially kidnap and rob the elderly” and other heirs and beneficiaries of their “familial relations and inheritance expectations.” *See id.* at ¶¶57, 71, 76.



Plaintiffs' conclusory, conspiracy-theory-laden Complaint is not anchored to any cogently pleaded facts connecting Defendant Smith (or any of the defendants) to any of the myriad federal or state statutory provisions referenced therein. In fact, Plaintiffs' 59 page, 217 paragraph Complaint contains *only one reference* to any specific conduct by Defendant Smith – that she filed an objection to a motion for protective order on behalf of Carole Brunsting in the Brunsting Probate Case. *See* Compl. at ¶128. That is it.

The circumstances where an attorney can be liable to a non-client for litigation conduct incident to the execution of her professional duties to a client are extremely limited,<sup>3/</sup> and Plaintiffs have failed to allege any such facts here.

Plaintiffs' Complaint is inherently implausible, and should be dismissed for the following procedural, jurisdictional and substantive reasons:

1. **The Court Should Dismiss Plaintiffs' Claims Pursuant to FED. R. CIV. P. 12(b)(1) for Lack of Subject Matter Jurisdiction** – The Court lacks subject matter jurisdiction over Plaintiffs' claims for the following reasons:

- **Plaintiffs' Claims are Not Ripe** – Ripeness is a component of subject matter jurisdiction. *See Lopez v. City of Houston*, 617 F.3d 336, 341 (5th Cir. 2010). Where, as is true here, a plaintiff's claimed injury is contingent upon the occurrence of uncertain future events that may not occur as anticipated (*i.e.*, an unfavorable outcome in a pending probate proceeding), "the claim is not ripe for adjudication." *Id.* at 342.
- **Munson Lacks Article III Standing** – Standing is a component of subject matter jurisdiction. *Carr v. Alta Verde Indus.*, 931 F.2d 1055, 1061 (5th Cir. 1991). To establish Article III standing, a plaintiff must establish an "injury-in-fact," which entails "a direct stake in the outcome." *See Sierra Club v. Cedar Point Oil Company, Inc.*, 73 F.3d 546, 555-56 (5th Cir. 1996). Munson is not a beneficiary in the Brunsting Probate Case, has no direct stake in this action and has not suffered an injury-in-fact sufficient to confer Article III standing.
- **Attorney Immunity Bars Plaintiffs' State Law Claims for Civil Damages** – Immunity from suit is jurisdictional. *Higgins v. Montgomery Cnty. Hosp. Dist.*, No. H-10-3787,

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<sup>3</sup> Under Texas Law, attorneys retain complete immunity from suit for civil liability to non-clients for actions taken in connection with representing a client in litigation. *See Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 483 (Tex. 2015); *Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 348 (5th Cir. 2016).

2011 U.S. Dist. LEXIS 81402, at \*5 (S.D. Tex. Jul. 26, 2011). Under Texas law, attorneys are immune from suit by non-clients (*i.e.*, the Plaintiffs) for actions taken in connection with representing a client in litigation. *Cantey Hanger, LLP*, 467 S.W.3d at 481. Because Smith is alleged only to have filed an opposition to a motion on behalf of her client in pending state court litigation, she remains immune from Plaintiffs' state law claims for civil damages (*i.e.*, Claims 45, 46 and 47).

2. **Plaintiffs Have Failed to State a Claim Upon Which Relief Can be Granted, and Their Claims Should be Dismissed** – Each of Plaintiffs' claims is implausible and should be dismissed pursuant to FED. R. CIV. P. 12(b)(6) for the following reasons:

- **Plaintiffs Lack RICO Statutory Standing** – Plaintiffs lack statutory standing to prosecute their civil RICO claims because they have not pled, and cannot establish, (1) a direct, concrete financial injury to their business or property, and (2) proximate causation (*i.e.*, that the alleged injury was proximately caused by the alleged RICO predicate act(s)). *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 607 (5th Cir. 1998).
- **Plaintiffs Have Failed to Plead Facts Establishing Any of the Substantive Elements of a RICO Violation** – Despite its length, Plaintiffs' Complaint consists of nothing more than a formulaic and conclusory recitation of statutory elements couched as factual allegations. *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir. 2007). Plaintiffs offer no factual support for any of their conclusions, and have failed to plausibly allege any actual (1) conduct or participation (2) of an enterprise (3) through a pattern (4) of racketeering activity. *St. Paul Mercury Ins. Co. v. Williamson*, 224 F.3d 425, 445 (5th Cir. 2000). Plaintiffs' RICO claims therefore should be dismissed. *See Anderson v. United States HUD*, 554 F.3d 525, 528 (5th Cir. 2008) (“a complaint must do more than name laws that may have been violated by the defendant; it must also allege facts regarding what conduct violated those laws.”).
- **Plaintiffs Have Failed to Plead a Viable Claim Under 42 U.S.C. §1983 (“Section 1983”)** – Plaintiffs' Section 1983 claim must be dismissed because they fail to identify any Constitutionally-protected rights which have been violated, or plead any facts demonstrating that Defendant is a state actor. *See Cornish v. Carr. Servs. Corp.*, 402 F.3d 545, 549 (5th Cir. 2005).
- **Plaintiffs Have Failed to Plead a Viable Claim Under 42 U.S.C. §1985 (“Section 1985”)** – Plaintiffs' Complaint does nothing more than reference Section 1985 and conclusorily state that it has been violated. Because Plaintiffs have not alleged any facts which would plausibly suggest (1) that they are members of a protected class, (2) that they have been deprived of any Constitutionally-protected rights, (3) that a conspiracy existed, (4) that Defendant engaged in any overt acts in furtherance of the conspiracy, or (5) the existence of any class-based discriminatory animus, their claim should be dismissed. *United Bhd. of Carpenters & Joiners v. Scott*, 463 U.S. 825, 828-29 (1983).

- 18 U.S.C. §242 (“Section 242”) Does Not Provide for a Private Right of Action – Section 242 is the criminal analogue to Section 1983 and does not provide for a private right of action. *Johnson v. Kegans*, 870 F.2d 992, 1005 n.4 (5th Cir. 1989).

## II.

### ARGUMENT AND AUTHORITIES

#### A. **Plaintiffs’ Claims Should be Dismissed for Lack of Subject Matter Jurisdiction.**

##### 1. **Standard of Review.**

FED. R. CIV. P. 12(b)(1) governs challenges to a court’s subject-matter jurisdiction. “Under Rule 12(b)(1), a claim is properly dismissed for lack of subject-matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the claim.” *In re FEMA Trailer Formaldehyde Prods. Liab. Litg.*, 668 F.3d 281, 286 (5th Cir. 2012). Plaintiffs’ claims are not justiciable because (1) they are not ripe and, even if they were, (2) Munson lacks Article III standing and (3) Defendant is immune from each of Plaintiff’s state law Non-Predicate Act Claims for civil damages.

##### 2. **Plaintiffs’ Purported Injuries are Speculative, Contingent and Not Ripe.**

“Ripeness is a component of subject matter jurisdiction, because a court has no power to decide disputes that are not yet justiciable.” *Lopez v. City of Houston*, 617 F.3d 336, 341 (5th Cir. 2010). “A court should dismiss a case for lack of ‘ripeness’ when the case is abstract or hypothetical,” *Monk v. Huston*, 340 F.3d 279, 282 (5th Cir. 2003), or where “further factual development is required.” *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 833 F.2d 583, 587 (5th Cir. 1987). That is, “if the purported injury is ‘contingent [on] future events that may not occur as anticipated, or indeed may not occur at all,’ the claim is not ripe for adjudication.” *Lopez*, 617 F.3d at 342 (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580–81 (1985)).

Here, Plaintiffs' alleged injuries are contingent upon what they view as the presumptive outcome of pending litigation – the Brunsting Probate Case. *See* Compl. at ¶¶213 (stating that Curtis is being deprived of her “beneficial interests” in the Brunsting Family Trusts), ¶213 (alleging that Munson's efforts to “obtain justice” in the Brunsting Probate Case have been frustrated). But the future outcome of the Brunsting Probate Case is unknown and, because Plaintiffs' purported injuries are “contingent [on] future events that may not occur as [Plaintiffs] anticipate[,]” their claims are not ripe and should be dismissed. *See Lopez*, 617 F.3d at 342.

**3. Munson Has No Direct Stake in the Outcome of this Case and Lacks Article III Standing.**

Standing is a component of subject matter jurisdiction. *See Carr v. Alta Verde Indus.*, 931 F.2d 1055, 1061 (5th Cir. 1991). To establish Article III standing, a plaintiff must demonstrate: (1) an injury in fact, (2) causation, and (3) redressability. *Okpalobi v. Foster*, 244 F.3d 405, 425 (5th Cir. 2001). The requirement of an “injury in fact” is intended to limit access to the courts only to those who “have a direct stake in the outcome.” *See Sierra Club v. Cedar Point Oil Company, Inc.*, 73 F.3d 546, 555-56 (5th Cir. 1996).

The general theory underlying the Complaint is that Defendant (and the rest of the “Probate Mafia”) have engaged in conduct which has frustrated the direction and outcome of the Brunsting Probate Case. *See generally* Complaint. But Munson is not a beneficiary in the Brunsting Probate Case and admittedly lacks any tangible interest in the outcome of those proceedings. *See* ECF No. 33 at ¶69 (“One thing [the parties] appear to agree on is that Munson is not a party to any of the prior lawsuits, nor is he a beneficiary of the Brunsting Family of Trusts.”). Munson's only connection to any of the conclusory events in the Complaint is that he purportedly provided “paralegal” services to Curtis in connection with other pending litigation. Munson's

disappointment or frustration with the status, or results, of litigation in which he provided paralegal services is not a concrete injury in fact, and he lacks Article III standing.

**4. Plaintiffs’ State Law Non-Predicate Act Claims are Barred by Attorney Immunity.**

“Immunity from suit is jurisdictional and, therefore, is properly decided pursuant to a Rule 12(b)(1).” *Higgins v. Montgomery Cnty. Hosp. Dist.*, No. H-10-3787, 2011 U.S. Dist. LEXIS 81402, at \*5 (S.D. Tex. Jul. 26, 2011). Under Texas law, “attorneys are immune from civil liability to non-clients for actions taken in connection with representing a client in litigation.” *Cantey Hanger, LLP*, 467 S.W.3d at 481 (internal quotations omitted). “Even conduct that is ‘wrongful in the context of the underlying suit’ is not actionable if it is ‘part of the discharge of the lawyer’s duties in representing his or her client.’” *Id.* (quoting *Toles v. Toles*, 113 S.W.3d 899, 910-11 (Tex. App.—Dallas 2003, no pet.)).

Attorney immunity is not merely a defense to liability. *See Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 346-48 (5th Cir. 2016). Rather, “attorney immunity is properly characterized as a true immunity from suit[.]” *Id.* This is true even where a plaintiff labels an attorney’s conduct as “fraudulent.” *See Byrd*, 467 W.W.3d at 483. The only exceptions to an attorney’s immunity from suit are if the attorney has engaged in conduct that is “entirely foreign to the duties of an attorney,” or if the conduct “does not involve the provision of legal services . . . .” *See id.* at 482.

Here, Plaintiffs’ Complaint contains only one reference to any specific conduct by Defendant Smith – that she filed an opposition to a motion for protective order on behalf of her client in the Brunsting Probate Case. *See Compl.* at ¶128. Put differently, Plaintiffs allege only that Defendant was actively discharging her duties to her client in the context of active litigation. Defendant therefore remains immune from the non-client Plaintiffs’ claims for civil liability with respect to any claims arising under Texas law. For this reason, the Court lacks subject matter

jurisdiction over Plaintiffs' Non-Predicate Act Claims 45, 46 and 47, and those claims should be dismissed.

**B. Plaintiffs' Claims Should be Dismissed for Failure to State a Claim Upon Which Relief May be Granted.**

**1. Standard of Review.**

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the formal sufficiency of the pleadings and is "appropriate when a defendant attacks the complaint because it fails to state a legally cognizable claim." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). The court must accept the factual allegations of the complaint as true, view them in a light most favorable to the plaintiff, and draw all reasonable inferences in the plaintiff's favor, *id.*, but need "not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions." *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir. 2007) (internal citations omitted).

To avoid dismissal a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plausibility requires "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). As framed by the Fifth Circuit, "a complaint must do more than name laws that may have been violated by the defendant; it must also allege facts regarding what conduct violated those laws." *See Anderson v. United States HUD*, 554 F.3d 525, 528 (5th Cir. 2008). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (quoting *Twombly*, 550 U.S. at 570) (internal quotation marks omitted). "[D]ismissal

is proper if the complaint lacks an allegation regarding a required element necessary to obtain relief.” *Torch Liquidating Trust ex rel. Bridge Assocs. L.L.C. v. Stockstill*, 561 F.3d 377, 384 (5th Cir. 2009) (internal quotation marks and citation omitted).

## 2. Plaintiffs Lack Statutory Standing Under RICO.

The standing provision of civil RICO provides that “*any person injured* in his business or property *by reason of* a violation of section 1962 of this chapter may sue therefor . . . and shall recover threefold the damages he sustains.” See 18 U.S.C. 1964(c) (emphasis added). To establish statutory standing, a RICO plaintiff must therefore establish both (1) an injury (2) that was proximately caused by a RICO violation (*i.e.*, predicate act(s)). See *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 606 (5th Cir. 1998); *Sedima, S.P. R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985) (“[a] plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation.”).

### a. Plaintiffs Lack a Direct, Concrete Injury-in-Fact.

To satisfy the requirements for RICO statutory standing, a plaintiff’s injury must be “conclusive” and cannot be “speculative.” *Gil Ramirez Grp., L.L.C. v. Houston Indep. Sch. Dist.*, 786 F.3d 400, 409 (5th Cir. 2015). “Injury to mere expectancy interests or to an ‘intangible property interest’ is not sufficient to confer RICO standing.” See *id.* (quoting *Pinnacle Brands*, 138 F.3d at 607).

Here, the face of the Complaint shows that Curtis has not alleged any direct, concrete financial injury to her business or property. Indeed, the Complaint identifies only “*threats* of injury,” and repeatedly and consistently characterizes Curtis’ supposed “injury” in terms of her “inheritance *expectancy*.” See, *e.g.*, Compl. at ¶¶165-66, 213. Put differently, Curtis complains only that the “Probate Mafia’s” alleged conduct has interfered with, or threatened, her future anticipated *expectancy interests* in the Brunsting Probate Case. A clearer example of a speculative



non-RICO injury is unimaginable. *See Gil Ramirez Grp., L.L.C.*, 786 F.3d at 409 (“Injury to mere *expectancy interests* . . . is not sufficient to confer RICO standing.”)(emphasis added); *Firestone v. Galbreath*, 976 F.2d 279, 282 (6th Cir. 1992) (estate beneficiaries lacked standing under RICO because the alleged direct harm was to the estate, which flowed only indirectly to the beneficiaries).

And Munson’s purported “injury” is even more attenuated, because he lacks any expectancy interest in the Brunsting Probate Case. *See* ECF No. 33 at ¶69. Munson’s only claimed connection to this matter is that he purportedly provided paralegal services to Ms. Curtis over the past several years, and is dissatisfied with the results of the cases on which he worked. *See* Compl. at ¶215. This is not a concrete injury in fact under any calculus.

Because Plaintiffs have failed to plead facts plausibly showing that they incurred an injury sufficient to meet the RICO standing requirements, the Court can and should dismiss all claims against Defendant Smith.

b. Defendant Smith did not Proximately Cause Any of Plaintiffs’ “Injuries.”

To adequately plead standing, Plaintiffs must also establish that Defendant’s “predicate acts”—here, Smith’s alleged violations of 18 U.S.C. §§ 1512 and 1519<sup>4/</sup> – “constitute both a factual and proximate cause of the plaintiff’s alleged injury.” *Whalen v. Carter*, 954 F.2d 1087, 1091 (5th Cir. 1992). This requires Plaintiffs to show the “*directness* of the relationship between the conduct and the harm.” *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010)(emphasis added) (internal citations omitted). Where the “link” between the alleged injury and predicate acts “is too remote, purely contingent, or indirect,” the RICO claim should be dismissed. *Id.*

18 U.S.C. §§ 1512(c) provides:

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<sup>4</sup> Plaintiffs have identified 45 separate “predicate acts” in the Complaint but only 2 (Claims 20 and 21) appear to be directed at Defendant.

(c) Whoever corruptly –

(1) alters, destroys, mutilates, or conceals a record, document or other object, or attempts to do so, with the intent to impair the object’s integrity or availability for use in an official proceeding; or

(2) Otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned for not more than 20 years, or both.

18 U.S.C. §§ 1519 in turn states:

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

Here, Plaintiffs’ Complaint contains no factual allegations which could plausibly demonstrate that Smith has violated either federal statute. The only “fact” involving any conduct by Smith is that she opposed a motion for protective order in pending litigation. *See* Compl. at ¶128. But this is the type of routine advocacy that an attorney is permitted – and indeed obligated – to engage in when representing a client in litigation, and cannot rise to the level of a predicate act under RICO. *See, e.g., St. Gernain v. Howard*, 556 F.3d 261, 262 (5th Cir. 2009) (attorney’s alleged violation of Rules of Professional Conduct in prior litigation is insufficient to implicate RICO). Because Plaintiffs have pleaded no facts plausibly demonstrating that Smith engaged in any predicate act, they have not, and cannot, adequately plead proximate causation and lack statutory RICO standing for this additional reason.

**3. Plaintiffs Have Failed to Plead the Substantive Elements of a Civil RICO Claim.**

Even if Plaintiffs had statutory standing to sue under RICO, which they clearly do not, their claims must still be dismissed because they have pleaded no facts plausibly supporting the substantive elements of their claim. Based only on Defendant Smith’s filing of an opposition to a

motion for protective order in pending state court probate litigation, Plaintiffs have alleged violations of RICO sections 1962(c) and (d). These subsections state:

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection . . . (c) of this section.

18 U.S.C. §§ 1962(c), (d).

To plead a violation of 20 U.S.C. §§ 1962(c) or (d), Plaintiffs must demonstrate: (1) conduct or participation (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Sedima*, 473 U.S. at 496; *St. Paul Mercury Ins. Co. v. Williamson*, 224 F.3d 425, 445 (5th Cir. 2000). Plaintiffs have not done so here.

a. Plaintiffs Have Not Alleged the Existence of an “Enterprise.”

To state a claim under RICO, a plaintiff must first allege the existence of an “enterprise,” which RICO defines as “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.” *See* 18 U.S.C. § 1961(4). As the definition suggests, an enterprise can be either a legal entity or association-in-fact. *See St. Paul Mercury Ins. Co.*, 224 F.3d at 445. Plaintiffs’ Complaint does not plausibly allege the existence of either.

**(i) “Probate Court No. 4” is Not a Legal Entity.**

Plaintiffs first allege that “Probate Court No. 4” is a legal entity enterprise within the meaning of 18 U.S.C. § 1961(4). *See* Compl. at ¶36. But, as is true with the entire Complaint, Plaintiffs fail to plead facts supporting this conclusory assertion. And it is well-established that a county government department (*i.e.*, a county probate court) is not a legal entity that can sue or be sued separate and apart from the county itself. *See* TEX. LOC. GOV’T CODE § 71.001 (“A county

is a corporate and political body.”); see *Darby v. City of Pasadena*, 939 F.2d 311, 313 (5th Cir. 1991); *Crull v. City of New Braunfels, Texas*, 267 F. App’x. 338, 341-42 (5th Cir. 2008). Because Plaintiffs’ assertion of a legal entity enterprise has no basis in law or fact, dismissal is appropriate.

**(ii) Plaintiffs Have Not Alleged an Association-in-Fact Enterprise.**

What Plaintiffs appear to be claiming is that the various individual judges, lawyers and court personnel whom they have sued (*i.e.*, the “Harris County Tomb Raiders” or “Probate Mafia”) operate as an “association-in-fact” enterprise. See Compl. at ¶¶54-58. But this conspiracy-theory allegation is pure conjecture, and Plaintiffs again allege no facts which plausibly demonstrate the existence of the ominous “secret society” about which they complain. See *id.* at ¶58 (referencing “regular participants in this secret society.”).

When the alleged enterprise is an association-in-fact enterprise, the plaintiff must show evidence of: (1) an existence separate and apart from the pattern of racketeering; (2) ongoing organization; and (3) members that function as a continuing unit as shown by a hierarchical or consensual, decision-making structure. See *Delta Truck & Tractor, Inc. v. J.I. Case Co.*, 855 F.2d 241, 243 (5th Cir. 1988); *Boyle v. United States*, 556 U.S. 938, 943-45 (2009).

Again, Plaintiffs’ have alleged **no facts** which, if true, would satisfy any of these three requirements. Plaintiffs do not allege that the “Probate Mafia” maintains any existence separate and apart from what Plaintiffs have alleged to be a pattern of racketeering. They likewise do not allege that the “Probate Mafia” is an ongoing organization or that the various alleged members operate or function as a continuing unit. Simply put, Plaintiffs have again parroted legal conclusions but failed to support them with any concretely pleaded facts. *Anderson v. United States HUD*, 554 F.3d 525, 528 (5th Cir. 2008). For this reason, Plaintiffs have not plausibly pled the existence of an association-in-fact enterprise.

b. Plaintiffs Have Not Alleged a “Pattern” of Racketeering Activity.

“A pattern of racketeering activity consists of two or more predicate criminal acts that are (1) related and (2) amount to or pose a threat of continued criminal activity.” *St. Germain*, 556 F.3d at 263; *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 239 (1989). To adequately allege a “pattern,” Plaintiffs must plead both that the acts are related to each other, and that those acts either constitute or threaten long-term criminal activity – thereby reflecting “continuity.” *See H.J. Inc.*, 492 U.S. at 239.

Here, Plaintiffs’ Complaint conclusorily states in several instances that the Defendants have engaged in a “pattern of racketeering,” but fails to set forth any facts demonstrating such a pattern. The Complaint includes no facts demonstrating how the various alleged predicate acts are germane, or that they constitute or threaten long-term criminal activity. *See, e.g., Allstate Ins. Co. v. Donovan*, No. H-12-0432, 2012 U.S. Dist. LEXIS 92401, at \*13 (S.D. Tex. 2012). Plaintiffs’ Complaint consists of nothing more than scatter-shot references to myriad “predicate act” statutes identified in RICO, followed by repetitive and conclusory assertions that one or more of the Defendants have purportedly violated these statutes “for the purpose of executing or attempting to execute a scheme and artifice to default and deprive . . . .” *See, e.g.,* Compl. at ¶¶121-123, 125. Because Plaintiffs have alleged no facts which would plausibly demonstrate a single predicate act, let alone the required “pattern” of such acts, dismissal is appropriate.

c. Plaintiffs Have Not Plausibly Alleged a Conspiracy Under § 1692(d).

A claim under § 1962(d) is necessarily predicated upon a properly pleaded claim under subsections (a), (b), or (c). Because Plaintiffs have failed to adequately plead violations of those other subsections, the § 1962(d) conspiracy allegation fails to state a claim. *Nolen v. Nucentrix Broadband Neflvorks*, 293 F.3d 926, 930 (5th Cir. 2002) (affirming dismissal of § 1962(d) claim where plaintiff did not adequately plead § 1962(a) and (c) claims). Additionally, Plaintiffs’

conspiracy allegations are conclusory and lack supporting factual details. *See Lovick v. Ritemoney Ltd*, 378 F.3d 433, 437 (5th Cir. 2004) (holding that courts need not rely on “conclusional allegations or legal conclusions disguised as factual allegations” in considering a motion to dismiss). Plaintiffs’ bald insistence that Defendant Smith (or any of the defendants) conspired to participate in a criminal enterprise does not make it so, and is insufficient to support a RICO claim.

**4. Plaintiffs’ Non-Predicate Act Claims Alleging Violations of Sections 1983, 1985 and 242 Should All be Dismissed.**

In addition to their RICO claim, Plaintiffs have also asserted four “non-predicate act” claims<sup>5/</sup> against Defendant for civil damages. The first such claim (Claim 44) alleges violations of Sections 1983, 1985 and 242. *See* Compl. at ¶159. Each of these claims is without merit, and is addressed in turn below.

a. Plaintiffs’ Section 1983 Claim Should be Dismissed.

Section 1983 “provides a federal cause of action for the deprivation, under the color of law, of a citizen’s ‘rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994). To state a claim under Section 1983, a plaintiff must allege facts that show that he has been deprived of a right secured by the Constitution and laws of the United States and that the deprivation occurred under color of state law. *See Flagg Bros, Inc. v. Brooks*, 436 U.S. 149, 155 (1978); *Cornish v. Carr. Servs. Corp.*, 402 F.3d 545, 549 (5th Cir. 2005).

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<sup>5</sup> This section addresses only those causes of action listed under the “Non-Predicate Act Civil Claims for Damages.” While none of these claims specifically mention Smith, in an abundance of caution, she responds to each such claim that globally references the “Defendants.” To the extent Plaintiffs also seek individual liability against Smith based on their predicate act claims under 18 U.S.C. §§ 1512 and 1519 (*see* Claims 20 and 21), neither criminal statute creates a private right of action and those claims also should be dismissed. *See Gipson v. Callahan*, MO-97-CA-160, 1997 U.S. Dist. LEXIS 23139, at \*17 (W.D. Tex. 1997) (no private right of action under § 1512); *Peavey v. Holder*, 657 F. Supp. 2d 180, 191 (D.D.C. 2009) (no private right of action under § 1519).

**(i) *Plaintiffs Do Not Identify Any Particular Constitutionally-Protected Rights.***

Plaintiffs' Section 1983 claim should be dismissed in the first instance because they have not even identified in the Complaint any particular Constitutionally-protected rights that have allegedly been violated. *See Graham v. Connor*, 490, U.S. 386, 394 (1989). True to form, Plaintiffs have instead vaguely and generally stated only that they have been deprived of unspecified "rights, privileges, and immunities secured and protected by the Constitution . . ." and leave it to the Court and the Defendant to speculate as to which one(s). *See* Compl. at ¶159. For this reason alone, Plaintiffs Section 1983 claims should be dismissed.

**(ii) *Plaintiffs Have Not Alleged State Action.***

The requirement that a deprivation occur under color of state law is also known as the "state action" requirement – and Plaintiffs cannot meet it here. *See Bass v. Parlwood Hasp.*, 180 F.3d 234, 241 (5th Cir. 1999). Smith is a private individual, and Plaintiffs have not alleged otherwise. A private party such as Smith will be considered a state actor for Section 1983 purposes only in rare circumstances. *See Gordon v. Neugebauer*, 57 F.Supp.3d 766, 773 (N.D. Tex. 2014). First, the plaintiff can show that the private actor was implementing an official government policy. *See Rundus v. City of Dallas, Tex.*, 634 F.3d 309, 312 (5th Cir. 2011). Plaintiffs have not identified any official government policy that caused an alleged deprivation of their civil rights, and the first narrow exception is therefore inapplicable here.

Alternatively, a plaintiff can show that a private entity's actions are fairly attributable to the government. *Id.* This is also known as the "attribution test." The Supreme Court has articulated a two-part inquiry for determining whether a private party's actions are fairly attributable to the government: (1) "the deprivation [of plaintiffs constitutional rights] must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a



person for whom the State is responsible” and (2) “the party charged with the deprivation must be a person who may fairly be said to be a state actor.” *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982); *see also Bass*, 180 F.3d at 241.

The Supreme Court utilizes three different tests for determining whether the conduct of a private actor can be fairly attributable to a state actor under the second prong of the attribution test: (1) the nexus or joint-action test, (2) the public function test, and (3) the state coercion or encouragement test. *See Richard v. Hoechst Celanese Chern. Grp., Inc.*, 355 F.3d 345, 352 (5th Cir. 2003); *Lewis v. Law-Yone*, 813 F.Supp. 1247, 1254 (N.D. Tex. 1993) (describing the three tests as applicable to the resolution of the second prong of the attribution test articulated by the Supreme Court in *Lugar*).

Under the “nexus test,” a private party may be considered a state actor “where the government has ‘so far insinuated itself into a position of interdependence with the [private actor] that it was a joint participant in the enterprise,’” and the actions of the private party can be treated as that of the state itself. *Bass*, 180 F.3d at 242; *see also Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982). Plaintiffs have pled no facts which would suggest that any state governmental entity has “insinuated itself into a position of interdependence” with Defendant Smith. Indeed, Plaintiffs fail to plead any facts which would show that Smith ever interacted or communicated with the any state governmental entity regarding the filing of an opposition to a motion for protective order on behalf of her client. Plaintiffs therefore have failed to plead facts that would satisfy the nexus test for state action under Section 1983.

Under the “public function test,” a “private entity may be deemed a state actor when that entity performs a function which is traditionally the exclusive province of the state.” *Bass*, 180 F.3d at 241-42. Here, Plaintiffs’ Complaint is devoid of any facts showing that the representation

of beneficiaries in probate litigation is a function that traditionally is the exclusive province of the state, and Plaintiffs therefore have failed to plead facts that would satisfy the public function test for state action under Section 1983.

Under the “state coercion test,” “a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.” *Bass*, 180 F.3d at 242. State coercion or compulsion can be found where the plaintiff establishes that the private defendants were engaged in a conspiracy with state officials. *See Tebo v. Tebo*, 550 F.3d 492, 496 (5th Cir. 2008).

To establish such a conspiracy, the plaintiff must show that the private and public actors entered into an agreement to commit an illegal act. *Id.* At the motion to dismiss stage, the plaintiff must “allege specific facts to show an agreement.” *See id.* (quoting *Priester v. Lowndes Cnty.*, 354 F.3d 414, 421 (5th Cir. 2004)). Here, Plaintiffs have not included any facts in their Complaint which would suggest that Defendant Smith entered into any agreement with, or was acting at the behest of, any government official when she prepared an opposition to a motion for protective order on behalf of her client. There are simply no facts pleaded which would, if true, show the existence of such an agreement. Plaintiffs thus have failed to plead facts showing that Defendant Smith was coerced or encouraged by any governmental entity sufficient to satisfy the state coercion test. *Priester*, 354 F.3d at 420 (conspiracy alleges that are “merely conclusory, without reference to specific facts,” will not survive a motion to dismiss).

Because Plaintiffs have failed to establish the necessary state action, their Section 1983 claim should be dismissed.

b. Plaintiffs' Section 1985 Claim Should be Dismissed.

To state a §1985 claim, a plaintiff must plead: (1) a conspiracy involving two or more persons, (2) to deprive, directly or indirectly, a person or class of persons of equal protection of the laws, (3) that one or more of the conspirators committed an act in furtherance of that conspiracy (4) which causes injury to another in his person or property or a deprivation of any right or privilege he has as a citizen of the United States, and (5) the conspirators' action is motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *United Bhd. of Carpenters & Joiners v. Scott*, 463 U.S. 825, 828-29 (1983); *Wong v. Stripling*, 881 F.2d 200, 202 (5th Cir. 1989). Plaintiffs' §1985 claim fails for several reasons.

Plaintiffs have not alleged any facts to support any of these elements. Plaintiffs identify no specific "right of privilege" that has been deprived. *See* Compl. at ¶159 (generally and vaguely alleging the deprivation of "rights, privileges, and immunities secured and protected by the Constitution and laws of the United States."). Plaintiffs likewise fail to plead with particularity a conspiracy or any overt acts. *Compare Taylor v. Fed. Home Loan Bank Bd.*, 661 F. Supp. 1341, 1346 (N.D. Tex. 1986) (plaintiff must plead existence of conspiracy and overt acts with particularity), *with* Compl. at ¶129 ("Defendants . . . did willfully and knowingly conspire together to participate, and did participate, in a scheme or artifice . . ."). Finally, the Complaint is devoid of any factual allegations demonstrating that Plaintiffs are members of a protected class, or that any of the alleged "conspiracy" and "overt acts" were motivated by class-based discriminatory animus. Simply put, Plaintiffs have once again conclusively alleged a violation of the law, without stating the basis for the alleged violation. *See Anderson*, 554 F.3d at 528 ("a complaint must do more than name laws that may have been violated by the defendant; it must also allege facts regarding what conduct violated those laws.").

For these reasons, Plaintiffs' Section 1985 claim should be dismissed.

c. Section 242 Does Not Provide for a Private Right of Action.

Section 242 is the criminal analogue to Section 1983 and does not provide for a private right of action. *Johnson v. Kegans*, 870 F.2d 992, 1005 n.4 (5th Cir. 1989). Plaintiffs' claim that Defendant has conspired to violate Section 242 therefore should be dismissed without further inquiry.

5. Plaintiffs' Remaining Non-Predicate Act Claims (Claims 45, 46 and 47) are all Barred by Attorney Immunity.

Plaintiffs' remaining Non-Predicate Act Claims, which allege "aiding and abetting breach of fiduciary duty," "aiding and abetting misapplication of fiduciary" and "tortious interference with inheritance expectancy," all arise under Texas law and, for the reasons more fully stated in Section II(A)(4) of this Motion, are barred by attorney immunity. *See* Compl. at ¶¶160-66.

**III.**  
**CONCLUSION**

Accordingly, Defendant respectfully requests that the Court grant her Motion to Dismiss and dismiss Plaintiffs' claims with prejudice, and for such other and further relief, at law or in equity, to which Defendant may show herself to be justly entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 10, 2016, a true and correct copy of the foregoing and/or attached instrument was served on all counsel of record pursuant to the Federal Rules of Civil Procedure through the Southern District of Texas CM/ECF E-File System and as indicated below:

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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS AND RIK  
WAYNE MUNSON,

*Plaintiffs,*

vs.

CANDACE KUNZ-FREED, ET AL.,

*Defendants.*

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Civil Action No. 4:16-cv-01969

**ORDER**

The Court, having considered Defendant Charlene Payne Smith’s (the “Defendant”) Motion to Dismiss the Verified Complaint for Damages of Plaintiffs Candace Louise Curtis (“Curtis”) and Rik Wayne Munson (“Munson”) (collectively, the “Plaintiffs”) pursuant to FED. R. Civ. P. 12(b)(1) and (6) (the “Motion”), the response, if any, and arguments of counsel, if any, is of the opinion that the Motion should be, in all things, GRANTED.

It is therefore ORDERED that all claims asserted by Plaintiffs, and against Defendant, are hereby DISMISSED WITH PREJUDICE.

It is so ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Alfred H. Bennett  
United States District Judge



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	§	

**PLAINTIFF’S ANSWER TO DEFENDANT JASON OSTROM’S FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6) MOTION TO DISMISS**

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**I. Nature and Stage of the Proceedings**

1. Plaintiffs brought the above titled action pursuant to 18 U.S.C. §1964(c) alleging Racketeer Influenced Corrupt Organization Act violations of 18 U.S.C. §1962(c) and 18 U.S.C. §1962(d), both individually and as private attorneys general on behalf of the public trust, on July 5, 2016 in the Southern District of Texas.
2. On October 31, 2016, Defendant Jason Ostrom filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt 78).

**II. Contextual Summary**

3. Plaintiff Candace Louise Curtis (Curtis) lives in California and is a beneficiary of inter vivos trusts having a situs in Houston, Texas.
4. Other beneficiaries of the trusts include Plaintiff Curtis’ siblings: Carl Brunsting, Carole Brunsting, and Defendants Amy Brunsting and Anita Brunsting. (Dkt 33-1, 33-2 and 33-3)

5. Neither Plaintiff Curtis nor any of her siblings is an heir to, and none has inheritance expectancy, from the “Brunsting Estates” (Dkt 41-3 and 41-4)<sup>1</sup>.

### III. History of “The Trust”

6. In 1996 Elmer Brunsting and his wife Nelva Brunsting created the original Brunsting Family Living Trust for their benefit, for the benefit of their five primary issue, as well as for their remaindermen grandchildren and great grandchildren. (Dkt 34-1)

7. The Brunstings restated their Trust in 2005 (Dkt 33-2) removing Anita Brunsting as successor trustee and appointing Carl and Amy Brunsting as successor co-trustees, and naming Candace Curtis as alternate.

8. The Brunstings amended their restatement in 2007 (Dkt 33-3), to remove Amy Brunsting as a successor co-trustee, appointing Candace in her place, and naming Frost Bank as the alternate. It would appear from this sequence of events that Elmer and Nelva sought to prevent what has since occurred.

9. Elmer Brunsting was declared incompetent in June 2008 and on July 1, 2008 the first illicit successor trustee appointment to the Brunsting Trust was apparently drafted and notarized by Candace Kunz-Freed, claiming a change in jointly selected successor trustees had been made by Nelva Brunsting alone. (Exhibit 1) That instrument portends to have placed Anita Brunsting back in a trustee position.

10. Elmer Brunsting passed on April 1, 2009. At the death of Elmer Brunsting the inter vivos “family” trust became irrevocable and its assets were divided between an irrevocable decedent’s trust and a revocable survivor’s trust (Dkt 34-2 Articles III & VII).

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<sup>1</sup> See *Curtis v Brunsting* 704 F.3d 406 regarding the Brunsting inter vivos Trusts

11. First named successor co-trustee Carl Brunsting fell ill with encephalitis on or about July 3, 2010 and by August 25, 2010 the extortion instrument<sup>2</sup> had been drafted and notarized by Candace Freed, naming Anita and Amy Brunsting successor co-trustees.

#### **IV. A History of the Litigation**

12. Candace Curtis v Anita and Amy Brunsting is a breach of fiduciary action seeking accounting and disclosures, filed in the Southern District of Texas on February 27, 2012, (Exhibit 2) and was dismissed under the Probate exception to federal diversity jurisdiction March 8, 2012. Plaintiff Curtis filed a timely notice of appeal.

13. On March 9, 2012 Defendant Bobbie Bayless filed a Petition to take depositions before suit in the Harris County District Court styled, “In Re: Carl Henry Brunsting. (Exhibit 3)

14. On January 9, 2013 the Fifth Circuit issued a unanimous opinion with Order for Reverse and Remand published *Curtis v Brunsting* 704 F.3d 406 (Dkt 34-4).

15. On January 29, 2013 Defendant Bobbie Bayless filed a suit in the Harris County District Court against Defendants Vacek & Freed, in the name of the “Estate of Nelva Brunsting” raising only trust related issues. (Dkt 34-5)

16. In late 2013 Plaintiff Curtis enlisted the assistance of Houston Attorney Jason Ostrom.

17. Immediately upon appearing as Plaintiff Curtis’ representative in the federal lawsuit, Curtis v Brunsting 4:12-cv-592, Defendant Jason Ostrom arranged a remand to the Harris County Probate Court to consolidate Plaintiff Candace Curtis’ lawsuit with that of her brother Plaintiff Carl Brunsting, (Dkt 26-1) allegedly to afford complete relief to the parties.

18. It should be noted that Ostrom amended Curtis’ federal complaint to add Carl Henry Brunsting as an “Involuntary Plaintiff”, in order to pollute diversity so he could perfect a remand

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<sup>2</sup> The alleged August 25, 2010 “Qualified Beneficiary Designation and Testamentary Power of Appointment Under Living Trust Agreement” a.k.a. 8/25/2010 QBD.

to state court to consolidate the first filed Plaintiff, Candace Curtis, with later filed state court Plaintiff Carl Brunsting, where federal plaintiff Curtis was named a Defendant only. (Dkt 34-7) (see also Dkt 57-1 and 57-2)

19. Defendant Ostrom thereafter abandoned “Plaintiff Curtis” and “Curtis v Brunsting” in the probate court record, pleading only under the heading of “Estate of Nelva Brunsting” (Exhibits 4 and 5 attached).

#### **V. Statement of the Issues**

1. Plaintiffs have not adequately pleaded the necessary predicate acts;
2. The plaintiffs have not stated a RICO claim under section 1962(c);
3. Plaintiffs have failed to adequately plead with particularity their fraud-based predicate acts as required by Federal Rule 9(b);
4. Plaintiffs have failed to plead reliance in connection with their fraud related claims;
5. Plaintiffs failed to plead a cognizable RICO enterprise;
6. Plaintiffs enterprise allegations are too vague and conclusory
7. Plaintiffs' claims should be dismissed because Plaintiffs' allegations do not satisfy RICO's proximate cause standard.

#### **VI. The Argument**

20. The RICO complaint articulates, with specificity, more than 40 events, each of which is listed as a RICO predicate act at 18 U.S.C. §1961(1) and each Defendant is accused of in-concert aiding and abetting. It is unnecessary for Plaintiffs to plead that each defendant personally committed two or more predicate acts.

*To be convicted of conspiracy to violate RICO under § 1962(d), the conspirator need not himself have committed or agreed to commit the two or more predicate acts, such as bribery, requisite for a substantive RICO offense under § 1962(c). Section 1962(d)-which forbids "any person to conspire to violate" § 1962(c)-is even more comprehensive than the general conspiracy provision applicable to federal crimes, § 371, since it contains no requirement of an overt or specific act to effect the conspiracy's object. Presuming Congress intended the "to conspire" phrase to have its ordinary meaning under the criminal law, see *Morissette v. United States*, 342 U. S. 246, 263, well-established principles and contemporary understanding demonstrate that, although a conspirator must intend to further an*

*endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, it suffices that he adopt the goal of furthering or facilitating the criminal endeavor, and he need not agree to undertake all of the acts necessary for the crime's completion. Salinas' contrary interpretation of § 1962(c) violates the foregoing principles and is refuted by Bannon v. United States, 156 U. S. 464, 469. Its acceptance, moreover, is not required by the rule of lenity, see United States v. Shabani, 513 U. S. 10, 17. Even if Salinas did not accept or agree to accept two bribes, there was ample evidence that the sheriff committed at least two predicate acts when he accepted numerous bribes and that Salinas knew about and agreed to facilitate the scheme, and this is sufficient to support Salinas' conviction under § 1962(d). Pp. 61-66. United States v Salinas 654 F.2d 319*

21. It is also only necessary to show the defendant associated with the criminal venture, purposefully participated in the criminal activity, and sought by his actions to make the venture successful. *United States v. Landerman*, 109 F.3d 1053, 1068 n.22 (5th Cir. 1997). Jason Ostrom's conduct inarguably meets and exceeds this criterion.

22. A defendant associates with a criminal venture if he shares in the criminal intent of the principal, and the defendant participates in criminal activity if he has acted in some affirmative manner designed to aid the venture. *Landerman*, 109 F.3d at 1068 n.22. The level of participation may be of relatively slight moment. *Leos-Quijada*, 107 F.3d at 794. Also, it does not take much evidence to satisfy the facilitation element once the defendant's knowledge of the unlawful purpose is established. *United States v. Bennett*, 75 F.3d 40, 45 (1st Cir. 1996).<sup>3</sup>

23. Jason Ostrom's overt acts clearly intended to convert the Brunsting trusts into assets of a probate estate by masquerading Curtis v Brunsting behind an "estate" label.

## **VII. Res Judicata and Collateral Estoppel**

### **1. The Brunsting Trusts are not a Probate Matter**

24. The Brunsting Trusts are not assets belonging to the Estates of Elmer or Nelva Brunsting and are not subject to probate administration.

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<sup>3</sup> US Attorneys' Criminal Resource Manual CRM 2474

25. That finding of fact and conclusion of law was settled by the Justices of the Fifth Circuit Court of Appeals<sup>4</sup> when Plaintiff Curtis' original petition survived the probate exception to federal diversity jurisdiction.

26. Moreover, the "Estate" inventory (Dkt 41-7) approved March 27, 2013, contains only an old car and the claims pending against Vacek and Freed in the Harris County District Court and was followed immediately by two drop orders. (Dkt 41-5 and 6).

27. The Fifth Circuit Court of Appeals on review held that Curtis v Brunsting was a matter relating only to an inter vivos trust not in the custody of a state court, that the assets in the inter vivos trust were not assets belonging to any "Estate" and were not subject to probate administration. (Dkt 34-4)

28. Defendant Ostrom, (Dkt 78) like Defendants Vacek & Freed (Dkt 19 and 20), Bobbie Bayless (Dkt 23), Jill Willard Young (Dkts 25, 38), Anita Brunsting (Dkt 30) Amy Brunsting (Dkt 35), Steven Mendel/Bradley Featherston (Dkt 36), Neal Spielman (Dkt 39 and 40), Christine Riddle Butts, Clarinda Comstock and Tony Baiamonte (Dkt 53), claim the Racketeer Influenced Corrupt Organization Act action before this Honorable Court arises from a "Probate Case" or "Probate Matter". However, the so called "Probate Matter" does not speak to anything but the Brunsting Trusts.

29. The Fifth Circuit found that Plaintiff Curtis' federal lawsuit was exclusively related to the Brunsting inter vivos Trusts, that those trusts were not in the custody of any state court, that trust assets were not property of any estate and that even though the wills had been since filed and there was an ongoing probate of the estate, the assets in an inter vivos trust are not property

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<sup>4</sup> Curtis v. Brunsting 704 F.3d 406



belonging to an estate and would not be subject to probate administration. Jason Ostrom's remand to state court did not change that.

30. The Circuit Court also noted that the only heir to the Estates of Elmer and Nelva Brunsting was the Brunsting Trust.

31. The Circuit Court also reiterated the long standing doctrine of custodia legis, citing to the United States Supreme Court in *Marshall v. Marshall*<sup>5</sup> for the proposition that no court can assume in rem jurisdiction over a res in the custody of another court. (Dkt 34-4)

32. Two actions were filed in state courts subsequent to Curtis reverse and remand back to the federal Court. Both state court suits were brought in the name of the "Estate of Elmer and Nelva Brunsting" and both suits raised only claims relating to the Brunsting trusts, then in the custody of a federal Court.

33. Federal Plaintiff Curtis is not an heir to any estate and neither are the other trust beneficiaries. The trust is the only heir to any estate and alleged trespass against the trust is against the named beneficiaries, not against any estate. Plaintiff Curtis is a real party in interest in the Brunsting Trusts, but not in any estate.

34. Defendant Ostrom admits to causing the case of *Curtis v Brunsting* 5:12-cv-592 to be remanded to Harris County Probate Court. However, Mr. Ostrom characterizes the remand as "*remanding the case back to Harris County Probate Number 4*", (Dkt 78 Page 4 of 24 unnumbered paragraph 7), as if to imply Plaintiff Curtis was some kind of escapee being returned to the custody of Harris County Probate Number 4, when Plaintiff Curtis had never been to Harris County Probate Court and had no claims pending there.

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<sup>5</sup> 547 U.S. 293, 126 S. Ct. 1735, 164 L. Ed. 2d 480 (2006).

35. Plaintiff Curtis retained Defendant Jason Ostrom in the federal court matter under the letterhead of Ostrom/Sain. After effecting a remand to state probate court Ostrom pled exclusively under the heading “Estate of Nelva Brunsting”, which Plaintiff Curtis’ lawsuit is not.

### VIII. Sufficiency of the Pleadings

36. Defendant Ostrom claims Plaintiffs fail to plead a cognizable RICO claim, enterprise, fraud based acts, reliance or proximate cause.

37. Such assertions can only be ground upon an unfamiliar view of the law, as surely Defendant cannot honestly plead ignorance of his acts or the facts when his proclaimed station requires him to be knowledgeable of the records and pleadings in the cases he claims to be an attorney in.

38. Plaintiffs more than adequately plead Harris County Probate Court as both the RICO enterprise and a victim of the racketeering activity.

39. In *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 164 (2001), the Supreme Court stated:

*The Court has held that RICO both protects a legitimate “enterprise” from those who would use unlawful acts to **victimize** it, United States v. Turkette, 452 U.S. 576, 591 (1981), and also protects the public from those who would unlawfully use an “enterprise” (whether legitimate or illegitimate) as a “vehicle” through which “unlawful . . . activity is committed,” National Organization for Women, Inc., 510 U.S. [249,] 259 (1994).*

40. Plaintiffs plead cognizable predicate acts with the necessary particularity and Plaintiffs plead acts demonstrative of conspiracy and of aiding and abetting with more particularity in each reply to motions to dismiss.

41. This Probate Bully Mob of RICO Defendants fully intended to trap the Brunsting siblings in a cycle of vacuous paper exchanges to maximize attorney billing profits while resolving

absolutely nothing on the public record, in order to protect the racketeering activity from discovery and investigation by legitimate law enforcement resources.

42. Each of the “RICO Defendants” aided and abetted the conspiracy in violation of 18 U.S.C. §§2 and 1962(d) and now come before this Honorable Court claiming their attempt to bust the Brunsting trusts for their own personal gain is a bitter sibling dispute over the administration of their parents’ estate. Nothing could be further from the truth.

43. While real damages are difficult to calculate without fiduciary disclosures, the additional injury resulting from five years of improperly motivated “litigation” posturing, directly and proximately caused by these Defendants illicit conduct, are tangible, concrete, calculable and a matter of public record.

44. Every one of the Brunsting beneficiaries has been injured by the fraud perpetrated on the federal and state courts, upon the Brunsting family and upon Plaintiffs by these Defendants.

45. Jason Ostrom was instrumental in the plot to treat the Brunsting Trusts as if they were a probate asset and his feigned ignorance of the legal precedents set by pro se Curtis in this extended Brunsting Trusts litigation, is in direct conflict with his fiduciary obligation to know.

46. Defendant Jason Ostrom’s feigned ignorance of law and fact are not defenses.

47. Defendant Ostrom also makes dubious statements regarding Plaintiff Munson’s participation in protecting Plaintiff Curtis’ property interest and those of the Brunsting trusts.

48. That participation is common knowledge and a matter of public record.

49. The name Rik Munson appears for the first time at Docket entry 9 in Curtis’ original federal lawsuit and appears a total of ten times in the Official record on Appeal to the Fifth Circuit in 2012. (CA No. 12-20164)

**IX. Amendment and Adoption by Reference**

50. Pursuant to the authority provided by Federal Rule of Civil Procedure 10(b) and Federal Rule of Civil Procedure 15(a)(1), Plaintiffs hereby adopt and incorporate by reference into Plaintiffs' original complaint (Dkt 1), the Addendum of Memorandum and the pleadings subsumed therein, (Dkt 26) and all of Plaintiffs' Replies to Defendants Motions, as if fully expressed in said Complaint, including but not limited to Docket entries 33, 34, 41, 45, 57, 61, 62, 65, 69, this reply, the replies yet unfiled and the attached exhibits as if fully expressed therein;

51. Plaintiffs further adopt and incorporate by reference all of the Defendants' Motions and pleadings and the claims stated therein, as exhibits in support of Plaintiffs' Complaint, as if originally attached thereto, including but not limited to Docket entries 19, 20, 23, 25, 30, 35, 36, 38, 39, 40, 53, 78, 79, 81, 83, 84 and those yet unfiled as if fully attached as exhibits thereto.

**X. Conclusion**

52. Defendant Jason Ostrom told the Honorable Judge Kenneth Hoyt in his application for approval of his First Amended Complaint that the purpose for a remand to state court was to consolidate with Plaintiff Carl Brunsting in order to afford complete relief to the parties.

53. Defendant Ostrom deprived Plaintiff Curtis of a federal judicial forum and access to the only Court of competent jurisdiction under false pretexts, by presenting unopposed motions to amend Plaintiff Curtis' federal complaint and to remand to Harris County Probate Court.

54. The Brunsting Trusts are the only heir to the "Estates of Elmer and Nelva Brunsting". Trust assets are not property belonging to the "Estates", and are not subject to probate administration, yet each of these Defendants insist this RICO lawsuit arises out of a dispute between siblings over inheritance expectancies and the administration of an estate and others

have pled Plaintiffs are disgruntled litigants seeking vengeance for being on the losing end of fully litigated state court determinations.

55. For the last five years, these Defendants have each participated in denying Plaintiff Curtis and each of the Brunsting siblings the enjoyment of their parents' benevolence. Each has engaged in gaming the judicial process, posing as advocates, to maximize fees and resolve nothing, while holding resolution of the Brunsting trusts hostage under a probate administration pretext.

Wherefore, Plaintiffs move this Honorable Court for an Order denying the Rule 12(b)(6) Motion to Dismiss filed by Defendant Jason Ostrom October 31, 2016, (Dkt 78) and hold this Defendant to answer.

Respectfully submitted,

November 18, 2016

/s/ Candace L. Curtis  
Candace L. Curtis

/s/ Rik W. Munson  
Rik W. Munson

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 November 18, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis  
Candace L. Curtis

/s/ Rik W. Munson  
Rik W. Munson

7/1/08

Appt of Succ. Trustees

APPOINTMENT OF SUCCESSOR TRUSTEES

WHEREAS, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, is a Founder of the Brunsting Family Living Trust dated October 10, 1996, as amended, (the "Trust Agreement"); and,

WHEREAS, Pursuant to Article IV, Section B, of the Brunsting Family Living Trust entitled "Our Successor Trustees," an original Trustee will have the right to appoint his or her own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any other reason, as well as specify conditions relevant to such appointment; and,

WHEREAS, ELMER H. BRUNSTING is no longer able to manage his financial affairs, as is evidenced by the physicians' letters attached. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

WHEREAS, the said NELVA E. BRUNSTING is desirous of her right as original Trustee to designate, name and appoint her own successors to serve as Trustees in the event that she ceases to serve by reason of death, disability or for any other reason, as well as specify conditions of such appointment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

NELVA E. BRUNSTING makes the following appointment:

IF, NELVA E. BRUNSTING, fail or cease to serve by reason of death, disability or for any other reason, then the following individuals will serve as successor Co-Trustees:

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

In order to maintain the integrity of the Trust Agreement and to meet my estate planning desires and goals, my Trustees shall comply with the directive set forth below to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.



**1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information**

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this document or any subsequent documents signed by the Founders, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in the Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

**2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founder's physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. The Founder has signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

### **3. Determination of "Incompetence" or "Incapacity"**

For purposes of the Trust Agreement, and notwithstanding any other conflicting provisions contained in the Trust Agreement or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founder, the Founder hereby voluntarily waives any physician-patient privilege or psychiatrist-patient privilege and authorizes physicians and psychiatrists to examine them and disclose their physical or mental condition, or other



personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founder's desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under the Trust Agreement (if any), or if there is no such Trust Protector provided under the Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event the Trust Agreement does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of the trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

The Founder has signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next

successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of the Trust Agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the Trust Agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

This Appointment of Successor Trustees is effective immediately upon execution of this document by the Founder, with the said successor Trustees to act at such times and in such instances as provided in the Brunsting Family Living Trust dated October 10, 1996, as amended.

All other provisions contained in the Brunsting Family Living Trust October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby or by previous amendments or appointments still in effect.

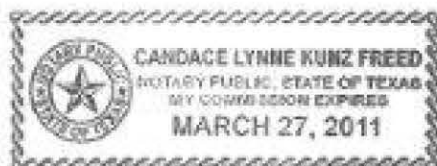
WITNESS MY HAND on July 1, 2008.

*Nelva E. Brunsting*  
\_\_\_\_\_  
NELVA E. BRUNSTING,  
Founder and Original Trustee

THE STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me on July 1, 2008 NELVA E. BRUNSTING, as Founder and Original Trustee.

*Candace Lynne Kunz Freed*  
\_\_\_\_\_  
Notary Public, State of Texas





Cent of Trust

**CERTIFICATE OF TRUST**

The undersigned Founder hereby certifies the following:

- 1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the subject trust was:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

- 2. ELMER H. BRUNSTING, died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

- 3. For purposes of asset allocation, transfer of property into the trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the said trust shall now be known as:

NELVA E. BRUNSTING, Trustee, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The tax identification number of the BRUNSTING FAMILY LIVING TRUST is 481-30-4685.

- 4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the remaining original Trustee fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.
6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.
7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

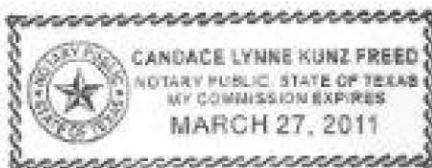
The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

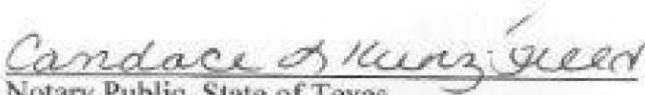
  
NELVA E. BRUNSTING,  
Founder and Trustee

STATE OF TEXAS  
COUNTY OF HARRIS

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING, as Founder and Trustee.

Witness my hand and official seal.



  
Notary Public, State of Texas



CERTIFICATE OF TRUST  
FOR THE  
ELMER H. BRUNSTING DECEDENT'S TRUST

The undersigned Founder hereby certifies the following:

- 1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the original trust was:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

- 2. ELMER H. BRUNSTING died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

- 3. The BRUNSTING FAMILY LIVING TRUST authorized the creation of the subsequent irrevocable trust known as the ELMER H. BRUNSTING DECEDENT'S TRUST. For purposes of asset allocation, transfer of property into the Decedent's Trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the Decedent's Trust shall now be known as:

NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The tax identification number of the ELMER H. BRUNSTING DECEDENT'S TRUST is 27-6453100. The Trust is irrevocable and no longer qualifies as a grantor trust.

An acceptable abbreviation for account titling is as follows:

NELVA E. BRUNSTING, Tee of the ELMER H. BRUNSTING DECEDENT'S TR dtd 4/1/09, as est UTD 10/10/96.

- 4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the said NELVA E. BRUNSTING, the surviving original Trustee, fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING



CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.
6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.
7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their power over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

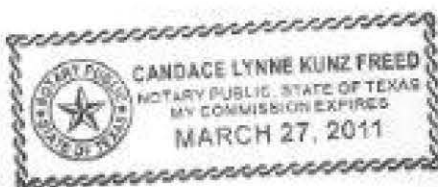
*Nelva E. Brunsting*  
 \_\_\_\_\_  
 NELVA E. BRUNSTING,  
 Founder and Trustee

THE STATE OF TEXAS §  
 §  
 COUNTY OF HARRIS §

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING as Founder and Trustee.

Witness my hand and official seal.

*Candace Lynne Kunz Freed*  
 \_\_\_\_\_  
 Notary Public, State of Texas



United States Courts  
Southern District of Texas  
FILED

FEB 27 2012

David J. Bradley, Clerk of Court

United States District Court  
for the  
Southern District of Texas

CANDACE LOUISE CURTIS,  
Plaintiff,

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§  
§

VS.

Civil Action No. \_\_\_\_\_

ANITA KAY BRUNSTING, and  
AMY RUTH BRUNSTING  
And Does 1-100  
Defendants

Jury Trial Demanded

PLAINTIFF'S ORIGINAL PETITION, COMPLAINT AND APPLICATION FOR EX  
PARTE TEMPORARY RESTRAINING ORDER, ASSET FREEZE, TEMPORARY  
AND PERMANENT INJUNCTION.

**I.**  
Parties

1. Plaintiff, Candace Louise Curtis, is a citizen of the State of California.  
Defendant Anita Kay Brunsting, is a citizen of the State of Texas and  
Defendant Amy Ruth Brunsting a citizen of the State of Texas.

**II.**  
Jurisdiction and Venue

2. This Court has federal subject matter and diversity jurisdiction of the  
state law claims alleged herein pursuant to 28 USC §1332 (a) (1) - 28 USC  
§1332 (b) and 28 USC §1332 (C) (2) in that this action is between parties who

Pg-11

2012 14538

NO. \_\_\_\_\_

IN RE: CARL HENRY BRUNSTING

§  
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§

IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS

RECORDER'S MEMORANDUM  
This instrument is of poor quality  
at the time of imaging

80 JUDICIAL DISTRICT FILED  
Chris Daniel  
District Clerk

CARL HENRY BRUNSTING'S  
VERIFIED PETITION TO TAKE DEPOSITIONS BEFORE SUIT

MAR 09 2012

TO THE HONORABLE JUDGE OF SAID COURT:

Time: \_\_\_\_\_  
By: \_\_\_\_\_  
Harris County, Texas  
Deputy

Petitioner, Carl Henry Brunsting ("Petitioner"), asks the court for permission to take depositions by oral examination and/or on written questions to obtain testimony and documents to investigate his potential proceedings involving Anita Kay Brunsting ("Anita"), Amy Ruth Brunsting ("Amy"), Vacek & Freed, PLLC ("Vacek"), and Candace L. Kunz-Freed ("Freed") as authorized by Tex. R. Civ. P. 202.3(a), and in support thereof would show as follows:

1. Petitioner is a resident of Harris County, Texas and is one of the heirs of the estates of his parents, Elmer and Nelva Brunsting, who both resided in Harris County, Texas until their deaths. Petitioner is also one of the beneficiaries of the Brunsting Family Living Trust (the "Family Trust") and other trusts arising therefrom, as well as other trusts and estate planning tools implemented by his parents. Petitioner held a power of attorney for his mother, is the personal representative named in his mother's will, and was previously named to become the successor trustee of the Family Trust upon his mother's death.

2. The parties sought to be deposed and the documents, if any, to be requested of the witnesses are:

- A. Vacek, a professional limited liability company formed under the laws of Texas doing business in Harris County, Texas which may be served through its registered agent, Albert E. Vacek, Jr., at 11777 Katy Freeway, Suite 300,

CONFIRMED FILE DATE: 3/9/2012

UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS,  
PLAINTIFF

VS.

ANITA KAY BRUNSTING,  
AMY RUTH BRUNSTING,  
AND DOES 1-100,  
DEFENDANTS

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CIVIL ACTION NO. 4:12-cv-00592  
JUDGE KENNETH M. HOYT

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED PETITION

I. PARTIES

1. Plaintiff, Candice Louis Curtis is a citizen of the State of California.
2. Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has answered and appeared herein.
3. Defendant Amy Ruth Brunsting is a citizen of the State of Texas, who has answered and appeared herein.
4. Necessary Party and involuntary plaintiff is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas and is expected to waive the issuance of citation. He is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.
5. Necessary Party is Carole Ann Brunsting, who is a citizen of the State of Texas, and who can be served with citation at 5822 Jason St., Houston, Texas 77074. She is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.



## II. JURISDICTION AND VENUE

6. This Court had jurisdiction of the state law claims alleged herein pursuant to 28 USC § 1332(a)(1) – 28 USC § 1332(b), and 28 USC § 1332(C)(2) in that this action is between parties who are citizens of different states and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs. Jurisdiction may be destroyed if all necessary parties are joined.
7. The Res in this matter includes assets belonging to the Brunsting Family Living Trust (“Trust”) and assets belonging to the Estate of Nelva Brunsting, Deceased, under the care and control of Necessary Party Carl Brunsting.

## III. NATURE OF ACTION

8. This action arises out of the misappropriate and mismanagement of assets that belonged to Nelva Brunsting during her life and of assets that belonged to the Brunsting Family Trust, and the execution of invalid documents seeking to amend the Brunsting Family Trust.

## IV. CAUSES OF ACTION

9. Breach of Fiduciary Duty. Defendants Anita Brunsting and Amy Brunsting are Co-Trustees of the Trust and owed to Plaintiff, Carl Brunsting, and Carole Brunsting, a fiduciary duty, which includes : (1) a duty of loyalty and utmost good faith; (2) a duty of candor; (3) a duty to refrain from self-dealing; (4) a duty to act with integrity of the strictest kind; (5) a duty of fair, honest dealing; and (6) a duty of full disclosure. Defendants have violated this duty by engaging in self-dealing, by failing to disclose the existence of assets to Plaintiff, by failing to account to Plaintiffs for Trust assets and income, by failing to place Plaintiff’s interests ahead of their own, and by making distributions that deviate from the strict language of the Trust. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment

interest and costs of court.

10. Fraud. Defendants Anita Brunsting and Amy Brunsting made misrepresentations of material facts with the intent that Plaintiff rely upon them, and Plaintiff did rely upon such misrepresentations to her detriment. Such misrepresentations included statements regarding the Trust, Trust assets, and her right to receive both information and Trust assets. On information and belief, Defendants made fraudulent misrepresentations to Nelva Brunsting upon which she relied to her detriment and to the ultimate detriment of her Estate. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest both on behalf of herself, and on behalf of the Estate of Nelva Brunsting, Deceased.
11. Constructive Fraud. Constructive fraud exists when a breach of a legal or equitable duty occurs that has a tendency to deceive others and violate their confidence. As a result of Defendants' fiduciary relationship with Plaintiff and with Nelva Brunsting, Defendants owed Plaintiff and Nelva Brunsting legal duties. The breaches of the fiduciary duties discussed above and incorporated herein by reference constitute constructive fraud, which caused injury to both Nelva Brunsting's Estate and Plaintiff. Plaintiff seeks actual damages, as well as, punitive damages individually and on behalf of Nelva Brunsting's Estate.
12. Money Had and Received. Defendants have taken money that belongs in equity and good conscience to Plaintiff, and has done so with malice and through fraud. Plaintiff seeks her actual damages, exemplary damages, pre- and post-judgment interest and court costs.
13. Conversion. Defendants have converted assets that belong to Plaintiff as beneficiary of the Brunsting Family Trust, assets that belong to the Brunsting Family Trust, and assets that belonged to Nelva Brunsting and that should be a part of her Estate. Defendants have

wrongfully and with malice exercised dominion and control over these assets, and has damaged Plaintiff, the Brunsting Family Trust, as well as the Estate of Nelva Brunsting by so doing. Plaintiff seeks actual damages, exemplary damages, pre- and post-judgment interest and court costs, both individually and on behalf of the Decedent's Estate.

14. Tortious Interference with Inheritance Rights. A cause of action for tortious interference with inheritance rights exists when a defendant by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received. Defendants herein breached their fiduciary duties and converted funds that would have passed to Plaintiff through the Brunsting Family Trust, and in doing so tortiously interfered with Plaintiff's inheritance rights. Plaintiff seeks actual damages as well as punitive damages.
15. Declaratory Judgment Action. The Brunsting Family Trust was created by Nelva and Elmer Brunsting, and became irrevocable upon the death of Elmer Brunsting. After his death, Nelva executed a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment ("Modification Documents"), which attempted to change the terms of the then-irrevocable Trust. Upon information and belief, Nelva did not understand what she was signing when she signed the Modification Documents, and signed them as a result of undue influence and/or duress. Plaintiff seeks a declaration that the Modification Documents are not valid, and further that the *in terrorem* clause contained therein is overly broad, against public policy and not capable of enforcement. Plaintiff further seeks a declaration as to her rights under the Brunsting Family Trust. Plaintiff contends and will show that she has brought her action in good faith.
16. Demand for Accounting. Plaintiff seeks a formal accounting from Defendants in compliance



with the Texas Property Code.

V. JURY DEMAND

17. Plaintiff hereby makes her demand for a jury trial in this matter.

VI. PRAYER

18. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial in this matter, she will take judgment for her actual and exemplary damages, actual and exemplary damages will be awarded to the Estate of Nelva Brunsting, that pre- and post-judgment interest and costs of court will be assessed against the Defendants, and that she be granted such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

OSTROM/*Sain*

A limited Liability Partnership

BY: /s/ Jason B. Ostrom

JASON B. OSTROM

(Fed. Id. #33680)

(TBA #24027710)

NICOLE K. SAIN THORNTON

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Houston, Texas 77006

713.863.8891

713.863.1051 (Facsimile)

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

/s/ Jason B. Ostrom  
Jason B. Ostrom

FILED  
2/12/2015 1:51:33 PM  
Stan Stanart  
County Clerk  
Harris County

PROBATE COURT 4

DM

**DATA-ENTRY  
PICK UP THIS DATE**

CAUSE NO. 412,249

02132015:1439:P003B

IN RE: ESTATE OF	§	IN THE PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED PETITION

TO THE HONORABLE PROBATE COURT: JURY FEE PAID

COMES NOW, Plaintiff, Candace Louis Curtis, and files this Second Amended Petition and for cause of action would show as follows:

I. PARTIES

Plaintiff, Candace Louis Curtis is a citizen of the State of California.

Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has made an appearance and can be served through her counsel of record.

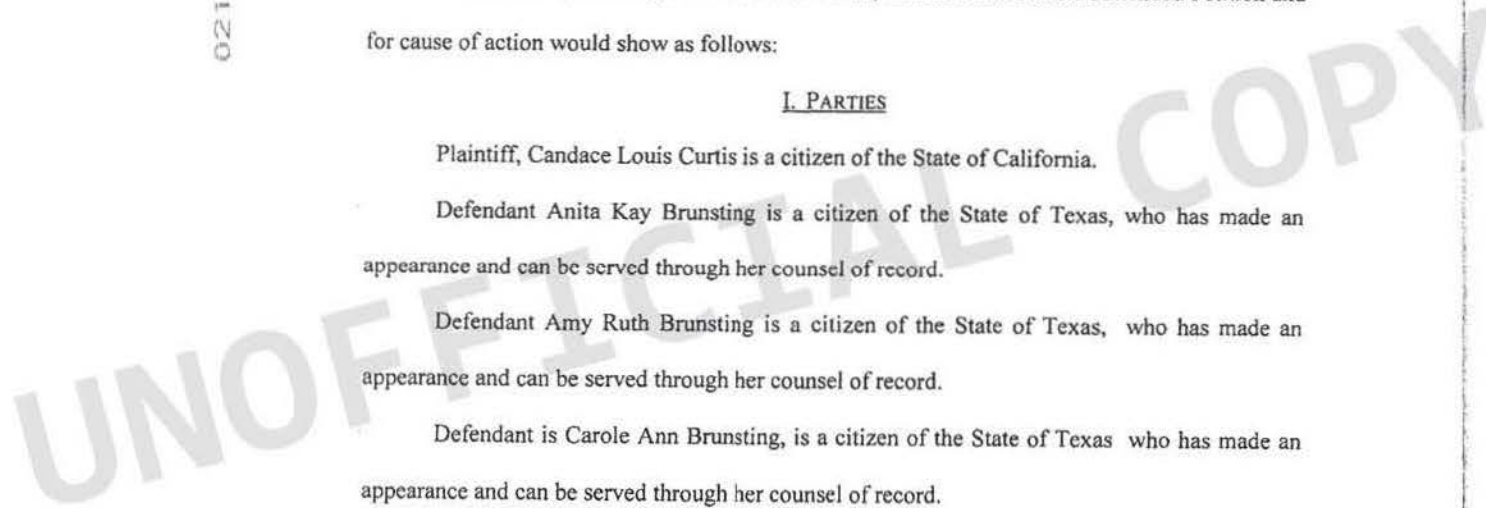
Defendant Amy Ruth Brunsting is a citizen of the State of Texas, who has made an appearance and can be served through her counsel of record.

Defendant is Carole Ann Brunsting, is a citizen of the State of Texas who has made an appearance and can be served through her counsel of record.

Necessary Party is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas who has made an appearance and can be served through her counsel of record.

II. JURISDICTION AND VENUE

This Court had jurisdiction pursuant to Sections 32.002(c) and 32.005 of the Texas Estates Code, Chapter 37 of the Texas Civil Practice and Remedies Code, and Chapter 115 of the Texas Property Code. Venue is proper pursuant to Section 33.002.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Curtis, et al

Plaintiffs

v

Kunz-Freed, et al

Defendants

§  
§  
§  
§  
§  
§

Civil Action No. 4:16-cv-01969

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**ORDER**

Upon due consideration, Defendants Rule 12(b)(1) and 12(b)(6) Motions to Dismiss filed on October 31, 2016, by Defendant Jason Ostrom in the above styled cause (Dkt 78), should be Denied.

It is SO ORDERED

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Alfred H Bennet  
United Stated District Judge

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 DEFENDANT BERNARD MATHEW’S FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1) and 12(b)(6) MOTION TO DISMISS**

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Federal Rule of Civil Procedure 12(b)(6) ..... 2

1. Plaintiffs filed 18 U.S.C. 1962(c) and 18 U.S.C. 1962(d) claims along with civil rights, common law breach of fiduciary and other claims on July 5, 2016.

2. On November 2, 2016, Defendant Bernard Lisle Mathews III filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and Federal Rule of Civil Procedure 12(b)(6). (Dkt 81)

**I. INTRODUCTION**

3. In its purest form this lawsuit is about property and the intentions of Elmer and Nelva Brunsting that their worldly possessions pass to their issue without conflict, complications, or excess costs. In pursuit of that goal Elmer and Nelva Brunsting purchased a trust and estate plan package as both a product and a service of Albert Vacek, Jr.

4. According to assurances that Vacek gives his customers, his trust package was supposed to avoid what Vacek calls “the three evils”. Those evils include “probate”, “guardianship” and “taxes”.

5. Vacek partner, Candace Kunz-Freed, began drafting instruments undermining the Brunsting trust as soon as Elmer Brunsting weakened (see Dkt 26-11 and 26-14) and then continued the erosion with each subsequent “Hurrah”<sup>1</sup>, the next being the encephalitis and coma suffered by Carl Brunsting.

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<sup>1</sup> In legal parlance a.k.a. a “qualifying event”

## II. NATURE AND STAGE OF THE PROCEEDING

6. Plaintiffs in the above titled action, brought 18 U.S.C. §1964(c) Racketeer Influenced Corrupt Organization and other claims, both individually and as private attorneys general on behalf of the public trust, on July 5, 2016 in the Southern District of Texas.

7. On November 2, 2016, Defendant Bernard Mathews filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and Federal Rule of Civil Procedure 12(b)(6). (Dkt #81).

## III. SUMMARY OF THE CASE

8. 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, and Defendants Amy and Anita Brunsting, and also includes the remaindermen grandchildren and great grandchildren of Grantors Elmer and Nelva Brunsting, et al., per stirpes.

9. In 1996, Plaintiff Curtis' parents, Elmer Brunsting and Nelva Brunsting, created the original Brunsting Family Living Trust for their benefit, for the benefit of their five primary issue and for the benefit of the remaindermen grandchildren and great grandchildren. (Dkt 33-1)

10. The Brunstings restated their Trust in 2005 (Dkt 33-2) and amended the restatement in 2007. (Dkt 33-3)

11. Elmer Brunsting was declared incompetent in June 2008 and passed on April 1, 2009.

12. At the death of Elmer Brunsting the inter vivos "family" trust became irrevocable and divided its assets among an irrevocable decedent's trust and a revocable survivor's trust. (Dkt 33-2, Articles III and VII)



13. Nelva Brunsting passed on November 11, 2011 and a number of instruments surfaced that had been drafted after Elmer Brunsting became incompetent and after he passed, claiming changes had been made to irrevocable trusts. The 8/25/2010 QBD (Dkt 26-14)<sup>2</sup> (also called the extortion instrument) and the several appointments of successor trustee are just such instruments (Dkt 26-14)<sup>3</sup>

14. The acting trustees, Anita and Amy Brunsting, conducted themselves in complete secrecy. After Nelva Brunsting passed they refused to answer, account or provide disclosures and after two unsuccessful demand letters<sup>4</sup> advising Anita and Amy Brunsting to do the right thing, Plaintiff Curtis brought suit in the Southern District of Texas.

15. On March 6, 2012, Defendant Bernard Matthews filed an “emergency motion” for removal of lis pendens.<sup>5</sup> In the opening paragraph of his "emergency motion" Defendant Bernard Mathews states:

*[Note: This Motion is brought subject to the Trustees contention that this Court lacks subject matter jurisdiction due to the fact that Texas Probate Code §115.001 (7) confers exclusive jurisdiction over matters related to questions “arising in the administration or distribution of a trust” to the State District Court, and by analogy this case should not be considered under the Probate Exception to Federal Court Jurisdiction, Marshall v. Marshall, 126 S.Ct. 1735, 1748 (2006). These issues will be raised by a separate Motion to Dismiss under FRCP 12(b)]*

16. Mathews also attached a perjured affidavit signed and sworn to by Amy Brunsting to his March 6, 2012 “emergency motion”<sup>6</sup> and on March 8, 2012, Curtis’ complaint was dismissed sua

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<sup>2</sup> This instrument was the subject of Defendant Amy and Anita Brunsting’s No-evidence Motion for Partial Summary Judgment (Dkt 26-5), and Curtis answer and demand to produce evidence. (Dkt 26-11)

<sup>3</sup> This is Plaintiff Curtis 20 page Motion for Partial Summary and Declaratory Judgment with numerous exhibits that remains unanswered by Defendants Anita and Amy Brunsting.

<sup>4</sup> Case 4:12-592 Exhibits 17 and 20 in the original federal complaint (4:12-cv-592 Dkt 1 at pages 67-68, and 71-79 respectively.

<sup>5</sup> Case 4:12-cv-592 Document 10 Filed in TXSD on 03/06/12

<sup>6</sup> Case 4:12-cv-592 Documents 10 and 10-1, Filed in TXSD on 03/06/12

sponte under the Probate Exception to Federal Diversity Jurisdiction, due to the Court's reliance upon the assertions made by officer of the Court, Bernard Mathews.

#### **IV. STATEMENT OF THE ISSUES**

1. Plaintiffs do not have an actual case or controversy with Mathews;
2. Plaintiffs do not state a claim against Mathews;
3. Mathews only handled an emergency motion for removal of lis pendens;
4. Mathews has immunity from civil accountability to his tort victims because he is an attorney.

#### **V. PLAINTIFFS' REPLY**

17. Candace Curtis v Anita and Amy Brunsting (4:12-cv-592) began in the federal Court in the Southern District of Texas on February 27, 2012, seeking equitable relief in the form of accountings, answers to information requests and monetary damages for known acts and omissions.

18. Plaintiff Curtis' original lawsuit alleged that all the information in the case was uniquely in the possession of the Defendants and included an affidavit with exhibits showing exactly where the case was at that point in time.

19. The federal Court dismissed an application for injunction filed with the original complaint due to want of service on the Defendants, and in the Order the Court expressed concern over whether or not the Court had subject matter jurisdiction. (4:12-cv-592 Dkt 8)

20. Defendant Bernard Mathews appears to have intentionally manipulated the Court's previous expression of concern over whether the Court had subject matter jurisdiction, knowingly misstating Texas Property Code §115.001 to be the Probate Code, and then

bootstrapping a Route Test theory that was very harshly reversed by the Supreme Court on the second page of the *Marshall v. Marshall* opinion he cited as his authority.<sup>7</sup>

*“Nevertheless, the Ninth Circuit in the instant case read the probate exception broadly to exclude from the federal courts' adjudicatory authority "not only direct challenges to a will or trust, but also questions which would ordinarily be decided by a probate court in determining the validity of the decedent's estate planning instrument." 392 F.3d 1118, 1133 (2004). The Court of Appeals further held that a State's vesting of exclusive jurisdiction over probate matters in a special court strips federal courts of jurisdiction to entertain any "probate related matter," including claims respecting "tax liability, debt, gift, [or] tort." Id., at 1136. We hold that the Ninth Circuit had no warrant from Congress, or from decisions of this Court, for its sweeping extension of the probate exception". Marshall v Marshall 547 U.S. 293, 126 S. Ct. 1735, 1736*

21. Curtis and Munson spent the next 14 months on an appeal before returning to the federal Court, more than four years ago. For this Court's perusal, Plaintiffs attach the "Appellants Opening Brief on Appeal", as it speaks directly to the root of matters presently before this Honorable Court. (Exhibit 1)

22. Defendant Mathews is currently listed as a staff attorney on the vacek.com web site (Exhibit 2) and was listed as a staff attorney with Vacek and Freed when he filed his disingenuous motion under the letterhead of Green and Mathews (4:12-cv-592 Dkt 10).

**1. Not a Probate Matter**

23. Plaintiff Curtis' federal appeal distinguished the Brunsting Trust from the Brunsting Estate.

24. According to the Fifth Circuit, the Brunsting Trusts are not assets belonging to any estate and are not subject to probate administration.

25. On March 2, 2012, a mere four days before his "emergency motion", Mathews filed a complaint in the Harris County District Court, on behalf of Plaintiff Reginald Parr. *Reginald D.*

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<sup>7</sup> *Marshall v Marshall 547 U.S. 293, 126 S. Ct. 1735, 1736*

*Parr vs. Sherry Evon Dunegan CA 201213022*. In that case Mr. Parr was suing Ms. Dunegan for breach of fiduciary in the administration of a Texas trust drawn up by the law firm of Vacek and Freed.

26. It would necessarily follow that an attorney preparing a complaint for the Harris County District Court, involving a substantively identical case to that of Plaintiff Curtis, would know that trusts are not heard exclusively in the probate court, and would know the difference between the Property Code and the Estate Code (which Mathews called the "Probate Code").

27. If Mathews read the Supreme Court opinion in *Marshall v. Marshall* before citing to that authority and signing his pleading, he would also know his Route Test assertions were patently disingenuous.

## **2. Lis Pendens**

28. Defendants filed their "emergency" motion claiming to be trustees; that the property to which the lis pendens related was to be liquidated in order to distribute proceeds to the heirs, and that Plaintiff's only intent was to frustrate that sale.

29. The lis pendens at issue was amongst the papers filed with the Court, but was never on file with the County Recorder as to frustrate any sale.

30. The house itself was sold like it was on fire and neither Plaintiff Curtis nor siblings Carl or Carole have ever received any distribution of proceeds from the sale of that house.

31. After Bernard Mathew's "Emergency Motion" resulted in the improper dismissal of Plaintiff Curtis' action, Mathews immediately interfered with all three of Curtis' subpoenas for records, including the email records of Nelva Brunsting, Exxon Stock transfer records from Computershare, and Bank of America transaction records, all of which loom large in rebutting Anita and Amy's fact claims.

**3. Mathew's Email: "Intend to Move this to Probate"**

32. Subsequent to the dismissal of Plaintiff Curtis' federal lawsuit, Mathews emailed Bobbie Bayless, Carole Brunsting and Candace Freed, providing accounting spreadsheets that were shockingly revealing.

33. This email (Exhibit 3) was the first real indication of what is later revealed to be a concerted effort, with the sole purpose of converting Plaintiff Curtis' trust related breach of fiduciary claims into estate claims.

34. Mathews, and every other defendant attorney, has actively engaged in trying to accomplish what Vacek assures his customers his estate plans will avoid, "probate".

**VI. AMENDMENT AND ADOPTION BY REFERENCE**

35. Pursuant to the authority provided by Federal Rule of Civil Procedure 10(b) and 15(a)(1), Plaintiffs hereby adopt and incorporate by reference into Plaintiffs' original complaint (Dkt 1), the Addendum of Memorandum and the pleadings subsumed therein, (Dkt 26) and all of Plaintiffs' Replies to Defendants Motions, as if fully expressed in said Complaint, including but not limited to Docket entries 33, 34, 41, 45, 57, 61, 62, 65, 69, 85. this reply and the attached exhibits, as if fully expressed therein;

36. Plaintiffs further adopt by reference all of the Defendants' Motions and pleadings, the claims stated therein and the exhibits attached, as exhibits in support of Plaintiffs' Complaint, including but not limited to Docket entries 19, 20, 23, 25, 30, 35, 36, 38, 39, 40, 53, 78, 79, 81, 83, and 84, as if fully attached as exhibits thereto.

## VII. CONCLUSION

37. Bernard Mathew's "Emergency Motion" was disingenuous in its expressions of both law and fact, and was filed for the improper purpose of manipulating the Court's stated hesitancy over whether or not it had subject matter jurisdiction, thus achieving an improper dismissal.

38. This conduct multiplied the litigation for Plaintiff Curtis resulting in a 14-month delay and additional costs, and has exacerbated injury to the beneficiaries and the Brunsting Trust res.

39. Bernard Mathew's participation appears innocuous in a context vacuum, however, in hindsight, that conduct would appear to be part and parcel of the scheme and artifice to deprive.

40. Plaintiffs do have an actual controversy with Vacek and Freed staff attorney Bernard Mathews and have specifically articulated adequate in-concert aiding and abetting events and conspiracy claims that include Mr. Mathews.

41. Whether or not Mr. Mathew's conduct can be regarded as conduct normally associated with his role as an attorney in the larger view, is a valid subject for judicial consideration.

42. The entire Brunsting family has been victimized by this long con scheme fashioned by Albert Vacek Jr. and furthered by a probate court protected bully mob.

43. Only attorneys stand to benefit from embroiling the Brunsting siblings in probate court where nothing can, has been, or will be resolved without an agreement involving a flow of private wealth to public actors, with no judicial resolution of any substantive issues.

44. Bernard Mathews, and every other attorney involved in this dispute since, has demonstrated an intention to interfere with the Brunsting Beneficiaries' Trust Property interests under the guise of administering a probate estate, and have interfered with those interests.

Wherefore, Plaintiffs move this Honorable Court for an Order denying the Rule 12(b)(6) and Rule 12(b)(1) Motion to Dismiss filed by Defendant Bernard Mathews November 2, 2016, and hold Mr. Mathews to answer.

Respectfully submitted,

/s/ Candace L. Curtis  
Candace L. Curtis

/s/ Rik W. Munson  
Rik W. Munson

#### **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 23rd day of November, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Rik W. Munson  
Rik W. Munson



**Case No. 12-20164**

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**In the United States Court of Appeals  
For the Fifth Circuit**

**CANDACE LOUISE CURTIS,**

*Plaintiff - Appellant*

**v.**

**ANITA KAY BRUNSTING; DOES 1-100; AMY RUTH BRUNSTING,**

*Defendants - Appellees*

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**APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

---

**BRIEF OF PLAINTIFF - APPELLANT**

---

**Candace Louise Curtis  
1215 Ulfinian Way  
Martinez, California 94553  
(925) 759-9020  
occurtis@sbcglobal.net  
*Appellant pro se***

## **CERTIFICATE OF INTERESTED PERSONS**

NO. 12-20164

Candace Louise Curtis v. Anita Kay Brunsting, et al.

The undersigned Plaintiff-Appellant pro se, certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that the judges of this court may evaluate possible disqualification or recusal.

- (1) Candace Louise Curtis, Plaintiff-Appellant, Beneficiary, Successor Co-Trustee for the Elmer Brunsting Irrevocable Decedent's Trust
- (2) Anita Kay Brunsting, Defendant
- (3) Amy Ruth Brunsting, Defendant
- (4) Bernard Lilse Mathews III, Counsel for Defendants in the District Court
- (5) The Honorable Kenneth Hoyt, Judge, United States District Court for the Southern District of Texas Houston Division
- (6) Carl Henry Brunsting, Beneficiary, Executor, Successor Co-Trustee for the Elmer Brunsting Irrevocable Decedent's Trust
- (7) Carole Ann Brunsting, Beneficiary
- (8) Vacek & Freed, PLLC, Trust Law Firm
- (9) Candace L. Kunz-Freed, Trust Attorney

## **NOTICE OF CORRELATIVE ACTION AND NEWLY DISCLOSED EVIDENCE**

On March 9, 2012, Plaintiff-Appellant's brother, Carl Brunsting, filed a *Verified Petition to Take Depositions Before Suit*, in the District Court for Harris County Texas, No. 2012 14538. That Petition identifies the above named Defendant-Appellees, Anita Brunsting and Amy Brunsting, along with the law firm of Vacek and Freed, as having potentially adverse interests to that of Carl Brunsting.

Counsel for Carl Brunsting is Bobbie Bayless of Bayless and Stokes, Houston, Texas.

On April 2, 2012, the Houston firm of Vacek and Freed filed the Will of Elmer Brunsting [#412248] and a purported Will for Nelva Brunsting [#412249] with the Harris County Clerk, with application for No Administration.

On or about April 5, 2012, Curtis received a number of documents by email, addressed to Carl Brunsting c/o Bobbie Bayliss, Candace Curtis, and their sister Carole Brunsting, sent from Defendants' counsel Bernard Mathews, in "connection with litigation brought by Ms. Curtis and threatened by Carl Brunsting." These documents were offered to satisfy accounting requirements under the Texas Property Code and included spreadsheets labeled as Schedules A through J.

These "take my word for it documents" seem to indicate that more than half a million dollars in assets may have been self-dealt, commingled, or otherwise

misappropriated, **in the fifteen months prior to the death of Nelva Brunsting**, and that Defendants have not kept accurate books and records.

It should be noted here that misappropriation of fiduciary in excess of \$200,000.00 is a class “A” felony in Texas, and that an elderly victim adds a class level enhancement.

On May 18, 2012, the Harris County District Court entered an Order authorizing Carl Brunsting to proceed with depositions.

/s/

---

Candace Louise Curtis  
Plaintiff-Appellant pro se

## **STATEMENT REGARDING ORAL ARGUMENT**

Curtis requests oral argument pursuant to Federal Rule of Appellate Procedure 34(a)(1) and Fifth Circuit Rule 28.2.3, only to the extent it would aid the Court in understanding the factual background of this case and clarify the legal issues presented.

Appellant suggests that the issues presented can be determined upon the record, pursuant to Fed. R. App. P. 34(a)(3), and that oral argument would not benefit the panel, as the parties' positions are clear and the record is uncomplicated.

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## **STATEMENT OF JURISDICTION**

This Appeal is from an Order [481-482] dismissing four civil tort causes of action, entered by the Honorable Kenneth Hoyt of the United States District Court for the Southern District of Texas, on March 8, 2012. A timely Notice of Appeal [493-494] was filed on March 12, 2012. The District Court was asked to exercise jurisdiction under 28 U.S.C. § 1332. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291.

## STATEMENT OF THE ISSUES

1. To what extent, if any, does the probate exception to federal subject matter jurisdiction apply to causes of action for breach of fiduciary, fraud, conversion, and other civil torts that occur in fiduciary relations related to trusts, wills or estates?
2. To what extent, if any, can the probate exception to federal subject matter jurisdiction be applied where there is no probate?
3. To what extent, if any, can the probate exception to federal subject matter jurisdiction be applied to trust related controversies, given the fact that modern trusts are created for the dual purposes of minimizing death tax obligations and avoidance of probate?
4. Does a sua sponte order dismissing Plaintiff's action on jurisdictional grounds deny due process to Plaintiff, who received no notice of motion and no meaningful opportunity to be heard?

## STATEMENT OF THE CASE

The record will show that Plaintiff, Candace Curtis (Curtis), and Defendants, Anita Brunsting and Amy Brunsting (Anita and Amy), are siblings.

The record will further show that their father, Elmer H. Brunsting, died April 1, 2009, and their mother, Nelva Brunsting, died November 11, 2011. Subsequent to their Mother's death, Defendants refused to communicate in a satisfactory manner, if at all, and provided no meaningful information after receiving demand letters Curtis sent to Defendants officially demanding an accounting, a list of assets, and copies of trust documents and records. Curtis also requested that Defendants file the Decedents' Wills and that they not dispose of property without prior notice [67-68] [71-74].

On February 27, 2012, Curtis filed a pro se complaint [5-17] in the United States District Court for the Southern District of Texas alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud, and intentional infliction of emotional distress, claiming that Defendants, acting as trustees, failed to notice her of any actions affecting her beneficial interests and refused to provide copies of non-protected trust instruments and accountings for the trust assets, or to report on any other acts of administration.

Curtis also filed an application for injunction [15] seeking to enjoin Defendants from further actions involving trust property until a true and complete

accounting, list of assets, copies of trust documents, and reports of transactions had been disclosed, or upon further order of the Court.

At the time Curtis filed her complaint in the federal court, neither Decedent's will had been filed, and no probate or other proceeding had been commenced in any court. [6]

Also filed amongst Plaintiff's papers were copies of common law *lis pendens* public notices.

Curtis's application for injunction was properly denied on February 28, 2012, pursuant to Fed.R.Civ.P. 65(b), as defendants had not yet been served.

In the order denying injunction [431] the Court expressed that it may not have subject matter jurisdiction, but did not articulate a reason, and did not invite briefs on any specific subject.

Following a telephone hearing on March 7, 2012, regarding defense motion for removal of a *lis pendens* notice, the Court issued an Order dismissing Plaintiff's complaint under the probate exception to federal diversity jurisdiction, citing to *Marshall v Marshall* 547 U.S. 293, 126 S. Ct. 1735. [\*481]

## STATEMENT OF FACTS

As the District Court correctly noted, Curtis has always maintained that the claims raised below are civil torts for personal injury, seeking monetary damages from Defendants in personam.

By Affidavit [18-31] in support of her complaint Curtis states that she has never received a true and complete accounting, has not received copies of trust documents relating to any now-existing trust in which she has a beneficial interest, has not received prior notice of actions affecting her beneficial interests, and has made the requisite written demands upon the fiduciary defendants prior to bringing court action.

All of the information necessary to the protection of Plaintiff's rights and beneficial interest is uniquely in the possession and under the control of Defendants.

“Silence can only be equated with fraud when there is a legal duty to speak, or when an inquiry left unanswered would be intentionally misleading... We cannot condone this shocking conduct.... If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately.” *U.S. v. Tweel*, 550 F2nd 997, 299-300.

Amy and Anita have the obligation to provide material information that they have secreted or otherwise withheld Curtis has the equitable right to demand the information from the Defendants, Amy and Anita. Amy and Anita have the equitable duty to disclose and to account, and have no lawful reason for



withholding or concealing the information. Amy and Anita have refused or otherwise failed to meet the fiduciary obligations owed to Curtis and are thus liable for breach of fiduciary and associated civil torts. There is no valid constitutional, statutory or other rational reason why the federal court cannot take cognizance of these civil tort causes of action.

### **STANDARD OF REVIEW**

“[a] trial court abuses its discretion when it bases its decision on an erroneous view of the law or a clearly erroneous assessment of the evidence.” *United States v. Caldwell*, 586 F.3d 338, 341 (5<sup>th</sup> Cir. 2009).

This Court is asked to review the District Court’s dismissal of Plaintiff’s four civil causes of action de novo.

### **SUMMARY OF ARGUMENT**

1. There is no probate exception to federal diversity jurisdiction over an *inter partes* tort action, where a federal court is not asked to probate or annul a will or take jurisdiction over property in the possession of a state court.
2. The theory that one may be estopped from pursuing tort remedies by a probate exception where there is no probate is self-defeating. Where there is case or controversy, and the jurisdictional requisites of

diversity and amount in controversy are met, the federal courts have subject matter jurisdiction of torts whether there is a probate or not.

3. As it is the primary purpose for creation of a trust to avoid probate and reduce estate tax liabilities, it is irrational and a cruel irony that a competent federal tribunal would be barred from protecting the rights of one's beneficiaries because of some fictitious relationship between ministerial estate functions performed by ecclesiastical courts and controversies heard exclusively before courts of Chancery at Westminster.
4. The Sua sponte dismissal of Plaintiff's action, without notice and opportunity to be heard, is denial of Due Process.

## ARGUMENT

### NATURE OF THE CLAIM

The probate exception does not apply to *inter partes* civil tort claims seeking purely monetary damages from defendants in personam<sup>1</sup>.

The District Court's Order of Dismissal [\*481] at item II states:

“The plaintiff's dispute arises out of the administration of the family Trust.”

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<sup>1</sup> Resting upon the authorities contained in the Brief for Petitioner Vicky Lynn Marshall No. 04-1544 before the United States Supreme Court *Marshall v Marshall* 547 U.S. 293, 126 S. Ct. 1735. Argument & Summary of Argument Pages 9-18 and authorities cited.

And at item III:

“... However, in her pleadings, the plaintiff asserts that she is suing her sisters individually and severally as co-trustees for the Trust because they have failed... “to meet their first obligation under that power...””

The “Nature of the Claim” test has always been the choice of the Fifth Circuit, and these conclusions are not wholly relevant to application of the probate exception. Since there is no dispute that Curtis’s suit seeks monetary damages from defendant trustee’s in personam, questions surrounding distribution are moot. The Trust is not liable.

“...an officer may be held liable in damages to any person injured in consequence of a breach of any of the duties connected with his office...The liability for nonfeasance, misfeasance, and for malfeasance in office is in his 'individual', not his official capacity...”  
70 Am. Jur. 2nd Sec. 50, VII Civil Liability.

## **THE ROUTE TEST**

Defendant’s Emergency Motion for Removal of lis pendens [434] states:

“[Note: This Motion is brought subject to the Trustees contention that this Court lacks subject matter jurisdiction due to the fact that Texas Probate Code §115.001 (7) confers exclusive jurisdiction over matters related to questions “arising in the administration or distribution of a trust” to the State District Court, and by analogy this case should not be considered under the Probate Exception to Federal Court Jurisdiction, *Marshall v. Marshall*, 126 S.Ct. 1735, 1748 (2006). These issues will be raised by a separate Motion to Dismiss under FRCP 12(b)”

First impression seemed to indicate that Defendant’s motion for removal of lis pendens should have been filed with the court Defendants claimed to be the

court having exclusive jurisdiction. This appears to be the same error to which the District Court fell victim.

Under closer scrutiny it becomes clear that Defendant's counsel, Bernard Mathews, misstated Texas Property Code §115.001, claiming it to be the Probate Code, and then bootstrapped to the Supreme Court what appears to be the Ninth Circuit's holding, that was very harshly reversed by the Supreme Court on the second page of the Marshall opinion.<sup>2</sup>

It is not Texas Probate Code §115.001, rather Texas Property Code §115.001, that grants original and exclusive jurisdiction over the administration of trusts, and that grant of jurisdiction is to the District Court not the Probate Court. The District Court is a court of general, not special, jurisdiction.

“Nevertheless, the Ninth Circuit in the instant case read the probate exception broadly to exclude from the federal courts' adjudicatory authority "not only direct challenges to a will or trust, but also questions which would ordinarily be decided by a probate court in determining the validity of the decedent's estate planning instrument." *392 F.3d 1118, 1133 (2004)*. The Court of Appeals further held that a State's vesting of exclusive jurisdiction over probate matters in a special court strips federal courts of jurisdiction to entertain any "probate related matter," including claims respecting "tax liability, debt, gift, [or] tort." *Id.*, at 1136. **We hold that the Ninth Circuit had no warrant from Congress, or from decisions of this Court, for its sweeping extension of the probate exception**". (*emphasis Curtis*)

The District court dismissed Curtis's action a priori on the assertion of Defendants' counsel without an FRCP 12(b) motion or jurisdictional hearing, even

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<sup>2</sup> *Marshall v Marshall* 547 U.S. 293, 126 S. Ct. 1735, 1736

though Defendants' own exhibits [473] show that the property subject to lis pendens was not property of a probate estate but of a resulting Trust.

Even if Defendants' counsel had stated the Texas statutes honestly, the Supreme Court in *Marshall* expressly dispels Defendants' route test assertions. In view of the very compelling brief filed by the petitioner before the Supreme Court in that case, it is difficult to envision an application of the probate exception where, as here, there is no probate.

“Texas courts have recognized a state-law tort action for interference [\*\*\*37] with an expected inheritance or gift, modeled on the Restatement formulation. See *King*, 725 S. W. 2d, at 754; *Brandes v. Rice Trust, Inc.*, 966 S.W.2d 144, 146-147 [\*\*499] (*Tex. App.* 1998). It is clear, under *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938), that Texas law governs the substantive elements of Vickie's tortious interference claim. It is also clear, however, that Texas may not reserve to its probate courts the exclusive right to adjudicate a transitory tort. We have long recognized that "a State cannot create a transitory cause of action and at the same time destroy the right to sue on that transitory cause of action in any court having jurisdiction." *Tennessee Coal, Iron & R. Co. v. George*, 233 U.S. 354, 360, 34 S. Ct. 587, 58 L. Ed. 997 (1914). Jurisdiction is determined "by the law of the court's creation and cannot be defeated by the extraterritorial operation of a [state] statute . . . , even though it created the right of action." *Ibid.* Directly on point, we have held that the jurisdiction of the federal courts, "having existed from the beginning of the Federal government, [can] not be impaired by subsequent state [\*\*\*38] legislation creating courts of probate." *McClellan v. Carland*, 217 U.S. 268, 281, 30 S. Ct. 501, 54 L. Ed. 762 (1910) (upholding federal jurisdiction over action by heirs of decedent, who died intestate, to determine their rights in the estate (citing *Waterman*, 215 U.S. 33, 30 S. Ct. 10, 54 L. Ed. 80)).” *Marshall v Marshall* 547 U.S. 293, 126 S. Ct. 1735, 1744.

## **TEXAS STATUTORY PROBATE JURISDICTION**

The correct jurisdictional statement for probate is found at Texas Probate

Code §4:

### **§ 4. Jurisdiction of County Court With Respect to Probate Proceedings**

The county court shall have the general jurisdiction of a probate court. It shall probate wills, grant letters testamentary and of administration, settle accounts of personal representatives, and transact all business appertaining to estates subject to administration, including the settlement, partition, and distribution of such estates. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 4, eff. Sept. 1, 1993.

## **TEXAS STATUTORY TRUST JURISDICTION**

The correct jurisdictional statement for trusts is found at Property

Code § 115.001:

§ 115.001. JURISDICTION. (a) Except as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction over all proceedings concerning trusts, including proceedings to:

- (1) construe a trust instrument;
- (2) determine the law applicable to a trust instrument;
- (3) appoint or remove a trustee;
- (4) determine the powers, responsibilities, duties, and liability of a trustee;
- (5) ascertain beneficiaries;
- (6) make determinations of fact affecting the administration, distribution, or duration of a trust;
- (7) determine a question arising in the administration or distribution of a trust;
- (8) relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle;

(9) require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and

(10) surcharge a trustee.

(b) The district court may exercise the powers of a court of equity in matters pertaining to trusts.

## **CUSTODIA LEGIS AND THE LAW OF COMITY**

The District Court's Order of Dismissal [481] points to distribution in dismissing the action under the probate exception and further comments thusly:

“Responding to the defendants’ motion, the plaintiff seeks to satisfy the jurisdictional issue of the amount in controversy by stating that the *res* is the Trust.”

The trial Court construes derivative rights for the primary premise of Curtis's action, borrowing from arguments made by Defendants, which appear nowhere in Curtis's pleadings. Fraud, intentional infliction of emotional distress and breach of fiduciary duties are civil torts, distinct from in Rem actions.

The incorporeal *res* of the complaint, as first stated in paragraph 3 therein [\*6], includes only the body of rights harmed, or in jeopardy, resulting from the breach of fiduciary obligations on the part of Defendants. The second reference to “*res*” in the same paragraph of Curtis’s complaint is a notice that federal jurisdiction was not precluded by doctrines of *Comity* or *Custodia legis*, as no prior action had been commenced in any other court, and Curtis fails to find “in rem” custody of property to be a formative factor in probate exception test analysis in any other context.



## THE FIFTH CIRCUIT AND THE PROBATE EXCEPTION

In *Breaux et al., v. Dilsaver* 254 F.3d 533 (5th Cir. 2001) the court held that civil tort claims against administrators in their individual capacity do not fall within the probate exception. The court reasoned that because plaintiff's claim did not challenge the validity of probate proceedings, did not seek to recover property from either estate, and did not require that a federal court assume control of estate property or interfere with state probate proceedings, that it was outside the probate exception to diversity jurisdiction. The court held in the opening paragraph:

This diversity suit arises from Appellants' claim that the Appellee committed fraud and breached his fiduciary duties while serving as administrator of two decedents' estates. The district court dismissed the suit, concluding that the probate exception to federal jurisdiction prevented it from hearing the case. We disagree: that the suit is against the administrator only in his personal capacity and does not require federal interference in any state probate proceeding. As the suit does not fall within the probate exception, we reverse and remand. *Breaux et al., v. Dilsaver* 254 F.3d 533 (5th Cir. 2001)

## HISTORY OF PROBATE AND TRUSTS IN ENGLAND

Justice Ginsberg authored the opinion of the Supreme Court in *Marshall* and she begins with the following quote:

In *Cohens v. Virginia*, Chief Justice Marshall famously cautioned: "It is most true that this Court will not take jurisdiction if it should not; but it is equally true, that it must take jurisdiction, if it should . . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." 19 U.S. 264, 6 Wheat. 264, 404, 5 L. Ed. 257 (1821). 1821). [\*\*\*14] Among [\*\*490] longstanding limitations on federal jurisdiction otherwise properly

exercised are the so-called "domestic relations" and "probate" exceptions. Neither is compelled by the text of the Constitution or federal statute. Both are judicially created doctrines stemming in large measure from misty understandings of English legal history..."

## **DISPUTES OVER LEGACIES**

The Surrey Council of England<sup>3</sup> presents a history of Probate in England and Wales from the early 13th century until the Court of Probate Act of 1857.

"Since the church had little jurisdiction over real estate there are few references in church records to land disputes. Whilst the church had some authority over litigation before the interregnum, disputes were often considered a matter for the King's court not the ecclesiastical ones, and after the interregnum any land or property disputes were usually conducted in Chancery (eg in "Bleak House" by Charles Dickens)."

The Surrey Council does not mention trusts in their published history of probate. Seagle<sup>4</sup> gives a history of the creation of trusts as follows:

"The evasion of feudal dues and burdens began in the second half of the fourteenth century when the great landowners hit upon the idea of conveying the legal titles to their lands to groups of friends, with the understanding, however, that they would hold the land to certain uses of the grantor. Since the group of "*feoffees to uses*" as it was called, could renew itself, the feudal burdens which attached only on death could be avoided. Feudalism, it is true, was a chain of holding, and they lost in relation to their subtenants, but gained immeasurably more, in view of the vastness of their holdings, in relation to the greatest lord of all, who was the king. The common-law courts recognized only the legal title, but the Court of Chancery, being a court of conscience, stood ready to see to it that the feoffees discharged

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<sup>3</sup> <http://www.surreycc.gov.uk/recreation-heritage-and-culture/archives-and-history/archives-and-history-research-guides/wills-and-probate-records/a-brief-history-of-probate-in-england-and-wales>

<sup>4</sup> Book IV of "the Quest for Law" (William Seagle 1941) Chapter 13 "The Quest for Equity" page 190

the obligations of the uses. Henry VIII tried to end the process of evasion by extorting from a rather reluctant Parliament the Statute of Uses in 1535. But it was not long before this was evaded by a ridiculously transparent device. Estates were now conveyed to A for the use of B. The Statute of Uses executed the first use, for it provided that when one stood seized of land to the use of another, the feoffee should be deemed the legal owner. It was held, however, that the statute did not execute the second use! It has been well said that “by this means a statute made upon great consideration, introduced in a solemn and pompous manner, has had no other effect than to add at most three words to a conveyance.<sup>5</sup> The double use became what was called a trust, and the protection of the rights of the *cestui que trust* became the most important function of the Court of Chancery.”

By these histories the common thread between probate and trust is the Court of Chancery. Trust matters were always heard in Chancery, while probate matters were heard in the ecclesiastical courts. However, all disputes arising under probate were heard in Chancery.

It thus appears that the probate exception nomenclature is a misnomer properly referring only to administrative functions that do not, as a matter of law, present a controversy<sup>6</sup> and this is the sole reason for the lack of federal statutory subject matter jurisdiction in regard to the probate of a will, the administration of an estate and any other matter that does not present the requisite elements of case or controversy.

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<sup>5</sup> Fisher, *op. cit.*, p. 160 - The footnoted authorities for this section are given on page 412 of “the Quest for Law” Vol IV

<sup>6</sup> Brief for Petitioner Vicky Lynn Marshall before the United States Supreme Court No. 04-1544 Page 16 and authorities cited therein.

## THE PROBATE EXCEPTION AFTER MARSHALL

Article III of the United States Constitution,<sup>7</sup> 28 U.S.C. §1331 and 28 U.S.C. §1332, defines modern federal diversity jurisdiction.<sup>8</sup> There is nothing in the language of these provisions that explicitly bar federal courts from hearing probate related claims.

The Supreme Court has:

“...never recognized a "probate exception" to federal jurisdiction - i.e., a blanket jurisdictional bar that is uniquely applicable to probate-related claims." To the contrary, throughout its history, this Court repeatedly has held that there is broad federal jurisdiction over all kinds of probate related claims, including claims to decedents' estates by heirs, legatees and creditors.

In the occasional case where the Court held that there was no jurisdiction over a particular probate-related claim, it did so because a statutory jurisdictional requisite was not met - for example, because the parties were not diverse or because the plaintiff had not pled a case "at common law or in equity" - *not* because a non-statutory subject-matter exception precluded the exercise of federal jurisdiction.”<sup>9</sup>

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<sup>7</sup> Section 1, cl. 2 reads in pertinent part: “The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution [and] the Laws of the United States.”

<sup>8</sup> The grant of federal question jurisdiction under the Judiciary Act of 1875, 18 Stat. at 470, was later codified as 28 U.S.C. § 1331: “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Diversity jurisdiction as originally granted by the Judiciary Act of 1789, 1 Stat. at 78, is codified in 28 U.S.C. 1332(a):

The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$ 75,000, exclusive of interest and costs, and is between (1) Citizens of different States; (2) citizens of a State and citizens or subjects of a foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state, defined in section 1603(a) of this title as plaintiff and citizens of a State or of different States.

<sup>9</sup> Please see *Brief for Petitioner Vickie Lynn Marshall in the Supreme Court of the United States No. 04-1544 - Summary of Argument page 9*

Recently, in *Marshall*, the Supreme Court revisited the probate exception, cautioning against its expansive application and stating that the probate exception is "narrow," and should not be used as an excuse for federal courts to decline to exercise jurisdiction over actions merely because they involve a probate-related matter.

Amongst the relevant progeny of *Marshall* are *Lefkowitz v. Bank of New York*, 528 F.3d 102, 104 (2d Cir. 2007), and *Wisecarver v. Moore*, 489 F.3d 747 (6th Cir.2007) each of which specifically describes Curtis's four causes of action as outside the probate exception to federal diversity jurisdiction. Following in the wake of *Marshall*, the *Lefkowitz* court stated the exception thusly:

“While the issues involved in Plaintiff's remaining claims undoubtedly intertwine with the litigation proceeding in the probate courts, in addressing the claims, the federal court will not be asserting control of any res in the custody of a state court. A federal court properly “exercise[s] its jurisdiction to<sup>10</sup> adjudicate rights in [property in the custody of a state court] where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.” *Marshall*, 126 S.Ct. at 1747 (citing *Markham*, 326 U.S. at 494, 66 S.Ct. **The probate exception can no longer be used to dismiss “widely recognized tort[s]” such as breach of fiduciary duty or fraudulent misrepresentation merely because the issues intertwine with claims proceeding in state court. Accordingly, these claims may not be dismissed under the probate exception.**” (Emphasis added) *Lefkowitz v. Bank of New York*, 528 F.3d 102, 104 (2d Cir. 2007)

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<sup>10</sup> *Marshall*, 126 S.Ct. at 1748

In *Wisecarver v. Moore*, 489 F.3d 747 (6th Cir.2007), a case uniquely similar to the case in point in both fact and law, Plaintiffs raised 12 causes of action. The District Court dismissed the case under the probate exception to diversity. Wisecarver appealed the dismissal. Counts one through three were abandoned on appeal and of the nine remaining claims, five were dismissed and four were reversed and remanded. Most of the five tort claims were dismissed because the relief requested sought a probate related remedy, not because the causes themselves were within the dominion of probate per se. The Wisecarver court's legal reasoning concluded that:

12

Therefore, to the extent that Plaintiffs' claims seek *in personam* jurisdiction over the Defendants, and do not seek to probate or annul a will, the probate exception does not apply. Turning to the complaint, Plaintiffs allege, in relevant part:

13

Loretta Moore and Evelyn Page exercised undue influence on Floyd C. McCamy, and procured from Floyd C. McCamy his signature on testamentary documents . . . . The plaintiffs, upon information and belief, allege that the defendants obtained a Power of Attorney from the deceased prior to his death and used that Power of Attorney for their benefit. The defendants . . . failed to use good faith in exercising the authority granted by the power of attorney.

14

The defendants . . . through the use of their fiduciary and confidential relationship, with Floyd C. McCamy, prior to his death, persuaded him at a time when he was both physically and mentally incompetent, to execute a Will leaving his entire Estate to them even though the bulk of his Estate had come from the family of the plaintiffs and the deceased, Floyd C. McCamy, had stated his intent to leave the Estate to the plaintiffs.

15

[Defendants] . . . used their relationship with Mr. McCamy and his frail, weak and deteriorating physical and mental condition to create animosity towards the plaintiffs and to exercise dominion and control over McCamy.

16

[B]y virtue of the confidential and fiduciary relationship and the defendants' dominance over Floyd C. McCamy, defendants procured a Will from him which was not the intent or desire of Floyd C. McCamy and was designed solely for the benefit of the defendants . . .

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17

[D]efendants . . . manipulated Floyd C. McCamy by means of undue pressure and undue influence in order to cause Floyd C. McCamy to execute a Will whereby the defendants were materially benefited [sic].

18

Defendants . . . by way of conversion, have retained money and personal property of the deceased and have exercised dominion and control over such property as their own to [the] exclusion of the rightful owner. . . .

19

Liberally construed, Plaintiffs' claims for breach of fiduciary duty, breach of confidential relationship, undue influence, and fraud are not barred by the probate exception because they seek *in personam* jurisdiction over the Defendants and do not seek to probate or annul a will. Instead, these claims allege that the Defendants received assets from McCamy during his lifetime by misusing the Power of Attorney executed by McCamy in their favor and that Plaintiffs were damaged as a result. Moreover, these assets were allegedly transferred during McCamy's lifetime and were therefore not part of his estate at his death. Thus, these assets were not subject to the probate court's disposition of McCamy's estate. *See Lamica v. Pierre*, No. 5:05-CV-964, 2006 WL 3423861 (N.D.N.Y. Nov. 28, 2006) (finding probate exception inapplicable to claims relating to property transferred before decedent's death).

20

Since *Marshall*, other circuit courts considering similar claims have also held that causes of action alleging breach of fiduciary duties, fraud, and undue influence do not necessarily fall within the scope of the probate exception. *See Campi v. Chirco Trust UDT*, No. 05-55595, 2007 WL 628049, at \*1 (9th Cir. Feb. 27, 2007) (cause of



action alleging fraud, undue influence, and breach of fiduciary duties regarding property removed from a trust and never probated not barred by probate exception); *Jones v. Brennan*, 465 F.3d 304, 307-308 (7th Cir.2006) (breach of fiduciary duty claim regarding guardian's mismanagement not barred by probate exception). These decisions follow *Marshall's in personam/in rem* distinction and find that the principles underlying the probate exception are not implicated when federal courts exercise jurisdiction over claims seeking *in personam* jurisdiction based upon tort liability because the claims do not interfere with the *res* in the state court probate proceedings or ask a federal court to probate or annul a will.

21

Even though these claims in this case seek *in personam* jurisdiction, a majority of the relief that Plaintiffs seek would involve disturbing McCamy's estate, which has already been probated. For instance, Plaintiffs seek: (1) an order enjoining Defendants' disposition of assets received from McCamy's estate, (2) an order divesting Defendants of all property retained by them, which should be turned over to Plaintiffs as the heirs, next of kin, and intended beneficiaries of the deceased, and (3) a declaration that McCamy's probated will be declared invalid and that Defendants be denied any of the benefits of McCamy's will. Granting this relief is precisely what the probate exception prohibits because it would require the district court to dispose of property in a manner inconsistent with the state probate court's distribution of the assets. *Marshall*, 126 S.Ct. at 1748.

22

However, **Plaintiffs also seek two forms of relief which would not implicate the probate exception. First, they seek an accounting of assets received during the last two years of McCamy's life. As mentioned above, the removal of these assets from McCamy's estate during his lifetime removes them from the limited scope of the probate exception.** Second, they seek a monetary judgment in an amount to be determined in relation to the assets so removed.

23

Plaintiffs' remaining claims, those seeking money damages and other remedies relating to the procurement and promotion of a false will, are barred by the probate exception. These claims challenge the validity of McCamy's will and would require the district court to "disturb or affect the possession of property in the custody of a state court" because the state court already probated McCamy's estate. *Jones*, 465

F.3d at 307-08. These claims clearly involve the probate or annulment of a will and thus are barred by the probate exception.

24

AFFIRMED in part and REVERSED in part. *Wisecarver v. Moore*, 489 F.3d 747 (6th Cir.2007)

Although the Wisecarver Court makes a valid distinction as it relates to estates, Curtis questions whether a trust distribution remedy remains a valid factor in determining application of the probate exception in the wake of Marshall.

### **PROBATE EXCEPTION SUMMARY**

The “*nature of the claim*” test has always been the choice of the Fifth Circuit. Breach of fiduciary causes were not excluded under the probate exception in the Fifth Circuit, even before Marshall, so long as the relief sought was in personam, and granting it would not interfere with state probate proceedings.

The absence of *custodia legis* negates application of the law of “*Comity*”.

The “*route test*” can no longer be used to exclude federal subject matter jurisdiction after the Supreme Court’s holding in *Marshall*.

The civil torts complained of in the Court below are not ancillary to probate and, thus, the Seventh Circuit’s *Practical Test* does not apply, nor do any of the three abstention doctrines. Like the “*route test*” Curtis believes application of the Seventh Circuit’s “ancillary to probate” or “practical test” may not be wholly viable after Marshall, and that trust matters are not barred by any so-called probate exception.

## **BREACH OF FIDUCIARY IS A VIOLATION OF PUBLIC POLICY**

Curtis alleges Defendants have failed to fully disclose all material facts affecting her beneficial interest, refused to provide non-privileged documents and information as requested, appear to have mismanaged assets, may have engaged in self-dealing, co-mingling and use of fiduciary property to the injury of Curtis and for their own benefit, have failed to file true, complete, accurate and timely accountings, appear to have failed to maintain accurate books and records, have refused to disclose acts of administration, appear to have caused tax liabilities in a manner violative of trust terms, have shown bias and hostility towards Curtis, appear to have trespassed upon the Elmer Brunsting irrevocable decedents trust, to which Defendants are most likely not the proper co-trustees, and appear to have failed to protect assets in which Curtis has a beneficial interest.

Where there is a claim of breach of fiduciary regarding any transaction, and the appearance of a conflict of interest is shown, the presumption of impropriety applies and the burden of bringing forth proof that the actions were fair, necessary or justified is upon the fiduciary. The federal courts are not foreclosed from addressing these kinds of public policy concerns whether civil, criminal or both.

## **DUE PROCESS**

Due Process unquestionably requires both notice and a meaningful opportunity to be heard. The burden of establishing jurisdiction of any court over

either person or subject matter is upon the Plaintiff. However, Defendants never filed a motion challenging jurisdiction under Fed.R.Civ.P. 12(b). The Court never invited briefs on application of the probate exception to this case, there was no jurisdictional hearing, and there are no transcripts of any conference or hearing.

The Court's a priori order, issued sua sponte, denied Curtis Due Process, as Curtis has a right to notice and a meaningful opportunity to be heard on any jurisdictional challenge, prior to the Court's dismissal of the action.

For purposes of a motion to dismiss for lack of subject matter jurisdiction as a matter of law, the factual allegations of the complaint are presumed to be true and all reasonable inferences are to be made in favor of the plaintiff. *Whisnant v. United States*, 400 F.3d 1 177, 1 179 (9th Cir. 2005)

However, where the jurisdictional issue is bound up with the merits, the entire factual dispute is appropriately resolved by the proceeding on the merits. *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983)

Justice Ginsberg authored the Supreme Court's opinion in *Marshall* and ends that 12 page instrument with the following quote:

“Rather than preserving whatever vitality that the "exception" has retained as a result of the *Markham* dicta, I would provide the creature with a decent burial in a grave adjacent to the resting place of the *Rooker-Feldman* doctrine. [\*\*\*46] See *Lance v. Dennis*, 546 U.S. 459, 126 S. Ct. 1198, 163 L. Ed. 2d 1059 (2006) (Stevens, J., dissenting).”

## CONCLUSION

Breach of fiduciary, extrinsic and constructive fraud, and intentional infliction of emotional distress clearly fall outside what remains of the so-called “probate exception” to federal subject matter jurisdiction, whether or not the obligations breached interweave with trust or estate matters.

The Federal Court is only excluded from exercising the limited ministerial functions of probate courts, and those limits are consistent with what is expressed in Texas Probate Code §4.

The Federal Court has statutory jurisdiction to hear this controversy, and has the equitable jurisdiction to provide any relief that could be obtained from the Texas District Court under Texas Property Codes § 114.008 and § 115.001, including interpreting trust provisions, enjoining trustees from acting, compelling trustees to account, replacing trustees, dissolving a trust, distributing trust assets and any other relief that could be obtained from the Texas State District Court.

Wherefore, Plaintiff-Appellant Curtis herein respectfully moves this court to issue an order reversing the District Court’s dismissal of her four causes of action, and remand to the District Court for further proceedings consistent with this Court’s learned opinion.

Further, Curtis asks this Court for instruction to the U. S. District Court, to reconsider her application for injunction with a proper view of the law and in light of the fact Defendants have been served.

Curtis also asks that Defendants' counsel Bernard Mathews be ordered to show cause why he should not be held in contempt and sanctioned for perpetrating a fraud upon the District Court, and further order that Defendants are to bear the costs associated with this appeal.

Respectfully submitted,

*/s/*

---

Candace Louise Curtis  
1215 Ulfian Way  
Martinez, CA 94553  
(925) 759-9020  
Plaintiff-Appellant pro se

**CERTIFICATE OF SERVICE**

I, Candace L. Curtis, certify that today, June 11, 2012, a copy of the brief for appellant, a copy of the record excerpts, and the official record in this case, consisting of one CD, were served upon George William Vie III, by certified mail, No. 7010 0290 0002 8531 8897, postage prepaid to him at One City Centre, 1021 Main Street, Suite 1950, Houston, TX 77002.

/s/

---

Candace L. Curtis



## CERTIFICATE OF COMPLIANCE

Pursuant to 5TH CIR. R. 32.2.7 (c), undersigned pro se Plaintiff-Appellant certifies that this brief complies with the type-volume limitations of 5TH CIR. R. 32.2.7 (b).

1. Exclusive of the portions exempted by 5TH CIR. R. 32.2.7 (b)(3), this brief contains 6,844 words printed in a proportionally spaced typeface.
2. This brief is printed in a proportionally spaced, serif typeface using Times New Roman 14 point font in text and Times New Roman 12 point font in footnotes produced by Microsoft Word 2010 software.
3. Upon request, undersigned will provide an electronic version of this brief and/or a copy of the word printout to the Court.
4. Undersigned understands that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in 5TH CIR. R. 32.2.7, may result in the Court's striking this brief and imposing sanctions against the person who signed it.

/s/

---

Candace L. Curtis



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## About Bernard L. Mathews

Texas Estate Planning Attorney



Bernard L. Mathews  
Attorney at Law

17-20360.3048

Mr. Mathews has a varied practice that includes estate planning, banking, probate litigation, business litigation and a multitude of other business related matters. He has practiced in Texas and California for 32 years. Mr. Mathews has designed estate plans for numerous clients. His asset protection experience has been developed through real world matters involving creditors, debtors and would-be debtors.

## EDUCATION

Juris Doctor, Loyola University of Los Angeles School of Law, 1978

Bachelor of Aerospace Engineering, Georgia Institute of Technology (Georgia Tech), 1969

## JURISDICTIONS ADMITTED TO PRACTICE

United States District Courts for all Districts of Texas and California

Fifth Circuit Court of Appeals

United States Tax Court

## PROFESSIONAL & BAR ASSOCIATION MEMBERSHIPS

State Bar of Texas and State Bar of California

Board Certified in Civil Trial Law by the Texas Board of Legal Specialization

Houston Bar Association

Probate, Trust and Estate Section

Litigation Section

Fee Dispute Committee

## PERSONAL

- Resident of Spring, Texas
- Married to Linda S. Mathews since 1974.
- One daughter, Kenna, a graduate of Texas A&M University and currently a benefits administrator for a nationwide apartment development company
- Former Aerospace Engineer
- Avid tennis player

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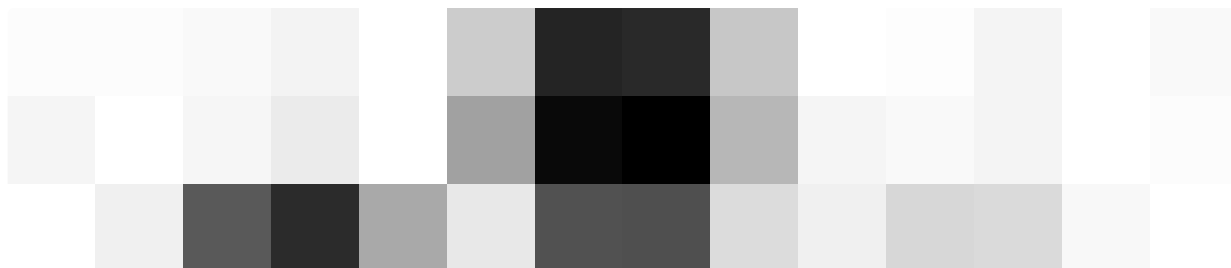
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17-20360.3051

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**Subject:** Brunsting Family Living Trust

---

**From:** Bernard Mathews (texlawyer@gmail.com)

---

**To:** bayless@baylessstokes.com; occurtis@sbcglobal.net; cbrunsting@sbcglobal.net;

---

**Cc:** akbrunsting@suddenlink.net; at.home3@yahoo.com; candace@vacek.com;

---

**Date:** Thursday, April 5, 2012 12:18 PM

---

Attached is a letter with the language set forth below, and a Trust Code Accounting with schedules. Related documents will be sent in a separate e-mail to reduce the size of the file.

"

via e-mail - [bayless@baylessstokes.com](mailto:bayless@baylessstokes.com)  
Carl Brunsting  
c/o Bobbie Bayless

via e-mail - [occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)  
Candace Curtis

via e-mail - [cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)  
Carole Brunsting

Re: Brunsting Family Living Trust

Dear Ms. Bayless, Curtis and Brunsting:

I represent Anita and Amy Brunsting in their capacity as Successor Trustees of the Brunsting Family Living Trust, and its sub-trusts (collectively, the "Trust"), in connection with litigation brought by Ms. Curtis and threatened by Carl Brunsting.

I have had previous contact with Ms. Curtis and Ms. Brunsting, but have not had occasion to discuss this matter with Ms. Bayless, as yet. I am hoping to have a frank discussion with her after the dissemination of the materials being forwarded to you with this letter.

Requests for an accounting have been received from Ms. Curtis. Forwarded with this letter is an accounting in the format required by Texas Trust Code §113.152. In addition, schedules for related matters are included for historical purposes.

I am also attaching a recent appraisal for the farm land in Iowa, and the appraisal and contract for the residential property in Houston.

The trustees have made every effort to provide you with a complete and accurate picture of the assets and liabilities of the Trust. It is not practical to copy and supply to all of you the supporting documents, but a date and time can be arranged at my offices, or the offices of Vacek & Freed, PLLC, to assemble all supporting documentation for your review. My only request is that we do this one time for all of you.

I am cognizant of the hearing set for April 13, 2012 in the Harris County District Court. I am hopeful that we can avoid proceeding on that hearing through cooperation and communication. If a meeting with the trustees would assist in this regard, I am happy to assist in arranging that.

17-20360.3052

As you may know, Ms. Bayless has requested that the original pour-over will of Nelva Brunsting be filed with the probate court. This has been done along with the will of Elmer Brunsting. Should we not be able to move forward on resolving questions and issues in connection with Trust administration, I will be moving to transfer the District Court matter, seeking authority for pre-suit discovery, to the Probate Court, under the cause number assigned to Nelva's will. I will all also be opposing the discovery on grounds that it is unnecessary and a burden on the Trust and the beneficiaries. If any discovery is authorized, I will request the opportunity to depose Carl Brunsting first, to determine that he has truly authorized this action against his sisters.

Obviously, I am hoping that family order can be restored, and we can work through this without court intervention.

Please let me know if you are unable to open the attachments associated with the e-mail of this letter, or want to have hard copies sent to you (please provide the address you would like me to use).

Please also contact me if you have any questions following your review of these materials, or want to schedule some form of follow up."

--

Bernard Lilse Mathews, III  
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Green & Mathews, LLP  
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(281) 580-8104 (fax)

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## Attachments

- Schedule J.pdf (50.26KB)
- Code 113.152 Accounting.pdf (32.62KB)
- Schedule A.pdf (72.88KB)
- Schedule B.pdf (94.48KB)
- Schedule C.pdf (24.97KB)
- Schedule D.pdf (163.79KB)
- Schedule E.pdf (600.14KB)
- Schedule F.pdf (185.87KB)

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- Schedule G.pdf (63.56KB)
- Schedule H.pdf (36.61KB)
- Schedule I.pdf (35.45KB)
- Lt Trust beneficiaries with accounting.pdf (46.14KB)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Curtis, et al

Plaintiffs

v

Kunz-Freed, et al

Defendants

§  
§  
§  
§  
§  
§

Civil Action No. 4:16-cv-01969

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**ORDER**

Upon due consideration, the Rule 12(b)(1) and 12(b)(6) Motions to Dismiss filed on November 2, 2016, by Defendant Bernard Mathews in the above styled cause (Dkt 81), should be Denied.

It is SO ORDERED

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Alfred H Bennet  
United Stated District Judge

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 DEFENDANT GREGORY LESTERS' MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(B)(6)**

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**I. Introduction**

1. 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, 18 U.S.C. §§1961-1968, and the right of private claims provided for at 18 U.S.C. §1964(c). (Dkt 1)

2. On November 7, 2016, Defendant Gregory Lester filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6). (Dkt 83)

## II. The Issues

- A. Plaintiffs have not adequately pleaded the necessary predicate acts.
- B. The Plaintiffs have not stated a RICO claim under section 1962(c).
  - 1. Plaintiffs have failed to adequately plead with particularity their fraud-based predicate acts as required by Federal Rule 9(b).
  - 2. Plaintiffs have failed to plead reliance in connection with their fraud related claims.
- C. Plaintiffs have failed to plead a cognizable RICO enterprise.
  - 1. Plaintiffs have failed to plead reliance in connection with their fraud related claims.
  - 2. Plaintiffs' enterprise allegations are too vague and conclusory.
  - 3. Plaintiffs' alleged enterprise lacks continuity.
- D. Plaintiffs have failed to adequately plead a pattern of racketeering activity.
- E. The Plaintiffs have not stated a RICO claim under section 1962(d).
  - 1. Plaintiffs' claims should be dismissed because Plaintiffs' allegations do not satisfy RICO's proximate cause standard.
- F. Plaintiffs' claims for "Hobbs Act," "wire fraud," "fraud under 18 U.S.C. §1001" and "Honest Services" fail because those statutes do not create private causes of action.
  - 1. The Hobbs Act does not create a private cause of action.
  - 2. The Wire Fraud statute does not create a private cause of action.
  - 3. The claim for "Fraud under 18 U.S.C. §1001" is not a private cause of action.
  - 4. The claim for "Honest Services" is not a private cause of action.
  - 5. Plaintiffs rely on impermissible collective pleading.

### III. Plaintiffs' Argument

3. Defendant challenges the sufficiency of the RICO Complaint on all of the usual substantive ground, in every subdivision of the nine necessary pleading elements for 18 U.S.C. 1962(c) and 18 U.S.C. 1962(d) claims, but fails to consider the ambit of federal “aiding and abetting” and “conspiracy” statutes.

4. Defendant asks the Court to take a disjointed view of the mosaic as if its parts were somehow unrelated, but Defendants are each charged with “participation” in the affairs of an enterprise through “in-concert aiding and abetting”. Plaintiffs need only show that Defendant performed an act in furtherance of the goals of the enterprise.

#### **Participation**

5. Gregory Lester is charged with participation in the affairs of an enterprise through a pattern of racketeering activity involving the commission of two or more predicate acts. Mr. Lester’s Motion admits there are almost fifty predicate acts claims, but argues that none specifically relate to him.

6. Mr. Lester’s Motion actually admits to his participation and, while claiming Plaintiffs’ Addendum of Memorandum is “replete with inaccuracies”, Mr. Lester’s introduction claims Plaintiff Candace Curtis is a disgruntled sibling in a probate case.

7. The record will show that Candace Curtis is a Plaintiff in a federal breach of fiduciary lawsuit, involving only the Brunsting Trusts<sup>1</sup> (Exhibit 1), that the case was dismissed under the probate exception, (Exhibit 1 entry 14) and appealed to the Fifth Circuit Court of Appeals,

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<sup>1</sup> Curtis v Brunsting 4:12-cv-592 filed TXSD 2/27/2012 and 704 F.3d 406.

(Exhibit 1 entry 16) where the dismissal was reversed and remanded back to the U.S.D.C. (Dkt 34-4)<sup>2</sup>

8. Back in the U.S.D.C. “Plaintiff Curtis” obtained a preliminary injunction to prevent wasting of trust assets.<sup>3</sup> On that very same day, federal Plaintiff Candace Curtis was named a “Nominal Defendant” in a state probate court suit styled “Carl Henry Brunsting Individually and as Executor for the Estates of Elmer and Nelva Brunsting”, (Dkt 33-6) hereinafter “The Probate Matter”.

9. “The Probate Matter” raises only claims relating to the Brunsting Trusts. It should be noted that the Brunsting Trusts were in the custody of a federal Court when the state court claims were filed.

10. The record will also show that Defendant Jason Ostrom filed an unopposed motion to remand Curtis v Brunsting to state probate court, to be consolidated with the “Estate of Nelva Brunsting” 412,249, where federal “Plaintiff Curtis” was named “Defendant Curtis”.

11. Curtis v Brunsting, in the Fifth Circuit, soured the market for looting inter vivos trusts under the pretext of probate administration and these Defendant “legal professionals” are a bunch of disgruntled members of a probate bully mob seeking vengeance for being on the losing end of a fully litigated Federal Fifth Circuit determination, that inter vivos trusts are not assets of a probate estate and are not subject to their degenerate version of probate administration.<sup>4</sup>

12. Mr. Lester’s participation involved drafting a false report for a purpose other than that for which it was authorized and Mr. Lester’s participation is easily shown by the documented sequence of events and his own admissions.

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<sup>2</sup> Also Docket entry 24 in Curtis v Brunsting 4:12-cv-592

<sup>3</sup> Curtis v Brunsting 4:12-cv-592 Docket entry 40 (Dkt 26-2 in this case)

<sup>4</sup> See the Brunsting Wills (Dkt 41-3 and 41-4)

#### **IV. The Report of Temporary Administrator Gregory Lester**

13. The “Report of Temporary Administrator Pending Contest”, (Dkt 83-2) was filed in the “Estate of Nelva Brunsting” 412249 on January 14, 2016.

14. The “Report” is not a report but a caricature of the racketeering conspiracy itself. It is a confession of the intention of all of these Defendants, as exemplified by the public record, to redirect the Brunsting inter vivos trust assets into a probate court, where there is not, and has never been, in Rem jurisdiction over the Brunsting Trusts.

15. The manifest purpose for the “Report” was to further the artifice initiated by Bayless when she filed exclusively trust related lawsuits in state courts, in the name of an estate, on January 29, 2013 and April 9, 2013.

16. Gregory Lester and Jill Willard Young agreed to further that plan on and before September 10, 2015<sup>5</sup>. Part of that scheme was to bully the beneficiaries of the Trusts into a sham mediation, staged for the sole purpose of extracting attorney fees from the Brunsting Trusts. (Dkt 26-16)

17. The “Report”, when compared to the record, displays numerous misstatements and contradictions, while merely posing as a report on the validity of “Estate” claims, as hereinafter more fully appears.

18. The “Report” never once mentions the Wills of Elmer or Nelva Brunsting and never once identifies an heir nor any assets belonging to the “Estates”.

19. In evaluating the “Estate” claims, the substance of the “Report” mentions Trustees and the Brunsting Trusts one-hundred fifty-five (155) times, while the words “Estate” (7) and probate (17) appear only in non-substantive contexts.

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<sup>5</sup> This is the hearing referred to by Defendant Neal Spielman on March 9, 2016 (Dkt 26-16) and Plaintiffs have been unable to obtain a transcript or an explanation from Mr. Baiamonte for the lack thereof.



20. It has already been shown that the approved inventories (Dkt 41-7) contain only one-half of an old car and the pending claims against Candace Freed in the District Court, but neither is mentioned in the “Report”.

21. The “Report” never mentions the merits of the “Estate” claims, but focuses entirely on claims relating to beneficiaries of the heir-in-fact “Trust”, which had already been held in the Fifth Circuit not to be property belonging to the “Estates”. (Dkt 34-4)

22. It should also be noted that administration of both Estates had been dropped on April 4, 2013, (Dkt 41-5 and 41-6) just five days before “The Probate Matter” involving only the Brunsting Trusts was filed. (Dkt 34-7)

23. In the Addendum to the report, later filed by Mr. Lester, (Exhibit 2) he states the following (emphasis added):

**Trustees of the Brunsting Family Living Trust**

*On July 1, 2008 an Appointment of Successor Trustees was executed by Nelva Erleen Brunsting, also known as Nelva E. Brunsting, pursuant to Article IV. Section B. of the Brunsting Family Living Trust. This document appointed Carl Henry Brunsting and Anita Kay Brunsting as successor co-trustees if Nelva E. Brunsting fails or ceases to serve. If either Carl Henry Brunsting or Anita Kay Brunsting should fail or cease to serve, then the remaining successor trustee would serve alone. If neither successor co-trustee is able or willing to serve, then **The Frost National Bank** shall serve as the sole successor trustee. A copy of the Appointment of Successor Trustees is attached hereto as the first exhibit to first supplement.*

24. What the instrument actually says is (emphasis added):

*“If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then **CANDACE LOUISE CURTIS** shall serve as sole successor Trustee. In the event **CANDACE LOUISE CURTIS** is unable or unwilling to serve, then **THE FROST NATIONAL BANK** shall serve as sole successor Trustee.”*

**Defendant Exhibit A**

25. Defendant's Exhibit A (Dkt 83-1) is the Order Appointing Temporary Administrator Gregory Lester.

26. The appointment was made pursuant to Estates Code 452.051 which reads:

*SUBCHAPTER B. TEMPORARY ADMINISTRATION PENDING CONTEST OF A WILL OR ADMINISTRATION*

*Sec. 452.051. APPOINTMENT OF TEMPORARY ADMINISTRATOR. (a) If a contest related to probating a will or granting letters testamentary or of administration is pending, the court may appoint a temporary administrator, with powers limited as the circumstances of the case require.*

*(b) The appointment may continue until the contest is terminated and an executor or administrator with full powers is appointed.*

*(c) The power of appointment under this section is in addition to the court's power of appointment under Subchapter A.*

*Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.*

*Amended by:*

*Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 44, eff. September 1, 2015.*

27. In the Order the Probate Court found that it had jurisdiction and venue over the Decedent's Estate and appointed Mr. Lester "Temporary Administrator" with limited powers to evaluate all claims filed against 1) Candace Freed 2) Anita Kay Brunsting, 3) Amy Ruth Brunsting, and 4) Carole Ann Brunsting, (Dkt 83-1 Numbered paragraph 1) and report to the Court regarding the merits of those claims.

28. The cestui que (beneficiary) is "the Trust" and the Trust is the only heir-in-fact to the Estates. Assets in the inter vivos trusts are not property belonging to the Estates and do not come within the purview of "probate administration".<sup>6</sup>

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<sup>6</sup> Curtis v Brunsting 704 F.3d 406, 410 (Jan 2-13)

29. Does the “Estate” have standing to bring claims against beneficiaries for trespass against the cestui que trust, committed during the life of a Grantor, or do those claims belong to the beneficiaries and the heir-in-fact Trust?

30. This question was settled in the Fifth Circuit in connection with the very Trusts at issue here, but was never considered in the report on the merits of any “Estate” claims.

#### **V. The Report and the Extortion Instrument**

31. The “Report” contains numerous assertions that misapplications of fiduciary are benign, justified, or can simply be “equalized” with more distributions of Brunsting Trust assets.

32. The “Report” ultimately concludes that if the Court were to rule on the “No Contest Clause” in the 8/25/2010 QBD, Curtis and her brother Carl would take nothing from the litigation.

33. The “Report” does not mention the controversy regarding the instrument, (Dkt 26-5 and 26-11) or which of the three alleged versions he selected for what reasons, or how it stretches beyond the limits stated in the report to reach to the irrevocable, un-amendable Trusts, or how any of that relates to property belonging to an Estate.

34. The “Report” contains warped conclusions, and while paraphrasing the irrevocable and unamendable trust provisions, the “Report” ultimately determines that changes alleged to have been made by Nelva alone were proper, “unless it can be shown Nelva was incompetent”. (Dkt 83-2 page 10)

35. The facts of record are that Nelva wrote to Candace Curtis in her own hand verifying that what Anita and Amy claim Nelva said and did (through the 8/25/2010 QBD) is “not true”. (Exhibit 3)

36. Nelva was not incompetent, the laws of the Trusts do not allow changes to be made by Nelva alone, no court of competent jurisdiction changed the trusts, and Nelva's state of mind at the time changes were made is irrelevant.

#### **VI. Amendment and Adoption by Reference**

37. Pursuant to the authority provided by Federal Rule of Civil Procedure 10(b) and 15(a)(1), Plaintiffs hereby adopt and incorporate by reference into Plaintiffs' original complaint (Dkt 1), the Addendum of Memorandum and the pleadings subsumed therein, (Dkt 26) and all of Plaintiffs' Replies to Defendants' Motions, as if fully expressed in said Complaint, including but not limited to Docket entries 33, 34, 41, 45, 57, 61, 62, 65, 69, 85, 86, this reply, and the attached exhibits, as if fully expressed therein.

38. Plaintiffs further adopt and incorporate by reference all of the Defendants' Motions and pleadings, the claims stated therein and the exhibits attached, as exhibits in support of Plaintiffs' Complaint, including but not limited to Docket entries 19, 20, 23, 25, 30, 35, 36, 38, 39, 40, 53, 78, 79, 81, 83, and 84, as if fully attached as exhibits thereto.

#### **VII. Conclusion**

39. Plaintiffs have more than adequately pled person, enterprise, conspiracy, pattern and fraud with the necessary particularity, and with each response to Motions to Dismiss, Plaintiffs establish participation and continuity more fully.

40. Defendant may not assert opposing claims of fact under federal Rule 12(b)(6).

41. None of the Brunsting siblings are heir to the estates of Elmer or Nelva Brunsting, none have challenged either Will, and none have individual standing in the "Estates of Elmer or Nelva Brunsting". (Dkt 41-3 and 41-4)

42. Assets in the Brunsting inter vivos trusts are not assets belonging to any “Estate” and are not subject to probate administration. (Dkt 34-4) The Executor of the Estates has no standing to bring “Estate” claims relating to the inter vivos trusts in any probate court.

43. Curtis v Brunsting 4:12-cv-592 is a lawsuit involving only the Brunsting Trusts<sup>7</sup>.

44. Upon the death of Elmer Brunsting the family trust not only became irrevocable, but it became unamendable, and the Decedent’s Trust was created both irrevocable and unamendable. The only exception is “Court of Competent Jurisdiction”. The Brunsting trusts could not even be decanted without court intervention and were not lawfully decanted, amended or revoked.

45. There is no 8/25/2010 QBD as a matter of law and nothing in the Lester report can be defended against the record of proceedings or the law of the trust.

46. Gregory Lester should be held to defend his “Report” under oath, just as all of these Defendants should.

WHEREFORE, Plaintiffs respectfully move this Honorable Court for an Order denying the Motion to Dismiss filed by Defendant Gregory Lester November 7, 2016. (Dkt 83)

Respectfully submitted,

November 27, 2016,

/s/Candace L. Curtis  
Candace L. Curtis

/s/Rik W. Munson  
Rik W. Munson

---

<sup>7</sup> Curtis v Brunsting 704 F.3d 406 (Jan. 2013)

**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 27<sup>th</sup> day of November 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/Candace L. Curtis  
Candace L. Curtis

/s/Rik W. Munson  
Rik W. Munson

CLOSED,REMANDED

**U.S. District Court  
SOUTHERN DISTRICT OF TEXAS (Houston)  
CIVIL DOCKET FOR CASE #: 4:12-cv-00592**

Candace Louise Curtis v. Anita Kay Brunsting et al **Case  
remanded to Harris County Probate Court No. 4.**

Assigned to: Judge Kenneth M. Hoyt  
Cause: 28:1332 Diversity-Fraud

Date Filed: 02/27/2012

Date Terminated: 05/15/2014

Jury Demand: Plaintiff

Nature of Suit: 370 Other Fraud

Jurisdiction: Diversity

**Special Master**

**William West**  
*Accountant*

represented by **Timothy Aaron Million**  
Hughes Watters Askanase  
Total Plaza  
1201 Louisiana St., 28th Floor  
Houston, TX 77002  
713-759-0818  
Fax: 713-759-6834  
Email: tmillion@hwa.com  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Candace Louise Curtis**

represented by **Jason B Ostrom**  
Ostrom Sain LLP  
5020 Montrose Blvd  
Ste 310  
Houston, TX 77006  
713-863-8891  
Email: jason@ostromsain.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Carl Brunsting**  
*Necessary Party and Involuntary Plaintiff*

represented by **Carl Brunsting**  
PRO SE

V.

**Defendant**

**Anita Kay Brunsting**

represented by **Bernard Lilse Mathews , III**  
Green and Mathews LLP  
14550 Torrey Chase Blvd  
Suite 245

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Houston, TX 77014  
281-580-8100  
Fax: 281-580-8104  
Email: texlawyer@gmail.com  
*TERMINATED: 02/20/2013*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**George William Vie , III**  
Mills Shirley LLP  
2228 Mechanic Street  
Suite 400  
Houston, TX 77550  
713-571-4232  
Fax: 713-893-6095  
Email: gwv\_order@millsshirley.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Amy Ruth Brunsting**

represented by **Bernard Lilse Mathews , III**  
(See above for address)  
*TERMINATED: 02/20/2013*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**George William Vie , III**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Does 1-100**

**Defendant**

**Carole Ann Brunsting**

**Defendant**

**Candace L. Kunz-freed**

**Defendant**

**Albert E. Vacek Jr.**

**Defendant**

**Vacek & Freed, PLLC**

**Defendant**

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**The Vacek Law Firm PLLC****Defendant****Bernard Lilse Mathews III**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
02/27/2012	<a href="#">1</a>	PLAINTIFF'S ORIGINAL PETITION, COMPLAINT AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION against Amy Ruth Brungsting, Anita Kay Brunsting (Filing fee \$ 350) filed by Candace Louise Curtis. (Attachments: # <a href="#">1</a> Continuation, # <a href="#">2</a> Continuation, # <a href="#">3</a> Continuation, # <a href="#">4</a> Continuation, # <a href="#">5</a> Continuation, # <a href="#">6</a> Continuation, # <a href="#">7</a> Continuation, # <a href="#">8</a> Continuation, # <a href="#">9</a> Continuation, # <a href="#">10</a> Continuation, # <a href="#">11</a> Continuation, # <a href="#">12</a> Continuation, # <a href="#">13</a> Continuation)(dterrell, ) Modified on 2/27/2012 (dterrell, ). (Entered: 02/27/2012)
02/27/2012	<a href="#">2</a>	PROPOSED ORDER Injunctinctive Order Temporary Restraining Order, Asset Freeze, Production of Documents and Records, Appointment of Receiver, filed. (dterrell, ) (Entered: 02/27/2012)
02/27/2012	<a href="#">3</a>	INITIAL DISCLOSURES by Candace Louise Curtis, filed.(dterrell, ) (Entered: 02/27/2012)
02/27/2012	<a href="#">4</a>	REQUEST for Production of Documents from Anita Kay Brunsting and Amy Ruth Brunsting by Candace Louise Curtis, filed.(dterrell, ) (Entered: 02/27/2012)
02/27/2012	<a href="#">5</a>	NOTICE by Candace Louise Curtis, filed. (dterrell, ) (Entered: 02/27/2012)
02/27/2012	<a href="#">6</a>	NOTICE by Candace Louise Curtis, filed. (dterrell, ) (Entered: 02/27/2012)
02/27/2012		Civil Filing fee re: <a href="#">1</a> Complaint,, : \$350.00, receipt number CC003143, filed. (dterrell, ) (Entered: 02/27/2012)
02/27/2012		Summons Issued as to Amy Ruth Brunsting, Anita Kay Brunsting, filed.(dterrell, ) (Entered: 02/27/2012)
02/28/2012	<a href="#">7</a>	ORDER for Initial Pretrial and Scheduling Conference by Telephone and Order to Disclose Interested Persons. Counsel who filed or removed the action is responsible for placing the conference call and insuring that all parties are on the line. The call shall be placed to (713)250-5613. Telephone Conference set for 5/29/2012 at 09:30 AM by telephone before Judge Kenneth M. Hoyt.(Signed by Judge Kenneth M. Hoyt) Parties notified.(ckrus, ) (Entered: 02/28/2012)
03/01/2012	<a href="#">8</a>	ORDER denying the application for a temporary restraining order and for injunction. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/01/2012)
03/05/2012	<a href="#">9</a>	Letter from Rik Munson re: serving copies on parties, filed. (Attachments: # <a href="#">1</a> cover letter) (saustin, ) (Entered: 03/05/2012)

03/06/2012	<a href="#">10</a>	EMERGENCY MOTION by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Attachments: # <a href="#">1</a> Affidavit Affidavit of Amy Brunsting, # <a href="#">2</a> Exhibit Property Appraisal, # <a href="#">3</a> Exhibit Sale Contract, # <a href="#">4</a> Exhibit Tax Appraisal, # <a href="#">5</a> Supplement Request for Hearing, # <a href="#">6</a> Proposed Order Proposed Order) (Mathews, Bernard) (Entered: 03/06/2012)
03/06/2012	<a href="#">11</a>	Corrected MOTION Removal of Lis Pendens by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Mathews, Bernard) (Entered: 03/06/2012)
03/06/2012	<a href="#">12</a>	NOTICE of Setting. Parties notified. Telephone Conference set for 3/7/2012 at 11:00 AM by telephone before Judge Kenneth M. Hoyt, filed. The call shall be placed to (713)250-5613. (chorace) (Entered: 03/06/2012)
03/08/2012	<a href="#">13</a>	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on 3/7/12 Appearances: Candace L. Curtis, pro se, Bernard Lilse Mathews, III.. The Court will, sua sponte, dismiss the pltf's case by separate order for lack of jurisdiction. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/08/2012)
03/08/2012	<a href="#">14</a>	ORDER OF DISMISSAL ( <i>Sua Sponte</i> ) re: <a href="#">10</a> EMERGENCY MOTION, <a href="#">11</a> Corrected MOTION Removal of Lis Pendens. The Court lacks jurisdiction and this case is dismissed. To the extent that a <i>lis pendens</i> has been filed among the papers in federal Court in this case, it is cancelled and held for naught. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/08/2012)
03/09/2012	<a href="#">15</a>	Plaintiff's Answer to <a href="#">11</a> Corrected MOTION Removal of Lis Pendens filed by Candace Louise Curtis. (pyebnetsky, ) (Entered: 03/12/2012)
03/12/2012	<a href="#">16</a>	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: <a href="#">14</a> Order of Dismissal, by Candace Louise Curtis (Filing fee \$ 455), filed.(mlothmann) (Entered: 03/12/2012)
03/16/2012	<a href="#">17</a>	Notice of Assignment of USCA No. 12-20164 re: <a href="#">16</a> Notice of Appeal, filed. (sguevara, ) (Entered: 03/16/2012)
03/26/2012	<a href="#">18</a>	Notice of the Filing of an Appeal. DKT13 transcript order form was not mailed to appellant. Fee status: Not Paid. The following Notice of Appeal and related motions are pending in the District Court: <a href="#">16</a> Notice of Appeal, filed. (Attachments: # <a href="#">1</a> Order Dismissal, # <a href="#">2</a> Notice of Appeal, # <a href="#">3</a> Docket sheet, # <a href="#">4</a> Motion IFP)(lfilmore, ) (Entered: 03/26/2012)
03/30/2012		USCA Appeal Fees received \$ 455, receipt number HOU022939 re: <a href="#">16</a> Notice of Appeal, filed.(klove, ) (Entered: 03/30/2012)
04/12/2012	<a href="#">19</a>	Form 22 TRANSCRIPT ORDER FORM by Candace Louise Curtis. Transcript is unnecessary for appeal purposes. This order form relates to the following: <a href="#">16</a> Notice of Appeal, filed.(mlothmann) (Entered: 04/16/2012)
04/26/2012		The Electronic record on appeal has now been certified to the Fifth Circuit Court of Appeals re: <a href="#">16</a> Notice of Appeal USCA No. 12-20164, filed.(blacy, ) (Entered: 04/26/2012)

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08/16/2012	<a href="#">20</a>	Transmittal Letter on Appeal Certified re: <a href="#">16</a> Notice of Appeal. A paper copy of the electronic record is being transmitted to the Fifth Circuit Court of Appeals in 3 volumes. (USCA No. 12-20164), filed.(hler, ) (Additional attachment(s) added on 8/17/2012: # <a href="#">1</a> UPS Tracking #) (hler, ). (Entered: 08/16/2012)
08/20/2012	<a href="#">21</a>	Transmittal Letter on Appeal Certified re: <a href="#">16</a> Notice of Appeal. CDs containing the electronic record are being sent to Bernard Lilse Mathews, III, filed.(hler, ) (hler, ). (Entered: 08/20/2012)
02/05/2013	<a href="#">22</a>	JUDGMENT of USCA for the Fifth Circuit re: <a href="#">16</a> Notice of Appeal ; USCA No. 12-20164. The judgment of the District Court is REVERSED, and the cause is REMANDED to the District Court for further proceedings in accordance with the opinion of the Court. Case reopened on 2/5/2013, filed.(jdav, ) (Entered: 02/05/2013)
02/05/2013	<a href="#">23</a>	Court of Appeals for the Fifth Circuit LETTER advising the record/original papers/exhibits are to be returned (USCA No. 12-20164), filed.(jdav, ) (Entered: 02/05/2013)
02/05/2013	<a href="#">24</a>	OPINION of USCA for the Fifth Circuit re: <a href="#">16</a> Notice of Appeal ; USCA No. 12-20164. The district court's dismissal of the case is REVERSED and the case is REMANDED for further proceedings. REVERSED AND REMANDED., filed.(jdav, ) (Entered: 02/05/2013)
02/06/2013	<a href="#">25</a>	NOTICE of Setting. Parties notified. Status/Scheduling Telephone Conference set for 2/19/2013 at 08:45 AM before Judge Kenneth M. Hoyt, filed. (dpalacios, ) (Entered: 02/06/2013)
02/17/2013	<a href="#">26</a>	NOTICE of Appearance by George W. Vie III on behalf of Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 02/17/2013)
02/19/2013	<a href="#">27</a>	ORDER FOLLOWING TELEPHONE STATUS/SCHEDULING CONFERENCE held on February 19, 2013 at 8:45 a.m. Appearances: Candace Curtis, pro se, George Vie ETT: TBA. Jury trial. Joinder of Parties due by 4/30/2013 Pltf Expert Witness List due by 9/30/2013. Pltf Expert Report due by 9/30/2013. Deft Expert Witness List due by 10/30/2013. Deft Expert Report due by 10/30/2013. Discovery due by 12/30/2013. Dispositive Motion Filing due by 12/30/2013. Docket Call set for 3/3/2014 at 11:30 AM in Courtroom 11A before Judge Kenneth M. Hoyt. The defendant's are to file an answer to the plaintiff's suit on or before March 4, 2013.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 02/19/2013)
02/20/2013	<a href="#">28</a>	ORDER that George W. Vie III and the law firm of Mills Shirley L.L.P. are substituted as attorneys of record for Defendants in lieu of Bernard Lilse Mathews, III and the law firm of Green & Mathews, L.L.P.(Signed by Judge Kenneth M. Hoyt) Parties notified. (chorace) (Entered: 02/20/2013)
03/01/2013	<a href="#">29</a>	ANSWER to <a href="#">1</a> Complaint,, by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(Vie, George) (Entered: 03/01/2013)
03/05/2013	<a href="#">30</a>	Court of Appeals LETTER advising Electronic record has been recycled (USCA No. 12-20164), filed.(smurdock, ) (Entered: 03/05/2013)

03/11/2013	<a href="#">31</a>	CERTIFICATE OF INTERESTED PARTIES by Plaintiff, filed.(mmapps, ) (Entered: 03/11/2013)
03/14/2013	<a href="#">32</a>	REPLY to <a href="#">29</a> Answer to Complaint, filed by Candace Louise Curtis. (sclement, ) (Entered: 03/20/2013)
03/14/2013	<a href="#">33</a>	CERTIFICATE OF SERVICE of <a href="#">32</a> Reply by Candace Louise Curtis, filed.(sclement, ) (Entered: 03/20/2013)
03/14/2013	<a href="#">34</a>	AFFIDAVIT of Candace Louise Curtis in Support of Application for Injunction, filed. (sclement, ) (Entered: 03/20/2013)
03/14/2013	<a href="#">35</a>	Renewed Application for Ex Parte Temporary Restraining Order, and Asset Freeze, Temporary and Permanent Injunction by Candace Louise Curtis, filed. Motion Docket Date 4/4/2013. (sclement, ) (Additional attachment(s) added on 3/20/2013: # <a href="#">1</a> Proposed Order) (sclement, ). (Entered: 03/20/2013)
03/14/2013	<a href="#">36</a>	EXHIBITS re: <a href="#">35</a> MOTION for Temporary Restraining Order by Candace Louise Curtis, filed.(sclement, ) (Entered: 03/20/2013)
03/22/2013	<a href="#">37</a>	NOTICE of Setting as to <a href="#">35</a> MOTION for Temporary Restraining Order. Parties notified. Injunction Hearing set for 4/9/2013 at 09:00 AM in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 03/22/2013)
03/29/2013		***Plaintiff's email request to appear telephonically at the Injunction hearing set for April 9, 2013 at 9:00 a.m is Denied. Candace Curtis' appearance in person is required, filed. (chorace) (Entered: 03/29/2013)
04/01/2013	<a href="#">38</a>	Letter from Rik Munson re: the mailing of a copy of Rule 11 motion, filed. (mmapps, ) (Entered: 04/02/2013)
04/04/2013	<a href="#">39</a>	RESPONSE in Opposition to <a href="#">35</a> MOTION for Temporary Restraining Order, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 04/04/2013)
04/09/2013	<a href="#">40</a>	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. PRELIMINARY INJUNCTION HEARING held on 4/9/2013. Witness: 10 Anita Kay Brunsting. Pursuant to the courtroom ruling as stated on the record, the parties shall work toward resolving this matter w/i 90 days, or the Court shall appoint an independent firm or accountant to gather financial records of the Trust. The parties shall submit a name of an agreed accountant w/i one week. Defendant's shall submit a motion for approval of payment of the Trust taxes. No bond is required at this time. Appearances:Candace Curtis. George William Vie, III.(Court Reporter: F. Warner), filed.(chorace, ) (Entered: 04/09/2013)
04/09/2013	<a href="#">42</a>	Exhibit List by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(chorace) (Entered: 04/11/2013)
04/10/2013	<a href="#">41</a>	NOTICE of filing of state court lawsuit against parties by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/10/2013)
04/11/2013	<a href="#">43</a>	MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/2/2013. (Attachments: # <a href="#">1</a> Proposed

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		Order)(Vie, George) (Entered: 04/11/2013)
04/11/2013	<a href="#">44</a>	ORDER granting <a href="#">43</a> Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/11/2013)
04/19/2013	<a href="#">45</a>	MEMORANDUM AND ORDER PRELIMINARY INJUNCTION. The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/19/2013)
04/19/2013	<a href="#">46</a>	NOTICE of Agreed CPA Firm pursuant to Court's Order for Accounting by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/19/2013)
04/29/2013	<a href="#">47</a>	ORDER. In light of the accusations in the pleadings and the Courts instructions, the Court is of the opinion that the best course forward is a Court appointed accountant who will be responsible to the Court. The Court, therefore, rejects the parties agreed notice as an appointment. An Order designating an accountant will be entered shortly. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) . (Entered: 04/29/2013)
05/01/2013	<a href="#">48</a>	<b>STRICKEN Per # 57</b> Order. Plaintiff's First AMENDED complaint with jury demand against All Defendants filed by Candace Louise Curtis.(olindor, ) (Entered: 05/01/2013)
05/01/2013	<a href="#">49</a>	MOTION for Joinder of Parties And Actions Demand For Show of Proof of Standing by Candace Louise Curtis, filed. Motion Docket Date 5/22/2013. (olindor) (Entered: 05/01/2013)
05/01/2013	<a href="#">50</a>	Plaintiff's Verified AFFIDAVIT In Support of Amended Complaint And In Support of Application For Joinder Candace Louise Curtis, filed. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit)(olindor) (Entered: 05/01/2013)
05/01/2013	<a href="#">51</a>	NOTICE of lawsuit and request to waiver service by Candace Louise Curtis, filed. (ccarnew, ) (Entered: 05/08/2013)
05/01/2013	<a href="#">52</a>	NOTICE of lawsuit and request to waive service by Candace Louise Curtis, filed. (ccarnew, ) (Entered: 05/08/2013)
05/01/2013	<a href="#">53</a>	NOTICE of a Lawsuit and Request to Waive Service of a Summons by Candace Louise Curtis, filed. (isoto) (Entered: 05/08/2013)
05/01/2013	<a href="#">54</a>	Notice of Lawuit and Request for Waiver of a Summons as to Bernard Lilse Mathews III sent on 4/28/13 by Candace Louise Curtis, filed.(dgonzalez) (Entered: 05/08/2013)
05/09/2013	<a href="#">55</a>	ORDER Pursuant to federal Rule of Civil Procedure 53, Appointing William G. West as Master to Perform Accounting <a href="#">47</a> .(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 05/09/2013)
05/21/2013	<a href="#">56</a>	RESPONSE in Opposition to <a href="#">49</a> MOTION for Joinder, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 05/21/2013)



05/22/2013	<a href="#">57</a>	ORDER denying <a href="#">49</a> Motion for Joinder of Parties and Actions and Motion to Amend Complaint. The Amended Complaint <a href="#">48</a> was filed w/o leave of Court and is therefore STRICKEN from the record.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 05/22/2013)
06/06/2013	<a href="#">58</a>	MOTION for Approval of Disbursement by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 6/27/2013. (Attachments: # <a href="#">1</a> Appendix Exhibits 1 and 2, # <a href="#">2</a> Proposed Order)(Vie, George) (Entered: 06/06/2013)
06/10/2013	<a href="#">59</a>	ORDER granting <a href="#">58</a> Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(kpicota) (Entered: 06/10/2013)
07/15/2013	<a href="#">60</a>	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on July 15, 2013 at 8:15 a.m. Appearances: William G. West (Accountant). Pursuant to phone conference, the Court conferred with Mr. West concerning his report due at the end of the month. Upon receipt, a hearing date will be set to address any concerns of the parties.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 07/15/2013)
08/05/2013	<a href="#">61</a>	ORDER. Before the Court is the report of the Court-appointed accountant for the Brunsting Family Living Trust for the period December 21, 2010 through May 31, 2013. Objections to the report and the accountants invoice shall be filed on or before August 27, 2013. Miscellaneous Hearing set for 9/3/2013 at 01:30 PM at Courtroom 11A before Judge Kenneth M. Hoyt(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 08/05/2013)
08/08/2013	<a href="#">62</a>	NOTICE - <i>Report of Master - Accounting of Income/Receipts and Expenses/Distributions of the Brunsting Family Living Trust for the Period December 21, 2010 Through May 31, 2013</i> re: <a href="#">55</a> Order, <a href="#">61</a> Order, by William West, filed. (Million, Timothy) (Entered: 08/08/2013)
08/08/2013	<a href="#">63</a>	Sealed Event, filed. (Entered: 08/08/2013)
08/26/2013	<a href="#">64</a>	MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/16/2013. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 08/26/2013)
08/27/2013	<a href="#">65</a>	MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013 by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/17/2013. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 08/27/2013)
08/27/2013	<a href="#">66</a>	ORDER granting <a href="#">64</a> Defendant's Motion for Approval of Disbursements to Pay Property Tax Bills.(Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana) (Entered: 08/27/2013)
08/27/2013	<a href="#">67</a>	RESPONSE to <i>Report of Master</i> , filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <a href="#">1</a> Appendix Tab 1, # <a href="#">2</a> Appendix Tab 2)(Vie, George) (Entered: 08/27/2013)
08/28/2013	<a href="#">68</a>	ORDER for Expedited Response; Motion-related deadline set re: <a href="#">65</a> MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013. Response to Motion due by 9/3/2013.(Signed by Judge Kenneth M. Hoyt) Parties

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		notified.(chorace) (Entered: 08/28/2013)
08/29/2013	<a href="#">69</a>	RESPONSE to <a href="#">62</a> Notice - Report of Master, filed by Candace Louise Curtis. (Attachments: # <a href="#">1</a> Proposed Order, # <a href="#">2</a> Proposed Order). (CD filed in Clerks Office.) (sscotch, ) (Entered: 08/29/2013)
08/29/2013	<a href="#">70</a>	This document is a duplicate of DE <a href="#">69</a> ; this entry was made for case management purposes. Plaintiff's Response to the Report of Master and Applications for Orders by Candace Louise Curtis, filed. (CD filed in Clerks Office). Motion Docket Date 9/19/2013. (Attachments: # <a href="#">1</a> Proposed Order, # <a href="#">2</a> Proposed Order)(sscotch, ) (Entered: 08/29/2013)
08/30/2013	<a href="#">71</a>	PROPOSED ORDER re: <a href="#">67</a> Response, filed.(Vie, George) (Entered: 08/30/2013)
09/03/2013	<a href="#">72</a>	OBJECTIONS to <a href="#">65</a> MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013, filed by Candace Louise Curtis. (mmapps, ) (Entered: 09/03/2013)
09/03/2013	<a href="#">73</a>	OBJECTIONS to <a href="#">62</a> Notice (Other), Defendants Motion for Orders to Recommit Matters to Master for Consideration, filed by Candace Louise Curtis. (mmapps, ) (Entered: 09/03/2013)
09/03/2013	<a href="#">74</a>	Plaintiff's Ex Parte Motion for Order to Show Cause and Application for Judgment of Civil Contempt by Candace Louise Curtis, filed. Modified on 9/3/2013 (chorace). (Entered: 09/03/2013)
09/03/2013	<a href="#">75</a>	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MISCELLANEOUS HEARING held on 9/3/2013. There were no objection's by the parties to the Master's Report. Invoices are Ordered to be paid. Any and all pending motions not ruled on are DENIED. Appearances:Candace Louise Curtis, Maureen McCutchen, William Potter, George William Vie, III, Timothy Aaron Million.(Court Reporter: S. Carlisle), filed.(chorace) (Entered: 09/03/2013)
09/03/2013	<a href="#">76</a>	NOTICE of Setting as to <a href="#">74</a> MOTION for Order to Show Cause. Parties notified. Motion Hearing set for 10/2/2013 at 11:30 AM in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 09/03/2013)
09/03/2013	<a href="#">77</a>	ORDER granting Approval of Disbursements to Special Master & Special Master's Attorney. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013)
09/03/2013	<a href="#">78</a>	ORDER granting <a href="#">65</a> Motion for Approval and Renewal of Farm Lease.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013)
09/18/2013	<a href="#">79</a>	TRANSCRIPT re: TRO Hearing held on April 9, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber FWarner. Release of Transcript Restriction set for 12/17/2013., filed. (fwarner, ) (Entered: 09/18/2013)
09/19/2013	<a href="#">80</a>	Notice of Filing of Official Transcript as to <a href="#">79</a> Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/19/2013)
09/23/2013	<a href="#">81</a>	NOTICE of Resetting. Parties notified. Motion Hearing reset for 10/2/2013 at 09:00 AM (TIME CHANGE ONLY) in Courtroom 11A before Judge Kenneth M. Hoyt,

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		filed. (chorace) (Entered: 09/23/2013)
09/23/2013	<a href="#">82</a>	RESPONSE in Opposition to <a href="#">74</a> MOTION for Order to Show Cause, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <a href="#">1</a> Appendix)(Vie, George) (Entered: 09/23/2013)
09/23/2013	<a href="#">83</a>	PROPOSED ORDER re: <a href="#">82</a> Response in Opposition to Motion, filed.(Vie, George) (Entered: 09/23/2013)
09/27/2013	<a href="#">84</a>	TRANSCRIPT re: Hearing held on September 3, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber S. Carlisle. Release of Transcript Restriction set for 12/26/2013., filed. (scarlisle) (Entered: 09/27/2013)
09/30/2013	<a href="#">85</a>	Notice of Filing of Official Transcript as to <a href="#">84</a> Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/30/2013)
10/02/2013	<a href="#">86</a>	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MOTION HEARING held on 10/2/2013. Argument heard. Order to follow. Appearances:Candace Louise Curtis, Maureen Kuzik McCuchen. George William Vie, III.(Court Reporter: M. Malone), filed.(chorace) (Entered: 10/02/2013)
10/03/2013	<a href="#">87</a>	ORDER denying <a href="#">74</a> Motion for Order to Show Cause and Application for Judgment of Civil Contempt. The Court directs that the plaintiff employ counsel within 60 days so that the case may proceed according to the rules of discovery and evidence. (Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana, 4) (Entered: 10/03/2013)
11/08/2013	<a href="#">88</a>	MOTION for Approval of Disbursement to pay invoice by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 11/29/2013. (Attachments: # <a href="#">1</a> Appendix Invoice, # <a href="#">2</a> Proposed Order)(Vie, George) (Entered: 11/08/2013)
11/12/2013	<a href="#">89</a>	ORDER granting <a href="#">88</a> Motion for Approval of Disbursement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 11/12/2013)
12/05/2013	<a href="#">90</a>	PLAINTIFF'S MOTION for Approval of Disbursement to pay fee retainer by Candace Louise Curtis, filed. Motion Docket Date 12/26/2013. (Attachments: # <a href="#">1</a> Proposed Order)(sbejarano, 1) (Entered: 12/06/2013)
12/12/2013	<a href="#">91</a>	NOTICE of Setting as to <a href="#">90</a> MOTION for Approval of disbursement to pay fee retainer. Parties notified. Telephone Conference set for 12/18/2013 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 12/12/2013)
12/18/2013	<a href="#">92</a>	RESPONSE to <a href="#">90</a> MOTION for Approval of disbursement to pay fee retainer filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <a href="#">1</a> Proposed Order )(Vie, George) (Entered: 12/18/2013)
12/18/2013	<a href="#">94</a>	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on December 18, 2013 at 8:30 a.m. Appearances: Candace Curtis Curtis, Jason Ostrom, George Vie, III. Pursuant to phone conference, the parties agree to seek and agree upon an accommodation that satisfies the plaintiffs request for a disbursement for attorneys fees, if they can do so. The Court sanctions this process and sets December 30, 2013 as the deadline for filing any agreement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/06/2014)

12/30/2013	<a href="#">93</a>	Agreed PROPOSED ORDER re: <a href="#">90</a> MOTION for Approval of disbursement to pay fee retainer, filed. (Attachments: # <a href="#">1</a> Proposed Order Agreed proposed order)(Vie, George) (Entered: 12/30/2013)
01/06/2014	<a href="#">95</a>	NOTICE of Appearance by Jason B. Ostrom on behalf of Jason Ostrom, filed. (Ostrom, Jason) (Entered: 01/06/2014)
01/06/2014	<a href="#">96</a>	AGREED ORDER granting Approval of Disbursements. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/07/2014)
02/24/2014	<a href="#">97</a>	NOTICE of Setting. Parties notified. Telephone Conference set for 2/28/2014 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 02/24/2014)
02/28/2014	<a href="#">98</a>	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on February 28, 2014 at 8:30 a.m. Appearances: Jason B. Ostrom, George William Vie, III. Pursuant to phone conference conducted this day, the plaintiff, who determines that additional parties and claims may be necessary for a complete resolution of the case, also fears loss of diversity jurisdiction on the part of the Court. In this regard, and with an eye toward resolving these concerns, the plaintiff is to report the nature and extent of this progress to the Court on or before March 30, 2014. Docket call is cancelled.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/02/2014)
03/08/2014	<a href="#">99</a>	MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/31/2014. (Attachments: # <a href="#">1</a> Appendix Exhibit A, # <a href="#">2</a> Proposed Order)(Vie, George) (Entered: 03/08/2014)
03/10/2014	<a href="#">100</a>	Order Granting Defendants Motion for Approval of Disbursements to Pay Property Tax Bills <a href="#">99</a> Motion for Approval.(Signed by Judge Kenneth M. Hoyt) Parties notified.(sclement, 4) (Entered: 03/10/2014)
03/26/2014	<a href="#">101</a>	MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 4/16/2014. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 03/26/2014)
03/27/2014	<a href="#">102</a>	ORDER granting <a href="#">101</a> Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/27/2014)
04/15/2014	<a href="#">103</a>	MOTION for Approval of quarterly estimated income tax payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/6/2014. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 04/15/2014)
04/16/2014	<a href="#">104</a>	ORDER granting <a href="#">103</a> Motion for Approval of Quarterly Estimated Income Tax Payments. (Signed by Judge Kenneth M. Hoyt) Parties notified. (rosaldana, 4) (Entered: 04/16/2014)
04/22/2014	<a href="#">105</a>	MOTION for Approval of Disbursements by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/13/2014. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 04/22/2014)

04/22/2014	<a href="#">106</a>	ORDER granting <a href="#">105</a> Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/22/2014)
05/09/2014	<a href="#">107</a>	Unopposed MOTION for Leave to File First Amended Petition by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Attachments: # <a href="#">1</a> Exhibit Exhibit A)(Ostrom, Jason) (Entered: 05/09/2014)
05/09/2014	<a href="#">108</a>	First AMENDED Complaint with Jury Demand against Amy Ruth Brunsting, Anita Kay Brunsting, Does 1-100 filed by Candace Louise Curtis.(Ostrom, Jason) (Entered: 05/09/2014)
05/09/2014	<a href="#">109</a>	Unopposed MOTION to Remand by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Ostrom, Jason) (Entered: 05/09/2014)
05/12/2014	<a href="#">110</a>	Unopposed PROPOSED ORDER <i>Granting Motion for Leave to File First Amended Petition</i> re: <a href="#">107</a> Unopposed MOTION for Leave to File First Amended Petition, filed. (Ostrom, Jason) (Entered: 05/12/2014)
05/15/2014	<a href="#">111</a>	ORDER granting <a href="#">107</a> Motion for Leave to File First Amended Petition.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014)
05/15/2014	<a href="#">112</a>	ORDER granting <a href="#">109</a> Motion to Remand to Harris County Probate Court No. 4.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014)
07/25/2016	<a href="#">113</a>	MOTION for Permission for Electronic Case Filing by Candace Louise Curtis, filed. Motion Docket Date 8/15/2016. (Attachments: # <a href="#">1</a> Letter, # <a href="#">2</a> Proposed Order) (chorace) (Entered: 07/28/2016)
07/29/2016	<a href="#">114</a>	ORDER denying <a href="#">113</a> Motion for Permission for Electronic Case Filing..(Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 07/29/2016)
08/03/2016	<a href="#">115</a>	Plaintiff Candace Louise Curtis' Motion for Relief from Order Pursuant to Fed. Civ. P. 60(b)(3), Fed. R. Civ. P. 60(b)(6) and Fed. R. Civ. P. 60(d)(3) by Candace Louise Curtis, filed. Motion Docket Date 8/24/2016. (Attachments: # <a href="#">1</a> Proposed Order) (dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	<a href="#">117</a>	Other EXHIBITS re: <a href="#">115</a> MOTION., filed. (Attachments: # <a href="#">1</a> Continuation of Exhibits, # <a href="#">2</a> Continuation, # <a href="#">3</a> Continuation, # <a href="#">4</a> Continuation, # <a href="#">5</a> Continuation, # <a href="#">6</a> Continuation, # <a href="#">7</a> Continuation, # <a href="#">8</a> Continuation, # <a href="#">9</a> Continuation, # <a href="#">10</a> Continuation, # <a href="#">11</a> Continuation, # <a href="#">12</a> Continuation, # <a href="#">13</a> Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	<a href="#">118</a>	Other EXHIBITS re: <a href="#">115</a> MOTION by Candace Louise Curtis., filed. (Attachments: # <a href="#">1</a> Exhibits Continue, # <a href="#">2</a> Continuation, # <a href="#">3</a> Continuation, # <a href="#">4</a> Continuation, # <a href="#">5</a> Continuation, # <a href="#">6</a> Continuation, # <a href="#">7</a> Continuation, # <a href="#">8</a> Continuation, # <a href="#">9</a> Continuation, # <a href="#">10</a> Continuation, # <a href="#">11</a> Continuation, # <a href="#">12</a> Continuation, # <a href="#">13</a> Continuation, # <a href="#">14</a> Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	<a href="#">119</a>	Other EXHIBITS re: <a href="#">115</a> MOTION by Candace Louise Curtis., filed. (Attachments: # <a href="#">1</a> Exhibits Continue, # <a href="#">2</a> Continuation, # <a href="#">3</a> Continuation, # <a href="#">4</a> Continuation, # <a href="#">5</a> Continuation, # <a href="#">6</a> Continuation, # <a href="#">7</a> Continuation, # <a href="#">8</a> Continuation, # <a href="#">9</a> Continuation,

17-20360.3078

		# <a href="#">10</a> Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/05/2016	<a href="#">116</a>	Other EXHIBITS re: <a href="#">115</a> MOTION., filed. (Attachments: # <a href="#">1</a> Exhibits, # <a href="#">2</a> Continuation, # <a href="#">3</a> Continuation, # <a href="#">4</a> Continuation, # <a href="#">5</a> Continuation, # <a href="#">6</a> Continuation, # <a href="#">7</a> Continuation, # <a href="#">8</a> Continuation, # <a href="#">9</a> Continuation, # <a href="#">10</a> Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/05/2016	<a href="#">120</a>	Plaintiff Candance Louise Curtis Motion for Sanctions With Points and Authorities Preliminary Statement by Candace Louise Curtis, filed. Motion Docket Date 8/26/2016. (Attachments: # <a href="#">1</a> Exhibit Transcript, # <a href="#">2</a> Exhibit)(mxperez, 5) (Entered: 08/09/2016)
08/10/2016	<a href="#">121</a>	PLAINTIFF'S NOTICE OF RELATED CASE (Local Rule 5.2) by Candace Louise Curtis, filed. (szellers, 7) (Entered: 08/11/2016)
08/10/2016	<a href="#">122</a>	PLAINTIFF CANDACE LOUISE CURTIS' MOTION FOR PERMISSION FOR ELECTRONIC CASE FILING by Candace Louise Curtis, filed. Motion Docket Date 8/31/2016. (Attachments: # <a href="#">1</a> Proposed Order)(szellers, 7) (Entered: 08/11/2016)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
11/14/2016 07:03:15			
<b>PACER Login:</b>	c14635:3890596:0	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	4:12-cv-00592
<b>Billable Pages:</b>	10	<b>Cost:</b>	1.00

<b>PACER Login:</b>	c14635:3890596:0	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	4:12-cv-00592
<b>Billable Pages:</b>	10	<b>Cost:</b>	1.00

No. 412,249

IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

**FIRST SUPPLEMENT TO REPORT OF TEMPORARY ADMINISTRATOR PENDING CONTEST**

On January 14, 2016 the REPORT OF TEMPORARY ADMINISTRATOR PENDING CONTEST (the “Report”) was filed in the above styled Decedent’s estate. This is the first supplement to the Report.

**Trustees of the Brunsting Family Living Trust**

On July 1, 2008 an Appointment of Successor Trustees was executed by Nelva Erleen Brunsting, also known as Nelva E. Brunsting, pursuant to Article IV. Section B. of the Brunsting Family Living Trust. This document appointed Carl Henry Brunsting and Anita Kay Brunsting as successor co-trustees if Nelva E. Brunsting fails or ceases to serve. If either Carl Henry Brunsting or Anita Kay Brunsting should fail or cease to serve, then the remaining successor trustee would serve alone. If neither successor co-trustee is able or willing to serve, then The Frost National Bank shall serve as the sole successor trustee. A copy of the Appointment of Successor Trustees is attached hereto as the first exhibit to first supplement.

In all other respects the Report filed on January 14, 2016 remains the same.

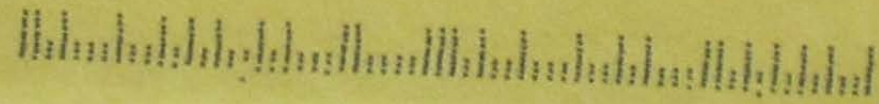


Nelva Brunsting  
13630 Pinerock Ln.  
Houston, TX 77079

HOUSTON TX 77079  
NOV 21 10 PM 2 T



Candy Curtes,  
1215 Uginian Way  
Martinez, CA  
94553



W  
S  
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Com  
tar  
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pat  
ner  
I  
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know



Hi:

Sunday

It's almost 10pm but I'm not sleepy and my computer won't cooperate tonight.

So I heard you were concerned that any money you receive after I leave this mortal coil will be put in a trust and Anita would have to deal it out.

That's not true. You'll still get whatever share is yours. If you don't know how to manage money

by now it's too late. I'm on alyqur quite a bit of the time now. Even sleep with it. The hum of the meter is rather soothing.

Had about 50 or so trickles this evening. Jim took care of taking the goodies out.

Our weather is still gorgeous but so very dry. Glad Jim met a farmer. I see farmers are doing better. In watching the Mule Series. Looks like your guys are winning.

Aren't those cards pretty? Could get them for me.  
 (over)

at home today, I'm going to  
get a lap desk. I guess  
I'm too lazy to sit at the  
desk. I usually write while  
watching TV at night.

Wish I had your lovely  
handwriting. I started out  
left handed but my 1st gr.  
teacher made me write  
right handed so I ~~was~~  
~~was~~ blame her.

f.

  
Hallmark  
STATIONERY

CNT3025  
© HALLMARK LICENSING, INC.  
MADE IN U.S.A.  
Hallmark.com

I can't  
even read  
my own  
writing!

Bye now, Love, Mother



DATA-ENTRY  
PICK UP THIS DATE

FILED  
2/6/2015 10:56:10 AM  
Stan Stanart  
County Clerk  
Harris County

PROBATE COURT 4

CAUSE No. 412,249-402

IN RE: ESTATE OF	§	IN THE PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS

NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER

TO THE HONORABLE PROBATE COURT:

COMES NOW, Plaintiff, Candace Louis Curtis, and files certified copies of an Injunction and Report of Master and would show the Court as follows:

1.

Plaintiff originally filed her Original Petition in the United States District Court for the Souther District of Texas, Houston Division, under Civil Action No. 4:12-CV-592. On April 19, 2013, the United States District Court entered a Memorandum and Order Preliminary Injunction in which it found that Anita Kay Brunsting and Amy Ruth Brunsting as Trustees had failed to act in accordance with the duties required by the Trust and enjoined them from disbursing any funds from any Trust accounts without prior permission of the court. See Ex. A, Memorandum and Order Preliminary Injunction. In that same order, the court determined to appoint an independent firm or account to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. See Ex A, Memorandum and Order Preliminary Injunction. Ultimately court appointed CPA William G. West filed his Report of Master dated July 31, 2013. See Ex. B, Report of Master.

2.

On May 15, 2014, the United States District Court entered an order transferring Civil Action 4:12-CV-00592 into Harris County Probate Court Number Four, Cause Number 412,249. See Ex.

02102015:0838:P0134

02112015:1339:P0002

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

---

**ORDER**

Upon due consideration, the Rule 12(b)(6) Motion to Dismiss filed on November 7, 2016, by Defendant Gregory Lester in the above styled cause (Dkt 83), should be Denied.

It is SO ORDERED

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Alfred H Bennet  
United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

Candace Louise Curtis, et al.

v.

Case Number: 4:16-cv-01969

Candace Kunz-Freed, et al.

---

**NOTICE OF SETTING**

**TAKE NOTICE THAT A PROCEEDING IN THIS CASE HAS BEEN SET FOR  
THE PLACE, DATE AND TIME SET FORTH BELOW.**

**Before the Honorable**

Alfred H Bennett

**PLACE:** Courtroom 8C  
United States District Court  
515 Rusk Avenue  
Houston, Texas 77002

**DATE:** 12/15/2016

**TIME:** 11:30 AM

**TYPE OF PROCEEDING:** Motion Hearing

Date: November 30, 2016

David J. Bradley, Clerk

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’ RESPONSE TO DEFENDANT DARLENE PAYNE-SMITH’S FEDERAL  
 RULE OF CIVIL PROCEDURE 12(b)(1) and 12(b)(6) MOTION TO DISMISS**

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## I. Introduction

1. Plaintiffs filed 18 U.S.C. 1962(c) and 18 U.S.C. 1962(d) claims along with civil rights, common law breach of fiduciary and other claims on July 5, 2016.
2. On November 10, 2016, Defendant Darlene Payne-Smith filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) (Dkt 84).

## II. Defendants Issues

- A. Plaintiffs' Claims Should be Dismissed for Lack of Subject Matter Jurisdiction
  1. Standard of Review
  2. Plaintiffs' Purported Injuries are Speculative, Contingent and Not Ripe
  3. Munson Has No Direct Stake in the Outcome of this Case and Lacks Article III Standing
  4. Plaintiffs' State Law Non-Predicate Act Claims are Barred by Attorney Immunity.
- B. Plaintiffs' Claims Should be Dismissed for Failure to State a Claim upon Which Relief May be Granted
  1. Standard of Review
  2. Plaintiffs Lack Statutory Standing under RICO
    - a. Plaintiffs Lack a Direct, Concrete Injury-in-Fact
    - b. Defendant Smith did not Proximately Cause Any of Plaintiffs' "Injuries."
  3. Plaintiffs Have Failed to Plead the Substantive Elements of a Civil RICO Claim.
    - a. Plaintiffs Have Not Alleged the Existence of an "Enterprise,"
      - (i) "Probate Court No. 4" is Not a Legal Entity
      - (ii) Plaintiffs Have Not Alleged an Association-in-Fact Enterprise
    - b. Plaintiffs Have Not Alleged a "Pattern" of Racketeering Activity.
    - c. Plaintiffs Have Not Plausibly Alleged a Conspiracy Under § 1692(d)
  4. Plaintiffs' Non-Predicate Act Claims Alleging Violations of Sections 1983, 1985 and 242 Should All be Dismissed.
    - a. Plaintiffs' Section 1983 Claim Should be Dismissed.
      - (i) Plaintiffs Do Not Identify Any Particular Constitutionally-Protected Rights



(ii) Plaintiffs Have Not Alleged State Action

b. Plaintiffs' Section 1985 Claim Should be Dismissed.

c. Section 242 Does Not Provide for a Private Right of Action.

**III. STANDARDS OF REVIEW**

3. Plaintiffs incorporate and adopt by reference the Standards of Review in Section II of their Reply (Dkt 33) to the Motions to Dismiss filed by Defendants Albert Vacek Jr. and Candace Kunz-Freed. (Dkt 19 & 20)

**IV. PLAINTIFFS' ARGUMENT**

**Summary of Plaintiffs' Argument**

4. An "Estate" is an abstraction of the mind that only exists in contemplation of rights in property. An "Estate" is not a legal entity and not a proper party to litigation. An estate can only act through its legal representative.

5. Fifteen Motions to Dismiss have been filed in this case and all fifteen motions claim "Probate Matter" or "Probate Case", yet there is not a single mention of the Wills of Elmer or Nelva Brunsting.

6. On January 12, 2005, the "Brunsting Family Trust" (Dkt 33-2) was restated. The Wills, signed at the same time, devise, bequeath and transfer all right, title and interest to property of any kind to the "Brunsting Trust". (Dkt 41-3 and 41-4)

7. Article III states in part:

*"I direct that no action be required in the county or probate court in relation to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisalment and list of claims as required by law."*

8. This list of acts was completed March 27, 2013 (Dkt 41-7) and “Probate” of the “Estates” was dropped from Calendar (Dkt 41-5 and 41-6) four days before Defendant Bobbie Bayless filed her “Probate Matter”. (Dkt 33-6)

9. Carl’s second application for letters testamentary was filed October 17, 2014, (Dkt 41-8) fourteen months after the Drop Order (Dkt 41-5 and 41-6), and five months after the remand of the “Trust Matter” from the federal Court.

### **The Assertion of Contrary Facts**

10. In the second unnumbered paragraph on page 1 under “Introduction” Defendant makes the following fact claims:

*“This is the most recent in a series of lawsuits involving the Brunsting siblings, all of which emanate from a state court probate proceeding, In re: Estate of Nelva E. Brunsting, which is pending under Cause No. 412.249 in Probate Court No. 4, Harris County, Texas (the “Brunsting Probate Case”).”*

11. Defendant goes on to add an entire paragraph in footnote 1 adopting the adverse statement of facts contained in Vacek and Freed’s Rule 12(b)(1) Motion to Dismiss. (Dkt 20)

12. However, Vacek and Freed’s Rule 12(b)(1) Motion to Dismiss adopts the statement of facts in their Rule 12(b)(6) Motion to Dismiss (Dkt 19), but those claims of fact are adverse to those contained in the complaint and may not be considered under 12(b)(6).

13. In order to overcome the presumptions in favor of the Plaintiffs’ claim of facts under 12(b)(1), a Defendant must support their claim of conflicting facts with matters outside the pleadings such as testimony and affidavits.

14. Defendant’s claims of contrary facts are not cognizable under Rule 12(b)(1), as there are no affidavits or exhibits attached to Docket entries 19, 20 or 84, and there are no references to the record of any proceedings. Defendant’s claims of contrary facts are not cognizable under

Rule 12(b)(1) or 12(b)(6). Moreover, the asserted facts are patently false and cannot be defended against the public record.

**V. The History and Nature of the Claims as Documented In the Public Record**

15. A properly supported history of the “*Series of lawsuits involving the Brunsting siblings*” begins with:

1. Candace Louise Curtis vs. Anita and Amy Brunsting and Does 1-100, CA 4:12-cv-592 filed TXSD February 27, 2012. The docket sheet for that case is attached as Exhibit 1.<sup>1</sup> The CA 4:12-cv-592 matter was dismissed sua sponte under the “Probate Exception to Federal Diversity Jurisdiction” March 8, 2012. (Exhibit 1 entry 13)

2. On March 9, 2012, Defendant Bobbie Bayless filed a Petition to take depositions before Suit in the Harris County District Court. (Exhibit 2)

3. On January 9, 2013, The Fifth Circuit Court of Appeals in Case Number 12-20164, issued a unanimous Opinion with Reverse and Remand, published Curtis v Brunsting et al, 704 F.3d 406. (Dkt 34-4) The Circuit Court held: 1) Candace Louise Curtis vs. Anita and Amy Brunsting and Does 1-100, CA 4:12-cv-592 is a lawsuit relating only to the administration of inter vivos trusts, 2) assets in an inter vivos trust are not property belonging to an estate, 3) the Brunsting Trusts were not in the custody of a state court, 4) was not subject to probate administration and, 5) did not come within the purview of the probate exception to federal diversity jurisdiction. (Dkt 34-4)

4. On January 29, 2013, Defendant Bobbie Bayless filed malpractice and breach of fiduciary claims against Vacek and Freed in the Harris County District Court in the name

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<sup>1</sup> Plaintiff Munson’s name appears at entries 9 and 38.

of “Carl Henry Brunsting Independent Executor of the Estates of Elmer and Nelva Brunsting. (Dkt 33-9)

5. On April 9, 2013, the Honorable Kenneth Hoyt issued an injunction in Candace Louise Curtis vs. Anita and Amy Brunsting, CA 4:12-cv-592, (Dkt 26-2) and on the same date, April 9, 2013:

6. Defendant Bobbie Bayless filed lawsuits against Anita, Amy and Carole Brunsting, and Candace Curtis, in Harris County Probate Court Number 4. This is the phenomenon Defendants refer to as “The Probate Matter”. The “Probate Matter” docket sheets are attached as Exhibits 3, 4, 5 and 6.

7. Upon being named a Defendant in Bayless “Probate Matter” Carole retained Darlene Payne-Smith and on May 6, 2013 Payne-Smith filed a Counter suit against Carl Brunsting for interfering with Carole’s “Inheritance expectancy”.<sup>2</sup>

16. Carole Ann Brunsting has never had fiduciary duties in regard to the Brunsting Trusts.

17. Carole Brunsting held Nelva Brunsting’s Medical Power of Attorney and her duties were to Nelva’s personal and medical care. That role and the subsequent conduct of the Defendant “legal professionals” would be consistent with the unsuspecting sibling medical POA role in the classic hustle fully explained in “How to Steal your Family Inheritance”. (Exhibit 7)

18. Plaintiff Candace Curtis has been obstructed from the performance of her fiduciary duties, and the pursuit of claims belonging to the Trusts, by Trustees de son tort, Anita and Amy Brunsting and these other Defendants in concert efforts.

## VI. STANDING

19. Defendant Darlene Payne-Smith argues that the matter before the Court is:

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<sup>2</sup> Harris County Probate Document No. PBT-2013-146160

*“the most recent in a series of lawsuits involving the Brunsting siblings, all of which emanate from a state court probate proceeding, In re: Estate of Nelva E. Brunsting”*

### **The Brunsting Wills**

20. Every one of these Defendants argued that the RICO action before the Court stems from a “Probate Matter” pending in Harris County Probate Court No. 4, and yet not a single one of those Motions (Dkt 19, 20, 23, 25, 30, 35, 36, 39, 40, 53, 78, 81, 83 or 84) mentions the Wills of Elmer or Nelva Brunsting. (Dkt 41-3 and 41-4)

21. Not a single one of the Motions identifies an heir to any estate and not a single one of the Motions identifies any assets belonging to an “Estate”.

22. The Will of Nelva Brunsting says in Articles II and III:

#### *II.*

*“I give, devise and bequeath all of my property and estate, real, personal or mixed, wherever situated, to my revocable living trust; ...”*

*“All of such property and estate shall be held, managed, and distributed as directed in such trust. The exact terms of the BRUNSTING FAMILY LIVING TRUST will govern the administration of my estate and the distribution of income and principal during administration.”*

#### *III.*

*...”I direct that no action be required in the county or probate court in relation to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisalment and list of claims as required by law.”*

23. Under Section H. “Protection of Beneficiaries”:

*“No beneficiary will have the power to anticipate, encumber or transfer any interest in my estate. No part of my estate or any trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary.”*

24. The Fifth Circuit Court of Appeals did read the Wills and did determine that the only heir to the Estates of Elmer and Nelva Brunsting is “The Trust”.

25. Plaintiffs find no indication that any of the Brunsting siblings have challenged either Will, and it would necessarily follow that neither Carl Brunsting, nor any Brunsting sibling, has individual standing in any administration of the “Estate of Nelva Brunsting”, a.k.a. the “Brunsting Probate Matter”. Let us look at that opening paragraph again.

*“This is the most recent in a series of lawsuits involving the Brunsting siblings, all of which emanate from a state court probate proceeding, In re: Estate of Nelva E. Brunsting, which is pending under Cause No. 412.249 in Probate Court No. 4, Harris County, Texas (the “Brunsting Probate Case”).”*

26. An “Estate”, is not a legal entity but an abstraction that only exists in contemplation of rights in property, in whatever form. A Decedent’s estate is the sum of the person’s assets – legal rights, interests and entitlements to property of any kind’ at the time of their death.

27. As noted by the Fifth Circuit and as can be seen in reading the Wills, the assets in the Brunsting Trusts are not assets belonging to either Founders Estate, and all of the Brunstings’ interest in property, whether real or personal, had been appointed and transferred to the Trust at the time of the Restatement in 2005.

28. As the assets in the Brunsting Trusts are not property belonging to an estate, those Trusts are not subject to probate administration.

### **Gaming the Judicial Process**

29. Defendant Bayless filed her suit in Harris County Probate No. 4, in the name of Carl Henry Brunsting “Individually and as Executor of the Estates of Elmer and Nelva Brunsting” raising only trust related claims, knowing the Brunsting Trusts were in the custody of a federal Court and that a federal Court had issued an injunction involving the Brunsting trusts that same day.

30. Having begun depositions before suit more than a year earlier and having read the Wills, Bayless knew or should have known that Carl Brunsting had no individual standing in the administration of any estate.

31. Bayless would also know that the trust, not being an asset belonging to any estate, would not be subject to probate and, as the Wills bequeath and direct all rights in property to “the Trust” to be disposed of under the terms of the trust, it would follow Bayless knew the estate had no right of claims relating to Trust assets. In any event, she had a duty to know.

## **VII. ENTER THE VEXATIOUS MULTIPLIER - DARLENE PAYNE-SMITH**

32. Bayless’ suit, brought in the name of Carl Brunsting individually, and in the name of the “Estate of Nelva Brunsting”, involving exclusively trust related claims, names all four of the other Brunsting siblings defendants, including federal Plaintiff Curtis.

33. Carole retained Defendant Darlene Payne-Smith and rather than point out the obvious, that the “Estate” owned no property, had no property interests in the Brunsting Trusts, and that Carl, not being an heir, had no individual standing to bring any “Probate Matter”, none-the-less filed a counter-suit against Carl Brunsting for tortious interference with “inheritance expectancy”, which is an interest none of the Brunsting siblings have in the probate of any “estate”.

34. The Brunsting trusts are the only real party in interest to all matters involving trust property, and all of the Defendants’ Motion to Dismiss have confessed to what they are charged with, attempting to loot an inter vivos trust under the pretext of administering a probate estate. In the process they have multiplied the litigation and the injuries exponentially.



**Motions for Distributions in “Estate of Nelva Brunsting”**

35. After Defendant Jason Ostrom arranged a remand of the federal case of Curtis v Brunsting 4:12-cv-592 to Harris County Probate, he immediately filed an unauthorized “Second Amended Complaint” (Dkt 34-9) in “Estate of Nelva Brunsting” and followed with application for a distribution of \$45,000 to pay his fees (Dkt 62-1), also in “Estate of Nelva Brunsting”. That ridiculous excuse for litigation spawned a flurry of vexatious objections from all the other “Probate Matter’ poser advocates.

36. Rather than point out the obvious, that there are no assets in the “Estate”, all of the Defendant attorneys joined in with objections pointing to the trust this and the trust that, generating hundreds of pages, never once mentioning the wills, standing or identifying an heir. (Exhibits 8-10).

37. On page 1 and 2 of an objection to a second application for distribution filed by Defendant Ostrom in “Estate of Nelva Brunsting”, Defendant Payne-Smith had these alleged fact assertions to offer: (Exhibit 8) (emphasis added)

*“1. Plaintiff, acting pro se, first filed her suit against her siblings, Anita Brunsting and Amy Brunsting, regarding the Trust in United States District Court for the Southern District of Texas.*

*Plaintiff’s Petition was filed in federal court in bad faith, without just cause, and frivolously as Plaintiff knew there was already litigation pending in this Court on the same and/or similar Trust issues and involving the same parties and did so without representation to the detriment of everyone else involved in this case. Plaintiff’s frivolous filing in federal court caused the other parties in this case to incur substantial unnecessary expenses defending against the suit, attending needless hearings in federal court on issues already before this Court, and responding to Plaintiff’s relentless and unsuccessful attempts to represent herself. Plaintiff wasted so much time and money attempting to represent herself in federal court that she was ordered by federal Judge Kenneth M. Hoyt to obtain legal counsel.”*

*“2. On April 19,2013, Judge Hoyt enjoined the Trustees from disbursing any funds from any Trust accounts without the Court’s permission. Plaintiff’s suit was*

*then transferred to this Court on June 4, 2014, pursuant to an Order of Remand entered by Judge Hoyt, and Plaintiff amended her Petition to include Carol Brunsting as a defendant. The injunction stands to this day.”*

### **VIII. RICO - INJURY IN FACT, PROXIMATE CAUSE AND STANDING**

#### **February 2012 to August 2014 in the Federal Court**

38. Plaintiffs are informed and believe that an estimated \$20,000 in fees were paid to attorneys by Brunsting interests, in connection with the federal case of Curtis v Brunsting 4:12-cv-592, between February 2012 and the August 2014 mediation.<sup>3</sup>

#### **February 2012 to August 2014 in State Courts**

39. Plaintiffs are informed and believe that a very rough estimate of state court claims related fees incurred during this period, based on figures thrown out at the mediation in August 2014, \$225,000 to Bayless from Carl’s pocket,<sup>4</sup> \$37,000 to Mills Shirley paid from the trust – 1/5 of which was Curtis’ property and, at a minimum, \$30,000 more from each sibling during this same period of time, most likely on credit terms.

#### **August 2014 to December 2016:**

40. The estimated totals for state court actions between February 2012 and August 2014, as shown above, is approximately \$412,000. That is approximately \$13,733 per month for that thirty month period.

41. If we use that value as the basis and multiply by the 28 months between August 2014 and December 2016, our total for that period equals approximately \$384,533.

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<sup>3</sup> These numbers do not reflect the federal appeal.

<sup>4</sup> Carl Brunstings’ Deposition testimony (Exhibit 11 Carl deposition page 78 line14)

42. Thus, the total estimated attorney fees for the “Probate Matter”, which includes the Harris County District Court case, is \$796,533. While grossly underestimated, this figure is more than absurd considering that nothing substantive was accomplished in any state court.

**Injuries to Plaintiffs Curtis and Munson, are both Personal and Pecuniary**

43. When Plaintiff Curtis was forced to file a pro se lawsuit in the Southern District of Texas to defend her rights in property from her sisters Anita and Amy Brunsting, She had to pay the filing and service of process fees. Neither Munson nor Curtis had ever filed a lawsuit in any court, but they did the best they could under the circumstances.

44. After the “breach of fiduciary” action was dismissed, Plaintiffs were forced to file a Fifth Circuit Appeal. Neither Munson nor Curtis had ever filed a federal appeal, did not know the process or the rules and neither knew anything about the probate exception. Plaintiffs thus agreed that one had to work to bring home the bacon and one would have to study, inform, write, and teach or in other words, “pull the plow”.

45. Curtis agreed that she had the more dependable income and would perform the bread winner function and that Munson had the better understanding of legal concepts and was thus the better suited to the legal research and writing function.

46. Munson was working at the time as both a performing artist and as a Systems Engineer, providing network support for the same Company where Plaintiff Curtis is employed as an accountant. Munson was eventually forced to resign from the network management obligations to focus on protecting Plaintiff Curtis’ property interests.

47. There are three conditions in the American system of jurisprudence where an opposing party can be awarded attorney fees under 28 U.S.C. §1927. First, a party who preserves or recovers a fund for the benefit of others (common fund) may recover attorneys' fees from the

fund or from the other parties who benefit from the fund.<sup>5</sup> Second, a party may recover attorneys' fees from an opposing party when the opposing party or the opposing party's attorney has disobeyed a court order,<sup>6</sup> and third, a party may recover attorneys' fees from an opposing party when the opposing party acts in bad faith.<sup>7</sup> All three of these criteria are met in this case.

48. If not for the conduct complained of against Vacek & Freed there would have been no litigation and if not for the participatory conduct of the rest of these defendants the legitimate Trust litigation would have long since been resolved.

49. The Honorable Kenneth Hoyt observed at the injunction hearing April 9, 2013, (Dkt 26-7, page 35 and 36) all that was needed to resolve the trust dispute was to distribute the assets to the beneficiaries, despite Defendants argument that the state court lawsuits were an obstacle to that end.

50. Given that Defendants, Anita and Amy Brunsting have clearly failed to honor the obligations of the office of trustee, are accused of malfeasance in the conduct of trust business, have conflicts of interest, and have refused or otherwise failed to pursue claims belonging to the Trusts, Plaintiff Curtis has assumed her proper station as successor trustee, in law and in fact.

51. Plaintiffs Curtis and Munson, through their active defense of the Brunsting Trust interests and the pursuit of claims belonging to the Brunsting Trusts have assumed the vacant office and are entitled to recover fees and costs.

#### **IX. AMENDMENT AND ADOPTION BY REFERENCE**

52. Pursuant to the authority provided by Federal Rule of Civil Procedure 10(b) and 15(a)(1), Plaintiffs hereby adopt and incorporate by reference into Plaintiffs' original complaint (Dkt 1),

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<sup>5</sup> Mills v. Electric Auto-Lite Co., 396 U.S. 375, 390-97 (1970). The Supreme Court in Mills defined the term "common fund" as a fund for the benefit of an entire class, such as an estate.

<sup>6</sup> Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399, 426-28 (1923); see Alyeska, 421 U.S. at 258 (noting that award of attorneys' fees may be part of sanction imposed on party or party's attorney for disobeying court order).

<sup>7</sup> Alyeska Pipeline Serv. Co. v. Wilderness Society, 421 U.S. 240, 257-59 (1975)

the Addendum of Memorandum and the pleadings subsumed therein, (Dkt 26) and all of Plaintiffs' Responses to Defendants' Motions, as if fully expressed in said Complaint, including but not limited to Docket entries 33, 34, 41, 45, 57, 61, 62, 65, 69, 85, 86, 87 and this response, as if fully expressed therein.

53. Plaintiffs further adopt and incorporate by reference all of the Defendants' Motions and pleadings, the claims stated therein and the exhibits attached, as exhibits in support of Plaintiffs' Complaint, including but not limited to Docket entries 19, 20, 23, 25, 30, 35, 36, 38, 39, 40, 53, 78, 79, 81, 83, and 84, as if fully attached as exhibits thereto.

## **X. CONCLUSION**

54. As of the filing of this response, the Complaint consists of the entire record before the Court and those Public Records this Honorable Court has been respectfully requested to take judicial notice of under Federal Rule of Evidence §201.

55. The Complaint contains satisfactory allegations with sufficient evidentiary support for the court to conclude 1) predicate acts have been articulated that establish a pattern of racketeering activity, 2) the Probate Court is both the enterprise and a victim of the racketeering conspiracy, 3) Legitimizing the theft of Brunsting Trust assets was the object of the racketeering conspiracy, 4) Defendants each participated in furthering the success of the racketeering conspiracy 5) Plaintiffs were injured in their business and property interests directly and proximately caused by the racketeering conspiracy 6) the racketeering activity is ongoing and continuous and the Brunstings are only one of many families victimized by the racketeering activities, 7) without the intervention of this Court the conduct complained of will continue unabated and other members of society will suffer injury directly and proximately caused by the same persons, the same racketeering conduct and 8) Plaintiffs claims are over-ripe for remedy.

56. Plaintiffs have sufficiently pled that:

- (1) defendants:
- (2) through commission of two of the enumerated predicate acts,
- (3) which constitute a “pattern” of
- (4) “racketeering activity,”
- (5) directly or indirectly participates in the conduct of
- (6) an “enterprise,”
- (7) the activities of which affect interstate or foreign commerce, and that
- (8) Plaintiffs have been injured in their business and property interests by reason of such conduct.

57. It has already been shown that participants need not have personally committed any predicate acts and that aiding and abetting by providing substantial assistance to the perpetrators in furtherance of a racketeering conspiracy is sufficient.

Wherefore, Plaintiffs move this Honorable Court for an Order denying the Rule 12(b)(6) and Rule 12(b)(1) Motion to Dismiss filed by Defendant Darlene Payne-Smith filed November 10, 2016, and hold to answer.

Respectfully submitted, December 1, 2016

/s/ Candace L. Curtis  
Candace L. Curtis

/s/ Rik W. Munson  
Rik W. Munson

**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 1st day of December, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Rik W. Munson  
Rik W. Munson



CLOSED,REMANDED

**U.S. District Court  
SOUTHERN DISTRICT OF TEXAS (Houston)  
CIVIL DOCKET FOR CASE #: 4:12-cv-00592**

Candace Louise Curtis v. Anita Kay Brunsting et al **Case  
remanded to Harris County Probate Court No. 4.**

Assigned to: Judge Kenneth M. Hoyt  
Cause: 28:1332 Diversity-Fraud

Date Filed: 02/27/2012  
Date Terminated: 05/15/2014  
Jury Demand: Plaintiff  
Nature of Suit: 370 Other Fraud  
Jurisdiction: Diversity

**Special Master**

**William West**  
*Accountant*

represented by **Timothy Aaron Million**  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Carl Brunsting**  
*Necessary Party and Involuntary Plaintiff*

represented by **Carl Brunsting**  
PRO SE

V.

**Defendant**

**Anita Kay Brunsting**

represented by **Bernard Lilse Mathews , III**  
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17-20360.3103

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**Defendant**

**Amy Ruth Brunsting**

represented by **Bernard Lilse Mathews , III**  
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*TERMINATED: 02/20/2013*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**George William Vie , III**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Does 1-100**

**Defendant**

**Carole Ann Brunsting**

**Defendant**

**Candace L. Kunz-freed**

**Defendant**

**Albert E. Vacek Jr.**

**Defendant**

**Vacek & Freed, PLLC**

**Defendant**

17-20360.3104

**The Vacek Law Firm PLLC****Defendant****Bernard Lilse Mathews III**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
02/27/2012	<a href="#">1</a>	PLAINTIFF'S ORIGINAL PETITION, COMPLAINT AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION against Amy Ruth Brungsting, Anita Kay Brunsting (Filing fee \$ 350) filed by Candace Louise Curtis. (Attachments: # <a href="#">1</a> Continuation, # <a href="#">2</a> Continuation, # <a href="#">3</a> Continuation, # <a href="#">4</a> Continuation, # <a href="#">5</a> Continuation, # <a href="#">6</a> Continuation, # <a href="#">7</a> Continuation, # <a href="#">8</a> Continuation, # <a href="#">9</a> Continuation, # <a href="#">10</a> Continuation, # <a href="#">11</a> Continuation, # <a href="#">12</a> Continuation, # <a href="#">13</a> Continuation)(dterrell, ) Modified on 2/27/2012 (dterrell, ). (Entered: 02/27/2012)
02/27/2012	<a href="#">2</a>	PROPOSED ORDER Injunctinctive Order Temporary Restraining Order, Asset Freeze, Production of Documents and Records, Appointment of Receiver, filed. (dterrell, ) (Entered: 02/27/2012)
02/27/2012	<a href="#">3</a>	INITIAL DISCLOSURES by Candace Louise Curtis, filed.(dterrell, ) (Entered: 02/27/2012)
02/27/2012	<a href="#">4</a>	REQUEST for Production of Documents from Anita Kay Brunsting and Amy Ruth Brunsting by Candace Louise Curtis, filed.(dterrell, ) (Entered: 02/27/2012)
02/27/2012	<a href="#">5</a>	NOTICE by Candace Louise Curtis, filed. (dterrell, ) (Entered: 02/27/2012)
02/27/2012	<a href="#">6</a>	NOTICE by Candace Louise Curtis, filed. (dterrell, ) (Entered: 02/27/2012)
02/27/2012		Civil Filing fee re: <a href="#">1</a> Complaint,, : \$350.00, receipt number CC003143, filed. (dterrell, ) (Entered: 02/27/2012)
02/27/2012		Summons Issued as to Amy Ruth Brunsting, Anita Kay Brunsting, filed.(dterrell, ) (Entered: 02/27/2012)
02/28/2012	<a href="#">7</a>	ORDER for Initial Pretrial and Scheduling Conference by Telephone and Order to Disclose Interested Persons. Counsel who filed or removed the action is responsible for placing the conference call and insuring that all parties are on the line. The call shall be placed to (713)250-5613. Telephone Conference set for 5/29/2012 at 09:30 AM by telephone before Judge Kenneth M. Hoyt.(Signed by Judge Kenneth M. Hoyt) Parties notified.(ckrus, ) (Entered: 02/28/2012)
03/01/2012	<a href="#">8</a>	ORDER denying the application for a temporary restraining order and for injunction. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/01/2012)
03/05/2012	<a href="#">9</a>	Letter from Rik Munson re: serving copies on parties, filed. (Attachments: # <a href="#">1</a> cover letter) (saustin, ) (Entered: 03/05/2012)

17-20360.3105

03/06/2012	<a href="#">10</a>	EMERGENCY MOTION by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Attachments: # <a href="#">1</a> Affidavit Affidavit of Amy Brunsting, # <a href="#">2</a> Exhibit Property Appraisal, # <a href="#">3</a> Exhibit Sale Contract, # <a href="#">4</a> Exhibit Tax Appraisal, # <a href="#">5</a> Supplement Request for Hearing, # <a href="#">6</a> Proposed Order Proposed Order) (Mathews, Bernard) (Entered: 03/06/2012)
03/06/2012	<a href="#">11</a>	Corrected MOTION Removal of Lis Pendens by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Mathews, Bernard) (Entered: 03/06/2012)
03/06/2012	<a href="#">12</a>	NOTICE of Setting. Parties notified. Telephone Conference set for 3/7/2012 at 11:00 AM by telephone before Judge Kenneth M. Hoyt, filed. The call shall be placed to (713)250-5613. (chorace) (Entered: 03/06/2012)
03/08/2012	<a href="#">13</a>	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on 3/7/12 Appearances: Candace L. Curtis, pro se, Bernard Lilse Mathews, III.. The Court will, sua sponte, dismiss the pltf's case by separate order for lack of jurisdiction. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/08/2012)
03/08/2012	<a href="#">14</a>	ORDER OF DISMISSAL ( <i>Sua Sponte</i> ) re: <a href="#">10</a> EMERGENCY MOTION, <a href="#">11</a> Corrected MOTION Removal of Lis Pendens. The Court lacks jurisdiction and this case is dismissed. To the extent that a <i>lis pendens</i> has been filed among the papers in federal Court in this case, it is cancelled and held for naught. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/08/2012)
03/09/2012	<a href="#">15</a>	Plaintiff's Answer to <a href="#">11</a> Corrected MOTION Removal of Lis Pendens filed by Candace Louise Curtis. (pyebernetsky, ) (Entered: 03/12/2012)
03/12/2012	<a href="#">16</a>	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: <a href="#">14</a> Order of Dismissal, by Candace Louise Curtis (Filing fee \$ 455), filed.(mlothmann) (Entered: 03/12/2012)
03/16/2012	<a href="#">17</a>	Notice of Assignment of USCA No. 12-20164 re: <a href="#">16</a> Notice of Appeal, filed. (sguevara, ) (Entered: 03/16/2012)
03/26/2012	<a href="#">18</a>	Notice of the Filing of an Appeal. DKT13 transcript order form was not mailed to appellant. Fee status: Not Paid. The following Notice of Appeal and related motions are pending in the District Court: <a href="#">16</a> Notice of Appeal, filed. (Attachments: # <a href="#">1</a> Order Dismissal, # <a href="#">2</a> Notice of Appeal, # <a href="#">3</a> Docket sheet, # <a href="#">4</a> Motion IFP)(lflmore, ) (Entered: 03/26/2012)
03/30/2012		USCA Appeal Fees received \$ 455, receipt number HOU022939 re: <a href="#">16</a> Notice of Appeal, filed.(klove, ) (Entered: 03/30/2012)
04/12/2012	<a href="#">19</a>	Form 22 TRANSCRIPT ORDER FORM by Candace Louise Curtis. Transcript is unnecessary for appeal purposes. This order form relates to the following: <a href="#">16</a> Notice of Appeal, filed.(mlothmann) (Entered: 04/16/2012)
04/26/2012		The Electronic record on appeal has now been certified to the Fifth Circuit Court of Appeals re: <a href="#">16</a> Notice of Appeal USCA No. 12-20164, filed.(blacy, ) (Entered: 04/26/2012)

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08/16/2012	<a href="#">20</a>	Transmittal Letter on Appeal Certified re: <a href="#">16</a> Notice of Appeal. A paper copy of the electronic record is being transmitted to the Fifth Circuit Court of Appeals in 3 volumes. (USCA No. 12-20164), filed.(hler, ) (Additional attachment(s) added on 8/17/2012: # <a href="#">1</a> UPS Tracking #) (hler, ). (Entered: 08/16/2012)
08/20/2012	<a href="#">21</a>	Transmittal Letter on Appeal Certified re: <a href="#">16</a> Notice of Appeal. CDs containing the electronic record are being sent to Bernard Lilse Mathews, III, filed.(hler, ) (hler, ). (Entered: 08/20/2012)
02/05/2013	<a href="#">22</a>	JUDGMENT of USCA for the Fifth Circuit re: <a href="#">16</a> Notice of Appeal ; USCA No. 12-20164. The judgment of the District Court is REVERSED, and the cause is REMANDED to the District Court for further proceedings in accordance with the opinion of the Court. Case reopened on 2/5/2013, filed.(jdav, ) (Entered: 02/05/2013)
02/05/2013	<a href="#">23</a>	Court of Appeals for the Fifth Circuit LETTER advising the record/original papers/exhibits are to be returned (USCA No. 12-20164), filed.(jdav, ) (Entered: 02/05/2013)
02/05/2013	<a href="#">24</a>	OPINION of USCA for the Fifth Circuit re: <a href="#">16</a> Notice of Appeal ; USCA No. 12-20164. The district court's dismissal of the case is REVERSED and the case is REMANDED for further proceedings. REVERSED AND REMANDED., filed.(jdav, ) (Entered: 02/05/2013)
02/06/2013	<a href="#">25</a>	NOTICE of Setting. Parties notified. Status/Scheduling Telephone Conference set for 2/19/2013 at 08:45 AM before Judge Kenneth M. Hoyt, filed. (dpalacios, ) (Entered: 02/06/2013)
02/17/2013	<a href="#">26</a>	NOTICE of Appearance by George W. Vie III on behalf of Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 02/17/2013)
02/19/2013	<a href="#">27</a>	ORDER FOLLOWING TELEPHONE STATUS/SCHEDULING CONFERENCE held on February 19, 2013 at 8:45 a.m. Appearances: Candace Curtis, pro se, George Vie ETT: TBA. Jury trial. Joinder of Parties due by 4/30/2013 Pltf Expert Witness List due by 9/30/2013. Pltf Expert Report due by 9/30/2013. Deft Expert Witness List due by 10/30/2013. Deft Expert Report due by 10/30/2013. Discovery due by 12/30/2013. Dispositive Motion Filing due by 12/30/2013. Docket Call set for 3/3/2014 at 11:30 AM in Courtroom 11A before Judge Kenneth M. Hoyt. The defendant's are to file an answer to the plaintiff's suit on or before March 4, 2013.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 02/19/2013)
02/20/2013	<a href="#">28</a>	ORDER that George W. Vie III and the law firm of Mills Shirley L.L.P. are substituted as attorneys of record for Defendants in lieu of Bernard Lilse Mathews, III and the law firm of Green & Mathews, L.L.P.(Signed by Judge Kenneth M. Hoyt) Parties notified. (chorace) (Entered: 02/20/2013)
03/01/2013	<a href="#">29</a>	ANSWER to <a href="#">1</a> Complaint,, by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(Vie, George) (Entered: 03/01/2013)
03/05/2013	<a href="#">30</a>	Court of Appeals LETTER advising Electronic record has been recycled (USCA No. 12-20164), filed.(smurdock, ) (Entered: 03/05/2013)

03/11/2013	<a href="#">31</a>	CERTIFICATE OF INTERESTED PARTIES by Plaintiff, filed.(mmapps, ) (Entered: 03/11/2013)
03/14/2013	<a href="#">32</a>	REPLY to <a href="#">29</a> Answer to Complaint, filed by Candace Louise Curtis. (sclement, ) (Entered: 03/20/2013)
03/14/2013	<a href="#">33</a>	CERTIFICATE OF SERVICE of <a href="#">32</a> Reply by Candace Louise Curtis, filed.(sclement, ) (Entered: 03/20/2013)
03/14/2013	<a href="#">34</a>	AFFIDAVIT of Candace Louise Curtis in Support of Application for Injunction, filed. (sclement, ) (Entered: 03/20/2013)
03/14/2013	<a href="#">35</a>	Renewed Application for Ex Parte Temporary Restraining Order, and Asset Freeze, Temporary and Permanent Injunction by Candace Louise Curtis, filed. Motion Docket Date 4/4/2013. (sclement, ) (Additional attachment(s) added on 3/20/2013: # <a href="#">1</a> Proposed Order) (sclement, ). (Entered: 03/20/2013)
03/14/2013	<a href="#">36</a>	EXHIBITS re: <a href="#">35</a> MOTION for Temporary Restraining Order by Candace Louise Curtis, filed.(sclement, ) (Entered: 03/20/2013)
03/22/2013	<a href="#">37</a>	NOTICE of Setting as to <a href="#">35</a> MOTION for Temporary Restraining Order. Parties notified. Injunction Hearing set for 4/9/2013 at 09:00 AM in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 03/22/2013)
03/29/2013		***Plaintiff's email request to appear telephonically at the Injunction hearing set for April 9, 2013 at 9:00 a.m is Denied. Candace Curtis' appearance in person is required, filed. (chorace) (Entered: 03/29/2013)
04/01/2013	<a href="#">38</a>	Letter from Rik Munson re: the mailing of a copy of Rule 11 motion, filed. (mmapps, ) (Entered: 04/02/2013)
04/04/2013	<a href="#">39</a>	RESPONSE in Opposition to <a href="#">35</a> MOTION for Temporary Restraining Order, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 04/04/2013)
04/09/2013	<a href="#">40</a>	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. PRELIMINARY INJUNCTION HEARING held on 4/9/2013. Witness: 10 Anita Kay Brunsting. Pursuant to the courtroom ruling as stated on the record, the parties shall work toward resolving this matter w/i 90 days, or the Court shall appoint an independent firm or accountant to gather financial records of the Trust. The parties shall submit a name of an agreed accountant w/i one week. Defendant's shall submit a motion for approval of payment of the Trust taxes. No bond is required at this time. Appearances:Candace Curtis. George William Vie, III.(Court Reporter: F. Warner), filed.(chorace, ) (Entered: 04/09/2013)
04/09/2013	<a href="#">42</a>	Exhibit List by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(chorace) (Entered: 04/11/2013)
04/10/2013	<a href="#">41</a>	NOTICE of filing of state court lawsuit against parties by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/10/2013)
04/11/2013	<a href="#">43</a>	MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/2/2013. (Attachments: # <a href="#">1</a> Proposed

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		Order)(Vie, George) (Entered: 04/11/2013)
04/11/2013	<a href="#">44</a>	ORDER granting <a href="#">43</a> Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/11/2013)
04/19/2013	<a href="#">45</a>	MEMORANDUM AND ORDER PRELIMINARY INJUNCTION. The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/19/2013)
04/19/2013	<a href="#">46</a>	NOTICE of Agreed CPA Firm pursuant to Court's Order for Accounting by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/19/2013)
04/29/2013	<a href="#">47</a>	ORDER. In light of the accusations in the pleadings and the Courts instructions, the Court is of the opinion that the best course forward is a Court appointed accountant who will be responsible to the Court. The Court, therefore, rejects the parties agreed notice as an appointment. An Order designating an accountant will be entered shortly. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) . (Entered: 04/29/2013)
05/01/2013	<a href="#">48</a>	<b>STRICKEN Per # 57</b> Order. Plaintiff's First AMENDED complaint with jury demand against All Defendants filed by Candace Louise Curtis.(olindor, ) (Entered: 05/01/2013)
05/01/2013	<a href="#">49</a>	MOTION for Joinder of Parties And Actions Demand For Show of Proof of Standing by Candace Louise Curtis, filed. Motion Docket Date 5/22/2013. (olindor) (Entered: 05/01/2013)
05/01/2013	<a href="#">50</a>	Plaintiff's Verified AFFIDAVIT In Support of Amended Complaint And In Support of Application For Joinder Candace Louise Curtis, filed. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit)(olindor) (Entered: 05/01/2013)
05/01/2013	<a href="#">51</a>	NOTICE of lawsuit and request to waiver service by Candace Louise Curtis, filed. (ccarnew, ) (Entered: 05/08/2013)
05/01/2013	<a href="#">52</a>	NOTICE of lawsuit and request to waive service by Candace Louise Curtis, filed. (ccarnew, ) (Entered: 05/08/2013)
05/01/2013	<a href="#">53</a>	NOTICE of a Lawsuit and Request to Waive Service of a Summons by Candace Louise Curtis, filed. (isoto) (Entered: 05/08/2013)
05/01/2013	<a href="#">54</a>	Notice of Lawuit and Request for Waiver of a Summons as to Bernard Lilse Mathews III sent on 4/28/13 by Candace Louise Curtis, filed.(dgonzalez) (Entered: 05/08/2013)
05/09/2013	<a href="#">55</a>	ORDER Pursuant to federal Rule of Civil Procedure 53, Appointing William G. West as Master to Perform Accounting <a href="#">47</a> .(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 05/09/2013)
05/21/2013	<a href="#">56</a>	RESPONSE in Opposition to <a href="#">49</a> MOTION for Joinder, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 05/21/2013)



05/22/2013	<a href="#">57</a>	ORDER denying <a href="#">49</a> Motion for Joinder of Parties and Actions and Motion to Amend Complaint. The Amended Complaint <a href="#">48</a> was filed w/o leave of Court and is therefore STRICKEN from the record.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 05/22/2013)
06/06/2013	<a href="#">58</a>	MOTION for Approval of Disbursement by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 6/27/2013. (Attachments: # <a href="#">1</a> Appendix Exhibits 1 and 2, # <a href="#">2</a> Proposed Order)(Vie, George) (Entered: 06/06/2013)
06/10/2013	<a href="#">59</a>	ORDER granting <a href="#">58</a> Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(kpicota) (Entered: 06/10/2013)
07/15/2013	<a href="#">60</a>	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on July 15, 2013 at 8:15 a.m. Appearances: William G. West (Accountant). Pursuant to phone conference, the Court conferred with Mr. West concerning his report due at the end of the month. Upon receipt, a hearing date will be set to address any concerns of the parties.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 07/15/2013)
08/05/2013	<a href="#">61</a>	ORDER. Before the Court is the report of the Court-appointed accountant for the Brunsting Family Living Trust for the period December 21, 2010 through May 31, 2013. Objections to the report and the accountants invoice shall be filed on or before August 27, 2013. Miscellaneous Hearing set for 9/3/2013 at 01:30 PM at Courtroom 11A before Judge Kenneth M. Hoyt(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 08/05/2013)
08/08/2013	<a href="#">62</a>	NOTICE - <i>Report of Master - Accounting of Income/Receipts and Expenses/Distributions of the Brunsting Family Living Trust for the Period December 21, 2010 Through May 31, 2013</i> re: <a href="#">55</a> Order, <a href="#">61</a> Order, by William West, filed. (Million, Timothy) (Entered: 08/08/2013)
08/08/2013	<a href="#">63</a>	Sealed Event, filed. (Entered: 08/08/2013)
08/26/2013	<a href="#">64</a>	MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/16/2013. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 08/26/2013)
08/27/2013	<a href="#">65</a>	MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013 by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/17/2013. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 08/27/2013)
08/27/2013	<a href="#">66</a>	ORDER granting <a href="#">64</a> Defendant's Motion for Approval of Disbursements to Pay Property Tax Bills.(Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana) (Entered: 08/27/2013)
08/27/2013	<a href="#">67</a>	RESPONSE to <i>Report of Master</i> , filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <a href="#">1</a> Appendix Tab 1, # <a href="#">2</a> Appendix Tab 2)(Vie, George) (Entered: 08/27/2013)
08/28/2013	<a href="#">68</a>	ORDER for Expedited Response; Motion-related deadline set re: <a href="#">65</a> MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013. Response to Motion due by 9/3/2013.(Signed by Judge Kenneth M. Hoyt) Parties

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		notified.(chorace) (Entered: 08/28/2013)
08/29/2013	<a href="#">69</a>	RESPONSE to <a href="#">62</a> Notice - Report of Master, filed by Candace Louise Curtis. (Attachments: # <a href="#">1</a> Proposed Order, # <a href="#">2</a> Proposed Order). (CD filed in Clerks Office.) (sscotch, ) (Entered: 08/29/2013)
08/29/2013	<a href="#">70</a>	This document is a duplicate of DE <a href="#">69</a> ; this entry was made for case management purposes. Plaintiff's Response to the Report of Master and Applications for Orders by Candace Louise Curtis, filed. (CD filed in Clerks Office). Motion Docket Date 9/19/2013. (Attachments: # <a href="#">1</a> Proposed Order, # <a href="#">2</a> Proposed Order)(sscotch, ) (Entered: 08/29/2013)
08/30/2013	<a href="#">71</a>	PROPOSED ORDER re: <a href="#">67</a> Response, filed.(Vie, George) (Entered: 08/30/2013)
09/03/2013	<a href="#">72</a>	OBJECTIONS to <a href="#">65</a> MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013, filed by Candace Louise Curtis. (mmapps, ) (Entered: 09/03/2013)
09/03/2013	<a href="#">73</a>	OBJECTIONS to <a href="#">62</a> Notice (Other), Defendants Motion for Orders to Recommit Matters to Master for Consideration, filed by Candace Louise Curtis. (mmapps, ) (Entered: 09/03/2013)
09/03/2013	<a href="#">74</a>	Plaintiff's Ex Parte Motion for Order to Show Cause and Application for Judgment of Civil Contempt by Candace Louise Curtis, filed. Modified on 9/3/2013 (chorace). (Entered: 09/03/2013)
09/03/2013	<a href="#">75</a>	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MISCELLANEOUS HEARING held on 9/3/2013. There were no objection's by the parties to the Master's Report. Invoices are Ordered to be paid. Any and all pending motions not ruled on are DENIED. Appearances:Candace Louise Curtis, Maureen McCutchen, William Potter, George William Vie, III, Timothy Aaron Million.(Court Reporter: S. Carlisle), filed.(chorace) (Entered: 09/03/2013)
09/03/2013	<a href="#">76</a>	NOTICE of Setting as to <a href="#">74</a> MOTION for Order to Show Cause. Parties notified. Motion Hearing set for 10/2/2013 at 11:30 AM in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 09/03/2013)
09/03/2013	<a href="#">77</a>	ORDER granting Approval of Disbursements to Special Master & Special Master's Attorney. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013)
09/03/2013	<a href="#">78</a>	ORDER granting <a href="#">65</a> Motion for Approval and Renewal of Farm Lease.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013)
09/18/2013	<a href="#">79</a>	TRANSCRIPT re: TRO Hearing held on April 9, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber FWarner. Release of Transcript Restriction set for 12/17/2013., filed. (fwarner, ) (Entered: 09/18/2013)
09/19/2013	<a href="#">80</a>	Notice of Filing of Official Transcript as to <a href="#">79</a> Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/19/2013)
09/23/2013	<a href="#">81</a>	NOTICE of Resetting. Parties notified. Motion Hearing reset for 10/2/2013 at 09:00 AM (TIME CHANGE ONLY) in Courtroom 11A before Judge Kenneth M. Hoyt,

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		filed. (chorace) (Entered: 09/23/2013)
09/23/2013	<a href="#">82</a>	RESPONSE in Opposition to <a href="#">74</a> MOTION for Order to Show Cause, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <a href="#">1</a> Appendix)(Vie, George) (Entered: 09/23/2013)
09/23/2013	<a href="#">83</a>	PROPOSED ORDER re: <a href="#">82</a> Response in Opposition to Motion, filed.(Vie, George) (Entered: 09/23/2013)
09/27/2013	<a href="#">84</a>	TRANSCRIPT re: Hearing held on September 3, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber S. Carlisle. Release of Transcript Restriction set for 12/26/2013., filed. (scarlisle) (Entered: 09/27/2013)
09/30/2013	<a href="#">85</a>	Notice of Filing of Official Transcript as to <a href="#">84</a> Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/30/2013)
10/02/2013	<a href="#">86</a>	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MOTION HEARING held on 10/2/2013. Argument heard. Order to follow. Appearances:Candace Louise Curtis, Maureen Kuzik McCuchen. George William Vie, III.(Court Reporter: M. Malone), filed.(chorace) (Entered: 10/02/2013)
10/03/2013	<a href="#">87</a>	ORDER denying <a href="#">74</a> Motion for Order to Show Cause and Application for Judgment of Civil Contempt. The Court directs that the plaintiff employ counsel within 60 days so that the case may proceed according to the rules of discovery and evidence. (Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana, 4) (Entered: 10/03/2013)
11/08/2013	<a href="#">88</a>	MOTION for Approval of Disbursement to pay invoice by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 11/29/2013. (Attachments: # <a href="#">1</a> Appendix Invoice, # <a href="#">2</a> Proposed Order)(Vie, George) (Entered: 11/08/2013)
11/12/2013	<a href="#">89</a>	ORDER granting <a href="#">88</a> Motion for Approval of Disbursement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 11/12/2013)
12/05/2013	<a href="#">90</a>	PLAINTIFF'S MOTION for Approval of Disbursement to pay fee retainer by Candace Louise Curtis, filed. Motion Docket Date 12/26/2013. (Attachments: # <a href="#">1</a> Proposed Order)(sbejarano, 1) (Entered: 12/06/2013)
12/12/2013	<a href="#">91</a>	NOTICE of Setting as to <a href="#">90</a> MOTION for Approval of disbursement to pay fee retainer. Parties notified. Telephone Conference set for 12/18/2013 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 12/12/2013)
12/18/2013	<a href="#">92</a>	RESPONSE to <a href="#">90</a> MOTION for Approval of disbursement to pay fee retainer filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <a href="#">1</a> Proposed Order )(Vie, George) (Entered: 12/18/2013)
12/18/2013	<a href="#">94</a>	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on December 18, 2013 at 8:30 a.m. Appearances: Candace Curtis Curtis, Jason Ostrom, George Vie, III. Pursuant to phone conference, the parties agree to seek and agree upon an accommodation that satisfies the plaintiffs request for a disbursement for attorneys fees, if they can do so. The Court sanctions this process and sets December 30, 2013 as the deadline for filing any agreement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/06/2014)

12/30/2013	<a href="#">93</a>	Agreed PROPOSED ORDER re: <a href="#">90</a> MOTION for Approval of disbursement to pay fee retainer, filed. (Attachments: # <a href="#">1</a> Proposed Order Agreed proposed order)(Vie, George) (Entered: 12/30/2013)
01/06/2014	<a href="#">95</a>	NOTICE of Appearance by Jason B. Ostrom on behalf of Jason Ostrom, filed. (Ostrom, Jason) (Entered: 01/06/2014)
01/06/2014	<a href="#">96</a>	AGREED ORDER granting Approval of Disbursements. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/07/2014)
02/24/2014	<a href="#">97</a>	NOTICE of Setting. Parties notified. Telephone Conference set for 2/28/2014 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 02/24/2014)
02/28/2014	<a href="#">98</a>	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on February 28, 2014 at 8:30 a.m. Appearances: Jason B. Ostrom, George William Vie, III. Pursuant to phone conference conducted this day, the plaintiff, who determines that additional parties and claims may be necessary for a complete resolution of the case, also fears loss of diversity jurisdiction on the part of the Court. In this regard, and with an eye toward resolving these concerns, the plaintiff is to report the nature and extent of this progress to the Court on or before March 30, 2014. Docket call is cancelled.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/02/2014)
03/08/2014	<a href="#">99</a>	MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/31/2014. (Attachments: # <a href="#">1</a> Appendix Exhibit A, # <a href="#">2</a> Proposed Order)(Vie, George) (Entered: 03/08/2014)
03/10/2014	<a href="#">100</a>	Order Granting Defendants Motion for Approval of Disbursements to Pay Property Tax Bills <a href="#">99</a> Motion for Approval.(Signed by Judge Kenneth M. Hoyt) Parties notified.(sclement, 4) (Entered: 03/10/2014)
03/26/2014	<a href="#">101</a>	MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 4/16/2014. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 03/26/2014)
03/27/2014	<a href="#">102</a>	ORDER granting <a href="#">101</a> Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/27/2014)
04/15/2014	<a href="#">103</a>	MOTION for Approval of quarterly estimated income tax payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/6/2014. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 04/15/2014)
04/16/2014	<a href="#">104</a>	ORDER granting <a href="#">103</a> Motion for Approval of Quarterly Estimated Income Tax Payments. (Signed by Judge Kenneth M. Hoyt) Parties notified. (rosaldana, 4) (Entered: 04/16/2014)
04/22/2014	<a href="#">105</a>	MOTION for Approval of Disbursements by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/13/2014. (Attachments: # <a href="#">1</a> Proposed Order)(Vie, George) (Entered: 04/22/2014)

04/22/2014	<a href="#">106</a>	ORDER granting <a href="#">105</a> Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/22/2014)
05/09/2014	<a href="#">107</a>	Unopposed MOTION for Leave to File First Amended Petition by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Attachments: # <a href="#">1</a> Exhibit Exhibit A)(Ostrom, Jason) (Entered: 05/09/2014)
05/09/2014	<a href="#">108</a>	First AMENDED Complaint with Jury Demand against Amy Ruth Brunsting, Anita Kay Brunsting, Does 1-100 filed by Candace Louise Curtis.(Ostrom, Jason) (Entered: 05/09/2014)
05/09/2014	<a href="#">109</a>	Unopposed MOTION to Remand by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Ostrom, Jason) (Entered: 05/09/2014)
05/12/2014	<a href="#">110</a>	Unopposed PROPOSED ORDER <i>Granting Motion for Leave to File First Amended Petition</i> re: <a href="#">107</a> Unopposed MOTION for Leave to File First Amended Petition, filed. (Ostrom, Jason) (Entered: 05/12/2014)
05/15/2014	<a href="#">111</a>	ORDER granting <a href="#">107</a> Motion for Leave to File First Amended Petition.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014)
05/15/2014	<a href="#">112</a>	ORDER granting <a href="#">109</a> Motion to Remand to Harris County Probate Court No. 4.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014)
07/25/2016	<a href="#">113</a>	MOTION for Permission for Electronic Case Filing by Candace Louise Curtis, filed. Motion Docket Date 8/15/2016. (Attachments: # <a href="#">1</a> Letter, # <a href="#">2</a> Proposed Order) (chorace) (Entered: 07/28/2016)
07/29/2016	<a href="#">114</a>	ORDER denying <a href="#">113</a> Motion for Permission for Electronic Case Filing..(Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 07/29/2016)
08/03/2016	<a href="#">115</a>	Plaintiff Candace Louise Curtis' Motion for Relief from Order Pursuant to Fed. Civ. P. 60(b)(3), Fed. R. Civ. P. 60(b)(6) and Fed. R. Civ. P. 60(d)(3) by Candace Louise Curtis, filed. Motion Docket Date 8/24/2016. (Attachments: # <a href="#">1</a> Proposed Order) (dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	<a href="#">117</a>	Other EXHIBITS re: <a href="#">115</a> MOTION., filed. (Attachments: # <a href="#">1</a> Continuation of Exhibits, # <a href="#">2</a> Continuation, # <a href="#">3</a> Continuation, # <a href="#">4</a> Continuation, # <a href="#">5</a> Continuation, # <a href="#">6</a> Continuation, # <a href="#">7</a> Continuation, # <a href="#">8</a> Continuation, # <a href="#">9</a> Continuation, # <a href="#">10</a> Continuation, # <a href="#">11</a> Continuation, # <a href="#">12</a> Continuation, # <a href="#">13</a> Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	<a href="#">118</a>	Other EXHIBITS re: <a href="#">115</a> MOTION by Candace Louise Curtis., filed. (Attachments: # <a href="#">1</a> Exhibits Continue, # <a href="#">2</a> Continuation, # <a href="#">3</a> Continuation, # <a href="#">4</a> Continuation, # <a href="#">5</a> Continuation, # <a href="#">6</a> Continuation, # <a href="#">7</a> Continuation, # <a href="#">8</a> Continuation, # <a href="#">9</a> Continuation, # <a href="#">10</a> Continuation, # <a href="#">11</a> Continuation, # <a href="#">12</a> Continuation, # <a href="#">13</a> Continuation, # <a href="#">14</a> Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	<a href="#">119</a>	Other EXHIBITS re: <a href="#">115</a> MOTION by Candace Louise Curtis., filed. (Attachments: # <a href="#">1</a> Exhibits Continue, # <a href="#">2</a> Continuation, # <a href="#">3</a> Continuation, # <a href="#">4</a> Continuation, # <a href="#">5</a> Continuation, # <a href="#">6</a> Continuation, # <a href="#">7</a> Continuation, # <a href="#">8</a> Continuation, # <a href="#">9</a> Continuation,

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		# <a href="#">10</a> Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/05/2016	<a href="#">116</a>	Other EXHIBITS re: <a href="#">115</a> MOTION., filed. (Attachments: # <a href="#">1</a> Exhibits, # <a href="#">2</a> Continuation, # <a href="#">3</a> Continuation, # <a href="#">4</a> Continuation, # <a href="#">5</a> Continuation, # <a href="#">6</a> Continuation, # <a href="#">7</a> Continuation, # <a href="#">8</a> Continuation, # <a href="#">9</a> Continuation, # <a href="#">10</a> Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/05/2016	<a href="#">120</a>	Plaintiff Candance Louise Curtis Motion for Sanctions With Points and Authorities Preliminary Statement by Candace Louise Curtis, filed. Motion Docket Date 8/26/2016. (Attachments: # <a href="#">1</a> Exhibit Transcript, # <a href="#">2</a> Exhibit)(mxperez, 5) (Entered: 08/09/2016)
08/10/2016	<a href="#">121</a>	PLAINTIFF'S NOTICE OF RELATED CASE (Local Rule 5.2) by Candace Louise Curtis, filed. (szellers, 7) (Entered: 08/11/2016)
08/10/2016	<a href="#">122</a>	PLAINTIFF CANDACE LOUISE CURTIS' MOTION FOR PERMISSION FOR ELECTRONIC CASE FILING by Candace Louise Curtis, filed. Motion Docket Date 8/31/2016. (Attachments: # <a href="#">1</a> Proposed Order)(szellers, 7) (Entered: 08/11/2016)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
11/14/2016 07:03:15			
<b>PACER Login:</b>	c14635:3890596:0	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	4:12-cv-00592
<b>Billable Pages:</b>	10	<b>Cost:</b>	1.00

<b>PACER Login:</b>	c14635:3890596:0	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	4:12-cv-00592
<b>Billable Pages:</b>	10	<b>Cost:</b>	1.00

Pg-11

2012 14538

NO. \_\_\_\_\_

IN RE: CARL HENRY BRUNSTING

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§

IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS

RECORDER'S MEMORANDUM  
This instrument is of poor quality  
at the time of imaging

80 JUDICIAL DISTRICT FILED  
Chris Daniel  
District Clerk

CARL HENRY BRUNSTING'S  
VERIFIED PETITION TO TAKE DEPOSITIONS BEFORE SUIT

MAR 09 2012

TO THE HONORABLE JUDGE OF SAID COURT:

Time: \_\_\_\_\_  
By: \_\_\_\_\_  
Harris County, Texas  
Deputy

Petitioner, Carl Henry Brunsting ("Petitioner"), asks the court for permission to take depositions by oral examination and/or on written questions to obtain testimony and documents to investigate his potential proceedings involving Anita Kay Brunsting ("Anita"), Amy Ruth Brunsting ("Amy"), Vacek & Freed, PLLC ("Vacek"), and Candace L. Kunz-Freed ("Freed") as authorized by Tex. R. Civ. P. 202.3(a), and in support thereof would show as follows:

1. Petitioner is a resident of Harris County, Texas and is one of the heirs of the estates of his parents, Elmer and Nelva Brunsting, who both resided in Harris County, Texas until their deaths. Petitioner is also one of the beneficiaries of the Brunsting Family Living Trust (the "Family Trust") and other trusts arising therefrom, as well as other trusts and estate planning tools implemented by his parents. Petitioner held a power of attorney for his mother, is the personal representative named in his mother's will, and was previously named to become the successor trustee of the Family Trust upon his mother's death.

2. The parties sought to be deposed and the documents, if any, to be requested of the witnesses are:

- A. Vacek, a professional limited liability company formed under the laws of Texas doing business in Harris County, Texas which may be served through its registered agent, Albert E. Vacek, Jr., at 11777 Katy Freeway, Suite 300,

CONFIRMED FILE DATE: 3/9/2012





**STAN STANART**

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## Probate Search - November 1837 to present

Case Number: 412249 Court: All File Date (From): MM/DD/YYYY <input type="text"/> (To): MM/DD/YYYY <input type="text"/> <input type="button" value="Search"/>	Images available from Sept. 1, 1999 to present  <b>228 Record(s) Found.</b>
Last Name      First Name      Middle Name  Party Attorney Company <input type="button" value="Search"/>	

CaseID	Case	File Date	Type Desc	Subtype	Style	Status	Judge	Court	View All
1618413	<a href="#">412249-401</a>	04/09/2013	ANCILLARY (LAWSUITS CASES) - CONVERSION		NELVA E. BRUNSTING, DECEASED	Open	CHRISTINE BUTTS	4	<a href="#">Parties</a>

Case	Event Date	Event Desc	Comments	Pgs
412249-401	10/12/2016	Certificate		35334579 Certificate 4 4 13228882 <a href="#">View</a>
412249-401	10/12/2016	Application to Dismiss		35334577 Application to Dismiss 11 4 13228881 <a href="#">View</a>
412249-401	04/07/2016	Legacy Event	ORDERED DARLENE PAYNE SMITH AND THE LAW FIRM OF CRAIN, CATON & JAMES ARE PERMITTED TO WITHDRAW AS COUNSEL OF RECORD; SIGNED 03/11/2016 Film code number PBT-2016-112549	23365329 Legacy Event 2 4 10916912 <a href="#">View</a>
412249-401	03/14/2016	Legacy Event	ORDERED DARLNE PAYNE SMITH AND THE LAW FIRM OF CRAIN, CATON & JAMES ARE PERMITTED TO WITHDRAW AS COUNSEL OF RECORD; SIGNED 03/11/2016 Film code number PBT-2016-83225	23311126 Legacy Event 5 4 10889271 <a href="#">View</a>

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412249-401	03/14/2016	Letter	CAROLE BRUNSTING Film code number PBT-2016-83130	23310902	Letter	2	4	10889179	<a href="#">View</a>	
412249-401	03/09/2016	RECEIPT		23302194					4	
412249-401	03/08/2016	Electronic Filing Fee		23300958					4	
412249-401	03/08/2016	Misc. Notice	DEFENDANT ANITA KAY BRUNSTING NOTICE OF DESIGNATION OF ATTORNEY IN CHARGE Film code number PBT-2016-77711	23300955	Misc. Notice	2	4	10884132	<a href="#">View</a>	
412249-401	03/07/2016	RECEIPT		23296599					4	
412249-401	03/07/2016	Electronic Filing Fee		23295622					4	
412249-401	03/07/2016	Legacy Event		23295618	Legacy Event	5	4	10881580	<a href="#">View</a>	
412249-401	01/26/2016	RECEIPT		23205078					4	
412249-401	01/25/2016	Instrument Over 25 Pages		23204331					4	
412249-401	01/25/2016	Electronic Filing Fee		23204328					4	
412249-401	01/25/2016	Application for Summary Judgement	CANDACE LOUISE CURTIS VERIFIED MOTION FOR ARTIAL SUMMARY JUDGMENT WITH CONCURRENT PETITIONS FOR DECLARATORY JUDGMENT Film code number PBT-2016-26242	23204319	Application for Summary Judgement	7	03	4	10835468	<a href="#">View</a>
412249-401	08/13/2015	Folder Created		22863091					4	
412249-401	08/13/2015	Folder Created		22863056					4	
412249-401	08/10/2015	RECEIPT		22855216					4	
412249-401	08/10/2015	Electronic Filing Fee		22854376					4	
412249-401	08/10/2015	Instrument Over 25 Pages		22854373					4	
412249-401	08/10/2015	Responses	RESPONSE TO DEFENDANT RESPONSE TO CARL HENTRY BRYNSTING MOTION FOR PROTECTIVE ORDER Film code number PBT-2015-258999	22854372	Responses	49	4	10656926	<a href="#">View</a>	
412249-401	08/03/2015	RECEIPT		22839911					4	
412249-401	08/03/2015	Electronic Filing Fee		22839666					4	
412249-401	08/03/2015	Amended	THIRD SUPPLEMENT TO PLAINTIFF FIRST AMENDED PETITION AND REQUEST FOR INJUNCTIVE RELIEF Film code number PBT-2015-250703	22839664	Amended	6	4	10649050	<a href="#">View</a>	
412249-401	08/03/2015	RECEIPT		22839061					4	

412249-401	07/31/2015	Electronic Filing Fee		22838484					4
412249-401	07/31/2015	Responses	DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER Film code number PBT-2015-250083	22838482	Responses	6	4	10648449	<a href="#">View</a>
412249-401	07/24/2015	RECEIPT		22820773					4
412249-401	07/23/2015	Notice of Hearing	HEARING- 08-03-15 @ 11:00 AM Film code number PBT-2015-240340	22820305	Notice of Hearing	2	4	10639208	<a href="#">View</a>
412249-401	07/23/2015	Electronic Filing Fee		22820303					4
412249-401	07/21/2015	RECEIPT		22813695					4
412249-401	07/20/2015	Conform Copies	CONF COPY	22813664					4
412249-401	07/20/2015	Electronic Filing Fee		22812314					4
412249-401	07/20/2015	Instrument Over 25 Pages		22812313					4
412249-401	07/20/2015	Motion For Protective Order	CARL HENRY BRUNSTING MOTION FOR PROTECTIVE ORDER CARL HENRY BRUNSTING MOTION FOR PROTECTIVE ORDER NO SERVICE REQUESTED Film code number PBT-2015-235874	22812310	Motion For Protective Order	51	4	10635027	<a href="#">View</a>
412249-401	07/20/2015	RECEIPT		22810187					4
412249-401	07/20/2015	Attorney Assigned		22809109					4
412249-401	07/17/2015	Electronic Filing Fee		22809119					4
412249-401	07/17/2015	Instrument Over 25 Pages		22809116					4
412249-401	07/17/2015	Responses	NON-PARTY'S CANDACE L KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC'S RESPONSE TO CARL HENRY BRUNSTING'S MOTION TO TRANSFER RELATED DISTRICT COURT CASE TO PROBATE COURT 4 Film code number PBT-2015-234080	22809114	Responses	96	4	10633412	<a href="#">View</a>
412249-401	07/15/2015	Legacy Event		22801894					4
412249-401	07/15/2015	RECEIPT		22800036					4
412249-401	07/14/2015	Electronic Filing Fee		22799561					4
412249-401	07/14/2015	Notice of Hearing	ON 7/21/2015 AT 2:00 PM Film code number PBT-2015-228889	22799557	Notice of Hearing	3	4	10628528	<a href="#">View</a>
412249-401	07/14/2015	Application to Transfer Docket (Indep.)	RELATED DISTRICT COURT CASE TO PROBATE COURT 4 Film code	22799556	Application to Transfer Docket	6	4	10628527	<a href="#">View</a>

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			number PBT-2015-228888	(Indep.)				
412249-401	07/14/2015	RECEIPT		22798842				4
412249-401	07/14/2015	RECEIPT		22798415				4
412249-401	07/13/2015	Electronic Filing Fee		22797462				4
412249-401	07/13/2015	Instrument Over 25 Pages		22797461				4
412249-401	07/13/2015	Responses	PLAINTIFF CURTIS RESPONE TO DEFENDANTS NO EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION AND DEMAND TO PRODUCE EVIDENCE Film code number PBT-2015-227757	22797459	Responses	47	4	10627483 <a href="#">View</a>
412249-401	07/13/2015	Electronic Filing Fee		22796824				4
412249-401	07/13/2015	Notice of Hearing	AUGUST 3, 2015 AT 11:00 AM Film code number PBT-2015-227302	22796822	Notice of Hearing	2	4	10627054 <a href="#">View</a>
412249-401	07/13/2015	RECEIPT		22795657				4
412249-401	07/13/2015	Electronic Filing Fee		22795444				4
412249-401	07/13/2015	Notice of Hearing	AUGUST 3, 2015 AT 11:00 AM Film code number PBT-2015-226432	22795443	Notice of Hearing	2	4	10626242 <a href="#">View</a>
412249-401	07/13/2015	Legacy Event		22794722				4
412249-401	07/13/2015	RECEIPT		22794134				4
412249-401	07/10/2015	Electronic Filing Fee		22793338				4
412249-401	07/10/2015	Amended	SECOND SUPPLEMENT TO PLAINTIFF FIRST AMENDED PETITION Film code number PBT-2015-225377	22793337	Amended	3	4	10625227 <a href="#">View</a>
412249-401	07/10/2015	RECEIPT		22792816				4
412249-401	07/09/2015	Electronic Filing Fee		22792124				4
412249-401	07/09/2015	Instrument Over 25 Pages		22792121				4
412249-401	07/09/2015	Application for Summary Judgement	CARL HENRY BRUNSTING MOTION FOR PARTIAL SUMMARY JUDGMENT Film code number PBT-2015-225037	22792077	Application for Summary Judgement	260	4	10624907 <a href="#">View</a>
412249-401	07/08/2015	RECEIPT		22784812				4
412249-401	07/07/2015	Electronic Filing Fee		22783920				4
412249-401	07/07/2015	Notice of Intention to Take Written Deposition	NO POST REQUESTED Film code number PBT-2015-220731	22783918	Notice of Intention to Take Written Deposition	5	4	10620833 <a href="#">View</a>

412249-401	07/02/2015	Miscellaneous Order	ORDER DENYING LAW-MOTION-TO-SHOW- AUTHORITY-TRCP-12; THIS INSTRUMENT RETURNED UNSIGNED BY JUDGES OFFICE Film code number PBT-2015-216035	22775714	Miscellaneous Order	17	4	10616341	<a href="#">View</a>
412249-401	07/02/2015	RECEIPT		22774399					4
412249-401	07/01/2015	Electronic Filing Fee		22772988					4
412249-401	07/01/2015	No Fee - Other	AMY RUTH BRUNSTING DESIGNATION OF EXPERTS Film code number PBT-2015-214532	22772987	No Fee - Other	4	4	10614908	<a href="#">View</a>
412249-401	07/01/2015	RECEIPT		22771931					4
412249-401	07/01/2015	RECEIPT		22771896					4
412249-401	07/01/2015	Electronic Filing Fee		22771591					4
412249-401	07/01/2015	Amended	CARL HENRY BRUNSTING FIRST AMENDED EXPERT WITNESS DESIGNATION AND FURTHER SUPPLEMENT TO CAROL RESPONSES TO ALL REQUESTS FOR DISCLOSURES Film code number PBT-2015-213764	22771590	Amended	3	4	10614163	<a href="#">View</a>
412249-401	07/01/2015	Electronic Filing Fee		22771484					4
412249-401	07/01/2015	No Fee - Other	ANITA KAY BRUNSTING EXPERT DESIGNATION Film code number PBT-2015-213684	22771480	No Fee - Other	6	4	10614096	<a href="#">View</a>
412249-401	06/26/2015	RECEIPT		22761935					4
412249-401	06/26/2015	Electronic Filing Fee		22761581					4
412249-401	06/26/2015	Application for Summary Judgement	ANITA AND AMY BRUNSTING'S JOINT NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT Film code number PBT-2015-208305	22761579	Application for Summary Judgement	9	4	10609038	<a href="#">View</a>
412249-401	06/19/2015	RECEIPT		22744589					4
412249-401	06/18/2015	Judge Signature Fee		22744197					4
412249-401	06/18/2015	Electronic Filing Fee		22744196					4
412249-401	06/18/2015	Rule 11 Agreement	STIPULATION AND RULE 11 AGREEMENT CONCERNING MOTION TO SHOW AUTHORITY Film code number PBT-2015-198889	22744193	Rule 11 Agreement	17	4	10600148	<a href="#">View</a>
412249-401	04/10/2015	RECEIPT		22596250					4
412249-401	04/10/2015	Application of Miscellaneous kind	LAW MOTION TO SHOW AUTHORITY TRCP 12 MOTION TO DISMISS FOR	22596082	Application of Miscellaneous	7	4	10522914	<a href="#">View</a>

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			WANT OF JURISDICTION Film code number PBT-2015-117405	kind					
412249-401	03/31/2015	Order to Compel (Dep.)	THIS INSTRUMENT RETURNED UNSIGNED BY JUDGES OFFICE Film code number PBT-2015-105354	22574533	Order to Compel (Dep.)	43	4	10511562	<a href="#">View</a>
412249-401	03/25/2015	RECEIPT		22562008					4
412249-401	03/24/2015	Electronic Filing Fee		22560448					4
412249-401	03/24/2015	Instrument Over 25 Pages		22560421					4
412249-401	03/24/2015	Responses	RESPONSE TO ANITA BRUNSTING'S MOTION TO COMPEL CARL BRUNSTING TO RESPOND TO DISCLOSURES Film code number PBT-2015-97461	22560413	Responses	43	4	10504142	<a href="#">View</a>
412249-401	03/24/2015	RECEIPT		22559683					4
412249-401	03/23/2015	Electronic Filing Fee		22559674					4
412249-401	03/23/2015	Objection	OBJECTION TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR Film code number PBT-2015-95444	22556936	Objection	4	4	10502276	<a href="#">View</a>
412249-401	03/23/2015	Order to Compel (Dep.)	CARL AND CANDACE TO REPOOND TO DISCLOSURES; SIGNED 3/23/15 Film code number PBT-2015-95392	22556866	Order to Compel (Dep.)	2	4	10502227	<a href="#">View</a>
412249-401	03/23/2015	RECEIPT		22555465					4
412249-401	03/20/2015	Electronic Filing Fee		22554505					4
412249-401	03/20/2015	Amended	FIRST SUPPLEMENT TO PLAINTIFF'S FIRST AMENDED PETITION Film code number PBT-2015-94015	22554504	Amended	4	4	10500933	<a href="#">View</a>
412249-401	03/11/2015	RECEIPT		22532147					4
412249-401	03/11/2015	Electronic Filing Fee		22531936					4
412249-401	03/11/2015	Application to Compel (Indep.)	CARL & CANDACE TO RESPOND TO DISCLOSURES Film code number PBT-2015-81853	22531935	Application to Compel (Indep.)	31	4	10489402	<a href="#">View</a>
412249-401	03/10/2015	RECEIPT		22528715					4
412249-401	03/10/2015	Electronic Filing Fee		22526997					4
412249-401	03/10/2015	Objection	OBJECTION TO CANDACE CURTIS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE Film code number	22526995	Objection	16	4	10487197	<a href="#">View</a>

			PBT-2015-79533						
412249-401	03/06/2015	RECEIPT		22522024					4
412249-401	03/05/2015	Conform Copies		22521398					4
412249-401	03/05/2015	Electronic Filing Fee		22521035					4
412249-401	03/05/2015	Order to Consolidate	ORDER NOT ENTERED Film code number PBT-2015-76288	22521032	Order to Consolidate	4	4	10484089	<a href="#">View</a>
412249-401	02/20/2015	Agreed Order	AGREED DOCKET CONTROL ORDER; SIGNED 2/19/15 Film code number PBT-2015-59154	22489856	Agreed Order	2	4	10467953	<a href="#">View</a>
412249-401	02/19/2015	Miscellaneous Order	ORDER DENYING PLAINTIFF'S APPLICATION FOR PARTIAL DISTRIBUTION; SIGNED 2/18/15 Film code number PBT-2015-58239	22487858	Miscellaneous Order	2	4	10467094	<a href="#">View</a>
412249-401	02/18/2015	RECEIPT		22486005					4
412249-401	02/17/2015	Electronic Filing Fee		22484864					4
412249-401	02/17/2015	Misc. Notice	NOTICE OF SUBSTITUTION OF PARTY Film code number PBT-2015-56642	22484863	Misc. Notice	2	4	10465564	<a href="#">View</a>
412249-401	02/13/2015	RECEIPT		22474018					4
412249-401	02/12/2015	Electronic Filing Fee		22473133					4
412249-401	02/12/2015	Certificate	OF WRITTEN DISCOVERY Film code number PBT-2015-49926	22473132	Certificate	2	4	10459314	<a href="#">View</a>
412249-401	02/11/2015	Subpoena Returned		22499993	Subpoena Returned	1	4	10473440	<a href="#">View</a>
412249-401	12/09/2014	Miscellaneous Order	ORDER DENYING CANDACE CURTIS' MOTION FOR DISTRIBUTION OF TRUST FUNDS AND CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS; SIGNED 12/9/14 Film code number PBT-2014-396930	22333498	Miscellaneous Order	1	4	10390940	<a href="#">View</a>
412249-401	12/09/2014	Objection	TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-396928	22333494	Objection	7	4	10390938	<a href="#">View</a>
412249-401	12/09/2014	RECEIPT		22333075					4
412249-401	12/09/2014	Electronic Filing Fee		22332395					4
412249-401	12/09/2014	Objection	OBJECTION TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code	22332389	Objection	7	4	10390361	<a href="#">View</a>



			number PBT-2014-396326						
412249-401	12/09/2014	RECEIPT		22331923				4	
412249-401	12/08/2014	Electronic Filing Fee		22331427				4	
412249-401	12/08/2014	Responses	AMY RUTH BRUNSTING'S REPOSE TO CARL HENRY BRUNSTING'S MOTION TO REMOVE TRUSTEE Film code number PBT-2014-395809	22331426	Responses	4	4	10389892	<a href="#">View</a>
412249-401	12/08/2014	Electronic Filing Fee		22331420				4	
412249-401	12/08/2014	Misc. Notice	OF APPEARANCE AND DESIGNATION OF LEAD COUNSEL FOR AMY RUTH BRUNSTING Film code number PBT-2014-395795	22331416	Misc. Notice	3	4	10389878	<a href="#">View</a>
412249-401	12/08/2014	RECEIPT		22328816				4	
412249-401	12/05/2014	Electronic Filing Fee		22327923				4	
412249-401	12/05/2014	Responses	TO CARL'S MOTION TO REMOVE TRUSTEES Film code number PBT-2014-393812	22327921	Responses	3	4	10387975	<a href="#">View</a>
412249-401	12/05/2014	Electronic Filing Fee		22327917				4	
412249-401	12/05/2014	Instrument Over 25 Pages		22327913				4	
412249-401	12/05/2014	Responses	TO CANDACE'S MOTION FOR DISTRIBUTION OF TRUST FUNDS & RESPONSE TO CARL'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-393808	22327909	Responses	156	4	10387972	<a href="#">View</a>
412249-401	12/02/2014	RECEIPT		22317681				4	
412249-401	12/02/2014	RECEIPT		22317367				4	
412249-401	12/02/2014	Attorney Assigned		22317022				4	
412249-401	12/01/2014	Electronic Filing Fee		22317025				4	
412249-401	12/01/2014	Witness List	PLAINTIFFS DESIGNATION OF EXPERT WITNESS Film code number PBT-2014-387901	22317023	Witness List	9	4	10382378	<a href="#">View</a>
412249-401	12/01/2014	Electronic Filing Fee		22316602				4	
412249-401	12/01/2014	Declination to Serve	CARL HENRY BRUNSTING'S EXPERT WITNESS DESIGNATION Film code number PBT-2014-387708	22316600	Declination to Serve	10	4	10382195	<a href="#">View</a>
412249-401	12/01/2014	RECEIPT		22314293				4	
412249-401	12/01/2014	Electronic Filing Fee		22313084				4	

412249-401	12/01/2014	Designation	OF EXPERT WITNESSES Film code number PBT-2014-385649	22313083	Designation	15	4	10380228	<a href="#">View</a>
412249-401	11/18/2014	RECEIPT		22293368					4
412249-401	11/18/2014	RECEIPT		22293113					4
412249-401	11/17/2014	Electronic Filing Fee		22291869					4
412249-401	11/17/2014	Amended	AMENDED NOTICE OF ORAL HEARING DECEMBER 09, 2014 AT 3:00 P.M. Film code number PBT-2014-373944	22291862	Amended	2	4	10369234	<a href="#">View</a>
412249-401	11/17/2014	Electronic Filing Fee		22291790					4
412249-401	11/17/2014	Notice of Hearing	AMENDED NOTICE OF ORAL HEARING Film code number PBT-2014-373927	22291788	Notice of Hearing	2	4	10369219	<a href="#">View</a>
412249-401	11/17/2014	RECEIPT		22286155					4
412249-401	11/14/2014	Electronic Filing Fee		22285803					4
412249-401	11/14/2014	Designation	NOTICE OF APPEARANCE AND DESIGNATION OF LEAD COUNSEL Film code number PBT-2014-371437	22285800	Designation	3	4	10366856	<a href="#">View</a>
412249-401	11/13/2014	RECEIPT		22283039					4
412249-401	11/13/2014	Electronic Filing Fee		22282550					4
412249-401	11/13/2014	Demand for a Jury		22282549	Demand for a Jury	3	4	10365377	<a href="#">View</a>
412249-401	11/13/2014	Objection	OBJECTION TO PLAINTIFFS MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-369853	22282544	Objection	7	4	10365373	<a href="#">View</a>
412249-401	11/13/2014	Attorney Assigned		22282540					4
412249-401	11/10/2014	RECEIPT		22274992					4
412249-401	11/10/2014	RECEIPT		22273153					4
412249-401	11/10/2014	RECEIPT		22272926					4
412249-401	11/10/2014	RECEIPT		22272588					4
412249-401	11/07/2014	Electronic Filing Fee		22272374					4
412249-401	11/07/2014	Notice of Hearing	OF ORAL ON 11/17/2014 AT 2:00 PM Film code number PBT-2014-363948	22272371	Notice of Hearing	2	4	10359858	<a href="#">View</a>
412249-401	11/07/2014	Electronic Filing Fee		22272353					4
412249-401	11/07/2014	Notice of Hearing	NOVEMBER 17, 2014 AT 2:00 PM Film code number PBT-2014-363941	22272350	Notice of Hearing	2	4	10359851	<a href="#">View</a>
412249-401	11/07/2014	Electronic Filing Fee		22272284					4
412249-401	11/07/2014	Application of Miscellaneous kind	CARL BRUNSTING MOTION TO MODIFY PRELIMINARY INJUNCTION Film code number PBT-2014-363923	22272280	Application of Miscellaneous kind	16	4	10359833	<a href="#">View</a>

412249-401	11/07/2014	Electronic Filing Fee		22272257					4
412249-401	11/07/2014	Application of Miscellaneous kind		22272255	Application of Miscellaneous kind	6	4	10359821	<a href="#">View</a>
412249-401	11/07/2014	Electronic Filing Fee		22272253					4
412249-401	11/07/2014	Responses	PLAINTIFFS RESPONSE TO CANDACE LOUISE CURTIS MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-363907	22272250	Responses	3	4	10359817	<a href="#">View</a>
412249-401	09/18/2014	Legacy Event	ORDER GRANTING MOTION FOR WITHDRAWAL OF COUNSEL FOR ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY AND AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART IT IS ORDERED THAT MAUREEN KUZIK MCCUTCHEN, AND THE LAW FIRM OF MILLS SHIRLEY LLP, ARE PERMITTED TO WITHDRAW AS COUNSEL, SIGNED SEPTEMBER 18, 2014 Film code number PBT-2014-305816	22162700	Legacy Event	2	4	10304906	<a href="#">View</a>
412249-401	09/17/2014	RECEIPT		22159463					4
412249-401	09/17/2014	Electronic Filing Fee		22158354					4
412249-401	09/17/2014	Affidavit of Notice		22158349	Affidavit of Notice	8	4	10303114	<a href="#">View</a>
412249-401	09/09/2014	RECEIPT		22141066					4
412249-401	09/09/2014	Electronic Filing Fee		22140844					4
412249-401	09/09/2014	Legacy Event		22140841	Legacy Event	7	4	10294095	<a href="#">View</a>
412249-401	09/09/2014	RECEIPT		22140039					4
412249-401	09/09/2014	Electronic Filing Fee		22139500					4
412249-401	09/09/2014	Notice of Hearing		22139494	Notice of Hearing	3	4	10293371	<a href="#">View</a>
412249-401	09/04/2014	Miscellaneous Order	ORDER APPROVING MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING SURVIVOR'S TRUST TO PAY FEDERAL INCOME TAXES, IOWA STATE INCOME TAXES, AD-VALOREM TAXES AND ACCOUNTANTS' FEES IT IS ORDERED THAT THE TRUSTEES HAVE AUTHORITY TO PAY, AND	22128646	Miscellaneous Order	2	4	10288845	<a href="#">View</a>

			SHALL HAVE AUTHORITY TO PAY WITHOUT FURTHER ORDER OF THIS COURT AND THAT ALL PAYMENTS REGARDING THE ELMER H. BRUNSTING DECEDENT'S TRUST SHALL BE PAID FROM BANK OF AMERICA CHECKING ACCOUNT **3536 AND THAT ALL PAYMENTS REGARDING THE NELVA F. BRUNSTING SURVIVOR'S TRUST SHALL BE PAID FROM BANK OF AMERICA CHECKING ACCOUNT **3523 SIGNED SEPTEMBER 4, 2014 Film code number PBT-2014-288833	
412249-401	08/27/2014	RECEIPT		22112746 4
412249-401	08/27/2014	Attorney Assigned		22112432 4
412249-401	08/27/2014	Electronic Filing Fee		22112424 4
412249-401	08/27/2014	Miscellaneous Order	ORDER APPROVING MOTION TO DISTRIBUTE FUNDS - ORDER NOT ENTERED Film code number PBT-2014-281217	22112417 Miscellaneous Order 2 4 10281595 <a href="#">View</a>
412249-401	08/27/2014	Application of Miscellaneous kind	MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING DECEDENT'S TRUST AND THE NELVA F. BRUNSTING SURVIVOR'S TRUST TO PAY FEDERAL INCOME TAXES, IOWA STATE INCOME TAXES, AD-VALOREM TAXES AND ACCOUNTANTS' FES Film code number PBT-2014-281213	22112411 Application of Miscellaneous kind 8 4 10281591 <a href="#">View</a>
412249-401	08/27/2014	RECEIPT		22112225 4
412249-401	08/27/2014	Notice of Hearing	ORAL HEARING SEPTEMBER 4, 2014 AT 10:30 AM Film code number PBT-2014-280737	22111607 Notice of Hearing 2 4 10281133 <a href="#">View</a>
412249-401	08/26/2014	Electronic Filing Fee		22111611 4
412249-401	08/05/2014	Legacy Event	ORDER APPROVING AGREED MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING DECEDENT'S TRUST AND THE NELVA F. BRUNSTING SURVIVOR'S TRUST TO PAY MEDIATOR'S FEE IT	22061276 Legacy Event 7 4 10257689 <a href="#">View</a>

			IS ORDERED THAT THE TRUSTEES HAVE AUTHORITY TO PAY ANDREWS KURTH LLP MEDIATION FEE OF \$6,500.00, AND ANY ADDITIONAL FEES AGREED TO IN WRITING, ONE HALF OF FEES SHALL BE PAID OUT OF THE DECEDENT'S TRUST AND ONE HALF OUT OF THE SURVIVOR'S TRUST SIGNED AUGUST 4, 2014 Film code number PBT-2014-256006						
412249-401	07/31/2014	RECEIPT		22051332					4
412249-401	07/30/2014	Electronic Filing Fee		22050838					4
412249-401	07/30/2014	Application of Miscellaneous kind	AGREED MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H BRUNSTING DECEDENT TRUST AND THE NELVA F BRUNSTING SURVIVOR TRUST TO PAY MEDIATOR FEE Film code number PBT-2014-250085	22050837	Application of Miscellaneous kind	7	4	10252018	<a href="#">View</a>
412249-401	07/09/2014	Agreed Order	DOCKET CONTROL ORDER SIGNED 7/8/14 Film code number PBT-2014-225383	22004818	Agreed Order	3	4	10228889	<a href="#">View</a>
412249-401	07/03/2014	RECEIPT		21994106					4
412249-401	07/02/2014	Electronic Filing Fee		21993266					4
412249-401	07/02/2014	Agreed Order	DOCKET CONTROL ORDER NOT ENTERED Film code number PBT-2014-218797	21993262	Agreed Order	3	4	10222821	<a href="#">View</a>
412249-401	06/04/2014	Miscellaneous Order	ORDER OF TRANSFER, SIGNED JUNE 3, 2014 Film code number PBT-2014-184792	21926067	Miscellaneous Order	7	4	10191039	<a href="#">View</a>
412249-401	05/29/2014	RECEIPT		21912730					4
412249-401	05/28/2014	Electronic Filing Fee		21910726					4
412249-401	05/28/2014	Application of Miscellaneous kind	MOTION TO ENTER TRANSFER ORDER Film code number PBT-2014-176707	21910722	Application of Miscellaneous kind	7	4	10183535	<a href="#">View</a>
412249-401	11/27/2013	Certificate	OF WRITTEN DISCOVERY FILE AS IS PER ATTY Film code number PBT-2013-385311	21545003	Certificate	3	4	9993118	<a href="#">View</a>
412249-401	06/26/2013	Certificate	OF WRITTEN DISCOVERY Film code number PBT-2013-207728	21252737	Certificate	3	4	9825067	<a href="#">View</a>
412249-401	06/07/2013	Amended	FIRST AMENDED PETITION FOR	21218496	Amended	18	4	9804466	<a href="#">View</a>

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			DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, AND FOR IMPOSITION OF A CONSTRUCTIVE TRUST Film code number PBT-2013-185898						
412249-401	05/31/2013	Amended	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, INDIVIDUALLY, AS ATTORNEY-IN-FACT FOR NELVA E. BRUNSTING, AS A SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THENELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE ANITA KAY BRUNSTING PERSONAL ASSET TRUST'S FIRST AMENDED ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURE Film code number PBT-2013-176480	<table border="1"> <tr> <td>21203560</td> <td>Amended</td> <td>6 4</td> <td>9795773</td> <td><a href="#">View</a></td> </tr> </table>	21203560	Amended	6 4	9795773	<a href="#">View</a>
21203560	Amended	6 4	9795773	<a href="#">View</a>					
412249-401	05/31/2013	Amended	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHARD, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S FIRST AMENDED ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR	<table border="1"> <tr> <td>21203548</td> <td>Amended</td> <td>6 4</td> <td>9795767</td> <td><a href="#">View</a></td> </tr> </table>	21203548	Amended	6 4	9795767	<a href="#">View</a>
21203548	Amended	6 4	9795767	<a href="#">View</a>					

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			DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURE Film code number PBT-2013-176474	
412249-401	05/29/2013	Certificate	CERTIFICATE OF WRITTEN DISCOVERY Film code number PBT-2013-174241	21200010 Certificate 3 4 9793694 <a href="#">View</a>
412249-401	05/13/2013	Answer	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, INDIVIDUALLY AS ATTORNEY-IN-FACT FOR NELVA E. BRUNSTING, AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES Film code number PBT-2013-154981	21167653 Answer 5 4 9776060 <a href="#">View</a>
412249-401	05/13/2013	Answer	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST,	21167647 Answer 5 4 9776056 <a href="#">View</a>

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			AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES Film code number PBT-2013-154977	
412249-401	05/08/2013	Affidavit	JOHN KASPAR Film code number PBT-2013-151609	21161865 Affidavit 1 4 9773018 <a href="#">View</a>
412249-401	05/08/2013	Affidavit	PETER DOWDLE Film code number PBT-2013-151607	21161863 Affidavit 1 4 9773016 <a href="#">View</a>
412249-401	05/06/2013	RECEIPT		21154580 4
412249-401	05/06/2013	RECEIPT		21154256 4
412249-401	05/03/2013	CounterClaim to Declaratory Judgement (Indep.)	CAROLE ANN BRUNSTING'S SPECIAL EXCEPTIONS AND SUBJECT THERETO ORIGINAL ANSWER AND COUNTERCLAIM Film code number PBT-2013-146160	21153621 CounterClaim to Declaratory Judgement (Indep.) 16 4 9768055 <a href="#">View</a>
412249-401	04/22/2013	Waiver	CANDACE LOUISE CURTIS Film code number PBT-2013-130579	21129125 Waiver 3 4 9753742 <a href="#">View</a>
412249-401	04/17/2013	Lawsuit Personal - Out / Private	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, 2582 COUNTRY LEDGE, NEW BRAUNFELS, COMAL COUNTY, TEXAS 78132 Film code number PBT-2013-125034	21119975 Lawsuit Personal - Out / Private 1 4 9748703 <a href="#">View</a>
412249-401	04/17/2013	Lawsuit Personal - Out / Private	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, 203 BLOOMINGDALE CIRCLE, VICTORIA, VICTORIA COUNTY, TEXAS 77904 Film code number PBT-2013-124969	21119825 Lawsuit Personal - Out / Private 1 4 9748652 <a href="#">View</a>
412249-401	04/16/2013	Citation Returned	SERVED PERSONAL CITATION TO CAROLE ANN BRUNSTING ON 4/15/13 Film code number PBT-2013-124419	21118787 Citation Returned 2 4 9748158 <a href="#">View</a>
412249-401	04/16/2013	RECEIPT		21117910 4
412249-401	04/16/2013	Citation Issued	1 PER BY P/P AMY RUTH BRUNSTING F/K/A AMY	21117863 4

			RUTH TSCHIRHART 2582 COUNTRY LEDGE NEW BRAUNFELS, COMAL COUNTY, TX 78132	
412249-401	04/16/2013	Citation Issued	1 PERS BY P/P ANITA KAY BRUNSTING F/K/A/ ANITA KAY RILEY 203 BLOOMINGDALE CIRCLE VICTORIA, VICTORIA COUNTY, TX 77904	21117855   4
412249-401	04/10/2013	Lawsuit Personal - Out / Private	CAROLE ANN BRUNSTING, 1333 W LOOP S., STE. 1700, HOU., TX 77027 Film code number PBT-2013-116956	21105451   Lawsuit Personal - Out / Private   2 4   9741475   <a href="#">View</a>
412249-401	04/09/2013	RECEIPT		21103484   4
412249-401	04/09/2013	Civil Case Information Sheet		21103388   Civil Case Information Sheet   1 4   9740263   <a href="#">View</a>
412249-401	04/09/2013	Citation Issued	1 PERS IN -CAROLE ANN BRUNSTING	21103384   4
412249-401	04/09/2013	Declaratory Judgement (Indep.)	PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES 1 PERS IN -CAROLE ANN BRUNSTING Film code number PBT-2013-115617	21103371   Declaratory Judgement (Indep.)   20 4   9740252   <a href="#">View</a>
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412249-401	04/09/2013	Case Initiated Application (OCA)		21103297   4



**STAN STANART**

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## Probate Search - November 1837 to present

Case Number: <input type="text" value="412248"/> Court: <input type="text" value="All"/> File Date (From): <input type="text" value="MM/DD/YYYY"/> <input type="text" value="MM/DD/YYYY"/> (To): <input type="text" value="MM/DD/YYYY"/> <input type="text" value="MM/DD/YYYY"/> <input type="button" value="Search"/>	Images available from Sept. 1, 1999 to present  <b>44 Record(s) Found.</b>
Last Name      First Name      Middle Name  Party Attorney Company <input type="button" value="Search"/>	

CaseID	Case	File Date	Type Desc	Subtype	Style	Status	Judge	Court	View All
1597405	<a href="#">412248</a>	04/02/2012	ORIGINAL WILL DEPOSIT	DEPOSIT WILL WITH NO APPLICATION	ELMER H BRUNSTING	Closed	CHRISTINE BUTTS	4	<a href="#">Parties</a>

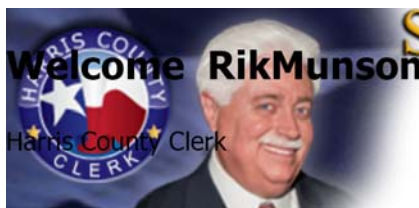
Case	Event Date	Event Desc	Comments	Pgs
412248	04/02/2015	Misc. Notice	NOTICE OF SUBSTITUTION OF COUNSEL OF RECORD AND APPEARANCE Film code number PBT-2015-107526	<a href="#">22578391</a> Misc. Notice 2 4 10513615 <a href="#">View</a>
412248	03/13/2015	RECEIPT		<a href="#">22537220</a> 4
412248	03/13/2015	Attorney Assigned		<a href="#">22536526</a> 4
412248	03/12/2015	Electronic Filing Fee		<a href="#">22536527</a> 4
412248	03/12/2015	Responses	AMY RUTH BRUNSTING RESPONSE TO CARL BRUNSTING APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND OBJECTION TO CANDACE CURTIS APPLICATION FOR APPOINTMENT AS SUCCESSOR EXECUTOR Film code number PBT-2015-84163	<a href="#">22536524</a> Responses 8 4 10491540 <a href="#">View</a>
412248	03/10/2015	RECEIPT		<a href="#">22529251</a> 4
412248	03/10/2015	Electronic Filing Fee		<a href="#">22528518</a> 4

412248	03/10/2015	Objection	OBJECTION TO CANDACE CURTIS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE -PER ATY FILE AS IS INSISTED HE WAS NOT TO PAY FILING FEES. Film code number PBT-2015-80305	22528517	Objection	16	4	10487929	<a href="#">View</a>
412248	03/10/2015	Attorney Assigned		22528516					4
412248	02/19/2015	RECEIPT		22487010					4
412248	02/19/2015	Electronic Filing Fee		22486776					4
412248	02/19/2015	Application to Resign	CARL HENRY BRUNSTING APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND CANDACE CURTIS APPLICATION FOR APPOINTMENT AS SUCCESSOR PERSONAL REPRESENTATIVE Film code number PBT-2015-57596	22486774	Application to Resign	4	4	10466484	<a href="#">View</a>
412248	10/17/2014	Letter Application		22224366	Letter Application	1	4	10336349	<a href="#">View</a>
				22224366	Letter Application	2	4	10336350	<a href="#">View</a>
412248	04/05/2013	Legacy Event	SIGNED APRIL 4, 2013, DOCKET DROP Film code number PBT-2013-111091	21096276	Legacy Event	1	4	9736064	<a href="#">View</a>
412248	04/05/2013	Order on Inventory (Indep.)	ORDERED INVENTORY, APPRAISEMENT AND LIST OF CLAIMS APPROVED, SIGNED APRIL 4, 2013 Film code number PBT-2013-111087	21096268	Order on Inventory (Indep.)	1	4	9736060	<a href="#">View</a>
412248	03/26/2013	RECEIPT		21077322					4
412248	03/26/2013	Conform Copies		21077248					4
412248	03/26/2013	Conform Copies		21077228					4
412248	03/26/2013	Inventory (Indep.)		21077221	Inventory (Indep.)	7	4	9724965	<a href="#">View</a>
412248	12/26/2012	Misc. Notice	NOTICE OF APPEARANCE OF COUNSEL - MAUREEN KUZIK MCCUTCHEN Film code number PBT-2012-413501	20910814	Misc. Notice	2	4	9628441	<a href="#">View</a>
412248	12/05/2012	Order to Extension	FOR FILING SUCH INVENTORY TO 3/26/13 SIGNED 11/30/12 Film code number PBT-2012-396211	20880446	Order to Extension	1	4	9612336	<a href="#">View</a>
412248	11/26/2012	RECEIPT		20862532					4
412248	11/26/2012	RECEIPT		20862476					4
412248	11/26/2012	Affidavit	PERSONAL REPRESENTATIVE'S AFFIDAVIT OF COMPLIANCE WITH NOTICE REQUIRMENTS	20862444	Affidavit	16	4	9600613	<a href="#">View</a>

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			UNDER SECTION 128A, TEXAS PROBATE CODE Film code number PBT-2012-383705						
412248	11/26/2012	Conform Copies		20862436					4
412248	11/26/2012	Application for Extension		20862435	Application for Extension	2	4	9600608	<a href="#">View</a>
412248	09/05/2012	Legacy Event		20717137	Legacy Event	1	4	9518518	<a href="#">View</a>
412248	08/28/2012	Order Admitting Will and Issuance of Letters Testamentary	ORDERED WILL ADMITTED TO PROBATE, LETTERS TESTAMENTARY TO CARL HENRY BRUNSTING, WHO IS APPOINTED INDEPENDENT EXECUTOR, W/O BOND, APPRAISERS WIAVED, SIGNED AUGUST 28, 2012 Film code number PBT-2012-287027	20702869	Order Admitting Will and Issuance of Letters Testamentary	2	4	9509885	<a href="#">View</a>
412248	08/28/2012	Admitted Will	TO PROBATE Film code number PBT-2012-287022	20702861	Admitted Will	12	4	9509881	<a href="#">View</a>
412248	08/28/2012	Proof of Misc. Types	OF DEATH AND OTHER FACTS, DRINA BRUNSTING Film code number PBT-2012-287019	20702858	Proof of Misc. Types	2	4	9509878	<a href="#">View</a>
412248	08/28/2012	Oath		20702855	Oath	1	4	9509876	<a href="#">View</a>
412248	08/28/2012	Letter Application		20702822	Letter Application	1	4	9509841	<a href="#">View</a>
				20702822	Letter Application	2	4	9509842	<a href="#">View</a>
412248	08/28/2012	Letter Application		20702817	Letter Application	2	4	9509839	<a href="#">View</a>
412248	08/27/2012	Citation Returned	SERVED CITATION ON APPLICATION FOR PROBATE OF LAST WILL BY POSTING Film code number PBT-2012-285509	20699973	Citation Returned	2	4	9508501	<a href="#">View</a>
412248	08/16/2012	Conversion Service Event	Executed: N;	20682097					4
412248	08/16/2012	PW-LT-Posting		20682096	PW-LT- Posting	2	4	9497864	<a href="#">View</a>
412248	08/15/2012	RECEIPT		20681947					4
412248	08/15/2012	Civil Case Information Sheet		20681946	Civil Case Information Sheet	1	4	9497788	<a href="#">View</a>
412248	08/15/2012	App to Probate Will and Issuance of Letters Testamentary	PW-LT POST DOD 4 01 2009 RETURN DATE AUGUST 27 2012 Film code number PBT-2012-274058	20681944	App to Probate Will and Issuance of Letters Testamentary	2	4	9497786	<a href="#">View</a>
412248	08/15/2012	Attorney Assigned		20681943					4
412248	04/02/2012	Purported Will		20681945	Purported Will	12	4	9497787	<a href="#">View</a>

412248	04/02/2012	Abstract of Notice		20447682	Abstract of Notice	1	4	9359614	<a href="#">View</a>
412248	04/02/2012	Folder Created		20447658					4
412248	04/02/2012	Case Initiated Application (OCA)	SEC 75 ORIGINAL WILL FILED DOD: 04/01/2009 Film code number PBT-2012-122640	20447657	Case Initiated Application (OCA)	12	4	9359611	<a href="#">View</a>



**STAN STANART**

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## Probate Search - November 1837 to present

Case Number: 412249-401 Court: All File Date (From): MM/DD/YYYY <input type="text"/> (To): MM/DD/YYYY <input type="text"/> <input type="button" value="Search"/>	Images available from Sept. 1, 1999 to present  <b>228 Record(s) Found.</b>
Last Name      First Name      Middle Name  Party Attorney Company <input type="button" value="Search"/>	

CaseID	Case	File Date	Type Desc	Subtype	Style	Status	Judge	Court	View All
1618413	<a href="#">412249-401</a>	04/09/2013	ANCILLARY (LAWSUITS CASES) - CONVERSION		NELVA E. BRUNSTING, DECEASED	Open	CHRISTINE BUTTS	4	<a href="#">Parties</a>

Case	Event Date	Event Desc	Comments	Pgs
412249-401	10/12/2016	Certificate		35334579 Certificate 4 4 13228882 <a href="#">View</a>
412249-401	10/12/2016	Application to Dismiss		35334577 Application to Dismiss 11 4 13228881 <a href="#">View</a>
412249-401	04/07/2016	Legacy Event	ORDERED DARLENE PAYNE SMITH AND THE LAW FIRM OF CRAIN, CATON & JAMES ARE PERMITTED TO WITHDRAW AS COUNSEL OF RECORD; SIGNED 03/11/2016 Film code number PBT-2016-112549	23365329 Legacy Event 2 4 10916912 <a href="#">View</a>
412249-401	03/14/2016	Legacy Event	ORDERED DARLNE PAYNE SMITH AND THE LAW FIRM OF CRAIN, CATON & JAMES ARE PERMITTED TO WITHDRAW AS COUNSEL OF RECORD; SIGNED 03/11/2016 Film code number PBT-2016-83225	23311126 Legacy Event 5 4 10889271 <a href="#">View</a>

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412249-401	03/14/2016	Letter	CAROLE BRUNSTING Film code number PBT-2016-83130	23310902	Letter	2	4	10889179	<a href="#">View</a>	
412249-401	03/09/2016	RECEIPT		23302194					4	
412249-401	03/08/2016	Electronic Filing Fee		23300958					4	
412249-401	03/08/2016	Misc. Notice	DEFENDANT ANITA KAY BRUNSTING NOTICE OF DESIGNATION OF ATTORNEY IN CHARGE Film code number PBT-2016-77711	23300955	Misc. Notice	2	4	10884132	<a href="#">View</a>	
412249-401	03/07/2016	RECEIPT		23296599					4	
412249-401	03/07/2016	Electronic Filing Fee		23295622					4	
412249-401	03/07/2016	Legacy Event		23295618	Legacy Event	5	4	10881580	<a href="#">View</a>	
412249-401	01/26/2016	RECEIPT		23205078					4	
412249-401	01/25/2016	Instrument Over 25 Pages		23204331					4	
412249-401	01/25/2016	Electronic Filing Fee		23204328					4	
412249-401	01/25/2016	Application for Summary Judgement	CANDACE LOUISE CURTIS VERIFIED MOTION FOR ARTIAL SUMMARY JUDGMENT WITH CONCURRENT PETITIONS FOR DECLARATORY JUDGMENT Film code number PBT-2016-26242	23204319	Application for Summary Judgement	7	03	4	10835468	<a href="#">View</a>
412249-401	08/13/2015	Folder Created		22863091					4	
412249-401	08/13/2015	Folder Created		22863056					4	
412249-401	08/10/2015	RECEIPT		22855216					4	
412249-401	08/10/2015	Electronic Filing Fee		22854376					4	
412249-401	08/10/2015	Instrument Over 25 Pages		22854373					4	
412249-401	08/10/2015	Responses	RESPONSE TO DEFENDANT RESPONSE TO CARL HENTRY BRYNSTING MOTION FOR PROTECTIVE ORDER Film code number PBT-2015-258999	22854372	Responses	49	4	10656926	<a href="#">View</a>	
412249-401	08/03/2015	RECEIPT		22839911					4	
412249-401	08/03/2015	Electronic Filing Fee		22839666					4	
412249-401	08/03/2015	Amended	THIRD SUPPLEMENT TO PLAINTIFF FIRST AMENDED PETITION AND REQUEST FOR INJUNCTIVE RELIEF Film code number PBT-2015-250703	22839664	Amended	6	4	10649050	<a href="#">View</a>	
412249-401	08/03/2015	RECEIPT		22839061					4	

412249-401	07/31/2015	Electronic Filing Fee		22838484					4
412249-401	07/31/2015	Responses	DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER Film code number PBT-2015-250083	22838482	Responses	6	4	10648449	<a href="#">View</a>
412249-401	07/24/2015	RECEIPT		22820773					4
412249-401	07/23/2015	Notice of Hearing	HEARING- 08-03-15 @ 11:00 AM Film code number PBT-2015-240340	22820305	Notice of Hearing	2	4	10639208	<a href="#">View</a>
412249-401	07/23/2015	Electronic Filing Fee		22820303					4
412249-401	07/21/2015	RECEIPT		22813695					4
412249-401	07/20/2015	Conform Copies	CONF COPY	22813664					4
412249-401	07/20/2015	Electronic Filing Fee		22812314					4
412249-401	07/20/2015	Instrument Over 25 Pages		22812313					4
412249-401	07/20/2015	Motion For Protective Order	CARL HENRY BRUNSTING MOTION FOR PROTECTIVE ORDER CARL HENRY BRUNSTING MOTION FOR PROTECTIVE ORDER NO SERVICE REQUESTED Film code number PBT-2015-235874	22812310	Motion For Protective Order	51	4	10635027	<a href="#">View</a>
412249-401	07/20/2015	RECEIPT		22810187					4
412249-401	07/20/2015	Attorney Assigned		22809109					4
412249-401	07/17/2015	Electronic Filing Fee		22809119					4
412249-401	07/17/2015	Instrument Over 25 Pages		22809116					4
412249-401	07/17/2015	Responses	NON-PARTY'S CANDACE L KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC'S RESPONSE TO CARL HENRY BRUNSTING'S MOTION TO TRANSFER RELATED DISTRICT COURT CASE TO PROBATE COURT 4 Film code number PBT-2015-234080	22809114	Responses	96	4	10633412	<a href="#">View</a>
412249-401	07/15/2015	Legacy Event		22801894					4
412249-401	07/15/2015	RECEIPT		22800036					4
412249-401	07/14/2015	Electronic Filing Fee		22799561					4
412249-401	07/14/2015	Notice of Hearing	ON 7/21/2015 AT 2:00 PM Film code number PBT-2015-228889	22799557	Notice of Hearing	3	4	10628528	<a href="#">View</a>
412249-401	07/14/2015	Application to Transfer Docket (Indep.)	RELATED DISTRICT COURT CASE TO PROBATE COURT 4 Film code	22799556	Application to Transfer Docket	6	4	10628527	<a href="#">View</a>

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			number PBT-2015-228888	(Indep.)				
412249-401	07/14/2015	RECEIPT		22798842				4
412249-401	07/14/2015	RECEIPT		22798415				4
412249-401	07/13/2015	Electronic Filing Fee		22797462				4
412249-401	07/13/2015	Instrument Over 25 Pages		22797461				4
412249-401	07/13/2015	Responses	PLAINTIFF CURTIS RESPONE TO DEFENDANTS NO EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION AND DEMAND TO PRODUCE EVIDENCE Film code number PBT-2015-227757	22797459	Responses	47	4	10627483 <a href="#">View</a>
412249-401	07/13/2015	Electronic Filing Fee		22796824				4
412249-401	07/13/2015	Notice of Hearing	AUGUST 3, 2015 AT 11:00 AM Film code number PBT-2015-227302	22796822	Notice of Hearing	2	4	10627054 <a href="#">View</a>
412249-401	07/13/2015	RECEIPT		22795657				4
412249-401	07/13/2015	Electronic Filing Fee		22795444				4
412249-401	07/13/2015	Notice of Hearing	AUGUST 3, 2015 AT 11:00 AM Film code number PBT-2015-226432	22795443	Notice of Hearing	2	4	10626242 <a href="#">View</a>
412249-401	07/13/2015	Legacy Event		22794722				4
412249-401	07/13/2015	RECEIPT		22794134				4
412249-401	07/10/2015	Electronic Filing Fee		22793338				4
412249-401	07/10/2015	Amended	SECOND SUPPLEMENT TO PLAINTIFF FIRST AMENDED PETITION Film code number PBT-2015-225377	22793337	Amended	3	4	10625227 <a href="#">View</a>
412249-401	07/10/2015	RECEIPT		22792816				4
412249-401	07/09/2015	Electronic Filing Fee		22792124				4
412249-401	07/09/2015	Instrument Over 25 Pages		22792121				4
412249-401	07/09/2015	Application for Summary Judgement	CARL HENRY BRUNSTING MOTION FOR PARTIAL SUMMARY JUDGMENT Film code number PBT-2015-225037	22792077	Application for Summary Judgement	260	4	10624907 <a href="#">View</a>
412249-401	07/08/2015	RECEIPT		22784812				4
412249-401	07/07/2015	Electronic Filing Fee		22783920				4
412249-401	07/07/2015	Notice of Intention to Take Written Deposition	NO POST REQUESTED Film code number PBT-2015-220731	22783918	Notice of Intention to Take Written Deposition	5	4	10620833 <a href="#">View</a>

412249-401	07/02/2015	Miscellaneous Order	ORDER DENYING LAW-MOTION-TO-SHOW- AUTHORITY-TRCP-12; THIS INSTRUMENT RETURNED UNSIGNED BY JUDGES OFFICE Film code number PBT-2015-216035	22775714	Miscellaneous Order	17	4	10616341	<a href="#">View</a>
412249-401	07/02/2015	RECEIPT		22774399					4
412249-401	07/01/2015	Electronic Filing Fee		22772988					4
412249-401	07/01/2015	No Fee - Other	AMY RUTH BRUNSTING DESIGNATION OF EXPERTS Film code number PBT-2015-214532	22772987	No Fee - Other	4	4	10614908	<a href="#">View</a>
412249-401	07/01/2015	RECEIPT		22771931					4
412249-401	07/01/2015	RECEIPT		22771896					4
412249-401	07/01/2015	Electronic Filing Fee		22771591					4
412249-401	07/01/2015	Amended	CARL HENRY BRUNSTING FIRST AMENDED EXPERT WITNESS DESIGNATION AND FURTHER SUPPLEMENT TO CAROL RESPONSES TO ALL REQUESTS FOR DISCLOSURES Film code number PBT-2015-213764	22771590	Amended	3	4	10614163	<a href="#">View</a>
412249-401	07/01/2015	Electronic Filing Fee		22771484					4
412249-401	07/01/2015	No Fee - Other	ANITA KAY BRUNSTING EXPERT DESIGNATION Film code number PBT-2015-213684	22771480	No Fee - Other	6	4	10614096	<a href="#">View</a>
412249-401	06/26/2015	RECEIPT		22761935					4
412249-401	06/26/2015	Electronic Filing Fee		22761581					4
412249-401	06/26/2015	Application for Summary Judgement	ANITA AND AMY BRUNSTING'S JOINT NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT Film code number PBT-2015-208305	22761579	Application for Summary Judgement	9	4	10609038	<a href="#">View</a>
412249-401	06/19/2015	RECEIPT		22744589					4
412249-401	06/18/2015	Judge Signature Fee		22744197					4
412249-401	06/18/2015	Electronic Filing Fee		22744196					4
412249-401	06/18/2015	Rule 11 Agreement	STIPULATION AND RULE 11 AGREEMENT CONCERNING MOTION TO SHOW AUTHORITY Film code number PBT-2015-198889	22744193	Rule 11 Agreement	17	4	10600148	<a href="#">View</a>
412249-401	04/10/2015	RECEIPT		22596250					4
412249-401	04/10/2015	Application of Miscellaneous kind	LAW MOTION TO SHOW AUTHORITY TRCP 12 MOTION TO DISMISS FOR	22596082	Application of Miscellaneous	7	4	10522914	<a href="#">View</a>

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			WANT OF JURISDICTION Film code number PBT-2015-117405	kind					
412249-401	03/31/2015	Order to Compel (Dep.)	THIS INSTRUMENT RETURNED UNSIGNED BY JUDGES OFFICE Film code number PBT-2015-105354	22574533	Order to Compel (Dep.)	43	4	10511562	<a href="#">View</a>
412249-401	03/25/2015	RECEIPT		22562008					4
412249-401	03/24/2015	Electronic Filing Fee		22560448					4
412249-401	03/24/2015	Instrument Over 25 Pages		22560421					4
412249-401	03/24/2015	Responses	RESPONSE TO ANITA BRUNSTING'S MOTION TO COMPEL CARL BRUNSTING TO RESPOND TO DISCLOSURES Film code number PBT-2015-97461	22560413	Responses	43	4	10504142	<a href="#">View</a>
412249-401	03/24/2015	RECEIPT		22559683					4
412249-401	03/23/2015	Electronic Filing Fee		22559674					4
412249-401	03/23/2015	Objection	OBJECTION TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR Film code number PBT-2015-95444	22556936	Objection	4	4	10502276	<a href="#">View</a>
412249-401	03/23/2015	Order to Compel (Dep.)	CARL AND CANDACE TO REPOOND TO DISCLOSURES; SIGNED 3/23/15 Film code number PBT-2015-95392	22556866	Order to Compel (Dep.)	2	4	10502227	<a href="#">View</a>
412249-401	03/23/2015	RECEIPT		22555465					4
412249-401	03/20/2015	Electronic Filing Fee		22554505					4
412249-401	03/20/2015	Amended	FIRST SUPPLEMENT TO PLAINTIFF'S FIRST AMENDED PETITION Film code number PBT-2015-94015	22554504	Amended	4	4	10500933	<a href="#">View</a>
412249-401	03/11/2015	RECEIPT		22532147					4
412249-401	03/11/2015	Electronic Filing Fee		22531936					4
412249-401	03/11/2015	Application to Compel (Indep.)	CARL & CANDACE TO RESPOND TO DISCLOSURES Film code number PBT-2015-81853	22531935	Application to Compel (Indep.)	31	4	10489402	<a href="#">View</a>
412249-401	03/10/2015	RECEIPT		22528715					4
412249-401	03/10/2015	Electronic Filing Fee		22526997					4
412249-401	03/10/2015	Objection	OBJECTION TO CANDACE CURTIS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE Film code number	22526995	Objection	16	4	10487197	<a href="#">View</a>

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			PBT-2015-79533				
412249-401	03/06/2015	RECEIPT		22522024			4
412249-401	03/05/2015	Conform Copies		22521398			4
412249-401	03/05/2015	Electronic Filing Fee		22521035			4
412249-401	03/05/2015	Order to Consolidate	ORDER NOT ENTERED Film code number PBT-2015-76288	22521032	Order to Consolidate	4 4	10484089 <a href="#">View</a>
412249-401	02/20/2015	Agreed Order	AGREED DOCKET CONTROL ORDER; SIGNED 2/19/15 Film code number PBT-2015-59154	22489856	Agreed Order	2 4	10467953 <a href="#">View</a>
412249-401	02/19/2015	Miscellaneous Order	ORDER DENYING PLAINTIFF'S APPLICATION FOR PARTIAL DISTRIBUTION; SIGNED 2/18/15 Film code number PBT-2015-58239	22487858	Miscellaneous Order	2 4	10467094 <a href="#">View</a>
412249-401	02/18/2015	RECEIPT		22486005			4
412249-401	02/17/2015	Electronic Filing Fee		22484864			4
412249-401	02/17/2015	Misc. Notice	NOTICE OF SUBSTITUTION OF PARTY Film code number PBT-2015-56642	22484863	Misc. Notice	2 4	10465564 <a href="#">View</a>
412249-401	02/13/2015	RECEIPT		22474018			4
412249-401	02/12/2015	Electronic Filing Fee		22473133			4
412249-401	02/12/2015	Certificate	OF WRITTEN DISCOVERY Film code number PBT-2015-49926	22473132	Certificate	2 4	10459314 <a href="#">View</a>
412249-401	02/11/2015	Subpoena Returned		22499993	Subpoena Returned	1 4	10473440 <a href="#">View</a>
412249-401	12/09/2014	Miscellaneous Order	ORDER DENYING CANDACE CURTIS' MOTION FOR DISTRIBUTION OF TRUST FUNDS AND CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS; SIGNED 12/9/14 Film code number PBT-2014-396930	22333498	Miscellaneous Order	1 4	10390940 <a href="#">View</a>
412249-401	12/09/2014	Objection	TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-396928	22333494	Objection	7 4	10390938 <a href="#">View</a>
412249-401	12/09/2014	RECEIPT		22333075			4
412249-401	12/09/2014	Electronic Filing Fee		22332395			4
412249-401	12/09/2014	Objection	OBJECTION TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code	22332389	Objection	7 4	10390361 <a href="#">View</a>

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			number PBT-2014-396326						
412249-401	12/09/2014	RECEIPT		22331923				4	
412249-401	12/08/2014	Electronic Filing Fee		22331427				4	
412249-401	12/08/2014	Responses	AMY RUTH BRUNSTING'S REPOSE TO CARL HENRY BRUNSTING'S MOTION TO REMOVE TRUSTEE Film code number PBT-2014-395809	22331426	Responses	4	4	10389892	<a href="#">View</a>
412249-401	12/08/2014	Electronic Filing Fee		22331420				4	
412249-401	12/08/2014	Misc. Notice	OF APPEARANCE AND DESIGNATION OF LEAD COUNSEL FOR AMY RUTH BRUNSTING Film code number PBT-2014-395795	22331416	Misc. Notice	3	4	10389878	<a href="#">View</a>
412249-401	12/08/2014	RECEIPT		22328816				4	
412249-401	12/05/2014	Electronic Filing Fee		22327923				4	
412249-401	12/05/2014	Responses	TO CARL'S MOTION TO REMOVE TRUSTEES Film code number PBT-2014-393812	22327921	Responses	3	4	10387975	<a href="#">View</a>
412249-401	12/05/2014	Electronic Filing Fee		22327917				4	
412249-401	12/05/2014	Instrument Over 25 Pages		22327913				4	
412249-401	12/05/2014	Responses	TO CANDACE'S MOTION FOR DISTRIBUTION OF TRUST FUNDS & RESPONSE TO CARL'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-393808	22327909	Responses	156	4	10387972	<a href="#">View</a>
412249-401	12/02/2014	RECEIPT		22317681				4	
412249-401	12/02/2014	RECEIPT		22317367				4	
412249-401	12/02/2014	Attorney Assigned		22317022				4	
412249-401	12/01/2014	Electronic Filing Fee		22317025				4	
412249-401	12/01/2014	Witness List	PLAINTIFFS DESIGNATION OF EXPERT WITNESS Film code number PBT-2014-387901	22317023	Witness List	9	4	10382378	<a href="#">View</a>
412249-401	12/01/2014	Electronic Filing Fee		22316602				4	
412249-401	12/01/2014	Declination to Serve	CARL HENRY BRUNSTING'S EXPERT WITNESS DESIGNATION Film code number PBT-2014-387708	22316600	Declination to Serve	10	4	10382195	<a href="#">View</a>
412249-401	12/01/2014	RECEIPT		22314293				4	
412249-401	12/01/2014	Electronic Filing Fee		22313084				4	



412249-401	12/01/2014	Designation	OF EXPERT WITNESSES Film code number PBT-2014-385649	22313083	Designation	15	4	10380228	<a href="#">View</a>
412249-401	11/18/2014	RECEIPT		22293368					4
412249-401	11/18/2014	RECEIPT		22293113					4
412249-401	11/17/2014	Electronic Filing Fee		22291869					4
412249-401	11/17/2014	Amended	AMENDED NOTICE OF ORAL HEARING DECEMBER 09, 2014 AT 3:00 P.M. Film code number PBT-2014-373944	22291862	Amended	2	4	10369234	<a href="#">View</a>
412249-401	11/17/2014	Electronic Filing Fee		22291790					4
412249-401	11/17/2014	Notice of Hearing	AMENDED NOTICE OF ORAL HEARING Film code number PBT-2014-373927	22291788	Notice of Hearing	2	4	10369219	<a href="#">View</a>
412249-401	11/17/2014	RECEIPT		22286155					4
412249-401	11/14/2014	Electronic Filing Fee		22285803					4
412249-401	11/14/2014	Designation	NOTICE OF APPEARANCE AND DESIGNATION OF LEAD COUNSEL Film code number PBT-2014-371437	22285800	Designation	3	4	10366856	<a href="#">View</a>
412249-401	11/13/2014	RECEIPT		22283039					4
412249-401	11/13/2014	Electronic Filing Fee		22282550					4
412249-401	11/13/2014	Demand for a Jury		22282549	Demand for a Jury	3	4	10365377	<a href="#">View</a>
412249-401	11/13/2014	Objection	OBJECTION TO PLAINTIFFS MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-369853	22282544	Objection	7	4	10365373	<a href="#">View</a>
412249-401	11/13/2014	Attorney Assigned		22282540					4
412249-401	11/10/2014	RECEIPT		22274992					4
412249-401	11/10/2014	RECEIPT		22273153					4
412249-401	11/10/2014	RECEIPT		22272926					4
412249-401	11/10/2014	RECEIPT		22272588					4
412249-401	11/07/2014	Electronic Filing Fee		22272374					4
412249-401	11/07/2014	Notice of Hearing	OF ORAL ON 11/17/2014 AT 2:00 PM Film code number PBT-2014-363948	22272371	Notice of Hearing	2	4	10359858	<a href="#">View</a>
412249-401	11/07/2014	Electronic Filing Fee		22272353					4
412249-401	11/07/2014	Notice of Hearing	NOVEMBER 17, 2014 AT 2:00 PM Film code number PBT-2014-363941	22272350	Notice of Hearing	2	4	10359851	<a href="#">View</a>
412249-401	11/07/2014	Electronic Filing Fee		22272284					4
412249-401	11/07/2014	Application of Miscellaneous kind	CARL BRUNSTING MOTION TO MODIFY PRELIMINARY INJUNCTION Film code number PBT-2014-363923	22272280	Application of Miscellaneous kind	16	4	10359833	<a href="#">View</a>

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412249-401	11/07/2014	Electronic Filing Fee		22272257					4
412249-401	11/07/2014	Application of Miscellaneous kind		22272255	Application of Miscellaneous kind	6	4	10359821	<a href="#">View</a>
412249-401	11/07/2014	Electronic Filing Fee		22272253					4
412249-401	11/07/2014	Responses	PLAINTIFFS RESPONSE TO CANDACE LOUISE CURTIS MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-363907	22272250	Responses	3	4	10359817	<a href="#">View</a>
412249-401	09/18/2014	Legacy Event	ORDER GRANTING MOTION FOR WITHDRAWAL OF COUNSEL FOR ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY AND AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART IT IS ORDERED THAT MAUREEN KUZIK MCCUTCHEN, AND THE LAW FIRM OF MILLS SHIRLEY LLP, ARE PERMITTED TO WITHDRAW AS COUNSEL, SIGNED SEPTEMBER 18, 2014 Film code number PBT-2014-305816	22162700	Legacy Event	2	4	10304906	<a href="#">View</a>
412249-401	09/17/2014	RECEIPT		22159463					4
412249-401	09/17/2014	Electronic Filing Fee		22158354					4
412249-401	09/17/2014	Affidavit of Notice		22158349	Affidavit of Notice	8	4	10303114	<a href="#">View</a>
412249-401	09/09/2014	RECEIPT		22141066					4
412249-401	09/09/2014	Electronic Filing Fee		22140844					4
412249-401	09/09/2014	Legacy Event		22140841	Legacy Event	7	4	10294095	<a href="#">View</a>
412249-401	09/09/2014	RECEIPT		22140039					4
412249-401	09/09/2014	Electronic Filing Fee		22139500					4
412249-401	09/09/2014	Notice of Hearing		22139494	Notice of Hearing	3	4	10293371	<a href="#">View</a>
412249-401	09/04/2014	Miscellaneous Order	ORDER APPROVING MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING SURVIVOR'S TRUST TO PAY FEDERAL INCOME TAXES, IOWA STATE INCOME TAXES, AD-VALOREM TAXES AND ACCOUNTANTS' FEES IT IS ORDERED THAT THE TRUSTEES HAVE AUTHORITY TO PAY, AND	22128646	Miscellaneous Order	2	4	10288845	<a href="#">View</a>

			SHALL HAVE AUTHORITY TO PAY WITHOUT FURTHER ORDER OF THIS COURT AND THAT ALL PAYMENTS REGARDING THE ELMER H. BRUNSTING DECEDENT'S TRUST SHALL BE PAID FROM BANK OF AMERICA CHECKING ACCOUNT **3536 AND THAT ALL PAYMENTS REGARDING THE NELVA F. BRUNSTING SURVIVOR'S TRUST SHALL BE PAID FROM BANK OF AMERICA CHECKING ACCOUNT **3523 SIGNED SEPTEMBER 4, 2014 Film code number PBT-2014-288833						
412249-401	08/27/2014	RECEIPT		22112746					4
412249-401	08/27/2014	Attorney Assigned		22112432					4
412249-401	08/27/2014	Electronic Filing Fee		22112424					4
412249-401	08/27/2014	Miscellaneous Order	ORDER APPROVING MOTION TO DISTRIBUTE FUNDS - ORDER NOT ENTERED Film code number PBT-2014-281217	22112417	Miscellaneous Order	2	4	10281595	<a href="#">View</a>
412249-401	08/27/2014	Application of Miscellaneous kind	MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING DECEDENT'S TRUST AND THE NELVA F. BRUNSTING SURVIVOR'S TRUST TO PAY FEDERAL INCOME TAXES, IOWA STATE INCOME TAXES, AD-VALOREM TAXES AND ACCOUNTANTS' FES Film code number PBT-2014-281213	22112411	Application of Miscellaneous kind	8	4	10281591	<a href="#">View</a>
412249-401	08/27/2014	RECEIPT		22112225					4
412249-401	08/27/2014	Notice of Hearing	ORAL HEARING SEPTEMBER 4, 2014 AT 10:30 AM Film code number PBT-2014-280737	22111607	Notice of Hearing	2	4	10281133	<a href="#">View</a>
412249-401	08/26/2014	Electronic Filing Fee		22111611					4
412249-401	08/05/2014	Legacy Event	ORDER APPROVING AGREED MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING DECEDENT'S TRUST AND THE NELVA F. BRUNSTING SURVIVOR'S TRUST TO PAY MEDIATOR'S FEE IT	22061276	Legacy Event	7	4	10257689	<a href="#">View</a>

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			IS ORDERED THAT THE TRUSTEES HAVE AUTHORITY TO PAY ANDREWS KURTH LLP MEDIATION FEE OF \$6,500.00, AND ANY ADDITIONAL FEES AGREED TO IN WRITING, ONE HALF OF FEES SHALL BE PAID OUT OF THE DECEDENT'S TRUST AND ONE HALF OUT OF THE SURVIVOR'S TRUST SIGNED AUGUST 4, 2014 Film code number PBT-2014-256006						
412249-401	07/31/2014	RECEIPT		22051332					4
412249-401	07/30/2014	Electronic Filing Fee		22050838					4
412249-401	07/30/2014	Application of Miscellaneous kind	AGREED MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H BRUNSTING DECEDENT TRUST AND THE NELVA F BRUNSTING SURVIVOR TRUST TO PAY MEDIATOR FEE Film code number PBT-2014-250085	22050837	Application of Miscellaneous kind	7	4	10252018	<a href="#">View</a>
412249-401	07/09/2014	Agreed Order	DOCKET CONTROL ORDER SIGNED 7/8/14 Film code number PBT-2014-225383	22004818	Agreed Order	3	4	10228889	<a href="#">View</a>
412249-401	07/03/2014	RECEIPT		21994106					4
412249-401	07/02/2014	Electronic Filing Fee		21993266					4
412249-401	07/02/2014	Agreed Order	DOCKET CONTROL ORDER NOT ENTERED Film code number PBT-2014-218797	21993262	Agreed Order	3	4	10222821	<a href="#">View</a>
412249-401	06/04/2014	Miscellaneous Order	ORDER OF TRANSFER, SIGNED JUNE 3, 2014 Film code number PBT-2014-184792	21926067	Miscellaneous Order	7	4	10191039	<a href="#">View</a>
412249-401	05/29/2014	RECEIPT		21912730					4
412249-401	05/28/2014	Electronic Filing Fee		21910726					4
412249-401	05/28/2014	Application of Miscellaneous kind	MOTION TO ENTER TRANSFER ORDER Film code number PBT-2014-176707	21910722	Application of Miscellaneous kind	7	4	10183535	<a href="#">View</a>
412249-401	11/27/2013	Certificate	OF WRITTEN DISCOVERY FILE AS IS PER ATTY Film code number PBT-2013-385311	21545003	Certificate	3	4	9993118	<a href="#">View</a>
412249-401	06/26/2013	Certificate	OF WRITTEN DISCOVERY Film code number PBT-2013-207728	21252737	Certificate	3	4	9825067	<a href="#">View</a>
412249-401	06/07/2013	Amended	FIRST AMENDED PETITION FOR	21218496	Amended	18	4	9804466	<a href="#">View</a>

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			DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, AND FOR IMPOSITION OF A CONSTRUCTIVE TRUST Film code number PBT-2013-185898						
412249-401	05/31/2013	Amended	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, INDIVIDUALLY, AS ATTORNEY-IN-FACT FOR NELVA E. BRUNSTING, AS A SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THENELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE ANITA KAY BRUNSTING PERSONAL ASSET TRUST'S FIRST AMENDED ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURE Film code number PBT-2013-176480	<table border="1"> <tr> <td>21203560</td> <td>Amended</td> <td>6 4</td> <td>9795773</td> <td><a href="#">View</a></td> </tr> </table>	21203560	Amended	6 4	9795773	<a href="#">View</a>
21203560	Amended	6 4	9795773	<a href="#">View</a>					
412249-401	05/31/2013	Amended	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHARD, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S FIRST AMENDED ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR	<table border="1"> <tr> <td>21203548</td> <td>Amended</td> <td>6 4</td> <td>9795767</td> <td><a href="#">View</a></td> </tr> </table>	21203548	Amended	6 4	9795767	<a href="#">View</a>
21203548	Amended	6 4	9795767	<a href="#">View</a>					

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			DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURE Film code number PBT-2013-176474	
412249-401	05/29/2013	Certificate	CERTIFICATE OF WRITTEN DISCOVERY Film code number PBT-2013-174241	21200010 Certificate 3 4 9793694 <a href="#">View</a>
412249-401	05/13/2013	Answer	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, INDIVIDUALLY AS ATTORNEY-IN-FACT FOR NELVA E. BRUNSTING, AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES Film code number PBT-2013-154981	21167653 Answer 5 4 9776060 <a href="#">View</a>
412249-401	05/13/2013	Answer	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST,	21167647 Answer 5 4 9776056 <a href="#">View</a>

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			AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES Film code number PBT-2013-154977	
412249-401	05/08/2013	Affidavit	JOHN KASPAR Film code number PBT-2013-151609	21161865 Affidavit 1 4 9773018 <a href="#">View</a>
412249-401	05/08/2013	Affidavit	PETER DOWDLE Film code number PBT-2013-151607	21161863 Affidavit 1 4 9773016 <a href="#">View</a>
412249-401	05/06/2013	RECEIPT		21154580 4
412249-401	05/06/2013	RECEIPT		21154256 4
412249-401	05/03/2013	CounterClaim to Declaratory Judgement (Indep.)	CAROLE ANN BRUNSTING'S SPECIAL EXCEPTIONS AND SUBJECT THERETO ORIGINAL ANSWER AND COUNTERCLAIM Film code number PBT-2013-146160	21153621 CounterClaim to Declaratory Judgement (Indep.) 16 4 9768055 <a href="#">View</a>
412249-401	04/22/2013	Waiver	CANDACE LOUISE CURTIS Film code number PBT-2013-130579	21129125 Waiver 3 4 9753742 <a href="#">View</a>
412249-401	04/17/2013	Lawsuit Personal - Out / Private	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, 2582 COUNTRY LEDGE, NEW BRAUNFELS, COMAL COUNTY, TEXAS 78132 Film code number PBT-2013-125034	21119975 Lawsuit Personal - Out / Private 1 4 9748703 <a href="#">View</a>
412249-401	04/17/2013	Lawsuit Personal - Out / Private	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, 203 BLOOMINGDALE CIRCLE, VICTORIA, VICTORIA COUNTY, TEXAS 77904 Film code number PBT-2013-124969	21119825 Lawsuit Personal - Out / Private 1 4 9748652 <a href="#">View</a>
412249-401	04/16/2013	Citation Returned	SERVED PERSONAL CITATION TO CAROLE ANN BRUNSTING ON 4/15/13 Film code number PBT-2013-124419	21118787 Citation Returned 2 4 9748158 <a href="#">View</a>
412249-401	04/16/2013	RECEIPT		21117910 4
412249-401	04/16/2013	Citation Issued	1 PER BY P/P AMY RUTH BRUNSTING F/K/A AMY	21117863 4



			RUTH TSCHIRHART 2582 COUNTRY LEDGE NEW BRAUNFELS, COMAL COUNTY, TX 78132	
412249-401	04/16/2013	Citation Issued	1 PERS BY P/P ANITA KAY BRUNSTING F/K/A/ ANITA KAY RILEY 203 BLOOMINGDALE CIRCLE VICTORIA, VICTORIA COUNTY, TX 77904	21117855   4
412249-401	04/10/2013	Lawsuit Personal - Out / Private	CAROLE ANN BRUNSTING, 1333 W LOOP S., STE. 1700, HOU., TX 77027 Film code number PBT-2013-116956	21105451   Lawsuit Personal - Out / Private   2 4   9741475   <a href="#">View</a>
412249-401	04/09/2013	RECEIPT		21103484   4
412249-401	04/09/2013	Civil Case Information Sheet		21103388   Civil Case Information Sheet   1 4   9740263   <a href="#">View</a>
412249-401	04/09/2013	Citation Issued	1 PERS IN -CAROLE ANN BRUNSTING	21103384   4
412249-401	04/09/2013	Declaratory Judgement (Indep.)	PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES 1 PERS IN -CAROLE ANN BRUNSTING Film code number PBT-2013-115617	21103371   Declaratory Judgement (Indep.)   20 4   9740252   <a href="#">View</a>
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**STAN STANART**

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## Probate Search - November 1837 to present

Case Number: 412249-402 Court: All File Date (From): MM/DD/YYYY <input type="text"/> (To): MM/DD/YYYY <input type="text"/> <input type="button" value="Search"/>	Images available from Sept. 1, 1999 to present  <b>31 Record(s) Found.</b>
Last Name      First Name      Middle Name  Party Attorney Company <input type="button" value="Search"/>	

CaseID	Case	File Date	Type Desc	Subtype	Style	Status	Judge	Court	View All
1658957	<a href="#">412249-402</a>	02/09/2015	ANCILLARY (LAWSUITS CASES) - CONVERSION			Open	CHRISTINE BUTTS	4	<a href="#">Parties</a>

Case	Event Date	Event Desc	Comments				Pgs
412249-402	02/18/2015	RECEIPT		22485375			4
412249-402	02/17/2015	Electronic Filing Fee		22484952			4
412249-402	02/17/2015	Misc. Notice	CHANGE OF NAME AND ADDRESS Film code number PBT-2015-56703	22484948	Misc. Notice	2 4 10465613	<a href="#">View</a>
412249-402	02/13/2015	RECEIPT		22476353			4
412249-402	02/13/2015	Electronic Filing Fee		22476352			4
412249-402	02/13/2015	RECEIPT		22474705			4
412249-402	02/13/2015	RECEIPT		22474561			4
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412249-402	02/12/2015	Application for Continuance		22474257	Application for Continuance	5 4 10459829	<a href="#">View</a>
412249-402	02/12/2015	Instrument Over 25 Pages		22473922			4
412249-402	02/12/2015	Electronic Filing Fee		22473921			4

412249-402	02/12/2015	Misc. Notice	NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER Film code number PBT-2015-50259	22473920	Misc. Notice	51	4	10459636	<a href="#">View</a>
412249-402	02/12/2015	Electronic Filing Fee		22473243					4
412249-402	02/12/2015	Demand for a Jury		22473240					4
412249-402	02/12/2015	Amended	PLAINTIFF'S SECOND AMENDED PETITION Film code number PBT-2015-49977	22473237	Amended	8	4	10459364	<a href="#">View</a>
412249-402	02/12/2015	RECEIPT		22471096					4
412249-402	02/11/2015	Electronic Filing Fee		22470519					4
412249-402	02/11/2015	Notice of Hearing		22470518	Notice of Hearing	2	4	10457956	<a href="#">View</a>
412249-402	02/11/2015	RECEIPT		22469329					4
412249-402	02/11/2015	Attorney Assigned		22468798					4
412249-402	02/10/2015	Electronic Filing Fee		22468966					4
412249-402	02/10/2015	Amended	NOTICE OF FILING OF PLAINTIFFS FIRST AMENDED PETITION Film code number PBT-2015-47716	22468965	Amended	12	4	10457227	<a href="#">View</a>
412249-402	02/09/2015	Receipts	RECEIPT# 1166586 CHARGED \$27.00 FOR ENVELOPE NUMBER 40506979 Film code number PBT-2015-47634	22468841	Receipts	1	4	10457152	<a href="#">View</a>
412249-402	02/09/2015	Misc. Notice	NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER FILED PREVIOUSLY ON 2/6/15 Film code number PBT-2015-47630	22468837	Misc. Notice	51	4	10457148	<a href="#">View</a>
412249-402	02/09/2015	Receipts	RECEIPT #1166892 CHARGE THE AMOUNT OF \$4.00 FOR ENVELOPE NUMBER 4081121	22468813					4
412249-402	02/09/2015	Application for Continuance		22468809					4
412249-402	02/09/2015	Receipts	RECEIPT #1166739 CHARGED \$182.00 FOR ENVELOPE #4075218 Film code number PBT-2015-47611	22468807	Receipts	1	4	10457132	<a href="#">View</a>
412249-402	02/09/2015	Motion Pertaining to Lawsuits Only (Indep.)	NOTICE OF FILING OF PLAINTIFF'S ORIGINAL PETITION Film code number PBT-2015-47608	22468802	Motion Pertaining to Lawsuits Only (Indep.)	601	4	10457130	<a href="#">View</a>
412249-402	02/09/2015	Folder Created		22468767					4

412249-402	02/09/2015	Case Initiated Application (OCA)	22468766	4
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# How to steal your family inheritance

Updated on August 2, 2014

Today I received an email asking if I "Want to [legally](#) hijack some major cash today?" Sounds intriguing, but as luck would have it, I just this week discovered an ingenious method of hijacking cash (as well as other assets). Ok, so it's not 100% legal. And it takes a little more than a day. But it's most definitely a hijack.

The idea is brilliant in its simplicity: *Steal your own [inheritance](#)*.

I'd like to take credit for it, I really would. Alas, my brain is not wired for [financial](#) intrigue. I don't have a criminal mind.

The beauty of this idea is that even the most diabolically challenged (like me) can pull it off.

## Step One: The Trust

You will need the following: Two elderly parents, a lawyer, an unsuspecting sibling, and some patience.

First, set up your FAMILY TRUST. There are two components to the trust: financial and medical. Obviously, your interest is in the financial. So as you are sitting with the family and the attorney, "graciously" allow your unsuspecting sibling (US) to be named as the person in charge of medical decisions for your parents. Since parents always want to be fair, they will naturally assign you to the lead financial role. Everyone will be happy. Especially you.

Now in this initial Trust document, there is a first position and a second position. Make sure you get the first financial position. Your US will be put in second position on the financial and you will be put in second position on the medical. This is all fair and square and makes the whole thing appear legit. Mom and Dad's future needs are now legally in the capable hands of their two devoted children. There are two decision makers for medical, two for financial. Lovely.

## Read this Blog Before Your \$ Gets Stolen

- [Inheritance Heisters: Thieves with PhDs | A User's Guide to Guilt Free Thievery](#)

## Step 2: The Setup

The Trust may sit gathering dust for some time. That's to be expected. The provisions of the Trust do not come into play until one of the parents becomes ill or dies. This may take some patience on your part. But trust me, it will be well worth the wait.

Now let's say the "triggering event" is that one parent becomes very sick. For the sake of argument, we will say it's the father. Suddenly the Trust document comes down off the shelf. Time to double check who is really authorized to make decisions for Dad's healthcare. Chances are very good that by this time, Mom is pretty distraught and probably not in the best mental shape to be authorizing "chemical code" or "DNR" decisions with Dad's doctors.

This is where having your unsuspecting sibling (US) as the primary healthcare decision-maker on the Trust comes into play. He will be so focused on doing the right thing medically, that he will not be paying any attention whatsoever to the financial side of things. After all, Mom and Dad still have healthcare benefits to pay for Dad's expenses. They still have income coming in. There's really nothing happening at this point that affects the financial aspect of the Family Trust.

At least, that's what US thinks...

### Step 3: The Old Switcheroo

While Mom and US are dealing with Dad, you'll be busy in your own way. You'll have several clandestine meetings with your attorney. He or she will give you the high sign when it's time to make your move.

Since it's your own family we're talking about, you will know when the perfect moment arrives. It is imperative to wait until both US and Mom are totally distracted with caring for Dad. Hopefully by this time Dad will be really, really ill. It helps if he needs hospice care, as implementing hospice requires Power of Attorney.

Now assuming your US is like most, he is dead serious about his care-taking duties. He knows hospice is needed. When your lawyer suggests that he (US, not the lawyer) should obtain Power of Attorney, he (US, not the lawyer) readily agrees.

However, to make this happen, Mom, who is still listed in the Family Trust, and is not sick or dead yet, needs to be disenfranchised from any and all decision-making power.

How do you accomplish this, you ask? The answer is simple. You get Mom declared **mentally incompetent!**

### Step 4: Movin' On Up

If you play this step right you will actually be able to get your US to cooperate as your unwitting accomplice. Have your lawyer tell US that it's a "mere formality" to get Mom declared mentally incompetent. Convince him this formality is necessary for him to get Dad enrolled in hospice.

Your objective here is to get US to be the one to obtain the doctor's signature on a form declaring Mom mentally incompetent. Trust me. He will not suspect a thing. He'll do anything/everything he can in the interest of supporting Dad and Mom through this incredibly difficult time.

As soon as you get that signed piece of paper, grab it and run -- don't walk -- to the lawyer's office. You've now got what you need to rewrite the trust in your favor! See how easy that was?

## **Sing it Queen -- I got a one track mind!**

### **Step 5: Grab those Assets**

With Dad now on his deathbed, both Mom and US are 100% distracted. They will have no idea what you're masterminding over at the old attorney's office. It will be months before they find out -- and by then it will be too late. Hehe.

So here's how this works:. Now that Dad is out of the picture (figurately for now, literally in a matter of weeks or days), that leaves only Mom to contend with. Oh wait! Remember, we got Mom declared mentally incompetent. So that means that the original trust document is no longer valid. Mom is officially legally incapable of making financial decisions for herself. Luckily, she has you, her faithful Trust executor, to make them for her!

Oh my! And what a conscientious little trust administrator you are! You are so on top of things and so diligent about managing the Family Trust that you don't waste a second. No sirree. The minute you get get that "mental incompetence" declaration signed, you get the lawyer to rewrite any/all sections of the Trust document that don't suit *your* needs, and off you go!

## **Money for Nothing**

### **Step 6: Laugh all the Way to the Bank**

De facto, you are now the only person with any legal claim to the Trust. With the mere stroke of a pen, you've obliterated both Mom and US from the document. Instead of the Family Trust, you could just as well title the revised document The Bank of Me.

Now, at some point after Dad kicks, US will probably regain his mental equilibrium. This is not to be confused with Mom -- her mental competency is gone, baby gone. It's signed, sealed and delivered on that scrap of paper her doctor signed. But US will eventually start poking his nose around the finances. You see, being a true caretaker at heart, he's still got a vested interest in making sure Mom's taken care of, now that she's a widow. And that means both physically/emotionally and financially.

No worries, however. US can't touch you or Mom's money. He's been summarily written out of the Trust document. That lawyer the whole family worked with to write the original document? Sorry, brother. That lawyer now represents you and only you. Not Mom and not US. YOU are the Trust. They are -- well, they are toast.



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PROBATE COURT 4

NO. 412,249-401

ESTATE OF § IN PROBATE COURT  
 NELVA E. BRUNSTING, §  
 DECEASED § NUMBER FOUR (4) OF  
 § HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, § IN PROBATE COURT  
 Individually and as independent §  
 executor of the estates of Elmer H. §  
 Brunsting and Nelva E. Brunsting §

v. §

ANITA KAY BRUNSTING f/k/a §  
 ANITA KAY RILEY, individually, §  
 as attorney-in-fact for Nelva E. § NUMBER FOUR (4) OF  
 Brunsting, and as Successor Trustee §  
 of the Brunsting Family Living Trust, §  
 the Elmer H. Brunsting Decedent's §  
 Trust, the Nelva E. Brunsting §  
 Survivor's Trust, the Carl Henry §  
 Brunsting Personal Asset Trust, and §  
 the Anita Kay Brunsting Personal §  
 Asset Trust, AMY RUTH §  
 BRUNSTING f/k/a AMY RUTH §  
 TSCHIRHART, individually and as §  
 Successor Trustee of the Brunsting §  
 Family Living Trust, the Elmer H. §  
 Brunsting Decedent's Trust, the §  
 Nelva E. Brunsting Survivor's Trust §  
 the Carl Henry Brunsting Personal §  
 Asset Trust, and the Amy Ruth §  
 Tschirhart Personal Asset Trust; §  
 CAROLE ANN BRUNSTING, §  
 individually and as Trustee of the §  
 Carole Ann Brunsting Personal §  
 Asset Trust; and as a nominal §  
 Defendant only, CANDACE §  
 LOUISE CURTIS § HARRIS COUNTY, TEXAS

1142014:0904: P0039

**OBJECTION TO PLAINTIFF'S MOTION FOR DISTRIBUTION OF TRUST FUNDS**

COMES NOW, Carole Ann Brunsting ("Carole Brunsting"), daughter of Nelva E. Brunsting, Deceased ("Decedent"); a beneficiary of the Estate of Nelva E. Brunsting, Deceased ("Estate"); and a beneficiary of The Brunsting Family Living Trust ("Trust"), and files this Objection to Plaintiff's Motion for Distribution of Trust Funds filed by Plaintiff, Candace Louise Curtis ("Plaintiff"):

**I.**  
**BACKGROUND**

1. Plaintiff first filed her suit against her siblings, Anita Brunsting, Amy Brunsting, and Carole Brunsting, regarding the Trust in United States District Court for the Southern District of Texas.<sup>1</sup> Plaintiff's suit was subsequently transferred to this Court on June 4, 2014, pursuant to an Order of Remand entered by the Federal Court.
2. Plaintiff's Petition was filed in bad faith, without just cause, and frivolously – especially with respect to filing her Petition in federal court knowing there was already litigation pending on the same issues in this Court.
3. On or about October 20, 2014, Plaintiff filed her Motion for Distribution of Trust Funds ("Motion") requesting that this Court authorize the payment of \$24,171.26 out of the Trust for attorney's fees and expenses allegedly incurred by her in prosecuting her frivolous Petition. Plaintiff's Motion, like her Petition, is wholly without merit, filed in bad faith, and is detrimental to Carole Brunsting, who is defending against the lawsuits in this cause out of her own pocket. Plaintiff should not be able to use the Trust to bankroll the lawsuit she is pursuing in bad faith.

---

<sup>1</sup> Cause No. 4:12-CV-00592; Candace Louise Curtis v. Anita Kay Brunsting, et. al; In the United States District Court for the Southern District of Texas.

**II.**  
**OBJECTIONS**

4. Carole Brunsting objects to Plaintiff's Motion because (1) the Trust is currently the subject of this litigation; (2) Plaintiff's suit and Motion have been brought in bad faith and without just cause; (3) and Plaintiff has proffered no evidence that the attorney's fees and expenses allegedly incurred by her and subject of her Motion are reasonable and necessary. Accordingly, Plaintiff's Motion should be denied.

5. First, this case involves, in large part, questions regarding the administration and distribution of the Trust. Until the litigation pertaining to the Trust is resolved, distributions from the Trust should only be made for necessities, such as paying taxes on Trust assets. Plaintiff should not be allowed to fund her lawsuit pending against other Trust beneficiaries with Trust funds.

6. Second, Plaintiff's Petition was brought in bad faith, without just cause, and frivolously. Unless and until Plaintiff is found to have brought her lawsuit in good faith and with just cause, she is not entitled to the payment of her attorney's fees and expenses out of the Trust funds. To allow Plaintiff access to Trust funds to subsidize her lawsuit would substantially prejudice Carole Brunsting, who is defending against the lawsuits in this cause out of her own funds.

7. Finally, Plaintiff has not provided one document or invoice to support her Motion. Plaintiff seeks a distribution to pay her attorney's fees and expenses allegedly incurred in this proceeding in the amount of \$24, 171.26, but there is no backup to support this amount. Carole Brunsting demands that the backup, including invoices, be produced by Plaintiff before the hearing on Plaintiff's Motion.

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WHEREFORE, PREMISES CONSIDERED, Carole Brunsting prays that the Court deny Candace Louise Curtis' Motion for Distribution of Trust Funds and for all other relief to which she may show herself justly entitled.

Respectfully submitted,

CRAIN, CATON & JAMES,  
A Professional Corporation

By: 

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Attorneys for Carole Ann Brunsting

1142014:0904:P0042

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument was forwarded to:


Ms. Bobbie G. Bayless  
BAYLESS & STOKES  
2931 Ferndale  
Houston, Texas 77098  
(713) 522-2218 (facsimile)

Mr. Jason Cox  
Ms. Nicole Sain Thornton  
OSTROM SAIN  
5020 Montrose Blvd., Ste. 310  
Houston, Texas 77006

Ms. Anita Kay Brunsting  
203 Bloomingdale Circle  
Victoria, Texas 77904

Ms. Amy Ruth Brunsting  
2582 Country Ledge  
New Braunfels, Texas 78132

by facsimile, hand delivery, and/or certified mail, return receipt requested, on this 13<sup>th</sup> day of November, 2014.

  
DARLENE PAYNE SMITH  
COURTNEY MCMILLAN LYSSY  
LORI A. WALSH



1142014:0904:P0043

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
NELVA E. BRUNSTING,	§	
	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS

---

CARL HENRY BRUNSTING,	§	IN PROBATE COURT
Individually and as independent	§	
executor of the estates of Elmer H.	§	
Brunsting and Nelva E. Brunsting	§	

v.

ANITA KAY BRUNSTING f/k/a	§	
ANITA KAY RILEY, individually,	§	
as attorney-in-fact for Nelva E.	§	NUMBER FOUR (4) OF
Brunsting, and as Successor Trustee	§	
of the Brunsting Family Living Trust,	§	
the Elmer H. Brunsting Decedent's	§	
Trust, the Nelva E. Brunsting	§	
Survivor's Trust, the Carl Henry	§	
Brunsting Personal Asset Trust, and	§	
the Anita Kay Brunsting Personal	§	
Asset Trust, AMY RUTH	§	
BRUNSTING f/k/a AMY RUTH	§	
TSCHIRHART, individually and as	§	
Successor Trustee of the Brunsting	§	
Family Living Trust, the Elmer H.	§	
Brunsting Decedent's Trust, the	§	
Nelva E. Brunsting Survivor's Trust	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Amy Ruth	§	
Tschirhart Personal Asset Trust;	§	
CAROLE ANN BRUNSTING,	§	
individually and as Trustee of the	§	
Carole Ann Brunsting Personal	§	
Asset Trust; and as a nominal	§	
Defendant only, CANDACE	§	
LOUISE CURTIS	§	HARRIS COUNTY, TEXAS

**ORDER DENYING PLAINTIFF'S MOTION FOR DISTRIBUTION OF TRUST FUNDS**

On this day the Court considered Plaintiff's Motion for Distribution of Trust Funds filed by Candace Louise Curtis, and the Court, having considered the Motion, any response thereto, and the arguments of counsel, finds and is of the opinion that the Motion should be DENIED. It is therefore,

ORDERED, that Candace Louise Curtis's Motion for Distribution of Trust Funds is DENIED.

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
JUDGE PRESIDING

**APPROVED AS TO FORM:**

CRAIN, CATON & JAMES,  
A PROFESSIONAL CORPORATION

By: 

DARLENE PAYNE SMITH

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Attorneys for Carole Ann Brunsting





12102014:0944:P0056

**OBJECTION TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION  
OF TRUST FUNDS**

COMES NOW, Carole Ann Brunsting ("Carole Brunsting"), daughter of Nelva E. Brunsting, Deceased; a beneficiary of the Estate of Nelva E. Brunsting, Deceased; and a beneficiary of The Brunsting Family Living Trust ("Trust"), and files this Objection to Carl Brunsting's Motion for Distribution of Trust Funds filed by Plaintiff, Candace Louise Curtis ("Plaintiff").

**I.  
BACKGROUND**

1. On or about April 9, 2013, Plaintiff, Carl Henry Brunsting ("Plaintiff"), filed his Petition for Declaratory Judgment for an Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief ("Petition") against his sisters, Amy Brunsting, Anita Brunsting, and Carole Brunsting, in various capacities. Plaintiff's lawsuit against Carole Brunsting was filed in bad faith, without just cause, and frivolously.
2. On or about November 7, 2014, Plaintiff filed his own Motion for Distribution of Trust Funds ("Motion") to pay his attorney's out of the Trust. Plaintiff's Motion, like his Petition, is wholly without merit, filed in bad faith, and is detrimental and unfairly prejudicial to Carole Brunsting, who is defending against the various lawsuits in this cause out of her own pocket. Plaintiff should not be able to use the Trust to bankroll the lawsuit he is pursuing in bad faith.

**II.  
OBJECTIONS**

3. Carole Brunsting objects to Plaintiff's Motion because (1) the Trust is currently the subject of this litigation; (2) Plaintiff's suit and Motion have been brought in bad faith and without just cause; (3) and Plaintiff has proffered no evidence that the attorney's fees and expenses allegedly incurred by him and subject of his Motion are reasonable and necessary. In

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fact, Plaintiff has failed to produce a single invoice or proof of payment for attorney's fees and costs allegedly incurred by him. Accordingly, Plaintiff's Motion should be denied.

4. This case involves, in large part, questions regarding the administration and distribution of the Trust. Until the litigation pertaining to the Trust is resolved, distributions from the Trust should only be made for necessities, such as paying taxes on Trust assets. Plaintiff should not be allowed to fund his lawsuit pending against other Trust beneficiaries with Trust funds.


5. Second, Plaintiff's Petition was brought in bad faith, without just cause, and frivolously. Unless and until Plaintiff is found to have brought his lawsuit in good faith and with just cause, he is not entitled to the payment of his attorney's fees and expenses out of the Trust funds. To allow Plaintiff access to Trust funds to subsidize his lawsuit would substantially prejudice Carole Brunsting, who is defending against the lawsuits in this cause out of her own funds.

6. Finally, Plaintiff has not provided one document or invoice to support his Motion. Plaintiff seeks a distribution to pay his attorney's fees and expenses allegedly incurred in this proceeding in an unspecified amount of, but there is no backup to support a single penny sought by Plaintiff. Carole Brunsting demands that the backup, including invoices and any payments thereon, be produced by Plaintiff before the hearing on Plaintiff's Motion.

WHEREFORE, PREMISES CONSIDERED, Carole Brunsting prays that the Court deny Carl Brunsting's Motion for Distribution of Trust Funds and for all other relief to which she may show herself justly entitled.

Respectfully submitted,

CRAIN, CATON & JAMES,  
A Professional Corporation

By:   
DARLENE PAYNE SMITH  
State Bar No. 18643525  
dsmith@craincaton.com  
LORI A. WALSH  
State Bar No. 24084038  
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Houston, Texas 77010  
(713) 658-2323  
(713) 658-1921 (Facsimile)

Attorneys for Carole Ann Brunsting

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument was forwarded  
to:


Ms. Bobbie G. Bayless  
BAYLESS & STOKES  
2931 Ferndale  
Houston, Texas 77098  
(713) 522-2218 (facsimile)

Mr. Jason Cox  
Ms. Nicole Sain Thornton  
OSTROM SAIN  
5020 Montrose Blvd., Ste. 310  
Houston, Texas 77006

Ms. Anita Kay Brunsting  
203 Bloomingdale Circle  
Victoria, Texas 77904

Ms. Amy Ruth Brunsting  
2582 Country Ledge  
New Braunfels, Texas 78132

by facsimile, hand delivery, and/or certified mail, return receipt requested, on this 9<sup>th</sup> day of  
December, 2014.

  
\_\_\_\_\_  
DARLENE PAYNE SMITH  
LORI A. WALSH

12102014:0944:P0059

COPY

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS

---

CARL HENRY BRUNSTING,	§	IN PROBATE COURT
Individually and as independent	§	
executor of the estates of Elmer H.	§	
Brunsting and Nelva E. Brunsting	§	

v.

ANITA KAY BRUNSTING f/k/a	§	
ANITA KAY RILEY, individually,	§	
as attorney-in-fact for Nelva E.	§	NUMBER FOUR (4) OF
Brunsting, and as Successor Trustee	§	
of the Brunsting Family Living Trust,	§	
the Elmer H. Brunsting Decedent's	§	
Trust, the Nelva E. Brunsting	§	
Survivor's Trust, the Carl Henry	§	
Brunsting Personal Asset Trust, and	§	
the Anita Kay Brunsting Personal	§	
Asset Trust, AMY RUTH	§	
BRUNSTING f/k/a AMY RUTH	§	
TSCHIRHART, individually and as	§	
Successor Trustee of the Brunsting	§	
Family Living Trust, the Elmer H.	§	
Brunsting Decedent's Trust, the	§	
Nelva E. Brunsting Survivor's Trust	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Amy Ruth	§	
Tschirhart Personal Asset Trust;	§	
CAROLE ANN BRUNSTING,	§	
individually and as Trustee of the	§	
Carole Ann Brunsting Personal	§	
Asset Trust; and as a nominal	§	
Defendant only, CANDACE	§	
LOUISE CURTIS	§	HARRIS COUNTY, TEXAS

**ORDER DENYING CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS**

On this day the Court considered Carl Brunsting's Motion for Distribution of Trust Funds and the Court, having considered the Motion, any response thereto, and the arguments of counsel, finds and is of the opinion that the Motion should be DENIED. It is therefore,



ORDERED, that Carl Brunsting's Motion for Distribution of Trust Funds is DENIED.

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
JUDGE PRESIDING

**APPROVED AS TO FORM:**

CRAIN, CATON & JAMES,  
A PROFESSIONAL CORPORATION

By: *Lori A. Walsh*

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12102014:0944:P0061



PROBATE COURT 4

DM

**DATA ENTRY  
PICK UP THIS DATE**

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, et al	§
v.	§
ANITA KAY BRUNSTING, et al	§

**RESPONSE TO CANDACE'S  
MOTION FOR DISTRIBUTION OF TRUST FUNDS  
&  
RESPONSE TO CARL'S  
MOTION FOR DISTRIBUTION OF TRUST FUNDS**

Defendant Anita Kay Brunsting files this response to Candace Louise Curtis' Motion for Distribution of Trust Funds and this response to Carl Brunsting's Motion for Distribution of Trust Funds and would respectfully show the Court as follows:

**I. Summary of the Argument**

1. Distributions to pay legal-fee creditors are not authorized by the trust and, therefore, the motions must be denied.
2. Distributions to pay legal-fee creditors are prohibited by the trust and, therefore, the motions must be denied.
3. The Court lacks jurisdiction to decide the distributions for legal-fee creditor issue because there are no allegations of fraud, misconduct, or clear abuse of discretion with respect to Candace's and Carl's request that the trust pay their attorneys' fees.
4. If the Court finds the *in terrorem* clause is enforceable, then Candace and Carl have no right to any distribution from the trust.

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## **II. Argument & Authorities**

Candace and Carl seek distributions from the trusts to pay their creditor-attorneys.

Neither Candace nor Carl cite any provision in the trust instruments that would allow for the requested distributions. This is a tacit admission that such distributions are not authorized by the trust instruments.

Neither Candace nor Carl cite any legal authority that would allow for the requested distributions. This is a tacit admission that such distributions are not permitted by any legal authority.

Since there is nothing in the trust instruments or in any legal authority that allows the requested distributions, the motions must be denied.

### **A. The Brunsting Family Living Trust.**

With respect to distributions under the Brunsting Family Living Trust, the instrument provides:

#### **i. Distributions of Net Income**

Our trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of [the beneficiary] as much of the net income from [the beneficiary's] trust share as our Trustee deems advisable for the health, education, maintenance and support of [the beneficiary], for [the beneficiary's] lifetime.

#### **ii. Distributions of Principal**

Our trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of [the beneficiary] as much of the principal from [the beneficiary's] trust share as our Trustee deems advisable for the health, education, maintenance and support of [the beneficiary], for [the beneficiary's] lifetime.<sup>1</sup>

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<sup>1</sup> Exhibit 1, Restatement of the Brunsting Family Living Trust, pages 10-1 to 10-12.

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Furthermore, the trust instrument prohibits the trust from being charged with a beneficiary's

debt:

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.<sup>2</sup>

Finally, the trust instrument provides:

All trusts created under this agreement shall be administered free from the active supervision of any court.<sup>3</sup>

**B. The Qualified Beneficiary Designation.**

With respect to distributions under the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement ("QBD"), the instrument provides:

The Trustee, shall have the power, in such Trustee's sole and absolute discretion, binding on all persons interested now or in the future in this trust, to distribute or apply for the benefit for whom the trust was created (hereinafter the "primary beneficiary") and the primary beneficiary's issue or to a trust for their benefit, so much of the income and/or principal of the Trust Estate, and at such time or times as Trustee shall deem appropriate for such distributees' health, support, maintenance, and education.<sup>4</sup>

Furthermore, the QBD contains spendthrift provisions that prohibit the requested distribution:

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<sup>2</sup> Exhibit 1, Restatement of the Brunsting Family Living Trust, page 11-1.

<sup>3</sup> Exhibit 1, Restatement of the Brunsting Family Living Trust, page 4-5.

<sup>4</sup> Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, pages 7-8.

[N]either the principal of these trusts nor any income of these trusts shall be liable for any debt of any beneficiary.<sup>5</sup>

The QBD stated purpose includes:

- (1) To protect trust assets and income from claims of and interference from third parties; and
- (2) To protect the beneficiary against claims of third parties.<sup>6</sup>

Finally, the QBD states:

It is the Trustor's intent that the terms of the Trust Agreement be carried out free from outside interference. Therefore, the purported exercise of any power granted under the Trust Agreement, whether by a Trustee, Special Co-Trustee, Trust Protector or a beneficiary, including a power of appointment, withdrawal, substitution, or distribution, shall be of no force and effect if such purported exercise was the result of compulsion. The purported exercise of a power shall be deemed to be the result of compulsion if such exercise is (i) in response to or by reason of any order or other direction of any court, tribunal or like authority having jurisdiction over the individual holding the power, the property subject to the power or the trust containing such property or (ii) the result of an individual not acting of his or her own free will.<sup>7</sup>

**C. Attorneys Fees are not "Health, Education, Maintenance and Support."**

Under both the Brunsting Family Living Trust and the QBD, the distributions are: (1) subject to the sole and absolute discretion of the trustee; and (2) as the trustee deems advisable for the health, education, maintenance and support of a beneficiary. Carl's and Candace's attorneys' fees

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<sup>5</sup> Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, page 25.

<sup>6</sup> Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, pages 5-6, ¶¶ 4 and 10.

<sup>7</sup> Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, page 25.

sought in their motion are not for their health, education, maintenance and support.<sup>8</sup> Accordingly, the requested distributions are not authorized by the trust.

**D. The Requested Distributions Violate the Spendthrift Provisions.**

The spendthrift provisions plainly state they are designed to prevent interference and claims of third parties. Candace's and Carl's attorneys are third parties. When the spendthrift provisions of the trust and the *in terrorem* provisions are analyzed together, it becomes abundantly clear that the trust was not intended to pay Candace's and Carl's attorneys fees in this case. Accordingly, the requested distributions are prohibited by the trust.

**E. There is No Justiciable Case or Controversy with Respect to the Request Distribution.**

In the case of *Di Portanova v. Monroe*, the First District Court of Appeals explained:

Under a discretionary trust, the beneficiary is entitled only to the income or principal that the trustee, in his discretion, shall distribute to the beneficiary. The beneficiary of a discretionary trust cannot compel the trustee to pay him or to apply for his use any part of the trust property, nor can a creditor of the beneficiary reach any part of the trust property until it is distributed to the beneficiary. A court cannot substitute its discretion for that of a trustee, and can interfere with the exercise of discretionary powers only in cases of fraud, misconduct, or clear abuse of discretion.

A court of equity has no right to interfere with and control, in any case, the exercise of a discretionary power, no matter in whom it may be vested; a corporate body or individuals, the aldermen of a city, the directors of a bank, a trustee, executor or guardian; and I add, that meaning and principle of the rule, and the limitations to which it is subject, are in all the cases to which it applies, exactly the same. The meaning and principle of the rule are, that the court will not substitute

---

<sup>8</sup> Although defendant was unable to find a case directly on point, the case of *Tedder v. Gardner Aldrich, LLP*, 421 S.W.3d 651 (Tex. 2013) appears instructive. The Texas Supreme Court held that attorneys fees in a divorce proceeding were not "necessaries." Defendant recognizes that there is a difference between "necessaries" and the HEMS standard, but nevertheless believes the HEMS standard would not include plaintiffs legal fees in the case at bar.



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its own judgment for that of the party in whom the discretion is vested, and thus assume to itself a power which the law had given to another[.]

In the absence of evidence of mala fides, the courts are disinclined to interfere where the trustee has been given discretionary powers . . . . The court will refuse to review his decision in the absence of a showing that he did not exercise his discretion in good faith or that his decision was unreasonable; for the trustee in such case stands in the position of an arbitrator.<sup>9</sup>

The First District Court of Appeals ultimately held that the ultimate issue decided by the trial court did not present a justiciable controversy for the trial court to resolve because the issue should have been left to the Trustees' discretion.<sup>10</sup>

Here, Candace and Carl ask this Court to usurp the powers of the trustees and substitute the court's discretion for that of the trustees in violation of the trust. The Court has no jurisdiction to make such determination, because there is no justiciable controversy for the trial court to resolve. There is no allegations of fraud, misconduct, or clear abuse of discretion with respect to Candace's and Carl's request that the trust pay their attorneys' fees.<sup>11</sup> Even if Candace and Carl made such allegations, there is no evidence to support such allegations.

**F. No Contest Clause - Carl and Candace May Not Have An Interest.**

Both Carl and Candace appear to concede that they have violated the trust's *in terrorem* clause. Both filed a declaratory judgment action asking this Court to rule that the trust's *in terrorem* clause is overly broad, against public policy, and not capable of enforcement, but neither challenges

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<sup>9</sup> *Di Portanova v. Monroe*, 229 S.W.3d 324, 330-331 (Tex. App.—Houston [1st Dist.] 2006, pet. denied)(internal citations omitted).

<sup>10</sup> *Id.* at 331.

<sup>11</sup> *See* Candace's Motion and Carl's Motion.

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that their acts to date violated the *in terrorem* clause.<sup>12</sup>

If it is determined that the trust's *in terrorem* clause is capable of enforcement, then Carl and Candace do not have an interest in the trust.

If Carl and Candace do not have an interest in the trust, then there is no right to a distribution. Thus, until the Court resolves the *in terrorem* clause issues, there cannot be distributions to Carl and Candace. Furthermore, even if the *in terrorem* clause issues are resolved in favor of Carl and Candace, the requested distributions cannot be made for the reasons discussed above.

### **III. Prayer**

For these reasons, Defendant Anita Kay Brunsting prays that Candace's and Carl's motion for distribution of trust funds be denied and that Defendant Anita Kay Brunsting receive all other relief, general and special, legal and equitable, to which she or the trust may be entitled.

Respectfully submitted,

/s/ Brad Featherston

---

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---

<sup>12</sup> Exhibit 3, Carl's First Amended Petition; Exhibit 4, Candace First Amended Petition.



**Certificate of Service**

I certify that a true and correct copy of the foregoing instrument was served on the following:

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via e-service or telefax on December 5, 2014, to Jason B. Ostrom, Bobbie G. Bayless, and Darlene Payne Smith, and by email to Amy Ruth Brunsting.

/s/ Brad Featherston

\_\_\_\_\_  
Bradley E. Featherston

12082014:1418:P0054

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CARL H. BRUNSTING

2/3/2015

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CAUSE NO. 2013-05455

CARL HENRY BRUNSTING, ) IN THE DISTRICT COURT OF  
INDEPENDENT EXECUTOR OF )  
THE ESTATES OF ELMER H. )  
BRUNSTING AND NELVA E. )  
BRUNSTING, )  
) )  
Plaintiffs, )  
) )  
V. ) HARRIS COUNTY, TEXAS  
) )  
CANDACE L. KUNZ-FREED )  
AND VACEK & FREED, PLLC )  
F/K/A THE VACEK LAW )  
FIRM, PLLC, )  
) )  
Defendants. ) 164TH JUDICIAL DISTRICT

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF  
CARL H. BRUNSTING  
FEBRUARY 3, 2015

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION of  
CARL H. BRUNSTING, produced as a witness at the  
instance of DEFENDANTS, and duly sworn, was taken in  
the above-styled and numbered cause on FEBRUARY 3,  
2015, from 10:06 a.m. to 1:05 p.m., before Stephanie M.  
Harper, RPR, CSR in and for the State of Texas,  
recorded by machine shorthand, at the offices of  
THOMPSON, COE, COUSINS & IRONS, LLP, One Riverway,  
Suite 1600, Houston, Texas, pursuant to the Texas Rules  
of Civil Procedure and the provisions stated on the  
record or attached hereto; that the deposition shall be  
read and signed before any notary public.

JOB NO. 177755

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A P P E A R A N C E S

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VIDEOGRAPHER:

MS. BRANDI MATHESON

ALSO PRESENT:

MS. DRINA BRUNSTING  
MS. CANDACE L. KUNZ-FREED

CARL H. BRUNSTING

2/3/2015

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1 THE VIDEOGRAPHER: On the record, 10:06,  
2 Tape 1.

3 CARL H. BRUNSTING,  
4 having been first duly sworn, testified as follows:

5 E X A M I N A T I O N

6 BY MS. FOLEY:

7 Q. Hello, Mr. Brunsting. My name is Zandra  
8 Foley, and I represent Candace Freed and her law firm  
9 in this lawsuit. Could you please state your full name  
10 for the record.

11 A. Carl Henry Brunsting.

12 Q. Okay. Have you ever given a deposition  
13 before?

14 A. Not that I remember. I don't know, yeah.

15 Q. Okay. I'm sure your lawyer's already talked  
16 to you about it, but I'm just going to go over a couple  
17 of housekeeping rules. No. 1 is sometimes you're going  
18 to be able to anticipate the question that I'm asking.  
19 But I'm going to do my best to not talk over you.

20 A. Okay.

21 Q. And I just ask that you not talk over me, just  
22 because there's a court reporter here who's taking  
23 everything down, and we just want to make sure that the  
24 record is clear.

25 The second thing is that if I ever ask you a

1 question that you don't understand, let me know that  
2 you don't understand it --

3 A. Thanks.

4 Q. -- And I will be happy to rephrase it.

5 Also you're doing a good job right now  
6 answering audibly, meaning you're saying "yes," "no."  
7 Please continue to do that, because the court reporter  
8 can't take down --

9 A. Right.

10 Q. It's harder to -- shaking heads, and "uh-huh"  
11 and "huh-uh." And so sometimes I may even -- if you  
12 just happen to say "uh-huh" or "huh-uh," then what I'll  
13 do is I'll say, "Is that a 'yes' or a 'no'?"

14 A. Yeah, right.

15 Q. And if I do that, I'm not trying to be ugly.  
16 I'm just trying to make sure we've -- we've got a clean  
17 record.

18 The last thing is that if you need to take  
19 a break for any reason at all, you just say so and  
20 we'll take a break. The only thing that I ask is that  
21 if there is a question that's on the floor, if you  
22 could please answer that question first, and then --

23 A. Yeah.

24 Q. -- and then we can take the break, all right?

25 A. Um-hmm.



1 Q. Okay. What is your date of birth?

2 A. July 31st, 1957.

3 Q. Okay. And what are your parents' names?

4 A. Elmer and Nelva Brunsting.

5 Q. Okay. And I understand you have some sisters;  
6 is that correct?

7 A. Yes.

8 Q. Okay. How many sisters do you have?

9 A. Four.

10 Q. Okay.

11 A. Yeah.

12 Q. And what are their names?

13 A. Candy, Carol, Amy, and Anita.

14 Q. Okay. Do you have any children?

15 A. Yes.

16 Q. How many children do you have?

17 A. One.

18 Q. And what's your child's name?

19 A. Marca, M-A-R-C-A.

20 Q. Where does she live?

21 A. North Houston. I can't remember the name of  
22 the town, but out in the country just west of Conroe  
23 kind of.

24 Q. Okay. Have you ever been married before?

25 A. No.

1 Q. Okay.

2 A. I mean, other than this one? No.

3 Q. Right. Correct. Okay. But you are currently  
4 married --

5 A. Yes, uh-huh.

6 Q. -- correct?

7 And what is your wife's name?

8 A. Drina.

9 Q. Okay. And how long have you been married?

10 A. Oh, I think 32 -- -3 years, yeah.

11 Q. Okay. Where did you grow up?

12 A. Born in Pryor, Oklahoma, and then moved to  
13 Kansas City, Kansas; Kansas City, Missouri; and down to  
14 Houston.

15 Q. Okay.

16 A. Yeah.

17 Q. Where did you go to high school?

18 A. In Westchester here in Houston.

19 Q. And after high school, what did you do?

20 A. Went to A&M for undergraduate, and then to  
21 Rice for graduate school.

22 Q. What did you study at A&M?

23 A. Archi- -- environmental architecture or  
24 environmental design. They didn't call it  
25 architecture, but -- yeah.

1 Q. Okay. And did you get a BS --

2 A. Yes.

3 Q. -- a Bachelor of Science?

4 A. Yeah, yeah.

5 Q. What year did you come out of A&M?

6 A. I have to think about that. Sorry.

7 I was 21, so -- yeah. 1978, yeah. I  
8 don't -- yeah.

9 Q. Okay. And then after you left A&M, where did  
10 you go?

11 A. Rice.

12 Q. What did you study at Rice?

13 A. A Master's in Architecture.

14 Q. Okay. And how long did it take you to get out  
15 of Rice?

16 A. Two years.

17 Q. After leaving Rice, what did you do?

18 A. We got married after Rice, yeah.

19 Q. Okay. Did you meet your wife at Rice?

20 A. No, no.

21 Q. Okay.

22 A. We met before that.

23 Q. Okay. Did you get -- become employed after  
24 you graduated from Rice?

25 A. Yes, uh-huh.

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10

1 Q. And where is the first place that you worked?

2 A. Charles Tapley, Tapley Luna Architects in --  
3 on Sunset here in -- in Houston, yeah.

4 Q. Okay. What did you do for them?

5 A. Architecture, yeah. I got registered, and,  
6 you know, did a lot of residential things, but, yeah.

7 Q. Okay. How long did you work for that company?

8 A. I'd say 18 years or so.

9 Q. And after you left there, did you go work  
10 somewhere else?

11 A. No, I worked for myself, yeah.

12 Q. Okay. What was the name of your business  
13 called?

14 A. Carl Brunsting Architecture. I don't know  
15 actually --

16 Q. Okay. Other than yourself --

17 A. -- yeah.

18 Q. I'm sorry. Go ahead.

19 A. I'm sorry. That's right.

20 Q. I'm sorry. I thought I interrupted you.

21 A. No, you're fine.

22 Q. Other than yourself, was there anybody else  
23 who was employed by your architecture firm?

24 A. No, only a secretary. Nothing -- no, not that  
25 I remember.

1 Q. Okay. Is that business still in existence  
2 today?

3 A. No, uh-uh.

4 Q. When did you stop working under that business  
5 name?

6 A. About five years ago.

7 Q. Okay. And why did you stop working?

8 A. My illness.

9 Q. Okay. How old is your daughter again? I'm  
10 sorry.

11 A. I'd say 32, but I'm not sure.

12 Q. Okay. Okay. All right. Other than the --  
13 the two jobs we just talked about --

14 A. Um-hmm.

15 Q. -- have you worked anywhere else since getting  
16 out of Rice?

17 A. Hmm-um.

18 Q. I'm sorry. Is that a "no"?

19 A. Um-hmm.

20 Q. Could you say "no"?

21 A. No, I didn't.

22 Q. Okay. Sure. And that's just --

23 A. Yeah.

24 Q. -- to keep the record clear.

25 A. I worked at Charles's and then was

CARL H. BRUNSTING

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12

1 self-employed, yeah.

2 THE REPORTER: I worked at what?

3 THE WITNESS: Charles Tapley -- Tapley  
4 Luna Architects and -- and was self-employed after  
5 that, yeah.

6 Q. (BY MS. FOLEY) Okay. Okay. Now I want to  
7 ask you some questions about the illness that you --  
8 that you referred to.

9 What was your diagnosis?

10 A. I'll say encephalitis but I'm -- yeah.

11 Q. Okay. And what -- do you remember when you  
12 first became ill?

13 A. About five years ago, and it just kind of hit  
14 me.

15 Q. Okay. When -- when you say it kind of hit  
16 you, what do you mean by -- by that?

17 A. That it just ended. I mean, I was nearly  
18 dead, yeah.

19 Q. Okay. Were you hospitalized?

20 A. Yes, um-hmm.

21 Q. And do you know how long you were  
22 hospitalized?

23 A. I don't know.

24 Q. Okay. Is that what also made you stop  
25 working; you stopped working after you fell ill?

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13

1 A. Oh, yeah, yeah.

2 Q. Okay. Do you know if the encephalitis that  
3 you were diagnosed was, was it viral or bacterial?

4 A. (Shook head.)

5 Q. You don't know? I'm sorry. Is that --

6 A. No, I don't know.

7 Q. Okay. Do you remember who treated you for  
8 that illness?

9 A. Well, somebody in the Medical Center, but  
10 mostly my wife did, yeah.

11 Q. Okay. Do you remember the name of any of your  
12 doctors?

13 A. No.

14 Q. And what is your understanding of the -- the  
15 -- the symptoms of your illness?

16 A. It unplugged my brain. I mean, they were  
17 every -- yeah.

18 THE REPORTER: Repeat your answer?

19 THE WITNESS: It unplugged my brain, my  
20 loss of memory and ability for -- yeah.

21 Q. (BY MS. FOLEY) Okay. What treatment did you  
22 have to take after you got out of the hospital?

23 A. Exercising, good food, and -- yeah, just kind  
24 of growing back and getting back again, yeah.

25 Q. Okay. Did you have to take medication?



1 A. Probably, but I don't remember, yeah.

2 Q. Okay. Are you on any medication today?

3 A. Some vitamins and -- uh-huh.

4 Q. Other than vitamins, are you on any  
5 prescription medication?

6 A. Hmm-um.

7 Q. I'm sorry. Is that a "no"?

8 A. No. No.

9 Q. Okay. And before today, have you been taking  
10 prescription medication to treat your illness?

11 A. No. Not recently. Yeah.

12 Q. Okay. Are you currently seeing a doctor for  
13 your illness?

14 A. (Shook head.)

15 Q. Is that a "no"?

16 A. No, uh-uh. Not -- not -- no, uh-uh.

17 Q. Okay. What type of, I guess -- well, strike  
18 that. Do you currently still suffer from any symptoms  
19 or injuries as a result of your illness?

20 A. There's some feeling that's coming back down  
21 there where it was numb. My feet and my groin, and  
22 again it's more normal now.

23 Q. Okay. And what about as far as like your --  
24 your mental faculties, have you been, I guess, told by  
25 a doctor that you have effects as a result of your

1 illness?

2 A. I don't know if I've been told by the doctor,  
3 but, yeah. I mean five years ago, I didn't know where  
4 I was born and what had happened, and then my memory  
5 came back through my life.

6 Q. Okay.

7 A. And now I'm designing things, and driving and  
8 tasting things properly, yeah, because of treatment,  
9 because of getting through it, yeah.

10 Q. Okay. And -- and you say "treatment." What  
11 kind of treatment are you referring to?

12 A. Exercise and good food, yeah.

13 Q. Okay. But you're not -- you're not talking  
14 about seeing a doctor or anything?

15 A. Not -- not recently, no, uh-uh.

16 Q. Okay. Do you remember when was the last time  
17 you saw a doctor?

18 A. I don't know.

19 Q. Do you have any current plans today to see a  
20 doctor in the future?

21 A. No, uh-uh.

22 Q. Do you remember what year it was that you  
23 became ill?

24 A. Five years ago, so it was 2009. Yeah, 2009,  
25 yeah.

1 Q. Okay. 2009 or 2010 --

2 A. Yeah.

3 Q. -- maybe?

4 A. Yeah. Not 2010, but 2009.

5 Q. 2009, okay.

6 Prior to 2009 --

7 A. Um-hmm.

8 Q. -- did you -- other than the job that you had  
9 working for your own company --

10 A. Um-hmm.

11 Q. -- did you have any other income at that time?

12 A. No.

13 Q. Okay. Did your wife work?

14 A. Yeah, uh-huh.

15 Q. Okay. What did she do?

16 A. A nurse, uh-huh.

17 Q. Okay. And does she still work today?

18 A. Yes, she's just started again, yeah.

19 Q. Okay. After your illness, did you -- was  
20 there -- well, strike that.

21 After your illness, did you receive income  
22 from any other place?

23 A. No.

24 Q. So you didn't have any income after you became  
25 ill?

CARL H. BRUNSTING

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17

1 A. No, uh-uh.

2 Q. Okay. After you became ill, did you receive  
3 financial assistance from any of your family members?

4 A. Well, we just did, yeah.

5 Q. I'm sorry?

6 A. Yes, we did. Just got an inheritance from  
7 Drina's dad who died.

8 Q. Okay. And when was that?

9 A. A few months ago now.

10 Q. Okay. Going back to after you fell ill --

11 A. Um-hmm.

12 Q. -- so back in 2009 --

13 A. Um-hmm.

14 Q. -- do you know whether or not somebody in your  
15 family or otherwise provided you with financial  
16 assistance after you fell ill?

17 A. No. No one did.

18 Q. No one did?

19 A. No.

20 Q. Okay. Do you know whether or not your mother  
21 provided you any financial assistance after you fell  
22 ill?

23 A. Not that I know of, no, but -- asked about my  
24 mom. I'm sorry, no. Can't tell you about her.

25 Q. You can't tell me about her?

1 A. She was unhappy about -- she was glad to see  
2 me getting back before she died, and just --

3 Q. Ok.

4 A. -- anyway.

5 Q. With respect to -- to your mother before  
6 you --

7 A. Um-hmm.

8 Q. -- fell ill, do you have any -- or do you know  
9 what her physical state was; was she healthy?

10 A. She was 88 and getting old, and could hardly  
11 talk. But she had people -- somebody taking care of  
12 her at home.

13 Q. Okay. Did you provide her with any financial  
14 assistance?

15 A. No.

16 Q. Okay. Do you know if any of your other  
17 siblings did?

18 A. I don't know.

19 Q. Okay. After you became ill in 2009 --

20 A. Um-hmm.

21 Q. And eventually you got out of the hospital,  
22 correct?

23 A. Yeah. Sure. Oh, yeah.

24 Q. Okay. After you got out of the hospital, did  
25 you go home to live?

1 A. Yes. Yeah.

2 Q. Okay. And do you still live -- live in the  
3 same house that you went home to today?

4 A. Yeah, yeah.

5 Q. Okay. Was there ever a time that you actually  
6 went to live with your -- your mother --

7 A. No.

8 Q. -- after your illness?

9 A. Actually, there was a little short time. I  
10 can't remember, yeah.

11 Q. Okay. And do you remember why you went to go  
12 live with your mom for that short time?

13 A. No. Drina had to go out of town or something.  
14 I'm not sure.

15 Q. Okay. During the time that you were staying  
16 with your mom, did you have an occasion to help her  
17 with any of her finances or anything like that?

18 A. No, not at all.

19 Q. Okay.

20 A. I was just getting back myself, I mean --  
21 yeah.

22 Q. Right. Was she taking care of you during that  
23 time?

24 A. No, no. There was a sort of helper there that  
25 was doing -- taking care of both of us, yeah.

1 Q. Okay. Who was that helper?

2 A. I don't know.

3 Q. Okay. Was it one or more than one person?

4 A. Actually, I don't know if there might have  
5 been two, but it was one that was normally the one who  
6 was there.

7 Q. Um-hmm. Okay. As a result of your illness,  
8 did you have to have any type of surgery or anything  
9 like that?

10 A. No. Well, what I've had recently. I just  
11 can't remember. I'm sorry. No, I just had some little  
12 minor things.

13 Q. Minor things like what?

14 A. (Pauses.)

15 Q. You can't recall?

16 A. I don't know what. No, uh-uh.

17 Q. Okay. And when you -- are -- are you thinking  
18 of thing that happened in the hospital or...

19 A. No, afterwards. Treatment of -- yeah.

20 Q. Okay. Did -- did the helpers who kind of  
21 helped you out around the house, did they ever come and  
22 provide you with any treatment per doctor's orders?

23 A. Not at all, no.

24 Q. Okay.

25 A. They were maid -- not maids, but, yeah.



1 Q. Um-hmm. During the time that you were living  
2 at home after your illness --

3 A. Um-hmm.

4 Q. -- other than your wife, did -- was there any  
5 nurse who would come by your home to check on you?

6 A. No, not at all, huh-uh.

7 Q. What about any doctors' visits while you were  
8 at home?

9 A. No.

10 Q. Okay. Do you recall if you saw more than one  
11 doctor for your illness?

12 A. No, I don't.

13 Q. Okay. Do you recall any of the doctors you  
14 saw?

15 A. Hmm-um.

16 Q. You don't recall their names?

17 A. No.

18 Q. During the time that you were staying with  
19 your mother, were you the only one of your siblings,  
20 say, staying with her at that time?

21 A. Um-hmm.

22 Q. And then other than the people that were kind  
23 of helping out, was there anyone else living in the  
24 house at that time?

25 A. No, uh-uh.

1 Q. Since you were ill and got out of the  
2 hospital, did your mother ever provide you with any  
3 gifts, financial gifts?

4 A. No, not that I know of, huh-uh.

5 Q. Do you know whether or not your mother  
6 provided any of your other siblings with any gifts?

7 A. Not that I know of, no.

8 Q. Did your siblings ever come to -- to see you  
9 after you got out of the hospital?

10 A. Yes.

11 Q. Okay. Did all of them or just some of them?

12 A. No, two that I remember when I was at my mom's  
13 house. They came in, kind of checked in to --

14 Q. Okay. Do you remember which two that was?

15 A. Anita and Carol.

16 Q. Okay. And were you close to Anita and Carol?

17 A. No.

18 Q. Are you close to any of your sisters?

19 A. No.

20 Q. Well, are all of your sisters your biological  
21 sisters?

22 A. No, the oldest one, Candy, was adopted.

23 Q. Okay.

24 A. Yeah. And the -- and the rest of them were,  
25 yeah.

1 Q. Be- -- Before you fell ill --

2 A. Um-hmm.

3 Q. -- who was -- what -- did any one of the  
4 siblings or you -- who was the main person caring for  
5 your mom?

6 A. I don't know.

7 Q. Okay. Do you know Candace Freed?

8 A. Name is familiar. I don't know.

9 Q. Okay. Do you know this lady who's sitting  
10 right besides me?

11 A. Hmm-um.

12 Q. Okay. Before you became ill, did you ever  
13 have an opportunity to speak with any of your -- your  
14 mom's lawyers?

15 A. (Shook head.)

16 Q. Is that a "no"? You have to say audibly.

17 A. Yeah, no, no. I'm sorry.

18 Q. Okay. Do you ever recall meeting with anybody  
19 who claimed to be an attorney for your mother?

20 A. (Shook head.)

21 Q. Is that a "no"?

22 A. No. No.

23 Q. Sorry.

24 A. That's all right.

25 Q. And you under -- you understand that we're

1 here today because you filed a -- a lawsuit --

2 A. Um-hmm.

3 Q. -- against Ms. Freed and her firm, correct?

4 A. Um-hmm. Um-hmm.

5 Q. Why did you file that lawsuit?

6 A. Because of what she's doing that -- I don't  
7 know. She's illegally doing -- trying to cover up what  
8 the -- her side did, yeah.

9 Q. Okay. Any other reason?

10 A. (Shook head.)

11 Q. I'm sorry. That's a "no"?

12 A. No.

13 Q. Okay. What did you do, if anything, to  
14 prepare for your deposition today?

15 A. Thought about getting back and thought about  
16 what's happened, yeah.

17 Q. Okay. Did you -- other than your lawyer, did  
18 you talk to anyone to prepare for your deposition  
19 today?

20 A. With my wife, yeah.

21 Q. Okay. And what did y'all talk about?

22 A. What was done against me and my mom to -- to  
23 handle things and -- sorry, let me think a minute.

24 Q. Sure.

25 A. (Pauses.)

1 Q. Can you -- can you recall anything specific  
2 y'all spoke about?

3 A. Who?

4 Q. You and your wife to prepare for your  
5 deposition today.

6 A. Not that I can specifically say, sorry.

7 Q. Okay. Do you remember how long you and your  
8 wife talked about the deposition?

9 A. Oh, just recently. Yeah. I mean, I don't  
10 know.

11 Q. I mean, how long was the conversation, if you  
12 recall?

13 A. Oh, real short. Yeah.

14 Q. Okay. Other than your wife, did you speak to  
15 anyone else --

16 A. No.

17 Q. -- to prepare for your deposition?

18 A. No.

19 Q. Okay. Did you review any documents to prepare  
20 for your deposition?

21 A. Documents? No.

22 Q. Did you review any e-mails to prepare for your  
23 deposition?

24 A. Notes about what had happened or what was  
25 done, yeah.

1 Q. And whose notes were those?

2 A. Where they came from, I'm not sure. But Drina  
3 gave them for -- to me, and about what was planned with  
4 me and my mom being sick, going after...

5 Q. And what do you mean by "what was planned"?

6 A. Let me think about it for a minute.

7 Q. Sure.

8 A. I don't know that I can clearly say, but --

9 Q. Okay.

10 A. -- what my sisters did to get the inheritance  
11 and leave me out of it. That was a change to the trust  
12 where I was left out of it or essentially left out of  
13 it.

14 Q. Okay. And which sister are you talking about?

15 A. Well, all three of the four of them. Not the  
16 adopted one, but the -- Anita, Amy, and Carol.

17 Q. Okay. And these notes that you saw, were they  
18 handwritten notes?

19 A. No.

20 Q. Were they typed out?

21 A. Yep. Yep.

22 Q. And were they notes between the sisters?

23 A. No.

24 Q. Do you know who -- who wrote the notes or  
25 typed the notes?

1 A. Bobbie, from what she understood from what had  
2 happened, yeah.

3 MS. BAYLESS: He's talking about the  
4 pleadings.

5 A. Yeah. I'm sorry. Yeah.

6 Q. (BY MS. FOLEY) Any other documents you  
7 reviewed to prepare for your deposition, other than the  
8 notes we just talked about?

9 A. No.

10 Q. And so who exactly filed this lawsuit?

11 A. Drina. You mean filed our version of it?

12 Q. This lawsuit, yes, sir.

13 A. Yeah, yeah. Drina, my wife, yeah.

14 Q. Okay.

15 A. But I signed -- I mean, she -- you know, I had  
16 to understand it and sign it more, yeah.

17 Q. Okay. Are you the executor of Ms. Brunsting's  
18 estate?

19 A. I was, but I don't -- I don't think I am now,  
20 so...

21 Q. But you're what now?

22 A. I was, but I'm not now. I don't think so.

23 Q. You're not the executor anymore?

24 A. No, I don't believe so. I don't know.

25 Q. Do you know who is?



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1 A. No.

2 Q. I'm sorry, the answer.

3 A. No, I don't.

4 Q. Currently, do you have any responsibilities  
5 with respect to your mother's estate?

6 A. (Shook head.)

7 Q. And I'm sorry, that's a --

8 A. No, no, no.

9 Q. And -- and currently do you know who, if  
10 anyone, has any responsibility as an executor or  
11 representative of your -- your mother's estate?

12 A. I think it -- no, I can't specifically say.

13 Q. Okay. Are you the independent executor of the  
14 estates of Elmer H. Brunsting and Nelva E. Brunsting?

15 A. Was at one point, yeah, but not --

16 Q. Okay. But you're not anymore?

17 A. No. No.

18 MS. FOLEY: Let's go off the record a  
19 second.

20 THE VIDEOGRAPHER: Off the record, 10:32.

21 (Break from 10:32 a.m. to 10:33 a.m.)

22 THE VIDEOGRAPHER: On the record, 10:33.

23 Q. (BY MS. FOLEY) You mentioned earlier you have  
24 kind of started to remember things, and you're  
25 designing?

1 A. Um-hmm.

2 Q. Are you currently working right now?

3 A. No, no. Just kind of going through college or  
4 my first job of learning things again, yeah.

5 Q. Okay.

6 A. An architect, I'm doing a -- a little project  
7 on a -- on a house where I can do wall sections and  
8 details and --

9 Q. Um-hmm.

10 A. -- dimensions and -- anyway, yeah.

11 Q. Okay. Are you working with a therapist?

12 A. No, no. Just what I'm doing at home, yeah.

13 Q. Got you.

14 In the lawsuit -- in this current lawsuit, you  
15 have not sued your sisters, correct; they're not  
16 involved in this lawsuit?

17 A. I don't know specifically about the lawsuit.  
18 They're responsible for what's happening to me in a bad  
19 way, but I don't know.

20 Q. Okay. Well, let me ask it this way: Have you  
21 taken any steps to -- have you -- have you filed suit  
22 against your sisters?

23 A. Yes.

24 Q. Okay.

25 A. Yeah.

1 Q. And that's another lawsuit, correct?

2 A. Yeah.

3 Q. They're not in this one, correct?

4 A. Um-hmm. I think it's -- I think it's two  
5 separate ones, yeah.

6 Q. Okay.

7 A. The lawyer against the sisters, but I'm not  
8 sure.

9 Q. Okay. And why did you file that lawsuit  
10 against your sisters?

11 A. Because of what they did to try to get  
12 inheritance with me being sick, yeah.

13 Q. Okay.

14 A. Being nearly dead, yeah.

15 Q. Got you.

16 And what evidence do you have that your  
17 sisters did that?

18 A. Cut -- tried to cut me out of the inheritance,  
19 yeah.

20 Q. And what evidence do you have that your  
21 sisters tried to cut you out of your inheritance?

22 A. I can't say.

23 Q. What -- what do you mean by you can't say?

24 A. (Pauses.)

25 Q. Are you -- are you aware of any evidence

1 that's out there?

2 A. It would be over by now, if we'd -- if it had  
3 been not messed up by them, yeah. My mom died a few  
4 years ago, and hadn't been resolved because of what  
5 they've blocked with trying to keep me and my adopted  
6 sister out of it. Yeah.

7 Q. Okay. And you mentioned earlier that the --  
8 they tried to cut you out of your inheritance. What  
9 exactly do you mean by that?

10 A. They tried to have it -- I don't know. They  
11 tried to cut me out of it. Tried to not get me -- let  
12 me get any money from the inheritance.

13 Q. Okay.

14 A. They were unhappy that I was alive, yeah.

15 Q. They were unhappy that you were alive; is that  
16 what you said?

17 A. Yes, yeah.

18 Q. Okay. You think they wanted you to die?

19 A. Yes.

20 Q. And why do you think that?

21 A. Because they -- last time I saw -- seen any of  
22 them, they were unhappy to see me being alive, and, you  
23 know, getting back.

24 Q. And when was the last time you saw them?

25 A. I don't know. I'd say three years ago might

1 have been -- I don't remember.

2 Q. Okay. Did you ever confront or talk to any of  
3 them about this?

4 A. Not specifically, no.

5 Q. Why not?

6 A. Well, the last time I remember being with any  
7 of them, they were -- my sister, Anita, lives down in  
8 Victoria, came all the way here to see me, see my  
9 sister Carol take me to see my mom. And Anita came in  
10 to kind of see what was going on. And -- and mom was  
11 sitting in this recliner about to die and couldn't even  
12 talk. And Anita came in from Victoria to see what was  
13 going on while Carol took me over there. And it was  
14 like a big thing for them to perform and see where I  
15 was, yeah.

16 Q. Okay. And -- and you didn't talk to any of  
17 them at that time about --

18 A. Well, I --

19 Q. -- the way you felt?

20 A. Going over I talked to Carol a little bit.  
21 She took me over -- she lived here in Houston, and took  
22 me over there for this performance to -- you know, to  
23 show that they were handling things so I could see my  
24 nearly dead mom. Anita came all the way from Victoria  
25 just to understand things. And she didn't talk the

1 whole time. And then, you know, Carol took me home.  
2 And I didn't talk to her the rest of the way, because  
3 she had acted so -- I saw what they were doing,  
4 performing this thing to -- yeah, let me see Mom and  
5 say that they were handling things. But Anita coming  
6 all the way from Victoria just to understand it, rather  
7 than... you know.

8 Q. Okay. So -- and as you said, they were trying  
9 to cut you out of your inheritance. Did they actually  
10 do that?

11 A. I don't think they -- they haven't, no.

12 Q. Okay. So you have not been cut out of your  
13 inheritance?

14 A. Not yet, no.

15 Q. Do you -- do you expect that that's going to  
16 happen?

17 A. No. Two things: The facts and the fact that  
18 the -- the family owns the farm in Iowa, which is --  
19 they couldn't get -- they couldn't sell it. Split it  
20 up like they did socks -- stocks that they went into  
21 and took hundreds of thousands of dollars, yeah.

22 Q. Okay. And which stocks are you referring to?

23 A. Oh, I think Exxon. I'm not sure, yeah.

24 Q. Do you know what percentage of the estate you  
25 are supposed to inherit under the current will?

1 A. Well, it should have been one fifth, equally.  
2 But they've done so much -- I don't know.

3 Q. Has -- has there been any distribution of any  
4 part of the estate?

5 A. Yes.

6 Q. Okay. So you have received some?

7 A. No, I haven't received anything, no.

8 Q. Okay.

9 A. It's -- yeah.

10 Q. What distributions are you aware of?

11 A. Stocks from the -- the -- Amy, Anita, and  
12 Carol have split up, yeah.

13 Q. Okay. Do you know when your mother hired  
14 Ms. Freed and her law firm for services?

15 A. Hmm-um. (Shook head.)

16 Q. And I'm sorry, is that a "no"?

17 A. No.

18 Q. Okay. And so then you also then don't know  
19 how she came to find them, correct?

20 A. No. No, I don't.

21 Q. Okay. And as -- I believe you said earlier  
22 you've never been to any meetings with Ms. Freed or her  
23 law firm with your mother, correct?

24 A. No.

25 Q. Okay. You've never attended any meetings



1 where your mother signed off on any documents, correct?

2 A. No. No.

3 Q. Okay. "No," you have not, correct?

4 A. That's right.

5 Q. You've also never been present for any  
6 conversations that your mother had with Ms. Freed about  
7 any of the documents she was signing, correct?

8 A. No, I haven't.

9 Q. Do you -- do you ever recall your mother  
10 calling you for any input with respect to any of the  
11 documents she was signing?

12 A. No.

13 Q. And that would be documents that were prepared  
14 by her lawyers?

15 A. (Shook head.)

16 Q. Were you in --

17 A. Yes, yes, I mean --

18 Q. I mean -- that was -- I messed up that  
19 question, that's why I'm --

20 A. Yes, no, I -- yes, I think so.

21 Q. Okay. So just so I can clean it up, you  
22 were -- you were not present for any -- hang on a  
23 second -- let me see what I'm saying now.

24 Okay. You don't recall your mother ever  
25 calling you for any input with respect to any documents

1 that she was signing prepared by Ms. Freed or her firm?

2 A. No, I don't.

3 MS. BAYLESS: Can you -- I'm just going  
4 to object to form. Can you narrow it down to time  
5 frame?

6 MS. FOLEY: Okay.

7 MS. BAYLESS: I mean, we're talking about  
8 different documents at different times.

9 MS. FOLEY: Sure. Well, I think he's  
10 already said that from the time -- that he's never had  
11 any conversations.

12 MS. BAYLESS: Well, if you'll just put  
13 your question that way, then. I'm just saying --

14 MS. FOLEY: Um-hmm.

15 MS. BAYLESS: Are we talking about for  
16 all time, or are we talking about these documents after  
17 he was ill? I'm just trying to --

18 MS. FOLEY: Okay. Sure.

19 MS. BAYLESS: I don't understand your  
20 question.

21 MS. FOLEY: Sure.

22 Q. (BY MS. FOLEY) Before you were ill, you'd  
23 never been present for any meetings or conversations  
24 your mother may have had with her attorneys at Vacek &  
25 Freed, correct?

1 A. Not that I remember, yeah.

2 Q. Okay. And since you've been ill, after your  
3 illness, you also never were present for any meetings  
4 or conversations your mother had with the attorneys at  
5 Vacek & Freed?

6 A. No, no.

7 Q. Before you were sick, you -- your mother never  
8 called you to get your input or to talk to you about  
9 any services she was receiving from Vacek & Freed?

10 A. Not that I remember, no.

11 Q. And since you were sick, your mother never  
12 called you to confer with you --

13 A. No.

14 Q. -- about any conversations she may have had  
15 with Ms. Freed or any other attorneys at her law firm?

16 A. No.

17 Q. Okay. You understand that part of this  
18 lawsuit concerns the Brunsting Family Living Trust?

19 A. Um-hmm.

20 Q. You understand that?

21 A. Yes.

22 Q. Okay. And do you know what that is?

23 A. What the family owns, as far as, yeah, stocks  
24 and the farm value, yeah.

25 Q. Okay. Do you know who told her to -- who told

1 your -- your parents to create such a trust?

2 A. No.

3 Q. Do you know who advised them to create such a  
4 trust?

5 A. Um-hmm.

6 Q. I'm sorry. Is that --

7 A. No, I don't.

8 Q. Okay. And do you know when it was created?

9 A. (Shook head.)

10 Oh, I would say 2009. I'm not sure if  
11 that's right or not.

12 Q. Okay.

13 A. Something close to that, yeah.

14 Q. One of the claims that you've made in this in  
15 this positi- -- in this -- in this lawsuit is that  
16 Ms. Brunsting, your mother, was misled about some of  
17 the documents she was signing.

18 A. Um-hmm.

19 Q. Do you -- do you understand that to be the  
20 case?

21 A. Yes.

22 Q. Okay. What documents do you believe your  
23 mother was misled to sign?

24 A. I don't know.

25 Q. Okay. And what makes you believe your mother

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1 was misled into signing those documents?

2 A. I can't say specifically.

3 Q. Okay. Do you have any evidence that Ms. Freed  
4 or the law firm misled Ms. Brunsting into signing  
5 documents?

6 A. Yes, I do. They faked her signature or  
7 something like that, yeah.

8 Q. Okay.

9 A. I don't know if that's right, but yeah.

10 THE REPORTER: That's what?

11 THE WITNESS: I don't know if that's  
12 right or not, but yeah.

13 Q. (BY MS. FOLEY) Okay. So -- so you're not  
14 sure about that, correct?

15 A. Yeah.

16 Q. So then you don't have any evidence that  
17 anybody at the law firm faked Ms. Brunsting's  
18 signature, correct?

19 A. Let me think about that a minute.

20 Q. Sure.

21 A. Not that I can say, no.

22 Q. Okay. You al- -- one of the claims you also  
23 make in this lawsuit is that Ms. Brunsting was unduly  
24 influenced to sign certain documents. Do you  
25 understand that to be one of your claims?

1 A. Yes, uh-huh.

2 Q. Okay. What evidence do you have that the law  
3 firm or Ms. Freed unduly influenced Mrs. Brunsting?

4 A. I can't specifically say. Sorry.

5 Q. Okay. Have you ever seen any evidence to that  
6 effect?

7 A. I think they faked her signature, but I'm not  
8 really sure, yeah, if that's...

9 Q. And are you saying that because that's what  
10 somebody told you?

11 A. No, that's what I'm looking at. I look at  
12 Mom's signature, and it wasn't like she normally would  
13 write things. It's like somebody signed it. But I'm  
14 not sure if that's right now.

15 Q. Okay. Did your mother ever tell you that  
16 somebody faked her signature?

17 A. No. No, uh-uh.

18 Q. So that's just your --

19 A. Yeah.

20 Q. -- your belief?

21 A. Yes.

22 Q. Okay. She -- with respect to your -- your  
23 claim that she was misled and she was unduly  
24 influenced --

25 A. Um-hmm.

1 Q. -- you -- you agree with me that you weren't  
2 present during the time that she signed any of these  
3 documents, correct?

4 A. Right.

5 Q. Okay. So then you have no evidence whatsoever  
6 that that in fact occurred, correct?

7 A. No evidence, yes. I mean...

8 Q. Another claim that you're making in this  
9 lawsuit is that Miss -- Mrs. Brunsting did not have the  
10 capacity -- um-hmm -- to sign certain trust documents  
11 and power of attorney. What evidence do you have that  
12 Ms. Brunsting did not have capacity?

13 A. She was sitting in a chair and could hardly  
14 move. She had somebody taking care of her, yeah.

15 Q. Okay.

16 A. I mean, she was almost -- yeah.

17 Q. Okay.

18 A. Could have been in a nursing home, but she was  
19 taken at home with somebody who cared for her every  
20 day, fed her and moved her from her chair to her bed  
21 and -- yeah.

22 Q. And what time frame are you talking about?

23 A. I don't know. Five years ago or -- yeah. I  
24 don't know. Mom died a few years ago, but -- yeah.

25 Q. And so that's just based on your observation,



1 correct?

2 A. What's that?

3 Q. That's based on what you observed, correct?

4 A. Yes.

5 Q. Okay. No doctor's ever told you that your  
6 mother was incapacitated at that time, correct?

7 A. No, no. It's obvious that she was, but --  
8 yeah.

9 Q. Okay. But no doctor ever told you that your  
10 mother --

11 A. Not that I remember, no, uh-uh.

12 Q. -- was incapacitated?

13 A. No.

14 Q. And let me -- let me finish my questions,  
15 because we're --

16 A. Sure.

17 Q. -- kind of talking over each other. And  
18 I'll --

19 A. Sure.

20 Q. I'll try to let you finish your answer.

21 But just so we've got it clean, no doctor ever  
22 told you your mother was incapacitated in the 2009 time  
23 frame, correct?

24 A. Not that I remember, no.

25 Q. Okay. In fact, at that time, your mother was

1 still living at her house, correct?

2 A. Yes, uh-huh.

3 Q. Okay.

4 A. Being cared for, though, yeah.

5 Q. Right. But she was living at her house?

6 A. Yeah, yeah.

7 Q. She was -- you -- you were -- you would be  
8 able to come over and speak to her, correct?

9 A. She couldn't talk, but, yeah.

10 Q. She couldn't talk?

11 A. No. Not that I remember, huh-uh.

12 Q. Okay. So your memory is that she couldn't  
13 talk at all?

14 A. No. That's right, yeah. At least the last  
15 few times I saw her, yeah.

16 Q. Okay. When was the last few times you saw  
17 her?

18 A. I don't know, three, four years ago, yeah.

19 Q. Okay. What about in the 2009 time frame  
20 before you fell ill; she was able to talk then,  
21 correct?

22 A. Oh, yeah, yeah.

23 Q. Okay. And then in 2010 after you -- after you  
24 became ill, she was able to talk at that time, correct?

25 A. Not that I remember right now.

1 Q. Okay. Other than what -- other than your view  
2 of your mother, what other evidence do you have that  
3 she was incapacitated from 2009 until the time she  
4 passed away?

5 A. Evidence that I have that she was  
6 incapacitated? Just not... you know, going over there  
7 and seeing that she was in the same chair the whole  
8 time and couldn't walk around, had somebody taking care  
9 of her, yeah.

10 Q. Okay. And what do you mean by "in the" -- "in  
11 the same chair the whole time"?

12 A. Oh, one of those big easy chairs, yeah. And  
13 somebody had to get her up and move her into the bed  
14 and kind of take care of her like.

15 Q. Okay. But you'll agree with me that just  
16 because someone can't move around as well as they --

17 A. Um-hmm --

18 Q. -- could in the past, that doesn't mean that  
19 they're mentally incapacitated, correct?

20 A. Well, not -- no, uh-uh, not completely. I  
21 don't know.

22 Q. In -- in 2009, would you -- do you know if  
23 your mother was seeing any doctors?

24 A. I don't know.

25 Q. Okay.

1 A. Because that was about the time that I was  
2 getting ill, so, yeah.

3 Q. Okay. What about in 2010, do you know if your  
4 mother was seeing any physicians at that time?

5 A. I don't know.

6 Q. What about 2011?

7 A. I don't know, yeah.

8 Q. And what about 2012?

9 A. I think she was, but I don't know what -- I  
10 don't have any memory about that time, yeah --

11 Q. Okay.

12 A. -- about what happened.

13 Q. Okay. Eventually, Anita Brunsting, your  
14 sister --

15 A. Um-hmm.

16 Q. -- became the trustee for the family trust.

17 A. (Nodded head.)

18 Q. Do you understand that to be the case?

19 A. Yes, yes.

20 Q. Okay. And in order to do that, there was a --  
21 a document that was executed that stated such, correct?

22 A. Yes.

23 Q. And that document was executed by your mother,  
24 correct?

25 A. I don't know how that was done, but, yes.

1 Q. Okay. And the reason you don't know is  
2 because you weren't there, correct?

3 A. Yeah, uh-huh.

4 Q. And you don't know what was explained to your  
5 mother at the time --

6 A. No.

7 Q. -- that she signed it?

8 A. No. No.

9 Q. You don't know what discussions she may have  
10 had with her attorneys about it, correct?

11 A. No, no.

12 Q. And -- and you don't know -- you don't have  
13 any information as to why that was done, meaning that  
14 Anita became the trustee, correct?

15 A. To go after the inheritance, yeah.

16 Q. Okay.

17 A. Because Dad was dead, and Mom was sick, and  
18 they -- and they had the value of the farm and the  
19 stocks.

20 Q. Okay.

21 A. And I was sick, so they were trying to get me  
22 out of the inheritance, yeah.

23 Q. And why do you believe that?

24 A. Because of where we are right now, being a  
25 legal problem because they tried to get me out of --

1 they were unhappy that I was surviving, yeah.

2 Q. Okay.

3 A. I'm sorry. I don't know a good way to put  
4 that, but...

5 Q. Do you know whether or not Ms. Brunsting  
6 actually requested that that happen, that Anita become  
7 the trustee?

8 A. Not that I know of. I don't know.

9 Q. Okay. Do you agree that it's possible that  
10 she in fact did want Anita to be the trustee?

11 A. No.

12 Q. Why not?

13 A. I don't know. I think Mom could have been  
14 talked into it instead of -- because saying, "Oh,  
15 Carl's about dead, and you've got to change this  
16 thing." I don't know.

17 Q. Um-hmm. Do you know if that actually  
18 happened?

19 A. I don't know. Not specifically, no.

20 Q. You understand that Anita was also named as  
21 the power of attorney named to have power of attorney  
22 over your mother, correct?

23 A. Um-hmm, um-hmm.

24 Q. Okay. And that was also in a document that  
25 was -- that was done that was made possible because

1 your mother signed off on a document; you understand  
2 that?

3 A. Somewhat, yes.

4 Q. Okay.

5 A. Anita, Amy, and Carol, yeah -- or Anita and  
6 Amy, yeah.

7 Q. Okay. And again, you weren't present when  
8 that document was signed, correct?

9 A. No, no, no.

10 Q. And you don't know what discussions were had  
11 between your mother and her attorney about that  
12 document, correct?

13 A. No, no.

14 Q. You don't know if your mother specifically  
15 requested that document?

16 A. No, I don't.

17 Q. Do you -- is Anita and Amy, are they still the  
18 trustees?

19 A. As far as I know, yes, uh-huh.

20 Q. Okay. You're aware that Carol was named  
21 Nelva's healthcare power of attorney, correct?

22 A. Not specifically. I don't remember that, no.

23 Q. Okay.

24 A. I think you're right, but...

25 Q. All right. And of course if that occurred,



1 you understand that your mother would have signed off  
2 on a document to that effect, correct?

3 A. I don't know.

4 Q. Okay. You don't have any information about  
5 any healthcare power of attorney your mother may have  
6 signed, correct?

7 A. (Shook head.)

8 Q. I'm sorry. Is that a "no"?

9 A. No, I don't, yeah.

10 Q. Okay. Do you know whether or not Carol was  
11 assisting your mother in going to the doctor?

12 A. Not that I'm aware of, no.

13 Q. Okay. Specifically in between 2009 until the  
14 time of her death, do you know whether or not Carol  
15 assisted your mother in going to the doctor?

16 A. I don't know, no.

17 Q. Do you know whether or not any of your sisters  
18 were responsible for paying for your -- helping your  
19 mom pay for her medical bills?

20 A. I don't know.

21 Q. And do you know what, if any, involvement  
22 Ms. Freed may have had in assisting your mom with  
23 having money so that she can pay her medical bills?

24 A. No, I don't.

25 Q. What is -- when's the last time you talked to

1 Candace Curtis?

2 A. I don't remember.

3 Q. Okay. I'm talking about your sister.

4 A. Oh, Can- -- oh, a couple of years ago, yeah,  
5 she came in town for -- and yeah. Candy, I'm sorry,  
6 yeah.

7 Q. Okay. So you call her Candy?

8 A. Yeah, yeah.

9 Q. Okay. What about Carol, when's the last time  
10 you talked to Carol?

11 A. When she took me over to Mom's about -- just  
12 before Mom had -- Mom died, yeah.

13 Q. And then I believe you said earlier you  
14 haven't spoken to Amy or Anita in several years.

15 A. No, no.

16 Q. Okay.

17 MS. FOLEY: Let's take a -- take a short  
18 break real quick.

19 THE VIDEOGRAPHER: Off the record, 10:57.

20 (Break from 10:57 a.m. to 11:02 a.m.)

21 THE VIDEOGRAPHER: On the record, 11:02,  
22 Tape 2.

23 Q. (BY MS. FOLEY) Hello, Mr. Brunsting. We're  
24 back on the record here. We just took a short break,  
25 and I saw you looking at some handwritten notes on the

1 break. Are those your notes?

2 A. Yeah.

3 Q. Can I take a look at them?

4 A. Sure. I didn't write any down. I just  
5 brought a -- thought about writing something and  
6 didn't, so...

7 Q. Um-hmm. And these are just notes that you've  
8 taken about --

9 A. I do every day, yeah.

10 Q. Like a journal?

11 A. Yeah.

12 Q. Okay.

13 MS. FOLEY: We can take a break later.

14 MS. BAYLESS: I haven't even seen them.  
15 I don't even know what we're talking about.

16 MS. FOLEY: Okay. Let's take a break  
17 now, then.

18 THE VIDEOGRAPHER: Off the record, 11:03.

19 (Break from 11:03 a.m. to 11:04 a.m.)

20 THE VIDEOGRAPHER: On the record, 11:04.

21 Q. (BY MS. FOLEY) Mr. Brunsting, we were just  
22 talking about a journal that you keep, correct?

23 A. Yep.

24 Q. And is that a daily journal you keep?

25 A. Yeah, yeah.

1 Q. Why do you keep it?

2 A. Just so I know what I've done, and where we  
3 went. You know, we did our school walk and -- and what  
4 I'm working on, and what I've read recently. I mean,  
5 like, pick up -- an architectural record has these  
6 notes in it where you've got to get -- be AIA or  
7 American Institute or -- or -- and so I read, and I  
8 make a little note about it and yeah.

9 Q. Okay.

10 A. Just what I've done every day, yeah, a diary.

11 Q. And when -- were you reviewing any part of it  
12 on the break?

13 A. Just --

14 Q. Were you --

15 A. No, I was going to, but I didn't.

16 Q. Okay. Did you -- do you write information in  
17 your journal about this case?

18 A. No. Not specifically, no. It's just what I  
19 do every day. And what -- what me getting back is  
20 about -- about, yeah.

21 Q. Okay. How long have you been keeping the  
22 journal?

23 A. Oh, I don't know. Four years, I mean,  
24 something -- since I'm coming back from -- yeah.

25 Q. Okay. Do you write about your sisters in your

1 journal?

2 A. No. Um-hmm.

3 Q. Okay.

4 A. Just what happens every day, and what I've --  
5 what we've done. Yeah.

6 Q. Um-hmm.

7 A. Like I look at the clock, and I see -- okay,  
8 we just did our walk, and I -- I'm working on -- I'm  
9 reading an AIA thing. And, you know, what I'm doing  
10 every day, a diary.

11 Q. And do you use it to refresh your -- your  
12 memory sometimes?

13 A. Just to -- not only refresh -- sometimes I do  
14 read it, but, yeah, usually it's just to kind of record  
15 just what's happened, yeah.

16 Q. Okay. And are you doing that at a direction  
17 of a doctor or --

18 A. No, no, uh-uh.

19 Q. Okay. Do you recall if -- well, strike that.  
20 Do you believe that there's any document that  
21 Candace Freed or her law firm drafted that cut you out  
22 of your inheritance?

23 A. Not that I know of, no.

24 Q. Okay. Do you recall whether or not your  
25 mother gave you any gifts, financial gifts, in your

1 lifetime?

2 A. Not that I can remember, no.

3 Q. Okay. Do you know if she gave gifts to any of  
4 your other siblings?

5 A. I don't know.

6 Q. Okay. What about to any of her grandchildren?

7 A. No.

8 Q. What about to your wife, do you know if your  
9 mother ever gave financial gifts to your wife?

10 A. No.

11 Q. One of the things you've also claimed in your  
12 lawsuit is that -- that my clients helped to implement  
13 a scheme to change the terms of the family trust.

14 A. Uh-huh.

15 Q. What scheme are -- are you referring to?

16 A. To get me out of it, and -- me and my adopted  
17 sister, Candy, out of it. Yeah.

18 Q. Okay. And what evidence do you have that my  
19 clients, Ms. Brunsting's lawyer and law firm, were  
20 involved in that scheme?

21 A. I don't know. I can't specifically say.

22 Q. Okay. Have you seen any such evidence?

23 A. Yes.

24 Q. What evidence have you seen?

25 A. I can't say. Sorry.

1 Q. Okay. What can you tell me about the scheme?

2 A. That I got sick and my sisters decided how to  
3 go in and get the inheritance in a way that left me out  
4 of it.

5 Q. Okay.

6 A. And -- yeah.

7 Q. And you -- as we sit here today, you don't  
8 have any evidence that my clients -- that that was  
9 their point, too, was to cut you out of your  
10 inheritance, do you?

11 A. Yes, I do. I just can't get specific about  
12 what that is, yes.

13 Q. Okay. Well, can you speak generally about --  
14 about what that is?

15 A. I was sick, and my mom was sick, and they took  
16 advantage, and tried to get me out of the inheritance,  
17 and that's why we're in this problem right now, of it  
18 not being split five ways.

19 Q. Okay. And is that mainly based on what  
20 your -- based on what you believe your sisters' goals  
21 were?

22 A. Yes.

23 Q. Okay. That's not based on anything that  
24 you've heard my clients say, correct?

25 A. Your clients are?



1 Q. Ms. Freed and her law firm, Ms. Brunsting's  
2 lawyers.

3 A. (Shook head.)

4 Q. I'm sorry. Is that a -- is that a "no"?

5 A. When you say "Ms. Brunsting's," who do you  
6 mean?

7 Q. Ms. Nelva Brunsting.

8 A. I don't know.

9 Q. Okay. Another thing you claim is that my  
10 clients, the lawyer and the law firm, improperly  
11 removed assets from Elmer and Nelva's estates from the  
12 family trust. What evidence do you have that my  
13 clients did that, meaning the lawyer or the law firm?

14 A. That they helped it happen. I'm not sure --  
15 yeah.

16 Q. Okay. Do you know if they helped it happen?

17 A. Well, where we are right now, trying to get  
18 this resolved in a good way, and...

19 Q. Well, I understand that. But do you know if  
20 my client helped that happen?

21 A. Not that I can specifically say, no.

22 Q. But can you tell me what assets you believe  
23 were improperly removed from the trust?

24 A. My access to the inheritance of the value of  
25 the farm and stocks.

1 Q. And when you say your access, what do you mean  
2 by that?

3 A. That we couldn't get this solved in a good way  
4 where it was five -- it was split five ways.

5 Q. And you're -- and when you say "it was" -- "it  
6 was split five ways," are you talking about all assets  
7 or a specific asset?

8 A. Stocks, and the farm value is -- farm value is  
9 more than the stocks were, and -- are -- and -- yeah.

10 Q. Okay.

11 A. Mom died, and it should have been split five  
12 ways, but they put up -- tried to get me out of it,  
13 so...

14 Q. Okay. But again, they have not been  
15 successful at this point, correct?

16 A. No. No. They partially are. They both --  
17 the three of them got a bunch of inheritance out -- or  
18 I mean stock money out, so...

19 Q. Okay. And you don't have any evidence that my  
20 client had anything to do with that, do you?

21 A. Your client is who?

22 Q. The -- Miss -- Ms. Freed and her law firm.

23 A. I -- I don't know. Sorry.

24 Q. I'm sorry. I didn't...

25 A. I don't know.

1 Q. Okay. One of the things that you've alleged  
2 in your petiti- -- your petition is that -- that there  
3 were changes made to the trust documents that Nelva  
4 Brunsting did not want made; do you recall that  
5 allegation?

6 A. Yeah, that -- that -- not specifically, no.

7 Q. Okay. Do you believe that there were changes  
8 made to the trust documents that Ms. Nelva Brunsting  
9 did not want made?

10 A. Yeah. Yes. I think she was talked into  
11 trying to get me out of the inheritance.

12 Q. Okay. What changes do you -- are you talking  
13 about?

14 A. Nothing. I can't give you specifically, so...

15 Q. Okay. And -- and with respect to what you  
16 said earlier, which is just your -- your sisters trying  
17 to cut you out of the inheritance, again, you don't  
18 have any evidence that Ms. Freed or -- or the law firm  
19 was -- had a -- had an intent or a goal to cut you out  
20 of your inheritance, do you?

21 A. Not any evidence, but I think that's what  
22 happened, is they were trying to help what my sisters  
23 were trying to do, which was keep me out of the  
24 inheritance.

25 Q. Okay. You weren't -- you weren't privy to any

1 conversations Ms. Nelva Brunsting and her lawyers may  
2 have had regarding changes to those documents, correct?

3 A. No.

4 Q. So you don't know if she actually requested  
5 those changes?

6 A. No, uh-uh.

7 Q. Another allegation you've made in your --

8 A. Um-hmm.

9 Q. -- by filing this lawsuit is that Ms. Nelva  
10 Brunsting's lawyers and her law firm, Candace Freed and  
11 Vacek & Freed, took steps to undermine Ms. Nelva  
12 Brunsting's control of her assets.

13 A. Um-hmm.

14 Q. Do you understand that allegation?

15 A. Yes, yeah.

16 Q. Okay. And what evidence do you have that  
17 Ms. Freed and her law firm took steps to undermine  
18 Ms. Nelva Brunsting's control of her assets?

19 A. Where we are right now without it being  
20 solved, because they're trying to keep me out of it.

21 Q. Okay. And I understand where we are right  
22 now. But what evidence do you have that my clients,  
23 Ms. Freed and her law firm, has done anything like  
24 that?

25 A. I don't know.

1 Q. Another thing you've claimed is that my  
2 clients Miss -- Ms. Freed and her law firm has -- has  
3 placed certain assets at risk of loss.

4 A. Certain assets -- assets?

5 Q. Yes. Um-hmm. Do you recall the allegation?

6 A. Yes, they tried to keep me out of it. But I  
7 don't know how to specifically say what -- what they  
8 did or how it was done, yeah.

9 Q. Okay. And with respect to the -- the assets  
10 that -- that you've pled were at risk of loss, do  
11 you -- which assets are you referring to?

12 A. Well, both stocks and the farm value, because  
13 like I said, the farm value's probably two-and-a-half  
14 million and the stocks were a million. And they've  
15 gone into and gotten a bunch of the stocks, but they  
16 couldn't sell the farm, so...

17 Q. Okay. And it's -- and what -- who is -- who  
18 do you understand to have done that?

19 A. Anita and Amy -- Anita, apparently, yeah.

20 Q. Okay. And you don't have any evidence that --  
21 that my client had anything to do with transferring  
22 stocks, correct?

23 A. Your client is who?

24 Q. Ms. Freed and her law firm.

25 A. That she helped them get me out or trying to

1 get me out of it? I'm sorry. Yeah.

2 Q. Okay. Specifically, though, what evidence do  
3 you have that Ms. Freed and her law firm had anything  
4 to do with transferring stock?

5 A. I can't say.

6 Q. Okay. And does that mean you don't know, or  
7 you --

8 A. Yeah. I can't -- like I said, I can't say. I  
9 don't know.

10 Q. Another thing you've alleged -- alleged in  
11 this case is that Ms. Nelva Brunsting did not  
12 understand the documents that were prepared for her --

13 A. Um-hmm.

14 Q. -- by Ms. Freed and her -- and her lawyers at  
15 Vacek & Freed.

16 A. Um-hmm.

17 Q. Did you understand that allegation?

18 A. Yes, yeah.

19 Q. Okay.

20 A. I think Mom was talked into things, and --  
21 because she was old and sick, yeah.

22 Q. Okay. What evidence do you have that  
23 Ms. Brunsting was talked into things by either  
24 Ms. Freed or Vacek & Freed?

25 A. I don't know.

1 Q. Okay. And again, whenever any such documents  
2 were presented to your mother or discussed with your  
3 mother by her attorneys, you weren't present for that,  
4 correct?

5 A. No. No, uh-uh.

6 Q. Another thing you've alleged in this lawsuit  
7 is that Ms. Freed and Vacek & Freed, the law firm,  
8 failed to address Ms. Nelva Brunsting's lack of  
9 capacity.

10 A. Yes.

11 Q. Do you understand that allegation?

12 A. Yeah.

13 Q. Okay.

14 A. Mom and me, yeah.

15 Q. Okay.

16 A. Kept me out of it.

17 Q. And -- and what -- what do you mean by kept  
18 you out of it?

19 A. That it was just done without notifying me or  
20 my mom about what was happening, yeah.

21 Q. Okay. And how do you know your mother wasn't  
22 notified?

23 A. I don't know.

24 Q. Okay. And you -- you said you also were not  
25 notified.



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1 A. Yeah.

2 Q. And -- and what do you think that somebody  
3 failed to notify you of?

4 A. What -- what they were planning to do. I  
5 don't know, yeah.

6 Q. Okay. And specifically with respect to what  
7 you've alleged in this suit, which is that Vacek &  
8 Freed and -- and Candace Freed failed to address  
9 Ms. Nelva Brunsting's lack of capacity --

10 A. Um-hmm.

11 Q. -- do you know when and if that ever came up?

12 A. Not specifically, no.

13 Q. Okay. Do you know what, if anything, was done  
14 by Ms. Freed to address it?

15 A. No.

16 Q. Do you know if Ms. Freed had any conversations  
17 with your sisters about Ms. Nelva Brunsting's capacity?

18 A. Not that I can say, no.

19 Q. Okay. And so then if there was any attempt  
20 made by Ms. Freed or her law firm to address Ms. Nelva  
21 Brunsting's capacity, you would not have any  
22 information whatsoever about that, correct?

23 A. Not specific -- no, no.

24 Q. And forgive me for the pause. I'm just trying  
25 to make sure I don't go over something I've already

1 been over.

2 A. Uh-huh.

3 Q. One of the allegations that you've made in the  
4 case is that -- excuse me -- Ms. Freed and her law firm  
5 failed to advise Elmer and Nelva of the terms of the  
6 family trust and the proper administration --

7 A. Um-hmm.

8 Q. -- of the family trust.

9 A. Um-hmm.

10 Q. What evidence, if any, do you have that they  
11 failed to provide such advice?

12 A. What we're in right now, we're trying to get  
13 it resolved in a good way, five -- split five ways.  
14 Instead of all this problem. I don't know.

15 Q. Okay.

16 A. I don't know how to say specifically.

17 Q. Okay. So you're saying that because there's a  
18 dispute amongst you and your -- your sisters --

19 A. Yes.

20 Q. -- that's -- that's why you believe that --

21 A. Yeah, she was --

22 Q. -- your parents weren't provided proper  
23 advice?

24 A. Yeah.

25 Q. Okay. Anything other than that?

1 A. Not that I can remember. Sorry.

2 Q. Another claim that you've made in this lawsuit  
3 is that Ms. Freed and her law firm failed to protect  
4 Nelva's rights with respect to the family trust.

5 A. Um-hmm.

6 Q. What do you mean by that exactly?

7 A. That she -- they -- she helped get it resolved  
8 where I was going to be kept out of it and -- yeah.

9 Q. Okay. How so?

10 A. I can't say specifically. I don't know.

11 Q. Okay. What specific rights do you mean when  
12 you say that Ms. Nelva Brunsting's rights were not  
13 protected by Ms. Freed and her law firm?

14 A. Where we are right now, instead of having  
15 resolved in a good way, yeah.

16 Q. Okay. So again, you're saying because you and  
17 your sisters are having a dispute about the trust --

18 A. Yeah.

19 Q. -- and the assets --

20 A. Yeah.

21 Q. -- that that's why you believe that Ms. Nelva  
22 Brunsting's rights aren't -- weren't protected?

23 A. That's right. It should have been split five  
24 ways, and then it would be -- would be over by now,  
25 yeah.

1 Q. Okay. And what you basing that on?

2 A. Pardon?

3 Q. What are you basing that on, that it should  
4 have been split five ways?

5 A. Well, there are five kids.

6 Q. Okay.

7 A. And the value of the farm and stocks, and that  
8 should have been after Mom died, all split, yeah.

9 Q. Okay. And is that based on something your mom  
10 told you or --

11 A. No, it's just what it should be with five kids  
12 and --

13 Q. Okay.

14 A. Mom and Dad are dead, and inheritance, yeah.

15 Q. But you understand that your parents could  
16 have changed their mind about how they want to  
17 distribute property after their death, correct?

18 A. I guess they could have, but I don't think  
19 they did, yeah.

20 Q. Okay. Another allegation you've made in this  
21 case is that Ms. Freed and her firm failed to advise  
22 Nelva Brunsting that Ms. Freed and her firm were also  
23 representing the trustees --

24 A. Yes.

25 Q. -- Amy and Anita; is that correct?

1 A. Yes.

2 Q. Okay. And how do you know that?

3 A. What happened without mom knowing it, I don't  
4 know.

5 Q. How do you know -- how do you know your mother  
6 did not know?

7 A. She was old and sick, and the -- it changed  
8 from being split five ways to being this problem right  
9 now, yeah.

10 Q. Okay. But again, you were never present for  
11 any discussions your mom may have had --

12 A. No, no.

13 Q. -- with Ms. Freed --

14 A. No.

15 Q. -- or her law firm about that, correct?

16 A. No, no. Yeah.

17 Q. Okay. And so you agree then it's possible  
18 that Ms. Freed and her law firm did in fact tell  
19 Nelva -- Nelva Brunsting about the fact that she was  
20 representing the trustees as well as Ms. Brunsting?

21 A. I don't know.

22 Q. Okay. And so -- but so what you're saying is  
23 you can't say one way or the other, because you weren't  
24 there, correct?

25 A. Yeah. Yes.

1 Q. What -- another allegation you have in your  
2 lawsuit is that Ms. Freed and her law firm failed to  
3 take steps to inform Nelva Brunsting of the objectives  
4 of the current trustees.

5 A. Um-hmm.

6 Q. What objectives are you referring to?

7 A. Having it done five ways, and after Mom died,  
8 it had -- I don't know what to say.

9 Q. Okay.

10 A. And where we are right now.

11 Q. Got you.

12 And I guess, do you have any evidence  
13 that -- that Miss -- Ms. Freed or her law firm intended  
14 to do anything, other than comply with what Ms. Nelva  
15 Brunsting and Mr. Elmer Brunsting wanted?

16 A. Where we are right now, and that it's taking  
17 so long to get through this, yeah.

18 Q. Okay. So again, the -- the fact of the  
19 dispute --

20 A. Yeah, the dispute.

21 Q. -- is your evidence?

22 A. Yes, uh-huh.

23 Q. Okay.

24 MS. FOLEY: Did you ever dismiss the  
25 conversion claim? You said in some interrogatories

1 that you would, but it's still in the petition.

2 MS. BAYLESS: You know, I did.

3 MS. FOLEY: Okay.

4 MS. BAYLESS: But I think that it's  
5 referred to in one -- I think the word "conversion"  
6 didn't get taken out in one paragraph.

7 MS. FOLEY: Yeah. Okay. So -- but it is  
8 gone?

9 MS. BAYLESS: But it is; it's gone, yeah.

10 MS. FOLEY: All right.

11 MS. BAYLESS: Yeah. I saw that actually  
12 when I was looking at this.

13 MS. FOLEY: Okay.

14 MS. BAYLESS: I just need to take it out  
15 in the next amendment.

16 MS. FOLEY: Sure.

17 Q. (BY MS. FOLEY) Another allegation you've made  
18 in your suit is that my clients, Ms. Freed and her law  
19 firm, helped -- tried to help the trustees, meaning Amy  
20 and Anita, hide their improper actions.

21 A. Um-hmm.

22 Q. What evidence do you have of that?

23 A. Where we are right now, having to get through  
24 this instead of it being split up five ways.

25 Q. Okay. But other than that, do you have any



1 other evidence that -- that Ms. Freed or -- or her law  
2 firm tried to hide any actions by Amy or Anita?

3 A. Not specifically, no, no.

4 Q. Okay. Because it -- it sounds like you -- you  
5 believe that you are aware of what Amy and Anita were  
6 trying to do, correct?

7 A. Yes. Yeah.

8 Q. Okay. And you understand that my client,  
9 Ms. Freed and her law firm, have provided documents in  
10 this case?

11 A. Yes.

12 Q. Okay. Another claim that you've made in your  
13 lawsuit here is that there are documents that were not  
14 signed at Ms. Freed's law firm, but were made to appear  
15 that they were. Do you recall that allegation?

16 A. No, I don't.

17 Q. Okay.

18 A. Sorry.

19 Q. Do you believe that occurred?

20 A. Yes.

21 Q. Why?

22 A. Tell me that again.

23 Q. Sure. That you believe that there's -- there  
24 are documents that were not signed by your mother --

25 A. Yeah.

1 Q. -- in Ms. Freed's office that were made to  
2 look like they were signed in her office.

3 A. Yes. Yeah, yeah.

4 Q. Okay. Why do you believe that?

5 A. There's a signature from Mom that didn't look  
6 like hers at all, like it was --

7 Q. Okay.

8 A. -- mocked up. Yeah.

9 Q. Okay. Do you know what document that was?

10 A. No, uh-uh.

11 Q. Okay. And so I guess it's your belief that  
12 somebody else completely signed the document?

13 A. Yes, uh-huh.

14 Q. Okay. And other than your looking at the  
15 signature and coming to that conclusion, what other  
16 evidence do you have that makes you believe that that's  
17 not your mother's signature?

18 A. I don't know. It -- yeah, it doesn't look  
19 like Mom -- I don't know -- Mom's handwriting. Like  
20 somebody else faked it.

21 Q. That's what it looks like to you?

22 A. Yeah, uh-huh.

23 Q. Okay. Anything other than that that makes you  
24 believe that that particular document was not signed by  
25 your mother?

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1 A. No.

2 Q. Other than the one document we're discussing,  
3 are there any other documents that you believe were not  
4 signed by your mother?

5 A. Not that I can remember, no.

6 Q. Okay. So but you recall one, correct?

7 A. Well, no, there were several that were that  
8 way, but -- yeah.

9 Q. Several documents?

10 A. Yeah. Uh-huh.

11 Q. Okay. I guess -- are you -- you're not  
12 alleging that Ms. Freed signed those documents, are  
13 you?

14 A. I don't know.

15 Q. You're not alleging that anybody at her law  
16 firm signed those documents, are you?

17 A. No.

18 THE REPORTER: What was your answer?

19 THE WITNESS: No.

20 Q. (BY MS. FOLEY) There's another allegation in  
21 your lawsuit where you claim that Nelva Brunsting had  
22 refused to sign a document that was prepared by the  
23 trustee -- at the request of the trustees --

24 A. Um-hmm.

25 Q. -- and by my client and her law firm.

1 A. Um-hmm.

2 Q. What document is that you're referring to?

3 A. Well, I have no -- I don't know. I don't know  
4 specifically.

5 Q. I'm sorry?

6 A. I don't know. I just remember seeing her  
7 signature didn't look like hers at all, so...

8 Q. Okay. Now -- now I'm talking about something  
9 that's a little bit different, though. There's another  
10 allegation in your lawsuit where you claim that  
11 Ms. Nelva Brunsting had refused to sign some  
12 documents --

13 A. Oh.

14 Q. -- that were prepared for her at the request  
15 of Amy and Anita.

16 A. Uh-huh.

17 Q. Do you recall that allegation?

18 A. Yes.

19 Q. What document are you referring to?

20 A. I don't know what specifically.

21 Q. Okay. What evidence do you have that  
22 Ms. Nelva Brunsting refused to sign any document that  
23 was prepared for her by Ms. Freed or her law firm?

24 A. Well, I think it's a fake signature, and how  
25 it's gone instead of being -- I don't know.

1 Q. Okay. Kind of like what we -- we discussed  
2 earlier?

3 A. No.

4 Q. Anything other than that?

5 A. Not that I can --

6 Q. Okay.

7 A. -- say. Sorry.

8 Q. Meaning, you weren't told by Nelva Brunsting  
9 that she refused to sign any documents --

10 A. Oh, no, no.

11 Q. -- correct?

12 A. No.

13 Q. Okay. And were you -- I guess, were you told  
14 by either Amy or Anita that Ms. Nelva Brunsting refused  
15 to sign any documents that they requested for her?

16 A. No.

17 Q. Okay. Another thing -- some other things that  
18 you complain about in your -- in your lawsuit is that  
19 there were improper expenses, improper trustees' fees,  
20 improper payments made to the trustees, Amy and Anita.  
21 Do you recall that allegation?

22 A. Yes.

23 Q. Okay. Do you have any evidence whatsoever  
24 that my client, Candace Freed and her law firm, had  
25 anything to do with that?

1 A. I don't know.

2 Q. Okay. Do you know what, if any, power or  
3 control Ms. Freed or her law firm may or may not have  
4 over, for instance, taking money out of the -- the  
5 trust assets and providing them to the trustees?

6 A. No, I don't.

7 Q. Okay. Do you know who is responsible for  
8 paying trustee fees?

9 A. Trustee fees?

10 Q. Yeah.

11 A. I don't know. I'd say Anita, but I'm not  
12 sure.

13 Q. Okay.

14 A. She's been the leader of the three of them.

15 Q. What do you mean by that?

16 A. I think she told Carol and Amy what to do to  
17 get this all done.

18 Q. Okay.

19 A. For me and Candy to not get anything, so...

20 Q. Okay.

21 A. Although, they kind of considered maybe Candy  
22 being involved.

23 THE REPORTER: Although they...

24 THE WITNESS: Considered Candy being  
25 involved with -- yeah.

1 Q. (BY MS. FOLEY) Okay. But either way, you  
2 don't have any evidence that my clients were involved  
3 in that at all?

4 A. Your clients are who?

5 Q. Ms. Freed and her law firm.

6 A. (Nonverbal response.)

7 Q. I'm sorry. Was that a --

8 A. No.

9 Q. Okay. One of the claims you have in this  
10 lawsuit is that my clients, Ms. Freed and her law firm,  
11 made misrepresentations to Nelva Brunsting and Elmer  
12 Brunsting.

13 A. Um-hmm.

14 Q. What specific misrepresentations do you  
15 believe Ms. Freed and Mister -- I'm sorry -- Ms. Freed  
16 and her law firm made to Nelva and Elmer Brunsting?

17 A. Specifically, I don't know. I just --  
18 generally, it was to try to...

19 Q. Generally what?

20 A. It was to try to get it over without me being  
21 involved.

22 Q. Okay. But you don't have -- you don't --  
23 you're not aware of any misrepresentations made by  
24 Ms. Freed or her law firm, correct?

25 A. No, not specifically, no.



1 Q. Okay. And -- okay.

2 In the -- in your lawsuit, you're -- you're  
3 claiming damages in this case --

4 A. Um-hmm.

5 Q. -- correct?

6 A. Yeah.

7 Q. What is your understanding of your damages  
8 that you've suffered as a result of this lawsuit?

9 A. What we're going through right now instead of  
10 it being divided five ways.

11 Q. Okay. Anything else?

12 A. Not specifically, no.

13 Q. You've also asked for attorney's fees in this  
14 case?

15 A. Yeah.

16 Q. Have you paid any -- your attorney any fees to  
17 date?

18 A. Yes.

19 Q. Okay. How much have you paid her, if you  
20 know.

21 A. A quarter of a million dollars.

22 Q. Okay. And the quarter of a million dollars  
23 that you've paid to your attorney, has that all been  
24 related to this lawsuit, or has it been related to  
25 other lawsuits as well?

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1 A. I can't speak specifically, but about this  
2 inheritance stuff, yeah.

3 Q. Okay. And as I understand it right now, you  
4 have at least two lawsuits, correct?

5 A. Um-hmm.

6 Q. And one is against my client, Ms. Freed and  
7 her law firm, correct?

8 A. Um-hmm.

9 Q. I'm sorry. That's a "yes"?

10 A. Yes.

11 Q. And the other has to -- is -- is related to  
12 your sisters, correct?

13 A. Yes, yes.

14 Q. Okay. Do you know if the \$250,000 that you've  
15 spent on attorney's fees is related to either suit or  
16 both?

17 A. Both of them, I think.

18 Q. Ok.

19 A. Yeah.

20 Q. Okay. Do you know how much of those fees are  
21 actually related to this lawsuit?

22 A. No, no, no.

23 Q. Okay. Have you ever heard of Rosewood Family  
24 Physicians?

25 A. The name sounds familiar, but I don't remember

1 why.

2 Q. Okay. What about Clarence F. Kendall, II?

3 A. Um-hmm.

4 Q. No. Do you know -- do you know that to be a  
5 doctor?

6 A. Yeah. Rosewood is that who was taking care of  
7 Mom.

8 Q. Okay.

9 A. Yeah.

10 Q. All right. What about Dr. Robert White, do  
11 you know who that is?

12 A. (Shook head.)

13 Q. What about Medical Chest Associates PA; is  
14 that somebody you may have seen?

15 A. I may have, but I'm not sure.

16 Q. Okay. Or your mom, maybe?

17 A. Could be. I don't know.

18 Q. Okay. What about G. Thomas Keith; do you know  
19 who that is?

20 A. (Shook head.)

21 Q. What about Dr. A.J. Jane?

22 A. (Shook head.)

23 Q. You don't know who that is?

24 A. (Shook head.)

25 Q. And could you --

1 A. No, I don't.

2 Q. Okay. What about Rudolph and Sri Kumala  
3 Shahendra?

4 A. No.

5 Q. Do you know who that is?

6 They live on Pinerock Lane.

7 A. Oh, really? Say the name again.

8 Q. Sure. I could barely pronounce it, but it's  
9 Rudolf and Srikumala Suhendra, which -- it's spelled  
10 S-R-I-K-U-M-A-L-A, and their last name is Suhendra.

11 A. Mom lives on Pinerock. I don't know why --  
12 who those people are.

13 Q. Okay. Possibly neighbors --

14 A. Yeah.

15 Q. -- of your mom?

16 A. Uh-huh.

17 Q. But you don't know them?

18 A. No, no. I mean, it was 40 years ago when I  
19 lived there, and so I don't know --

20 Q. Okay.

21 A. -- who her neighbors were, yeah.

22 Q. What about Tio Vasquez, do you know who that  
23 is?

24 A. (Shook head.)

25 Q. Do you know if he was one of the caregivers

1 who took care of your mom?

2 A. I don't know. Oh, that sounds familiar, but I  
3 don't know, yeah.

4 Q. Okay. What about Robert Cantu?

5 A. I don't know.

6 Q. You don't know who he is?

7 A. Um-hmm.

8 Q. Do you know if he may have been one of the  
9 caregivers who took care of your mom?

10 A. I don't know. Yeah.

11 Q. Okay. Do you know who Stan McCormick is?

12 A. Um-hmm.

13 Q. I'm sorry. Is that a "no"?

14 A. No.

15 Q. Do you know who Judy Lennox is?

16 A. No.

17 Q. What about Charles Gerhart?

18 A. No.

19 Q. What about Charles -- Dr. Charles Kevorkian?

20 A. No.

21 Q. Is he not one of your medical providers,  
22 Dr. Kevorkian?

23 A. Not that I remember, no.

24 Q. Okay. You provided some responses to  
25 interrogatories in discovery in this case. One of the

1 statements you've made is that your mother would  
2 sometimes become disoriented.

3 A. Um-hmm.

4 Q. When would this happen?

5 A. At the end of her life, yeah.

6 THE REPORTER: Can you repeat your  
7 answer?

8 THE WITNESS: At the end of her life.

9 Q. (BY MS. FOLEY) Okay.

10 A. And she couldn't talk, and she kind of -- you  
11 could see her thinking about things, but couldn't talk,  
12 I guess.

13 Q. But you don't know how long that was going on?

14 A. No, I don't know. A year or two.

15 Q. Okay. And do you know if she was seeing a  
16 doctor for that?

17 A. Pardon?

18 Q. Do you know if she was seeing a doctor for  
19 that?

20 A. Oh, I'm sure she was.

21 Q. But you don't know?

22 A. No, not specifically.

23 Q. Do you know if your mom had any medical  
24 conditions, like specific diagnoses?

25 A. I couldn't say specifically, but she was

1 unable to move almost, and had to be cared for. Yeah.

2 Q. Okay.

3 A. But cared for at home. She had somebody to  
4 feed her and take her here and...

5 Q. Had she suffered any significant -- for  
6 instance, like a heart attack, or stroke, or anything  
7 like that?

8 A. Not that I know of.

9 Q. In some of your responses, you talk about a  
10 safe deposit box. Did your mom have a safe deposit  
11 box?

12 A. I don't remember. I'm -- I'm sure she did,  
13 though. Yes, yes.

14 Q. Okay.

15 A. I don't specifically remember. Sorry.

16 Q. Do you know what she kept in the safety  
17 deposit box?

18 A. No.

19 Q. Do you know if anything has been taken or  
20 removed from that safety deposit box?

21 A. I don't know.

22 Q. Did your mom have savings bonds?

23 A. (Nodded head.)

24 Q. Is that a "yes"?

25 A. No. I'll just say, yes, I think so. Yeah.



1 Q. Okay. Do you know what happened to those  
2 savings bonds?

3 A. No, uh-uh. In her -- the stock's in her --  
4 and the farm value are what the inheritance was about,  
5 yeah --

6 Q. Okay.

7 A. -- or is about, yeah.

8 Q. Are you aware of a conference call that took  
9 place between your sisters and Ms. Freed and her law  
10 firm?

11 A. No.

12 Q. You don't know anything about that?

13 A. No.

14 Q. Another allegation that you may have made  
15 about the documents in this case is that you believe  
16 that there were some documents that were notarized by  
17 Ms. Freed and her law firm, even though Ms. Nelva  
18 Brunsting was not present when they were notarized --

19 A. Um-hmm.

20 Q. -- or did not sign when they were notarized.

21 A. Yes.

22 Q. Do you understand that allegation?

23 A. Yes.

24 Q. Okay. Do you know what documents you're  
25 talking about or what documents you saw?

1 A. Changing the inheritance. I don't know what  
2 they're called. Sorry.

3 Q. Okay. What about the document that made you  
4 believe that it was notarized at Ms. Freed's law firm  
5 but not signed by Ms. Brunsting at the law firm?

6 A. The fake signatures that was there, yeah.

7 Q. Okay.

8 A. And Mom wouldn't have wanted to do this. I  
9 don't know. Sorry.

10 Q. Okay. Anything else?

11 A. No.

12 Q. There's a statement in your discovery  
13 responses that says that the -- you believe that  
14 representations by Ms. Freed and her law firm were made  
15 in presentations at Elmer and Nelva Brunsting's church.

16 A. I don't specifically remember that. Sorry.

17 Q. Okay. So you're not aware of any speech or  
18 presentation Ms. Freed or her law firm may have done at  
19 your parents' church?

20 A. No, not that I know of, no.

21 Q. Okay. Which church did they go to?

22 A. A Methodist church, Chapelwood United --  
23 Chapelwood Methodist.

24 Q. Did you go to that same church?

25 A. Yes, uh-huh.

1 Q. Another allegation -- well, I don't know.

2 MS. FOLEY: Are you still making  
3 allegations of criminal misconduct, Bobbie?

4 MS. BAYLESS: No.

5 MS. FOLEY: Okay.

6 MS. BAYLESS: Sorry, I didn't know you  
7 were talking to me.

8 MS. FOLEY: No, that's okay.

9 Q. (BY MS. FOLEY) There's an allegation that you  
10 have in your claims that your -- your sisters were  
11 making improper personal -- payments for personal  
12 expenses.

13 A. Um-hmm.

14 Q. Do you recall that allegation?

15 A. Yes.

16 Q. What kind of things were they spending money  
17 on that you claim are improper personal expenses?

18 A. I can't say specifically. I don't know.

19 Q. Okay. What documents have you looked at to --  
20 to come to that determination?

21 A. What's been taken out of -- I can't be  
22 specific about it, but what's been taken out of  
23 inheritance and spent.

24 Q. Okay. But you don't know what they were spent  
25 on?

1 A. No. Well, one of them I do. She built a new  
2 house, Amy.

3 Q. Okay. And do you remember what time frame you  
4 believe she did that?

5 A. I don't know. A few years ago. I'm not for  
6 sure.

7 Q. Was it before or after your mom had passed  
8 away?

9 A. I don't know. I'd say a little bit after.  
10 I'm not real sure.

11 Q. Okay. Are you aware of any funds or money  
12 that was spent on your mom's care while she was at  
13 home?

14 A. Not that I'm aware of, no.

15 Q. Do you know where the money came from that  
16 paid for that care, the care that she received while  
17 she was at home?

18 A. From Mom's accounts or whatever. I'm not  
19 sure.

20 Q. Okay. You're not sure where the money came  
21 from?

22 A. No, I'm not. No, I'm not.

23 Q. Do you know -- so then you don't know who paid  
24 for the -- for that care that she received while she  
25 was at home, correct?

1 A. Well, I think she did for a while, and then  
2 she couldn't, and somebody else took care of it, I'm  
3 not sure.

4 Q. Do you know who that was?

5 A. No, uh-uh. I would say Anita, but I'm not  
6 sure. I shouldn't keep saying that. Sorry.

7 Q. Okay. Do you know how long she was receiving  
8 care at home?

9 A. No.

10 Q. There's also an allegation that you believe  
11 that your mother did not know that documents were  
12 prepared to disinherit your daughter.

13 A. Oh, yes.

14 Q. Okay. Do you recall that allegation?

15 A. Yeah.

16 Q. Okay. What evidence did you have that  
17 Ms. Nelva Brunsting did not know documents were  
18 prepared to disinherit your daughter?

19 A. I can't say. I don't know.

20 Q. Okay. Have you seen any documents that were  
21 prepared that would disinherit your daughter?

22 A. No, not that I can remember.

23 Q. Okay. Had you ever had any discussions with  
24 your -- with your mom or -- or anybody else about your  
25 mom or your dad possibly disinheriting your daughter?

1 A. No, no, no.

2 Q. Okay. Other than the two lawsuits, the one  
3 you have against Ms. Freed and her law firm, and the  
4 one you have against your sisters, do you have any  
5 other lawsuits pending right now related to your  
6 inheritance?

7 A. Not that I'm aware of. Sorry.

8 Q. With respect to the lawsuit that you have  
9 against your sisters, have any of them filed any claims  
10 against you?

11 A. Not that I'm aware of, no.

12 Q. There's another allegation that you've made  
13 which is that Nelva Brunsting was bullied.

14 A. Um-hmm.

15 Q. Okay. What evidence do you have that  
16 Ms. Brunsting was bullied by anyone?

17 A. What's happened and -- yeah.

18 Q. Okay. You don't have any evidence that my  
19 clients, Ms. Freed and her law firm, bullied Ms. Nelva  
20 Brunsting, do you?

21 A. Not evidence, I don't. Sorry.

22 Q. Okay.

23 A. Not that I can get specific about.

24 Q. I'm sorry. What now?

25 A. Not that I can get specific about.

1 Q. Okay. Well, what about even generally?

2 A. Yeah, they...

3 Q. You don't have anything?

4 A. Not that I can say, no.

5 Q. And I just have to ask this: You say not that  
6 you can say. What -- what do you mean by that, because  
7 you're under oath to tell the truth, so you can -- I  
8 mean, if you have evidence, I mean, this is my only  
9 time to get it.

10 A. I think she was -- I'm sorry, handled by my  
11 sisters in trying to get me out of this. I don't know  
12 what to say specifically.

13 Q. Okay. So it's -- it's related to -- to what  
14 you -- what you believe your sisters were trying to do,  
15 correct?

16 A. Yeah, it's -- the inheritance, yeah.

17 Q. Okay.

18 A. It should have been five ways, but they tried  
19 to keep me out of it.

20 Q. Okay. But you don't have anything specific  
21 that you're aware of --

22 A. Not that I can say.

23 Q. -- that Miss -- let me finish the question --  
24 that Ms. Freed and her law firm were involved in that,  
25 correct?



1 A. Yes, they were, but I can't be specific about  
2 it. Yeah.

3 Q. Okay.

4 A. That's why we're here instead of it being  
5 over, anyway.

6 Q. When you said, "That's why we're here," what  
7 are you referring to?

8 A. Miss -- Mom died a few years ago, and it  
9 should have been over by then and split five ways --

10 Q. Okay.

11 A. -- instead of this legal problem.

12 Q. Well, let -- let me ask this: Did the other  
13 lawsuit that you have going, you filed that lawsuit,  
14 correct?

15 A. I don't remember.

16 Q. Okay.

17 A. Yes, I'm sure yeah.

18 Q. And then you were the one who filed this  
19 lawsuit, correct?

20 A. Um-hmm, we did, yes. Uh-huh, yes.

21 Q. Meaning you and your wife, correct?

22 A. Yes, uh-huh.

23 Q. Okay. And as far as you know sitting here  
24 today, your other sisters have not filed a lawsuit?

25 A. I don't know.

1 Q. According to your discovery responses and as  
2 you've discussed here, there were -- and I'm reading  
3 from one of your answers -- approximately almost 3,000  
4 shares of Exxon stock that was transferred, correct?

5 A. As far as I'm aware, yeah.

6 Q. Okay. Do you know where there was -- where it  
7 was transferred to?

8 A. Yeah. To Anita's control, but I'm not sure  
9 who -- how it was handled.

10 Q. Okay. And again, you don't have any evidence  
11 that my client, Ms. Freed or her law firm, participated  
12 in that transfer --

13 A. No.

14 Q. -- of stock?

15 A. I don't have any evidence of that.

16 Q. Okay. And then you also mention the -- the  
17 Chevron stock, correct?

18 A. Um-hmm.

19 Q. Was that also transferred to someone?

20 A. From what I understand, yes.

21 Q. Do you know who it was transferred to?

22 A. No.

23 Q. And you don't have any evidence or information  
24 or facts to show that my clients, Ms. Freed and her law  
25 firm, participated in the transfer of any of that

1 stock?

2 A. I don't have any -- not that I can be specific  
3 about, yeah.

4 Q. Okay. And you also seem to be complaining  
5 about some money that Carol spent with respect to a  
6 joint account she had with your mother; is that  
7 correct?

8 A. Um-hmm.

9 Q. And do you know what those expenditures were  
10 for?

11 A. Expensive car and wasted -- I don't know.  
12 Yeah, that's the only one I know about, yeah.

13 Q. A car?

14 A. Yes.

15 Q. A car for herself?

16 A. Yes. Uh-huh, yeah.

17 Q. What kind of car?

18 A. Oh, some -- I don't know.

19 Q. Okay.

20 A. Some \$40,000 car. Yeah, I don't know what she  
21 has.

22 Q. Anything else that you're -- that you believe  
23 Carol spent that money on?

24 A. Yes.

25 Q. What?

1 A. Her horses and her cats, yeah. I mean, she's  
2 got like 50 quarter horses and 100 cats that she takes  
3 care of.

4 Q. Okay. And what role, if any, do you know  
5 is -- or have evidence that my client played in Carol  
6 spending that money?

7 A. I don't know.

8 Q. Do you know whether any of that money was  
9 spent -- and according to your interrogatory responses,  
10 it's about \$150,000 that she spent.

11 A. Okay.

12 Q. Does that sound about right to you?

13 A. Yeah.

14 Q. Do you know how much of that money was spent  
15 on your mother?

16 A. No.

17 Q. Do you know if any of that money was spent on  
18 your mother?

19 A. No, I don't know specifically, no.

20 Q. You also claim that about \$155,000 were paid  
21 to family members or paid for family obligations. Do  
22 you recall that allegation?

23 A. Not specifically.

24 Q. Okay. And so then do -- do you have any  
25 recollection of where you believe that money came from,

1 any -- where that money was taken from and spent?

2 A. Out of Mom's money and spent -- I'm not sure,  
3 for Amy, Anita, and Carol. But I'm not sure, yeah.

4 Q. Okay. Then also with respect to -- to your  
5 damages, you complained of missing savings bonds. You  
6 understand that allegation?

7 A. Um-hmm.

8 Q. I'm sorry. Is that a "yes"?

9 A. Yes.

10 Q. Okay. And do you know how much in savings  
11 bonds is missing?

12 A. No.

13 Q. Are -- do you know that the savings bonds  
14 actually existed?

15 A. Yes.

16 Q. You -- you had seen them before?

17 A. Well, yes, uh-huh.

18 Q. Okay. Do you know where they were kept?

19 A. No. I would say Wells Fargo, but I don't know  
20 if that's right now.

21 Q. Okay. Have you done any -- made any effort to  
22 check at Wells Fargo to see if those savings bonds are  
23 there?

24 A. Not that I'm aware of, no.

25 Q. And then another complaint you have on -- on

1 the damages side of things is that there's \$830,000 of  
2 income that came into the estate that's unaccounted  
3 for.

4 A. Yes.

5 Q. Do you recall that allegation?

6 A. Yes.

7 Q. Okay. And have you still not been able to  
8 determine what happened to the \$830,000?

9 A. Not that I'm aware of, no.

10 Q. Okay. Do you know when the \$830,000 came --  
11 became missing?

12 A. No. Not specifically, no.

13 Q. Okay.

14 A. Over the last two -- two years. I'm not sure.

15 Q. Okay.

16 THE VIDEOGRAPHER: There's around five  
17 minutes.

18 MS. FOLEY: Five minutes?

19 THE VIDEOGRAPHER: Yes, ma'am.

20 MS. FOLEY: You can go ahead and change  
21 right now.

22 THE VIDEOGRAPHER: Off the record, 12:01.

23 (Break from 12:01 p.m. to 12:19 p.m.)

24 THE VIDEOGRAPHER: On the record, 12:19,

25 Tape 3.

1 Q. (BY MS. FOLEY) All right. Mr. Brunsting, do  
2 you know -- have you ever seen any documents or letters  
3 that Ms. Nelva Brunsting may have written or drafted  
4 about any of the claims that you're making in this  
5 lawsuit?

6 A. No.

7 Q. Okay. I understand that in the -- in the  
8 past, I believe it was some of your sisters maybe have  
9 hired private investigators to follow people, follow  
10 you.

11 A. Um-hmm.

12 Q. Have you employed any private investigators?

13 A. No.

14 Q. Okay. And have you been provided any, I  
15 guess, sur- -- surveillance videos or recordings that  
16 any private investigator may have taken of you?

17 A. Not that I'm aware of, no.

18 Q. Okay. Have you -- are -- are you aware of any  
19 recordings any of your sisters may have done of -- of  
20 any phone calls with you?

21 A. Not that I'm aware of, no.

22 Q. And have you recorded any phone calls with  
23 your sisters?

24 A. No.

25 Q. Do you know whether or not your mother



1 assisted you in -- assisted you by paying any of your  
2 medical bills when you were -- when you fell ill?

3 A. No.

4 Q. Okay. Would it surprise you if she did?

5 A. Yeah.

6 Q. Why would that surprise you?

7 A. I don't -- I don't think -- I don't know.

8 Q. Okay. Let me ask you this: Do you believe  
9 you have the mental capacity to serve as the executor  
10 of your parents' estate?

11 A. I don't know.

12 Q. Okay.

13 A. I think we could do that together, but I don't  
14 know.

15 Q. Okay. Have you ever gone to see a doctor  
16 about that?

17 A. No. Not specifically, no.

18 Q. Okay. Has anyone ever challenged you on that  
19 issue, meaning has anyone ever claimed that they did  
20 not believe you had the capacity to serve as the  
21 executor of your parents' estate?

22 A. No.

23 Q. Are you having to, I guess, perform any duties  
24 related to your status as the executor of your parents'  
25 estate?

1 A. Doing this and -- and just getting it all  
2 resolved. I don't know what to say.

3 Q. Okay. When you say "doing this," what do you  
4 mean by that?

5 A. This interview and...

6 Q. Okay. Did -- did someone, either any of  
7 the -- your -- your siblings or the Court, tell you  
8 that you had to file this lawsuit against Ms. Freed and  
9 her law firm?

10 A. No.

11 Q. Was that solely your decision?

12 A. Our decision, yes.

13 Q. And when you say "our," you mean you and your  
14 wife?

15 A. Yes.

16 Q. You haven't met with any doctors who have  
17 questioned you about your capacity to serve as the  
18 executor of your parents' estate?

19 A. Not that I'm aware of, no.

20 Q. Another claim that you've made in this lawsuit  
21 is that Nelva Brunsting requested that you be  
22 reinstated as the successor trustee. Do you understand  
23 that claim?

24 A. Yes.

25 Q. Okay. How do you know that?

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1 A. Because I was taken out of it, and then Mom  
2 wanted me to get the -- get it back again, yeah.

3 Q. How do you know she wanted you to get it back  
4 again?

5 A. I don't know.

6 Q. Did she tell you that?

7 A. No, no.

8 Q. Did someone else tell you that that's what she  
9 wanted?

10 A. No, not that I know of.

11 Q. Is that just kind of what you assume based  
12 on...

13 A. What's happened, yeah.

14 Q. Okay. And -- and did you convey this to your  
15 sisters, Anita and Amy?

16 A. No.

17 Q. You didn't tell them?

18 A. No. Of course, no.

19 Q. Why not?

20 A. They were on the other side. I wouldn't tell  
21 them anything. I mean, I don't know.

22 Q. Do you recall what your -- what your final  
23 prognosis was when you left the hospital?

24 A. Encephalitis, but -- yeah.

25 Q. Okay. And did they tell you how long it would

1 take you to recover?

2 A. No, no.

3 Q. Okay. Did they tell you to follow up --  
4 follow up with any specialist?

5 A. Not that I'm aware of, no.

6 Q. Okay. I'm going to show you some -- some  
7 documents, and some of them I have copies of and some  
8 of them I don't.

9 MS. BAYLESS: Okay.

10 MS. FOLEY: So we're going to mark this  
11 as Exhibit No. 1.

12 This is your copy.

13 MS. BAYLESS: Okay.

14 (Exhibit No. 1 was marked.)

15 Q. (BY MS. FOLEY) And Exhibit No. 1 is --

16 MS. FOLEY: Sorry. I'm reaching over  
17 you.

18 Q. (BY MS. FOLEY) Exhibit No. 1 is the general  
19 dural -- durable power of attorney of Nelva E.  
20 Brunsting, and it's Bates labeled CHB6953 through  
21 CHB6979, and also V&F 000174 through -200.

22 Have you ever seen this document before?

23 A. Not that I'm aware of.

24 Q. Okay.

25 A. Oh, wait a minute.

1 Q. Sure. Go ahead and take your -- take your  
2 time looking at it.

3 A. Like I said, not that I'm aware of.

4 Q. Okay. If you would look at the third to the  
5 last page, so it's Page No. 25 of the document, and  
6 it's Bates-labeled CHB6977 --

7 A. Um-hmm.

8 Q. -- and V&F -198.

9 A. Yeah.

10 Q. All right. And do you -- do you see at the --  
11 at the bottom of that page, there's a signature line.

12 A. Um-hmm.

13 Q. And underneath, it's typed "Nelva E.  
14 Brunsting."

15 A. Um-hmm.

16 Q. And then there's a signature on top of that  
17 line.

18 A. Um-hmm.

19 Q. Do you believe that that's Ms. Brunsting's  
20 signature?

21 A. I don't know.

22 Q. Okay. Have you -- have you talked to a  
23 handwriting expert --

24 A. No.

25 Q. -- about her signatures?

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1                   Okay. Now I'm going to hand you -- and  
2 this is one I only have one copy of. This is "The  
3 Re-" -- "The Restatement of the Brunsting Family  
4 Trust" --

5           A.     Um-hmm.

6           Q.     -- "Family Living Trust." I'm sorry.

7                   MS. FOLEY: Oh, do you have two? Yeah, I  
8 have two.

9           Q.     (BY MS. FOLEY) And it's Bates-labeled CHB317  
10 through CHB403. So I have two copies.

11                   MS. FOLEY: So I'm going to hand you a  
12 copy, so you can look at it first and then if you can  
13 give it to Mr. Brunsting.

14                   MS. BAYLESS: Do we want to mark it?

15                   MS. FOLEY: Huh?

16                   MS. BAYLESS: Do you want to mark it?

17                   MS. FOLEY: Yeah, we can mark it. We can  
18 mark this as Exhibit No. 2.

19                   (Exhibit No. 2 was marked.)

20                   MS. FOLEY: Let me make sure I have the  
21 same thing. Hold on.

22           Q.     (BY MS. FOLEY) I'm handing you Exhibit 2, and  
23 I'm going to let you take a look at that.

24           A.     Um-hmm.

25           Q.     And let me know if you've ever seen that

1 document before.

2 A. Yes, I think I have.

3 Q. Okay. If you will flip over to Page -- excuse  
4 me.

5 It's 14-6 if you look at the bottom middle  
6 number, but then the CHB number is -315. So it's  
7 the -- literally the second-to-last page of the  
8 document.

9 A. You said 315?

10 Q. 315, yes, sir.

11 A. I don't have that in this stack.

12 Q. I'm sorry. Not 315. These are the same  
13 documents labeled differently. But it's the  
14 second-to-last page of the document.

15 A. Oh, -4-0 -- 402?

16 Q. Yes, 402.

17 A. Yeah.

18 Q. And do you see the -- the signature lines  
19 there?

20 A. Yeah, yeah, yeah.

21 Q. And do you see that there's a signature line  
22 on that -- on that page for Nelva Brunsting?

23 A. Um-hmm.

24 Q. Can you tell me if that appears to be Nelva  
25 Brunsting's signature?

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1 A. I think it is, yeah.

2 Q. Okay.

3 A. I -- I don't know, though. Yeah.

4 Q. Okay.

5 A. Yeah, put down I don't know, yeah.

6 Q. Okay.

7 A. You know what...

8 Q. Now I'm going to hand you what we're going to  
9 mark as Exhibit No. 3.

10 (Exhibit No. 3 was marked.)

11 MS. FOLEY: I have a copy for you.

12 Q. (BY MS. FOLEY) And Exhibit No. 3 for the  
13 record is Bates-labeled CHB -- excuse me. CHB979  
14 through CHB1015.

15 A. Um-hmm.

16 Q. Do you think you've ever seen this document  
17 before?

18 A. Yes, I think I have. I don't know if it's --  
19 it's this share thing, and I remember seeing that  
20 somewhere.

21 Q. Okay. If you would flip to the very last page  
22 of this document --

23 A. Um-hmm.

24 Q. -- and you see that there's a signature block  
25 for Nelva E. Brunsting?



1 A. Um-hmm.

2 Q. And her signature appears twice on -- on this  
3 page?

4 A. Um-hmm.

5 Q. Do you believe that that appears to you to be  
6 Nelva Brunsting's signature?

7 A. I don't know.

8 Q. Okay. Now I'm going to hand you what we're  
9 going to mark as Exhibit No. 4.

10 (Exhibit No. 4 was marked.)

11 MS. FOLEY: And I only have one copy of  
12 it.

13 MS. BAYLESS: Okay.

14 Q. (BY MS. FOLEY) If you could take a look --  
15 look at Exhibit No. 4, and if you could, could you read  
16 off the Bates-label number that's in the bottom right  
17 corner, the CHB number?

18 A. CHB444.

19 Q. Thank you, sir.

20 A. Okay.

21 Q. Have you ever seen that document before?

22 A. Not that I'm aware of.

23 Q. And do you see that there's a signature line  
24 for Nelva E. Brunsting on that document?

25 A. Yep.

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1 Q. Does that appear to you to be Ms. Brunsting's  
2 signature?

3 A. No, I don't think so.

4 Q. Okay. And why don't you think that that one  
5 is her signature?

6 A. Because it looks like the same as Elmer's  
7 instead of it being different signatures.

8 Q. Okay.

9 A. It's like the same person wrote those -- both  
10 of them in there.

11 Q. Okay.

12 A. I don't know if that's right, though.

13 Q. Anything else about it that makes you not  
14 believe that it's Ms. Nelva E. Brunsting's signature?

15 A. No.

16 Q. Okay.

17 (Exhibit No. 5 was marked.)

18 Q. (BY MS. FOLEY) All right. Now I'm going to  
19 hand you what we're going to mark as Exhibit No. 5.  
20 And for the record, this Exhibit No. 5 is Bates-labeled  
21 CHB447 --

22 A. Um-hmm.

23 Q. -- through CHB452.

24 And if you could, take a look and see if  
25 you've ever seen this document before.

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1 A. Not that I remember, no.

2 Q. Okay. If you would look on the very -- or  
3 second-to-last page of this document, and that is  
4 Bates-labeled CHB451 --

5 A. Um-hmm.

6 Q. -- and if you see there at the bottom of that  
7 page, there is a signature line for Nelva E. Brunsting,  
8 and a signature on top of that.

9 A. Um-hmm.

10 Q. Do you believe that based on what you're  
11 looking at, that that looks like to you Nelva E.  
12 Brunsting's signature?

13 A. I can't say. Sorry.

14 Q. Okay. Now I'm going to hand you what we're  
15 going to Bates-label -- excuse me -- as Exhibit No. 6,  
16 which is Bates-labeled CHB453.

17 (Exhibit No. 6 was marked.)

18 A. Um-hmm.

19 Q. (BY MS. FOLEY) Have you ever seen this  
20 document before?

21 A. Not that I remember, no.

22 Q. Okay. And if you look down towards the bottom  
23 of the --

24 A. Yeah.

25 Q. -- near the bottom of the page, there's a

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1 signature line for Nelva E. Brunsting --

2 A. Yeah.

3 Q. -- and a -- a signature on top of that line.

4 Does that appear to you to be the signature of Nelva E.  
5 Brunsting?

6 A. I -- I don't know.

7 Q. You don't know. Okay.

8 And now I'm going to hand you Exhibit Number  
9 -- actually, I'm going to hand you what we're going to  
10 mark as Exhibit No. 7, and it is Bates-labeled CHB454  
11 through CHB464.

12 (Exhibit No. 7 was marked.)

13 MS. FOLEY: I only have one copy of that  
14 one.

15 Q. (BY MS. FOLEY) If you could take a look at  
16 that document, and let me know if you've seen it  
17 before.

18 A. Not that I'm aware of, no.

19 Q. Okay. If you look to the  
20 second-to-the-last -- I think it's the second-to-last  
21 page that has the signature line on it.

22 Do you see the signature line on that  
23 document?

24 A. Yes.

25 Q. And based on the -- the signature that shows

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1 Nelva E. Brunsting, do you believe that that is  
2 Ms. Brunsting's signature?

3 A. I don't know.

4 Q. Okay. Thank you, sir.

5 Another claim that you've made in this  
6 lawsuit is that Ms. Freed and her law firm made oral  
7 misrepresentations to Nelva E. Brunsting when preparing  
8 documents that -- that she signed.

9 A. Um-hmm.

10 Q. Do you recall that allegation?

11 A. I remember the -- I recall the -- I -- I  
12 remember, yeah, a little bit about that.

13 Q. Okay. What oral misrepresentations do you  
14 believe Ms. Freed and her -- and/or her law firm made  
15 to Ms. Brunsting?

16 A. I don't know.

17 Q. Are you aware of any mis- -- specific  
18 misrepresentations that you believe Ms. Freed and her  
19 law firm made to Nelva E. Brunsting?

20 A. Not that I can say specifically, no.

21 Q. Okay. And what about generally?

22 A. I -- I can't answer.

23 Q. Okay. Is it because you don't recall  
24 anything, or you don't know of anything?

25 A. I don't know who -- which lawyer was that?

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1 Q. Her name is Candace Freed.

2 A. Yeah. Candace Freed, yeah.

3 Q. And so you -- so you don't -- you're not aware  
4 of any?

5 A. No, not -- not that I know of.

6 Q. Okay. Now I'm going to hand you what we're  
7 going to mark as Exhibit No. 8.

8 (Exhibit No. 8 was marked.)

9 Q. (BY MS. FOLEY) And Exhibit No. 8 for the  
10 record is labeled CHB14489. And for whatever reason,  
11 CHB14490. And if you could take a look -- you can take  
12 a minute to look through --

13 A. Um-hmm.

14 Q. -- this e-mail.

15 A. (Reviewing document.)

16 What would you like to know about this?

17 Q. Okay. Have you had time to look at it?

18 A. Yeah.

19 Q. Okay. In May of -- of 2010, you had an e-mail  
20 address of "cbarch-" --

21 A. Yes.

22 Q. -- "-@sbcglobal.net" --

23 A. Yeah.

24 Q. -- is that correct?

25 A. Yes.

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1 Q. Okay. And do you still have that e-mail  
2 address?

3 A. I don't know actually, yeah.

4 Q. Okay. Haven't e-mailed in a while?

5 A. No, not -- at all, the last few years. Sorry.

6 Q. Okay. Okay.

7 Have you ever -- do you recall this e-mail?

8 A. Yeah.

9 Q. Okay. And if you look at the e-mail that's in  
10 the middle of the first page --

11 A. Yeah, uh-huh.

12 Q. And this is an e-mail from Candace Curtis,  
13 correct?

14 A. Yeah.

15 Q. And is that your sister?

16 A. Yes.

17 Q. And in the first paragraph, the -- at the end,  
18 the last sentence of the first paragraph, the last --  
19 I'm sorry, the last line of the first paragraph, it  
20 reads: "How is her mental state," question mark.

21 A. Yeah.

22 Q. "'Oh piffle' could mean several different  
23 things." And then you respond to this e-mail, correct?

24 A. (Pauses.)

25 Q. If you look at the e-mail --

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1 A. Yeah.

2 Q. -- that's directly on top of that one?

3 A. Okay, yeah.

4 Q. That's your -- that's from you, correct?

5 A. Yeah.

6 Q. And you are responding to her question -- to  
7 Candace's question, correct?

8 A. Yes, uh-huh. She was wondering what was  
9 happening with Mom, yeah.

10 Q. Okay. So she's talking about Ms. Brunsting,  
11 correct?

12 A. Yes, uh-huh.

13 Q. And you -- you write a long paragraph here.  
14 But if you go to the -- one, two, three, four -- fourth  
15 line down, and the -- there's a sentence that starts  
16 towards the end of the fourth line that says: "Her  
17 mental state seems generally fine or normal to me, more  
18 forgetful for sure...she is worn out, getting groceries  
19 is a big deal for her."

20 Did I read that correctly?

21 A. Yes.

22 Q. Okay. So in May of 2010, you believe that  
23 your mom's mental state was generally fine or normal,  
24 correct?

25 A. Yeah, okay.



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1 Q. Okay.

2 A. Physically a problem, but yeah, uh-huh.

3 Q. Okay. And you don't recall that changing  
4 prior to you getting ill, do you?

5 A. What's that?

6 Q. Her mental state.

7 A. It happened about the same time. I don't  
8 know, yeah.

9 Q. Okay. Do you know -- because I -- well, I  
10 think actually you've already testified that you got --  
11 you became ill in 2009; is that correct?

12 A. Um-hmm.

13 Q. Okay. So this is 2010, which is later?

14 A. Um-hmm, yeah.

15 Q. Okay. And how sure are you that you became  
16 ill in 2009?

17 A. How sure am I?

18 Q. Yeah.

19 A. Oh, what happened five years ago was -- yeah.

20 Q. You think it could have been 2010?

21 A. No, I think it was -- I don't know.

22 Q. Okay. You just can't remember?

23 A. Yeah.

24 Q. Okay. But before you became ill --

25 A. Um-hmm.

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1 Q. -- it's your belief that your mother's mental  
2 state was fine or normal, correct?

3 A. Yeah, yeah.

4 Q. Okay. And forgive me. I'm skipping over  
5 stuff, because I've already asked you about it, so --  
6 as not to keep you here too long.

7 Are you aware that your -- one of your  
8 sisters or your sisters called the Adult Protective  
9 Services on your behalf?

10 A. Called them?

11 Q. Yes.

12 A. I don't know.

13 Q. Do you recall hearing anything about that?

14 A. No, not that --

15 Q. Anybody from Adult Protective Services ever  
16 contact you?

17 A. Not that I remember, no.

18 MS. FOLEY: Okay. Let's take another  
19 break here.

20 THE VIDEOGRAPHER: Off the record, 12:46.

21 (Break from 12:46 p.m. to 12:58 p.m.)

22 THE VIDEOGRAPHER: On the record, 12:58.

23 Q. (BY MS. FOLEY) Okay. Mr. Brunsting, I just  
24 have a few more questions for you --

25 A. Um-hmm.

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1 Q. I'm going to hand you what we're going to mark  
2 as Exhibit No. 9.

3 (Exhibit No. 9 was marked.)

4 Q. (BY MS. FOLEY) If you would take a look at  
5 Exhibit No. 9...

6 A. (Reviewing document.)

7 Q. Have you seen Exhibit No. 9 before?

8 A. Not that I remember, but I should have, yes.

9 Q. Okay. If you'd flip over to the third page --

10 A. Um-hmm.

11 Q. -- of Exhibit No. 9...

12 A. Um-hmm.

13 Q. For the record, Exhibit 9 is CHB1 through -3,  
14 with --

15 A. Um-hmm.

16 Q. -- Attachment CHB3-1 and CHB3-2.

17 A. Um-hmm.

18 Q. But if you go to CHB3, Page 3 of the document,  
19 there is a signature line for Carl Brunsting and a  
20 signature on top. Do you see that?

21 A. Um-hmm.

22 Q. Is that your signature?

23 A. Yes. Un-huh.

24 Q. Okay. And based on this agreement, it looks  
25 like you paid a \$30,000 advance retainer; is that

1 correct?

2 A. Um-hmm.

3 Q. And then you also agreed to an hourly rate for  
4 Ms. Bayless of \$350 an hour?

5 A. Yes.

6 Q. Okay. And -- and as you said earlier, you  
7 have been paying her her fees; is that correct?

8 A. Yeah, or we have. Yeah.

9 Q. Okay. Sure.

10 A. Sorry.

11 Q. But earlier you -- you mentioned that part of  
12 the income that you have been receiving here lately  
13 dealt with some inheritance money --

14 A. Um-hmm.

15 Q. -- as a result of the death of -- a death in  
16 your wife's family; is that correct?

17 A. Yes, uh-huh.

18 Q. How much was that inheritance?

19 A. I don't want to say.

20 Q. You said, you don't want to say?

21 A. Yeah.

22 Q. Why not?

23 A. I don't -- the number wrong, yeah.

24 Q. Oh, you don't have the number?

25 A. No, no.

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1 Q. Ok.

2 A. Several hundred thousand, but I don't know how  
3 many.

4 Q. Okay. When -- have you talked to Carol  
5 Brunsting about this lawsuit?

6 A. No.

7 Q. Have you talked to Candy about this lawsuit?

8 A. No. A little bit, yeah. No, not -- not about  
9 this lawsuit, no.

10 Q. Okay. When did you talk to her?

11 A. A couple of years ago or -- I don't know when  
12 that was, but we saw her when she came into town.  
13 Sorry.

14 Q. Okay. Y'all talked about this lawsuit?

15 A. No, not that I remember, no.

16 Q. Are you sure about that?

17 A. Yeah, yeah.

18 Q. Back in October of 2010, Miss -- I think the  
19 evidence is going to show in this case that Ms. Freed,  
20 the lawyer for -- for Nelva Brunsting, sent an e-mail  
21 to your sisters --

22 A. Um-hmm.

23 Q. -- regarding a meeting to discuss issues  
24 concerning Ms. Brunsting's capacity.

25 A. Um-hmm.

1 Q. And I believe you testified earlier you don't  
2 recall hearing anything about that.

3 A. That's right.

4 Q. Okay. During that time in October of 2010,  
5 were you still suffering from encephalitis?

6 A. Yes.

7 Q. Okay. And so if you would have been invited  
8 to participate in that phone call, would you have been  
9 able to?

10 A. I don't know at that time. I don't know.  
11 Yeah.

12 Q. Okay. And you said earlier -- you testified  
13 earlier that it has some effect on your brain; is that  
14 correct?

15 A. Yeah, yeah. The first part of it, I didn't --  
16 yeah, I wouldn't have been able to be on the phone  
17 with...

18 Q. Okay. And if -- if you were -- if during that  
19 time period that you were suffering from encephalitis,  
20 if something would have happened to Ms. Brunsting at  
21 that time, do you believe that you would have had the  
22 capacity to serve as her executor?

23 A. No.

24 Q. Okay.

25 A. At that time, no.

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1 Q. Would you have been able to act as her power  
2 of attorney at that time?

3 A. At that time, no.

4 Q. Okay. Would you have been able to -- would  
5 you have been able to manage her finances during the  
6 time that you were suffering from encephalitis?

7 A. No.

8 Q. Would you have been able to take care of the  
9 finances of the trust at that time?

10 A. No, uh-uh.

11 Q. Mr. Brunsting, do you believe that you have  
12 the capacity here today to testify in this deposition?

13 A. Yes.

14 Q. Okay. And have you understood all my  
15 questions here today?

16 A. More or -- yes, I have.

17 Q. Okay. And to the extent you didn't, did you  
18 ask me to rephrase or...

19 A. I'm sorry?

20 Q. To the extent that you did not understand me,  
21 did you ask me to rephrase the question and reask the  
22 question?

23 A. Not that I can remember. Sorry.

24 Q. You don't remember doing that?

25 A. No.

1 Q. Okay. But did you understand all my questions  
2 today?

3 A. More than -- yeah.

4 Q. Okay. All right.

5 A. More...

6 Q. What were you about to say?

7 A. More than I could have a couple of years ago  
8 or getting back from my illness.

9 Q. Got you. Got you.

10 MS. FOLEY: All right. I think I'll pass  
11 the witness.

12 MS. BAYLESS: We'll reserve our  
13 questions.

14 MS. FOLEY: Okay.

15 THE VIDEOGRAPHER: Off the record, 1:05.

16 (The deposition concluded at 1:05 p.m.)  
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WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper, giving the change, page number, line number and reason for the change. Please sign each page of changes.

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\_\_\_\_\_  
CARL H. BRUNSTING

CARL H. BRUNSTING

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1 I, CARL H. BRUNSTING, solemnly swear or affirm  
 2 under the pains and penalties of perjury that the  
 3 foregoing pages contain a true and correct transcript  
 4 of the testimony given by me at the time and place  
 5 stated herein, except as noted on the previous  
 6 correction page(s), and that I am signing this before a  
 7 Notary Public.

5  
6

7 CARL H. BRUNSTING

8

9 STATE OF T E X A S \*

10 COUNTY OF \_\_\_\_\_ \*

11

12 Before me, \_\_\_\_\_,  
 13 on this day personally appeared CARL H. BRUNSTING,  
 14 known to me, or proved to me under oath, to be the  
 15 person whose name is subscribed to the foregoing  
 16 instrument and acknowledged to me that they executed  
 17 the same for the purposes and consideration therein  
 18 expressed.

15

16 Given under my hand and seal of office on  
 17 this, the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

17

18

19

20 \_\_\_\_\_  
 21 NOTARY PUBLIC IN AND FOR THE  
 22 STATE OF TEXAS

20

21 My Commission Expires: \_\_\_\_\_

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JOB NO. 177755

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1 CAUSE NO. 2013-05455  
2 CARL HENRY BRUNSTING, ) IN THE DISTRICT COURT OF  
INDEPENDENT EXECUTOR OF )  
3 THE ESTATES OF ELMER H. )  
BRUNSTING AND NELVA E. )  
4 BRUNSTING, )  
) )  
5 Plaintiffs, )  
) )  
6 V. ) HARRIS COUNTY, TEXAS  
) )  
7 CANDACE L. KUNZ-FREED )  
AND VACEK & FREED, PLLC )  
8 F/K/A THE VACEK LAW )  
FIRM, PLLC, )  
9 )  
Defendants. ) 164TH JUDICIAL DISTRICT

10  
11 REPORTER'S CERTIFICATION  
ORAL AND VIDEOTAPED DEPOSITION OF CARL H. BRUNSTING  
12 FEBRUARY 3, 2015  
13

14 I, Stephanie M. Harper, a Certified Shorthand  
15 Reporter in and for the State of Texas, hereby certify  
16 to the following:

17 That the witness, CARL H. BRUNSTING, was duly sworn  
18 by the officer and that the transcript of the oral  
19 deposition is a true record of the testimony given by  
20 the witness;

21 That the deposition transcript was submitted on  
22 \_\_\_\_\_, 2015, to the witness, or to the attorney  
23 for the witness, for examination, signature, and return  
24 to U.S. Legal Support, Inc., by \_\_\_\_\_, 2015;

25 That the amount of time used by each party at the

CARL H. BRUNSTING

2/3/2015

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1 deposition is as follows:

2 MS. ZANDRA E. FOLEY - 02:22

3 MS. BOBBIE G. BAYLESS - 00:00

4 That pursuant to information given to the  
5 deposition officer at the time said testimony was  
6 taken, the following includes counsel for all parties  
7 of record:

8 MS. BOBBIE G. BAYLESS,  
ATTORNEY FOR PLAINTIFFS.

9 MS. ZANDRA E. FOLEY,  
ATTORNEY FOR DEFENDANTS.

10 I further certify that I am neither counsel for,  
11 related to, nor employed by any of the parties or  
12 attorneys in the action in which this proceeding was  
13 taken, and further that I am not financially or  
14 otherwise interested in the outcome of the action.

15 Further certification requirements pursuant to Rule  
16 203 of TRCP will be certified to after they have  
17 occurred.

18 Certified to by me this \_\_\_\_\_ of FEBRUARY, 2015

19  
20  
21  
22



-----  
STEPHANIE M. HARPER  
TEXAS CSR NO. 7433  
Expiration Date: 12-31-16

23  
24  
25

JOB NO. 177755

CARL H. BRUNSTING

2/3/2015

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was \_\_\_\_\_ was not \_\_\_\_\_  
3 returned to U.S. Legal Support, Inc., on \_\_\_\_\_,  
4 2015.

5 If returned, the attached Corrections and Signature  
6 page contains any changes and the reasons therefor;

7 If returned, the original deposition was delivered  
8 to MR. ZANDRA E. FOLEY, Custodial Attorney;

9 That \$\_\_\_\_\_ is the deposition officer's charges  
10 to the Attorney for Defendants, MR. ZANDRA E. FOLEY,  
11 Texas Bar No. 24032085, for preparing the original  
12 deposition transcript and any copies of exhibits;

13 That the deposition was delivered in accordance  
14 with Rule 203.3, and that a copy of this certificate  
15 was served on all parties shown herein on \_\_\_\_\_ and  
16 filed with the Clerk.

17 Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_,  
18 2015.

19 \_\_\_\_\_  
20 STEPHANIE M. HARPER  
21 TEXAS CSR NO. 7433  
22 Expiration Date: 12-31-16

23 U.S. Legal Support, Inc.  
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JOB NO. 177755

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Curtis, et al

Plaintiffs

v

Kunz-Freed, et al

Defendants

§  
§  
§  
§  
§  
§

Civil Action No. 4:16-cv-01969

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**ORDER**

Upon due consideration, the Rule 12(b)(6) Motion to Dismiss filed on November 10, 2016, by Defendant Darlene Payne-Smith in the above styled cause (Dkt 84), should be Denied.

It is SO ORDERED

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Date

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The Honorable Alfred H Bennet  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS AND RIK  
WAYNE MUNSON,

*Plaintiffs,*

vs.

CANDACE KUNZ-FREED, ET AL.,

*Defendants.*

§  
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§  
§  
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Civil Action No. 4:16-cv-01969

**DEFENDANT DARLENE PAYNE SMITH’S REPLY TO PLAINTIFFS’ RESPONSE TO  
DEFENDANT’S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER  
JURISDICTION AND FAILURE TO STATE A CLAIM**

Pursuant to FED. R. CIV. P. 12(b)(1) and (6), Defendant Darlene Payne Smith (the “Defendant” or “Smith”) files her Reply to Plaintiffs Candace Louise Curtis (“Curtis”) and Rik Wayne Munson’s (“Munson”) (collectively, the “Plaintiffs”) Response to Defendant’s Motion to Dismiss the Verified Complaint for Damages for Lack of Subject Matter Jurisdiction and Failure to State a Claim (the “Motion”), and would respectfully show the Court the following:

**I.  
INTRODUCTION**

On December 1, 2016, Plaintiffs filed their Response to Defendant’s Motion to Dismiss. *See generally*, ECF No. 38 (the “Response”). Consistent with the Complaint under review, Plaintiffs’ Response fails to provide a cogent response to *any* of independently dispositive bases for dismissal outlined in Defendant’s Motion. The Response instead consists of nothing more than a timeline of the Brunsting siblings’ various lawsuits, followed by a series of legal conclusions couched as fact.

For the following reasons, and those more fully-stated in Defendant’s Motion, Plaintiffs’ claims should be dismissed with prejudice.

**II.**  
**OBJECTION TO PURPORTED AMENDMENT OF COMPLAINT**

Initially, Defendant objects to Plaintiffs' attempt to use the Response as a vehicle to "amend" their Complaint. Specifically, in Paragraphs 52 through 54 of the Response, Plaintiffs purport to "adopt and incorporate by reference" into the Complaint *the entire record in this case*. See Response at ¶¶52-54. FED. R. CIV. P. 10 permits, in some circumstances, the incorporation by reference of certain information. However, "an incorporation by reference is always accompanied by the requirement that it be done with a degree of specificity and clarity which would enable a responding party to easily determine the nature and extent of the incorporation." See, e.g., *Morrison v. Office of the United States Tr. (In re Morrison)*, 375 B.R. 179, 193 (Bankr. W.D. Pa. 2007). Where, as here, use of the incorporation by reference tool fails in this regard, the Court maintains authority to take appropriate action to regulate its use. See *id.*

Plaintiffs' amorphous incorporation of the "entire record before the Court," which encompasses many thousands of pages, without specifying which portions allegedly cure the numerous pleading defects highlighted by Defendants' Motion, does not comport with the purpose and function of Rule 10 and should be stricken.

**III.**  
**JURISDICTIONAL BASES FOR DISMISSAL**

**A. Plaintiffs' Claims are Not Ripe.**

In her Motion, Defendant argued that Plaintiffs' claims must be dismissed because they are not ripe. Ripeness is a component of subject matter jurisdiction. See *Lopez v. City of Houston*, 617 F.3d 336, 341 (5th Cir. 2010). That is, because Plaintiffs' alleged injuries are contingent upon the occurrence of uncertain future events that may not occur as anticipated (*i.e.*, an unfavorable outcome in a pending probate proceeding), the Court lacks jurisdiction to hear those claims. *Id.* at



342. Plaintiffs have responded with only a conclusory statement that the claims are “over-ripe for remedy.” *see* Response at ¶55. Because Plaintiffs have failed to offer any argument or support demonstrating *how* their claims – all of which are premised on an unfavorable future outcome in the pending Brunsting Probate Case – are ripe for adjudication, dismissal is appropriate.

**B. Munson Lacks Article III Standing.**

In the Response, Plaintiffs appear to argue that Munson elected to quit his job in order to focus full time on legal research and writing in connection with Curtis’ multiple pending lawsuits. *See* Response at ¶¶44-46. Setting aside whether Munson is engaging in the unauthorized practice of law, his decision to do so is not a concrete “injury in fact” for standing purposes because it does not alter the fact that he is not a beneficiary of any of the Brunsting Trusts and has no direct stake in the outcome of this lawsuit. Plaintiffs have offered no authority to the contrary. Munson therefore lacks standing and all of his claims should be dismissed.

**C. Attorney Immunity Bars Plaintiffs’ Claims.**

The Response, much like the Complaint, contains only two references to any alleged conduct by Defendant Smith<sup>1/</sup> – and both Defendant-specific references pertain to core litigation conduct incident to Defendant’s execution of her professional duties to her client (Carole Ann Brunsting) in the Brunsting Probate Case. *See* Response at ¶¶7, 33 (alleging that Defendant, on behalf of her client, filed a counterclaim against Carl Brunsting); ¶¶36-37 (alleging that Defendant, on behalf of her client, filed an objection to Plaintiff Curtis’ request to distribute Brunsting Trust funds to pay her attorney’s fees for separate litigation against her siblings).<sup>2/</sup> As outlined in

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<sup>1</sup> As noted in the Motion, Defendant Smith had very limited involvement in one of the Brunsting series of lawsuits. She represented Plaintiff Curtis’ sister – Carole Brunsting – in the Brunsting Probate Case until she withdraw as counsel in early 2016. Defendant Smith was not involved in the remaining Brunsting lawsuits in any respect.

<sup>2</sup> The filing at issue is attached to Plaintiffs’ Response. *See* ECF No. 89-8.



Defendant's Motion, the circumstances where an attorney can be liable to a non-client for litigation conduct incident to the execution of her professional duties to a client are extremely limited. Under Texas Law, attorneys retain complete immunity from suit for civil liability to non-clients for actions taken in connection with representing a client in litigation. *See Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 483 (Tex. 2015); *Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 348 (5th Cir. 2016). Because that is all that has been alleged here, Defendant remains immune from Plaintiffs' claims.

**IV.**  
**SUBSTANTIVE BASES FOR DISMISSAL**

Defendant additionally moved for dismissal under Rule 12(b)(6) and the Response likewise does not address any of the substantive arguments raised that motion. Instead, the Response purports to "incorporate by reference" the entire record in this suit, provides a bullet-point list of the elements of Plaintiffs' RICO claim and then conclusively states that "Plaintiffs have sufficiently pled" each of those elements. *See* Response at ¶¶55-56. It is well established that the Court "not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions." *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir. 2007). Because the Complaint (and the Response) consist of nothing more than fantastical and conclusory assertions couched as facts, the Complaint should be dismissed.

**V.**  
**CONCLUSION**

Accordingly, Defendant respectfully requests that the Court grant her Motion to Dismiss and dismiss Plaintiffs' claims with prejudice, and for such other and further relief, at law or in equity, to which Defendant may show herself to be justly entitled.

Respectfully submitted,

By:     /s/ Barry Abrams    

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SMITH**

**CERTIFICATE OF SERVICE**

I hereby certify that on December 13, 2016, a true and correct copy of the foregoing and/or attached instrument was served on all counsel of record pursuant to the Federal Rules of Civil Procedure through the Southern District of Texas CM/ECF E-File System and as indicated below:

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/s/ Barry Abrams

Barry Abrams

**ENTERED**

May 16, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,

Plaintiffs,

VS.

CANDACE KUNZ-FREED, *et al*,

Defendants.

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CIVIL ACTION NO. 4:16-CV-1969

**ORDER**

Before the Court are Defendants Candace Kunz-Freed and Albert Vacek Jr.’s (collectively, “V&F”) Motion to Dismiss for Failure to State a Claim (Doc. #19), V&F’s Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. #20), Defendant Bobbie G. Bayless’s (“Bayless”) Motion to Dismiss (Doc. #23), Defendant Jill Willard Young’s (“Young”) Motion to Dismiss (Doc. #25), Defendant Anita Brunsting’s (“Anita”) Motion to Dismiss for Plaintiffs’ Failure to State a Claim (Doc. #30), Defendant Amy Brunsting’s (“Amy”) Motion to Dismiss (Doc. #35), Defendants Stephen A. Mendel and Bradley E. Featherston’s (collectively, “Mendel & Featherston”) Motion to Dismiss (Doc. #36), Defendant Neal Spielman’s (“Spielman”) Motion to Dismiss (Doc. #39), Spielman’s Motion to Dismiss Based on Lack of Subject Matter Jurisdiction (Doc. #40), Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock, and Tony Baiamonte’s (collectively, “Harris County Defendants”) Motion to Dismiss (Doc. #53), Defendant Jason Ostrom’s (“Ostrom”) Motion to Dismiss (Doc. #78), Defendant Bernard Lilse Mathews, III’s (“Mathews”) Motion to Dismiss (Doc. #81), Defendants Gregory Lester’s (“Lester”) Motion to Dismiss (Doc. #83), Defendant Darlene Payne Smith’s (“Smith”) Motion to Dismiss (Doc. #84), Plaintiffs’ Responses to said Motions (Docs. ##33, 34, 41, 45, 57, 62, 69, 85, 86, 87, 89), and various Defendants’ Replies to Plaintiffs’ Responses (Docs. #55, 63, 90).

Also before the Court are Young's Motion for Sanctions (Doc. #72), Plaintiffs' Motion for Consolidation (Doc. #43), Plaintiffs' Second Motion for Consolidation (Doc. #61), Young's Response in Opposition to Plaintiffs' Motions for Consolidation (Doc. #70), and Harris County Defendants' Response to Plaintiffs' Motions for Consolidation (Doc. #79).

Having considered the arguments and the applicable law, the Court grants V&F's Motion to Dismiss for Failure to State a Claim (Doc. #19), Bayless's Motion to Dismiss (Doc. #23), Young's Motion to Dismiss (Doc. #25), Anita's Motion to Dismiss (Doc. #30), Amy's Motion to Dismiss (Doc. #35), Mendel & Featherston's Motion to Dismiss (Doc. #36), Spielman's Motion to Dismiss (Doc. #39), Harris County Defendants' Motion to Dismiss (Doc. #53), Ostrom's Motion to Dismiss (Doc. #78), Mathews' Motion to Dismiss (Doc. #81), Lester's Motion to Dismiss (Doc. #83), and Smith's Motion to Dismiss (Doc. #84). As such, Plaintiffs' Motions for Consolidation are denied as moot. The Court also denies Young's Motion for Sanctions.

## **I. Background**

Plaintiffs' Complaint appears to relate to a probate matter in Harris County Probate Court No. 4, which the Plaintiffs generically call "Curtis v. Brunsting." Specifically, Plaintiffs assert almost fifty "claims" against more than fifteen defendants—including eleven lawyers, two judges, and one court reporter. These purported "claims" consist of fantastical allegations that some or all of the Defendants are members of a secret society and "cabal" known as the "Harris County Tomb Raiders," or "The Probate Mafia." Plaintiffs' claims rest on the assertion that this purported shadow organization engages in "poser advocacy" as an "exploitation opportunity" to "hijack" "familial wealth." And, as far as the Court can tell, this "poser advocacy" allegedly occurred in the matter of "Curtis v. Brunsting."

## II. Legal Standard

“Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1964–65 (2007). In considering a 12(b)(6) motion to dismiss a complaint, courts generally must accept the factual allegations contained in the complaint as true. *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982).

The court does not look beyond the face of the pleadings in determining whether the plaintiff has stated a claim under Rule 12(b)(6). *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999). “[A] complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, [but] a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 127 S. Ct. at 1964–65 (citing *Sanjuan v. Am. Bd. of Psychiatry & Neurology, Inc.*, 40 F.3d 247, 251 (7th Cir. 1994)) (citations omitted). And, “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 127 S. Ct. at 1965. The supporting facts must be plausible—enough to raise a reasonable expectation that discovery will reveal further supporting evidence. *Id.* at 1959.

“A document filed pro se is ‘to be liberally construed,’ . . . and ‘a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.’” See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990).

### III. Analysis

#### A. Failure to State a Claim

Plaintiffs' Complaint, even when liberally construed, completely fails to plead anything close to a plausible claim for relief against any of the alleged Defendants. In fact, Plaintiffs' allegations cannot be characterized as anything more than fanciful, fantastic, and delusional. Plaintiffs' allegations consist entirely of outlandish and conclusory factual assertions accompanied by a formulaic recitation of the elements of numerous causes of action unsupported by the alleged facts. Further, most of Plaintiffs alleged "claims" are either based on statutes that do not create a private cause of action, or simply do not exist under Texas or Federal law.

In regards to Plaintiffs' alleged RICO claim, Plaintiffs fail to plead any facts establishing they have standing under § 1964(c) to assert civil RICO claims against any of the Defendants because Plaintiffs fail to plead facts showing a recognizable injury to their business or property caused by the alleged RICO violations. *See* 18 U.S.C. § 1964(c) ("[a]ny person injured in his business or property by reason of a violation of [RICO] may sue"); *Allstate Inc. Co. V. Plambeck*, 802 F.3d 665, 676 (5th Cir. 2015) (*citing Bridge v. Phoenix Bond & Indemn. Co.*, 553 U.S. 639, 654 (2008)) (stating that to plead standing a plaintiff "must show that the [RICO] violation was a but-for and proximate cause of the injury"). Plaintiffs have also failed to plead any facts establishing a plausible claim that any of the Defendants engaged in a "racketeering activity" sufficient to trigger the RICO statute. Accordingly, Plaintiffs' RICO claim fails as a matter of law.

As Plaintiffs' Complaint is completely devoid of any well-pleaded facts establishing a single plausible claim for relief against any of the named Defendants, the Court grants V&F's, Bayless's, Young's, Anita's, Amy's, Mendel & Featherston's, Spielman's, Ostrom's, Mathews',

Lester's, and Smith's Motions to Dismiss for Failure to State a Claim.

## **B. Immunity**

### **i. Attorney Immunity**

Under Texas law, “attorneys are immune from civil liability to non-clients ‘for actions taken in connection with representing a client in litigation.’” *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2005, pet. denied)). Plaintiffs’ allegations against Defendants Young, Smith, Bayless, Spielman, Mendel & Featherston, and Mathews’ (“Attorney Immunity Defendants”), at best, assert wrongdoing based solely on actions taken during the representation of a client in litigation. Such claims are clearly barred by attorney immunity. Accordingly, all of the Attorney Immunity Defendants’ Motions to Dismiss are also granted on this ground.

### **ii. Judicial Immunity**

Judicial Immunity entitles judges to absolute immunity from suit for acts undertaken in their judicial capacity, even if they are done maliciously or corruptly. *Price v. Porter*, 351 F. Spp’x 925, 927 (5th Cir. 2009) (citing *Mireles v. Waco*, 502 U.S. 9, 10 (1991)). The sole exception is when a plaintiff alleges that a judge acted without jurisdiction or in a nonjudicial role. *Id.* Here, the allegations against Judges Butts and Comstock concern only actions taken in their judicial capacity. Accordingly, Judicial Immunity completely forecloses Plaintiffs’ claims against Judge Butts and Judge Comstock.<sup>1</sup>

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<sup>1</sup> In regards to Tony Baiamonte, a contract court reporter that was hired to steno-graphically record a single hearing in a probate proceeding, there are simply no factual allegations made against him within the complaint. Accordingly, it is difficult to determine whether immunity applies. Regardless, without any factual assertions as to Mr. Baiamonte, the Plaintiffs fail to



### C. Frivolous Complaint

As laid out above, Plaintiffs' allegations are frivolous because Plaintiffs have completely failed to allege any facts supporting the delusional scenario articulated in their Complaint, much less facts giving rise to a plausible claim for relief.

“District Courts have the inherent authority to dismiss a pro se litigant's frivolous or malicious complaint sua sponte even when the plaintiff has paid the required filing fee.” *Fitzgerald v. First East Seventh Street Tenants*, 221 F.3d 362, 363–64 (2d Cir. 2000); *Pillay v. INS*, 45 F.3d 14, 16–17 (2d Cir. 1995); *Holman v. Wooten*, No. 4:09–1634–CWH, 2010 WL 691263, at \*2 (D.S.C. Feb.24, 2010); *Larrimore v. Bank of New York Mellon*, No. 4:09–1647–TLW–TER, 2009 WL 4920776, at \*2 (S.D.N.Y. Dec. 11, 2009); *McCracken v. Natale*, No. 04 Civ. 5456, 2008 WL 5274317 (E.D.N.Y. Dec.17, 2008). The Supreme Court, while never having directly ruled on the matter, has also stated (albeit in dicta) that federal courts have the inherent power to dismiss frivolous lawsuits. *See Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 307–308, 109 S.Ct. 1814, 104 L.Ed.2d 318 (1989) (“Statutory provisions may simply codify existing rights or powers. Section 1915(d), for example, authorizes courts to dismiss a ‘frivolous or malicious’ action, but there is little doubt they would have power to do so even in the absence of this statutory provision.”).

As Plaintiffs' allegations are undeniably legally insufficient to create a plausible claim, they are clearly frivolous (and borderline malicious). Along with Plaintiffs' absolute failure to plead a plausible claim for relief, most of the defendants are also entitled to attorney, judicial, or qualified immunity. Accordingly, Plaintiffs' claims are also dismissed via this Court's inherent ability to dismiss frivolous complaints.

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state a plausible claim against him. Accordingly, Harris County Defendants' Motion to Dismiss is also granted on that ground.

**D. Sanctions**

Plaintiffs' passionate pleas to this Court during the December 15, 2016 Motion Hearing suggest that Ms. Curtis and Mr. Munson do not understand the legal shortcomings of their Complaint. The Court will therefore give Plaintiffs, as pro se litigants, the benefit of the doubt, and credit their filing of this lawsuit to their misunderstanding of applicable legal rules. Accordingly, the Court denies Young's Motion for Sanctions. That being said, Plaintiffs should now realize that all claims brought in this litigation—or any new claims relating to the subject matter of Plaintiffs' Complaint—lack merit, and cannot be brought to this, or any other court, without a clear understanding that Plaintiffs are bringing a frivolous claim. Accordingly, the Court cautions Plaintiffs from additional meritless filings.

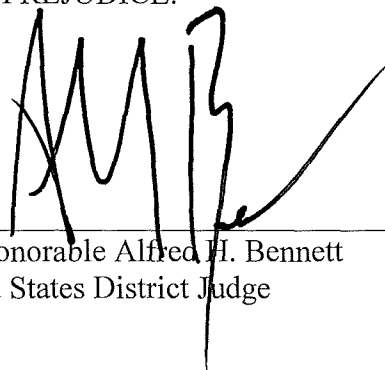
**IV. Conclusion**

For the foregoing reasons, Defendants' Motions to Dismiss are GRANTED, Young's Motion for Sanctions is DENIED, Plaintiffs' Motions for Consolidation are DENIED as moot, and all of Plaintiffs' claims are DISMISSED WITH PREJUDICE.

It is so ORDERED.

**MAY 16 2017**

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
The Honorable Alfred H. Bennett  
United States District Judge

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

File Number 4:16-cv-1969

Candace Louise Curtis, et al  
Plaintiffs

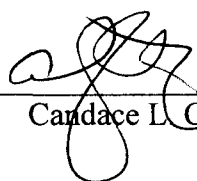
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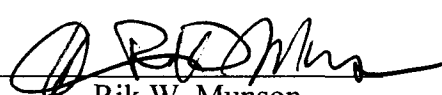
v  
Candace Kunz-Freed, et al  
Defendants

~~FILED~~  
MAY 28 2017  
# HOU 072706  
David A. Bradley, Clerk of Court

Notice of Appeal

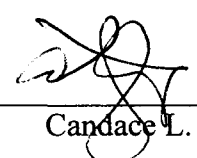
Notice is hereby given that Candace Louise Curtis and Rik Munson, Plaintiffs in the above-named case, hereby appeal to the United States Court of appeals for the Fifth Circuit, from a District Court Order dismissing all claims with prejudice, entered in the above action on the 16<sup>th</sup> day of May 2017.

  
\_\_\_\_\_  
Candace L. Curtis

  
\_\_\_\_\_  
Rik W. Munson

**Certificate of Service**

I hereby certify that a sufficient number of true and correct copies of the foregoing were served by U.S. Mail upon the United States District Court Clerk in Civil Action No. 4:16-cv-1969 on May 24<sup>th</sup> 2017.

  
\_\_\_\_\_  
Candace L. Curtis

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Candace Louise Curtis, et al.

*versus*

Case Number: 4:16-cv-01969

Judge Alfred H Bennett

Candace Kunz-Freed, et al.

**NOTICE OF THE FILING OF AN APPEAL**

An appeal has been filed by Candace Curtis, Rik Munson. The following appeal and related motions are pending in the District Court:

Notice of Appeal – #92

If the appellant fails to comply with the following requirements, then the Clerk of Court will submit a certificate of noncompliance to the Fifth Circuit Court of Appeals.

**FILING FEE:**

A filing fee is required to proceed on appeal. If the filing fee has not already been paid, then it must be paid or a motion to proceed *in forma pauperis* must be filed, unless appellant is an United States government agency.

**TRANSCRIPTS:**

If hearings were held in this case and the transcripts were not already produced, then transcripts must be ordered. Pursuant to FRAP 10(b)(1), a transcript order form must be filed within 14 days of the filing of the notice of appeal. Under Fifth Circuit Rule 10, the appellant's order of the transcript must be made on a DKT-13 Transcript Order form. The DKT-13 must be filed regardless of whether there were hearings or transcripts needed. A link to the DKT-13 form and instructions for ordering transcripts are available on the court's website at [www.txs.uscourts.gov/page/OrderingTranscripts](http://www.txs.uscourts.gov/page/OrderingTranscripts).

If there were no hearings or no transcripts are needed, file the DKT-13 form with the appropriate box marked to indicate so. For cases where transcripts are needed, prepare a separate DKT-13 for each reporter from whom you are ordering transcripts. All transcripts for electronically recorded proceedings may be ordered on one form. Each form should indicate the exact dates of the proceedings to be transcribed by that reporter.

This case had hearings. Reporter(s): H. Alcaraz, K. Metzger.

**EXHIBITS:**

The Fifth Circuit requires exhibits admitted into evidence be included in the electronic record for transmission to the Fifth Circuit. Exhibits in the custody of the court will be electronically filed by court staff. Exhibits previously returned to the parties must be immediately electronically filed in this case by the attorney, using event Exhibits in the Trial Documents category in ECF.

Date: May 30, 2017.

David J. Bradley, Clerk 17-20360.3337

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

File Number 4:16-cv-1969

Candace Louise Curtis, et al  
Plaintiffs

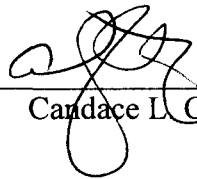
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v  
Candace Kunz-Freed, et al  
Defendants

~~FILED~~  
MAY 28 2017  
# HOU 072706  
David A. Bradley, Clerk of Court

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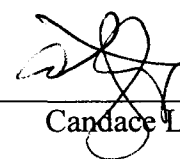
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Candace L. Curtis

  
\_\_\_\_\_  
Rik W. Munson

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\_\_\_\_\_  
Candace L. Curtis

**ENTERED**

May 16, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,

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VS.

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<sup>1</sup> In regards to Tony Baiamonte, a contract court reporter that was hired to steno-graphically record a single hearing in a probate proceeding, there are simply no factual allegations made against him within the complaint. Accordingly, it is difficult to determine whether immunity applies. Regardless, without any factual assertions as to Mr. Baiamonte, the Plaintiffs fail to

### C. Frivolous Complaint

As laid out above, Plaintiffs' allegations are frivolous because Plaintiffs have completely failed to allege any facts supporting the delusional scenario articulated in their Complaint, much less facts giving rise to a plausible claim for relief.

“District Courts have the inherent authority to dismiss a pro se litigant's frivolous or malicious complaint sua sponte even when the plaintiff has paid the required filing fee.” *Fitzgerald v. First East Seventh Street Tenants*, 221 F.3d 362, 363–64 (2d Cir. 2000); *Pillay v. INS*, 45 F.3d 14, 16–17 (2d Cir. 1995); *Holman v. Wooten*, No. 4:09–1634–CWH, 2010 WL 691263, at \*2 (D.S.C. Feb.24, 2010); *Larrimore v. Bank of New York Mellon*, No. 4:09–1647–TLW–TER, 2009 WL 4920776, at \*2 (S.D.N.Y. Dec. 11, 2009); *McCracken v. Natale*, No. 04 Civ. 5456, 2008 WL 5274317 (E.D.N.Y. Dec.17, 2008). The Supreme Court, while never having directly ruled on the matter, has also stated (albeit in dicta) that federal courts have the inherent power to dismiss frivolous lawsuits. *See Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 307–308, 109 S.Ct. 1814, 104 L.Ed.2d 318 (1989) (“Statutory provisions may simply codify existing rights or powers. Section 1915(d), for example, authorizes courts to dismiss a ‘frivolous or malicious’ action, but there is little doubt they would have power to do so even in the absence of this statutory provision.”).

As Plaintiffs' allegations are undeniably legally insufficient to create a plausible claim, they are clearly frivolous (and borderline malicious). Along with Plaintiffs' absolute failure to plead a plausible claim for relief, most of the defendants are also entitled to attorney, judicial, or qualified immunity. Accordingly, Plaintiffs' claims are also dismissed via this Court's inherent ability to dismiss frivolous complaints.

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state a plausible claim against him. Accordingly, Harris County Defendants' Motion to Dismiss is also granted on that ground.

**D. Sanctions**

Plaintiffs' passionate pleas to this Court during the December 15, 2016 Motion Hearing suggest that Ms. Curtis and Mr. Munson do not understand the legal shortcomings of their Complaint. The Court will therefore give Plaintiffs, as pro se litigants, the benefit of the doubt, and credit their filing of this lawsuit to their misunderstanding of applicable legal rules. Accordingly, the Court denies Young's Motion for Sanctions. That being said, Plaintiffs should now realize that all claims brought in this litigation—or any new claims relating to the subject matter of Plaintiffs' Complaint—lack merit, and cannot be brought to this, or any other court, without a clear understanding that Plaintiffs are bringing a frivolous claim. Accordingly, the Court cautions Plaintiffs from additional meritless filings.

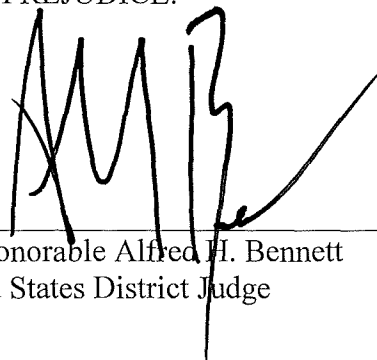
**IV. Conclusion**

For the foregoing reasons, Defendants' Motions to Dismiss are GRANTED, Young's Motion for Sanctions is DENIED, Plaintiffs' Motions for Consolidation are DENIED as moot, and all of Plaintiffs' claims are DISMISSED WITH PREJUDICE.

It is so ORDERED.

**MAY 16 2017**

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
The Honorable Alfred H. Bennett  
United States District Judge

APPEAL,APPEAL\_NAT

**U.S. District Court  
SOUTHERN DISTRICT OF TEXAS (Houston)  
CIVIL DOCKET FOR CASE #: 4:16-cv-01969  
Internal Use Only**

Curtis et al v. Kunz-Freed et al  
Assigned to: Judge Alfred H Bennett  
Cause: 18:1964 Racketeering (RICO) Act

Date Filed: 07/05/2016  
Jury Demand: None  
Nature of Suit: 470  
Racketeer/Corrupt Organization  
Jurisdiction: Federal Question

**Plaintiff**

**Candace Louise Curtis**

represented by **Candace Louise Curtis**  
218 Landana Street  
American Canyon, CA 94503  
925-759-9020  
Email: occurtis@sbcglobal.net  
PRO SE

**Plaintiff**

**Rik Wayne Munson**

represented by **Rik Wayne Munson**  
218 Landana Street  
American Canyon, CA 94503  
925-349-8348  
Email: blowintough@att.net  
PRO SE

V.

**Defendant**

**Candace Kunz-Freed**

represented by **Cory S Reed**  
Thompson Coe Cousins Irons  
One Riverway  
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713-403-8213  
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*ATTORNEY TO BE NOTICED*

17-20360.3346

**Defendant**

**Albert Vacek, Jr.**

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**Defendant**

**Bernard Lyle Matthews, III**

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**Defendant**

**Neal Spielman**

represented by **Martin Samuel Schexnayder**  
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**Defendant**

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17-20360.3347

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*LEAD ATTORNEY*

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**Defendant**

**Stephen A. Mendel**

represented by **Adraon DelJohn Greene**  
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**Stephen A Mendel**  
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*LEAD ATTORNEY*

**David Christopher Deiss**  
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**Defendant**

**Darlene Payne Smith**

represented by **Barry Abrams**

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**Defendant**

**Jason Ostrom**

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**Defendant**

**Gregory Lester**

represented by **Stacy L Kelly**  
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*LEAD ATTORNEY*  
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**Defendant**

**Jill Williard Young**

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17-20360.3349



**Defendant**

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*ATTORNEY TO BE NOTICED*

**Defendant**

**Clarinda Comstock** represented by **Laura Beckman Hedge**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Toni Biamonte** represented by **Laura Beckman Hedge**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Bobbie Bayless** represented by **Bobbie G Bayless**  
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Email: bayless@baylessstokes.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Anita Brunsting** represented by **Anita Brunsting**  
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PRO SE

**Defendant**

**Amy Brunsting** represented by **Amy Brunsting**  
2582 Country Ledge Drive

17-20360.3350

New Braunfels, TX 78132  
 PRO SE

**Defendant**

**Does 1-99**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
07/05/2016	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$ 400) filed by Rick Wayne Munson, Candace Louise Curtis. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Cover Letter)(rosaldana, 4) (Main Document 1 replaced on 7/7/2016) (rosaldana, 4). (Entered: 07/05/2016)
07/05/2016	<u>2</u>	Plaintiff Candace Louise Curtis' MOTION for Permission for Electronic Case Filing by Candace Louise Curtis, filed. Motion Docket Date 7/26/2016. (Attachments: # <u>1</u> Proposed Order) (rosaldana, 4) (Entered: 07/05/2016)
07/05/2016		Initial Filing fee: \$400 re: <u>1</u> Complaint, receipt number HOU064001, filed. (thanniable, 4) (Entered: 07/05/2016)
07/06/2016	<u>3</u>	ORDER for Initial Pretrial and Scheduling Conference and Order to Disclose Interested Persons. Initial Conference set for 10/28/2016 at 09:00 AM in Courtroom 8B before Judge Alfred H Bennett(Signed by Judge Alfred H Bennett) Parties notified. (ckrus, 4) (Entered: 07/06/2016)
07/20/2016	<u>6</u>	CERTIFICATE OF INTERESTED PARTIES by Plaintiffs, filed. (jtabares, 1) (Entered: 07/22/2016)
07/22/2016	<u>4</u>	WAIVER OF SERVICE Returned Executed as to Candace Kunz-Freed served on 7/9/2016, answer due 9/7/2016, filed.(Reed, Cory) (Entered: 07/22/2016)
07/22/2016	<u>5</u>	WAIVER OF SERVICE Returned Executed as to Albert Vacek, Jr served on 7/12/2016, answer due 9/12/2016, filed.(Reed, Cory) (Entered: 07/22/2016)
07/25/2016	<u>7</u>	Mail Returned Undeliverable as to Candace Louise Curtis re: <u>3</u> Order for Initial Conference - FORM,, filed. (klopez, 7) (Entered: 07/28/2016)
08/05/2016	<u>9</u>	WAIVER OF SERVICE Returned Executed as to Christine Riddle Butts served on 7/9/2016, answer due 9/7/2016, filed.

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		(dnoriega, 1) (Entered: 08/08/2016)
08/05/2016	<a href="#"><u>10</u></a>	WAIVER OF SERVICE Returned Executed as to Clarinda Comstock served on 7/9/2016, answer due 9/7/2016, filed. (dnoriega, 1) (Entered: 08/08/2016)
08/08/2016	<a href="#"><u>8</u></a>	WAIVER OF SERVICE Returned Executed as to Jason Ostrom served on 7/9/2016, answer due 9/7/2016, filed.(Ostrom, Jason) (Entered: 08/08/2016)
08/10/2016	<a href="#"><u>11</u></a>	WAIVER OF SERVICE Returned Executed as to Bobbie Bayless served on 8/2/2016, answer due 10/3/2016, filed. (dnoriega, 1) (Entered: 08/11/2016)
08/10/2016	<a href="#"><u>12</u></a>	NOTICE of Related Case by Rick Wayne Munson, filed. (dnoriega, 1) (Entered: 08/11/2016)
08/10/2016	<a href="#"><u>13</u></a>	MOTION for Permission for Electronic Case Filing by Candace Louise Curtis, Rick Wayne Munson, filed. Motion Docket Date 8/31/2016. (Attachments: # <a href="#"><u>1</u></a> Proposed Order)(dnoriega, 1) (Entered: 08/11/2016)
08/12/2016	<a href="#"><u>14</u></a>	ORDER granting <a href="#"><u>13</u></a> MOTION Permission for Electronic Case Filing (Signed by Judge Alfred H Bennett) Parties notified. (olindor, 4) (Entered: 08/12/2016)
08/16/2016	<a href="#"><u>15</u></a>	Request for Issuance of Summons as to Toni Biamonte, Amy Brunsting, Anita Brunsting, Bradley Featherston, Gregory Lester, Bernard Lyle Matthews, III, Stephen A. Mendel, Darlene Payne Smith, Neal Spielman, Jill Williard Young, filed.(Munson, Rik) (Entered: 08/16/2016)
08/17/2016		Summons Issued as to Toni Biamonte, Amy Brunsting, Anita Brunsting, Bradley Featherston, Gregory Lester, Bernard Lyle Matthews, III, Stephen A. Mendel, Darlene Payne Smith, Neal Spielman, Jill Williard Young. Issued summons returned to plaintiff by: First-class mail, filed.(hler, 4) (Entered: 08/17/2016)
08/24/2016	<a href="#"><u>16</u></a>	First CERTIFICATE OF INTERESTED PARTIES by Jason Ostrom, filed.(Ostrom, Jason) (Entered: 08/24/2016)
08/30/2016	<a href="#"><u>17</u></a>	WAIVER OF SERVICE Returned Executed as to Toni Biamonte served on 8/16/2016, answer due 10/17/2016, filed.(ssilva, 7) (Entered: 08/31/2016)
09/02/2016	<a href="#"><u>18</u></a>	Unopposed MOTION for Extension of Time File Responsive

		Pleading by Jason Ostrom, filed. Motion Docket Date 9/23/2016. (Attachments: # <a href="#">1</a> Proposed Order)(Ostrom, Jason) (Entered: 09/02/2016)
09/07/2016	<a href="#">19</a>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Candace Kunz-Freed, Albert Vacek, Jr, filed. Motion Docket Date 9/28/2016. (Reed, Cory) (Entered: 09/07/2016)
09/07/2016	<a href="#">20</a>	MOTION to Dismiss <i>For Lack of Subject Matter Jurisdiction</i> by Candace Kunz-Freed, Albert Vacek, Jr, filed. Motion Docket Date 9/28/2016. (Reed, Cory) (Entered: 09/07/2016)
09/07/2016	<a href="#">21</a>	CERTIFICATE OF INTERESTED PARTIES by Bobbie Bayless, filed.(Bayless, Bobbie) (Entered: 09/07/2016)
09/07/2016	<a href="#">22</a>	CERTIFICATE OF INTERESTED PARTIES by Candace Kunz-Freed, Albert Vacek, Jr, filed.(Reed, Cory) (Entered: 09/07/2016)
09/07/2016	<a href="#">23</a>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Bobbie Bayless, filed. Motion Docket Date 9/28/2016. (Attachments: # <a href="#">1</a> Proposed Order)(Bayless, Bobbie) (Entered: 09/07/2016)
09/08/2016	<a href="#">24</a>	ORDER granting <a href="#">18</a> Unopposed MOTION for Extension of Time File Responsive Pleading. Responses due by 11/7/2016.(Signed by Judge Alfred H Bennett) Parties notified.(olindor, 4) (Entered: 09/09/2016)
09/12/2016	<a href="#">28</a>	MOTION for Access to Electronic Filing by Anita Brunsting, filed. Motion Docket Date 10/3/2016. (Attachments: # <a href="#">1</a> Proposed Order)(mxperez, 5) (Entered: 09/19/2016)
09/12/2016	<a href="#">29</a>	CERTIFICATE OF INTERESTED PARTIES by Anita Brunsting, filed.(ocasas, 7) (Entered: 09/19/2016)
09/15/2016	<a href="#">25</a>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Jill Williard Young, filed. Motion Docket Date 10/6/2016. (Attachments: # <a href="#">1</a> Exhibit A)(Schaefer, Rafe) (Entered: 09/15/2016)
09/15/2016	<a href="#">26</a>	Supplemental MEMORANDUM <i>addendum</i> re: <a href="#">1</a> Complaint by Candace Louise Curtis, filed. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit, # <a href="#">3</a> Exhibit, # <a href="#">4</a> Exhibit, # <a href="#">5</a> Exhibit, # <a href="#">6</a> Exhibit, # <a href="#">7</a> Exhibit, # <a href="#">8</a> Exhibit, # <a href="#">9</a> Exhibit, # <a href="#">10</a> Exhibit, # <a href="#">11</a> Exhibit, # <a href="#">12</a> Exhibit, # <a href="#">13</a> Exhibit, # <a href="#">14</a> Exhibit, # <a href="#">15</a> Exhibit, # <a href="#">16</a> Exhibit, # <a href="#">17</a> Exhibit, # <a href="#">18</a> Exhibit, # <a href="#">19</a> Exhibit, # <a href="#">20</a> Exhibit, # <a href="#">21</a> Exhibit,

		# <a href="#">22</a> Exhibit, # <a href="#">23</a> Exhibit, # <a href="#">24</a> Exhibit, # <a href="#">25</a> Exhibit, # <a href="#">26</a> Exhibit, # <a href="#">27</a> Exhibit, # <a href="#">28</a> Exhibit, # <a href="#">29</a> Exhibit, # <a href="#">30</a> Exhibit, # <a href="#">31</a> Exhibit)(Munson, Rik) (Entered: 09/15/2016)
09/16/2016	<a href="#">30</a>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Anita Brunsting, filed. Motion Docket Date 10/7/2016. (Attachments: # <a href="#">1</a> Proposed Order)(rnieto, 1) (Entered: 09/22/2016)
09/16/2016	<a href="#">31</a>	MOTION for Access to Electronic Filing by Amy Brunsting, filed. Motion Docket Date 10/7/2016. (Attachments: # <a href="#">1</a> Proposed Order) (rnieto, 1) (Entered: 09/22/2016)
09/16/2016	<a href="#">32</a>	CERTIFICATE OF INTERESTED PARTIES by Amy Brunsting, filed. (rnieto, 1) (Entered: 09/23/2016)
09/18/2016	<a href="#">27</a>	AFFIDAVIT, filed.(Munson, Rik) (Entered: 09/18/2016)
09/21/2016	<a href="#">35</a>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Amy Brunsting, filed. Motion Docket Date 10/12/2016. (Attachments: # <a href="#">1</a> Proposed Order)(avleal, 1) (Entered: 09/28/2016)
09/27/2016	<a href="#">33</a>	RESPONSE in Opposition to <a href="#">20</a> MOTION to Dismiss <i>For Lack of Subject Matter Jurisdiction</i> , <a href="#">19</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Rik Wayne Munson. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit, # <a href="#">3</a> Exhibit, # <a href="#">4</a> Exhibit, # <a href="#">5</a> Exhibit, # <a href="#">6</a> Exhibit, # <a href="#">7</a> Exhibit, # <a href="#">8</a> Exhibit, # <a href="#">9</a> Exhibit, # <a href="#">10</a> Exhibit)(Munson, Rik) (Entered: 09/27/2016)
09/27/2016	<a href="#">34</a>	RESPONSE in Opposition to <a href="#">23</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Rik Wayne Munson. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit, # <a href="#">3</a> Exhibit, # <a href="#">4</a> Exhibit, # <a href="#">5</a> Exhibit, # <a href="#">6</a> Exhibit, # <a href="#">7</a> Exhibit, # <a href="#">8</a> Exhibit, # <a href="#">9</a> Exhibit, # <a href="#">10</a> Exhibit, # <a href="#">11</a> Exhibit)(Munson, Rik) (Entered: 09/27/2016)
09/30/2016	<a href="#">36</a>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM - <i>Rule 12(b)(6)</i> by Bradley Featherston, Stephen A. Mendel, filed. Motion Docket Date 10/21/2016. (Mendel, Stephen) (Entered: 09/30/2016)
09/30/2016	<a href="#">37</a>	First CERTIFICATE OF INTERESTED PARTIES by Bradley Featherston, Stephen A. Mendel, filed.(Mendel, Stephen) (Entered: 09/30/2016)
10/03/2016	<a href="#">38</a>	MOTION to Strike <a href="#">26</a> Memorandum,, by Jill Williard Young,

		filed. Motion Docket Date 10/24/2016. (Schaefer, Rafe) (Entered: 10/03/2016)
10/03/2016	<a href="#"><u>39</u></a>	MOTION to Dismiss by Neal Spielman, filed. Motion Docket Date 10/24/2016. (Schexnayder, Martin) (Entered: 10/03/2016)
10/03/2016	<a href="#"><u>40</u></a>	MOTION to Dismiss <i>based on lack of subject matter jurisdiction</i> by Neal Spielman, filed. Motion Docket Date 10/24/2016. (Schexnayder, Martin) (Entered: 10/03/2016)
10/03/2016	<a href="#"><u>41</u></a>	RESPONSE to <a href="#"><u>25</u></a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Candace Louise Curtis. (Attachments: # <a href="#"><u>1</u></a> Exhibit, # <a href="#"><u>2</u></a> Exhibit, # <a href="#"><u>3</u></a> Exhibit, # <a href="#"><u>4</u></a> Exhibit, # <a href="#"><u>5</u></a> Exhibit, # <a href="#"><u>6</u></a> Exhibit, # <a href="#"><u>7</u></a> Exhibit, # <a href="#"><u>8</u></a> Exhibit, # <a href="#"><u>9</u></a> Exhibit, # <a href="#"><u>10</u></a> Exhibit, # <a href="#"><u>11</u></a> Exhibit)(Curtis, Candace) (Entered: 10/03/2016)
10/04/2016	<a href="#"><u>42</u></a>	JOINDER in <a href="#"><u>38</u></a> MOTION to Strike <a href="#"><u>26</u></a> Memorandum,, , filed by Candace Kunz-Freed, Albert Vacek, Jr. (Reed, Cory) (Entered: 10/04/2016)
10/05/2016	<a href="#"><u>43</u></a>	MOTION to Consolidate Lead Case No. 4:12-cv-0592 and Member Case No. 4:16-cv-01969 by Candace Louise Curtis, filed. Motion Docket Date 10/26/2016. (Curtis, Candace) (Entered: 10/05/2016)
10/05/2016	<a href="#"><u>48</u></a>	RETURN of Service of SUMMONS Executed as to Jill Williard Young served on 8/26/2016, answer due 9/16/2016, filed. (mcodina, 7) (Entered: 10/07/2016)
10/05/2016	<a href="#"><u>49</u></a>	RETURN of Service of SUMMONS Executed as to Anita Brunsting served on 8/25/2016, answer due 9/15/2016, filed. (mcodina, 7) (Entered: 10/07/2016)
10/05/2016	<a href="#"><u>50</u></a>	RETURN of Service of SUMMONS Executed as to Gregory Lester served on 9/2/2016, answer due 9/23/2016, filed.(mcodina, 7) (Entered: 10/07/2016)
10/05/2016	<a href="#"><u>51</u></a>	RETURN of Service of SUMMONS Executed as to Amy Brunsting served on 8/30/2016, answer due 9/20/2016, filed. (mcodina, 7) (Entered: 10/07/2016)
10/05/2016	<a href="#"><u>52</u></a>	RETURN of Service of SUMMONS Executed as to Stephen A. Mendel served on 9/2/2016, answer due 9/23/2016, filed. (mcodina, 7) (Entered: 10/07/2016)
10/06/2016	<a href="#"><u>44</u></a>	CERTIFICATE OF INTERESTED PARTIES by Neal Spielman,



		filed.(Schexnayder, Martin) (Entered: 10/06/2016)
10/06/2016	<a href="#">45</a>	RESPONSE to <a href="#">30</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, <a href="#">35</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Candace Louise Curtis. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit, # <a href="#">3</a> Exhibit)(Curtis, Candace) (Entered: 10/06/2016)
10/06/2016	<a href="#">46</a>	CERTIFICATE OF INTERESTED PARTIES by Jill Williard Young, filed.(Schaefer, Rafe) (Entered: 10/06/2016)
10/07/2016	<a href="#">47</a>	Unopposed MOTION for Leave to File Motion to Dismiss In Excess of Page Limit by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock, filed. Motion Docket Date 10/28/2016. (Attachments: # <a href="#">1</a> Proposed Order)(Hedge, Laura) (Entered: 10/07/2016)
10/07/2016	<a href="#">53</a>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock, filed. Motion Docket Date 10/28/2016. (Hedge, Laura) (Entered: 10/07/2016)
10/07/2016	<a href="#">54</a>	MOTION for Leave to File Motion To Dismiss In Excess of Page Limit( Motion Docket Date 10/28/2016.), Unopposed AMENDED <a href="#">47</a> MOTION by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock, filed. (Attachments: # <a href="#">1</a> Proposed Order)(Hedge, Laura) (Entered: 10/07/2016)
10/11/2016	<a href="#">55</a>	REPLY in Support of <a href="#">25</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Jill Williard Young. (Schaefer, Rafe) (Entered: 10/11/2016)
10/11/2016	<a href="#">61</a>	MOTION to Consolidate Lead Case No. 4:12-cv-592 and Member Case No. 4:16-cv-1969 by Candace Louise Curtis, filed. Motion Docket Date 11/1/2016. (Attachments: # <a href="#">1</a> Proposed Order)(jengonzalez, 7) (Entered: 10/14/2016)
10/12/2016	<a href="#">56</a>	CERTIFICATE OF INTERESTED PARTIES by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock, filed.(Hedge, Laura) (Entered: 10/12/2016)
10/13/2016	<a href="#">57</a>	RESPONSE to <a href="#">53</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Rik Wayne Munson. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit, # <a href="#">3</a> Exhibit)(Munson, Rik) (Entered: 10/13/2016)

10/13/2016	<a href="#">58</a>	PROPOSED ORDER re: <a href="#">57</a> Response to Motion, filed.(Munson, Rik) (Entered: 10/13/2016)
10/13/2016	<a href="#">59</a>	MOTION to Stay <i>Rule 26(f) Conference and All Discovery Pending Resplution of Motions to Dismiss</i> by Candace Kunz-Freed, Albert Vacek, Jr, filed. Motion Docket Date 11/3/2016. (Reed, Cory) (Entered: 10/13/2016)
10/14/2016	<a href="#">60</a>	JOINDER in <a href="#">38</a> MOTION to Strike <a href="#">26</a> Memorandum,, , filed by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock. (Attachments: # <a href="#">1</a> Proposed Order)(Hedge, Laura) (Entered: 10/14/2016)
10/14/2016	<a href="#">62</a>	RESPONSE to <a href="#">36</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM - <i>Rule 12(b)(6)</i> filed by Candace Louise Curtis. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit, # <a href="#">3</a> Exhibit) (Munson, Rik) (Entered: 10/14/2016)
10/17/2016	<a href="#">63</a>	REPLY to Response to <a href="#">53</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock. (Hedge, Laura) (Entered: 10/17/2016)
10/18/2016	<a href="#">64</a>	ORDER granting <a href="#">47</a> Motion for Leave to File; granting <a href="#">54</a> Motion for Leave to File.(Signed by Judge Alfred H Bennett) Parties notified.(jdav, 4) (Entered: 10/18/2016)
10/18/2016	<a href="#">65</a>	RESPONSE to <a href="#">38</a> MOTION to Strike <a href="#">26</a> Memorandum,, filed by Rik Wayne Munson. (Attachments: # <a href="#">1</a> Exhibit)(Munson, Rik) (Entered: 10/18/2016)
10/18/2016	<a href="#">66</a>	REPORT of Rule 26(f) Planning Meeting by Rik Wayne Munson, filed.(Munson, Rik) (Entered: 10/18/2016)
10/19/2016	<a href="#">67</a>	OBJECTIONS to <a href="#">66</a> Report of Rule 26(f) Planning Meeting , filed by Bobbie Bayless, Toni Biamonte, Anita Brunsting, Christine Riddle Butts, Clarinda Comstock, Bradley Featherston, Candace Kunz-Freed, Stephen A. Mendel, Neal Spielman, Albert Vacek, Jr, Jill Williard Young. (Schaefer, Rafe) (Entered: 10/19/2016)
10/21/2016	<a href="#">68</a>	Unopposed MOTION to Substitute Attorney Adraon D. Greene in place of Stephen A. Mendel by Bradley Featherston, Stephen A. Mendel, filed. Motion Docket Date 11/14/2016. (Attachments: # <a href="#">1</a> Proposed Order)(Greene, Adraon) (Entered: 10/21/2016)



10/24/2016	<a href="#">69</a>	RESPONSE to <a href="#">40</a> MOTION to Dismiss <i>based on lack of subject matter jurisdiction</i> , <a href="#">39</a> MOTION to Dismiss filed by Rik Wayne Munson. (Munson, Rik) (Entered: 10/24/2016)
10/25/2016	<a href="#">70</a>	RESPONSE in Opposition to <a href="#">61</a> MOTION to Consolidate Lead Case No. 4:12-cv-592 and Member Case No. 4:16-cv-1969, <a href="#">43</a> MOTION to Consolidate Lead Case No. 4:12-cv-0592 and Member Case No. 4:16-cv-01969, filed by Jill Williard Young. (Schaefer, Rafe) (Entered: 10/25/2016)
10/27/2016	<a href="#">71</a>	MOTION for Joinder as to <a href="#">38</a> MOTION to Strike <a href="#">26</a> Memorandum,, by Bradley Featherston, Stephen A. Mendel, filed. Motion Docket Date 11/17/2016. (Deiss, David) (Entered: 10/27/2016)
10/27/2016	<a href="#">72</a>	MOTION for Sanctions by Jill Williard Young, filed. Motion Docket Date 11/17/2016. (Attachments: # <a href="#">1</a> Proposed Order) (Schaefer, Rafe) (Entered: 10/27/2016)
10/28/2016	<a href="#">73</a>	RETURN of Service of SUMMONS Executed as to Bradley Featherston served on 10/18/2016, answer due 11/8/2016, filed. (ckrus, 4) (Entered: 10/28/2016)
10/28/2016	<a href="#">74</a>	RETURN of Service of SUMMONS Executed as to Bernard Lyle Matthews, III served on 10/18/2016, answer due 11/8/2016, filed. (ckrus, 4) (Entered: 10/28/2016)
10/28/2016	<a href="#">75</a>	RETURN of Service of SUMMONS Executed as to Darlene Payne Smith served on 10/20/2016, answer due 11/10/2016, filed. (ckrus, 4) (Entered: 10/28/2016)
10/28/2016		Minute Entry for proceedings held before Judge Alfred H Bennett. SCHEDULING CONFERENCE held on 10/28/2016. Motion hearing set for December 12, 2016 at 10:00 AM Appearances:Bob Harrell, Eron Reid, Zander Foley. Bobbie G Bayless, Laura Beckman Hedge, Stephen A Mendel, Adraon DelJohn Greene, Cory S Reed.(Court Reporter: H. Alcaarez), filed.(ledwards, 4) (Entered: 10/28/2016)
10/28/2016	<a href="#">76</a>	NOTICE of Setting as to <a href="#">25</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , <a href="#">40</a> MOTION to Dismiss <i>based on lack of subject matter jurisdiction</i> , <a href="#">36</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM - <i>Rule 12(b) (6)</i> , <a href="#">28</a> MOTION, <a href="#">30</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, <a href="#">20</a> MOTION to Dismiss <i>For Lack of</i>

		<i>Subject Matter Jurisdiction</i> , <a href="#">35</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, <a href="#">23</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , <a href="#">39</a> MOTION to Dismiss , <a href="#">19</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM . Parties notified. Motion Hearing set for 12/9/2016 at 10:00 AM in Courtroom 8C before Judge Alfred H Bennett, filed. (ledwards, 4) (Entered: 10/28/2016)
10/28/2016	<a href="#">77</a>	CORRECTED NOTICE of Setting as to <a href="#">25</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , <a href="#">40</a> MOTION to Dismiss <i>based on lack of subject matter jurisdiction</i> , <a href="#">30</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, <a href="#">20</a> MOTION to Dismiss <i>For Lack of Subject Matter Jurisdiction</i> , <a href="#">53</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , <a href="#">35</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, <a href="#">23</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , <a href="#">39</a> MOTION to Dismiss , <a href="#">19</a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM . Parties notified. Motion Hearing set for 12/12/2016 at 10:00 AM in Courtroom 8C before Judge Alfred H Bennett, filed. (ledwards, 4) (Entered: 10/28/2016)
10/31/2016	<a href="#">78</a>	First MOTION to Dismiss <i>Complaint</i> by Jason Ostrom, filed. Motion Docket Date 11/21/2016. (Attachments: # <a href="#">1</a> Proposed Order Order Granting Jason Ostrom's Motion o Dismiss Complaint)(Ostrom, Jason) (Entered: 10/31/2016)
10/31/2016	<a href="#">79</a>	RESPONSE to <a href="#">61</a> MOTION to Consolidate Lead Case No. 4:12-cv-592 and Member Case No. 4:16-cv-1969 filed by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock. (Attachments: # <a href="#">1</a> Proposed Order)(Hedge, Laura) (Entered: 10/31/2016)
10/31/2016	<a href="#">80</a>	ORDER granting <a href="#">68</a> Motion to Substitute Counsel for Stephen A. Mendel and Bradley E. Featherson. Attorney Stephen A Mendel terminated. (Signed by Judge Alfred H Bennett) Parties notified. (rosaldana, 4) (Entered: 11/02/2016)
11/02/2016	<a href="#">81</a>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Bernard Lyle Matthews, III, filed. Motion Docket Date 11/23/2016. (Mathews, Bernard) (Entered: 11/02/2016)
11/04/2016	<a href="#">82</a>	NOTICE of Setting. Parties notified. Motion Hearing set for 12/15/2016 at 11:00 AM in Courtroom 8C before Judge Alfred H

		Bennett, filed. (ledwards, 4) (Entered: 11/04/2016)
11/07/2016	<a href="#"><u>83</u></a>	First MOTION to Dismiss <i>Complaint</i> by Gregory Lester, filed. Motion Docket Date 11/28/2016. (Attachments: # <a href="#"><u>1</u></a> Exhibit Exhibit A, # <a href="#"><u>2</u></a> Exhibit Exhibit B, # <a href="#"><u>3</u></a> Proposed Order Proposed Order)(Ostrom, Jason) (Entered: 11/07/2016)
11/10/2016	<a href="#"><u>84</u></a>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Darlene Payne Smith, filed. Motion Docket Date 12/1/2016. (Attachments: # <a href="#"><u>1</u></a> Proposed Order Order)(Abrams, Barry) (Entered: 11/10/2016)
11/18/2016	<a href="#"><u>85</u></a>	RESPONSE to <a href="#"><u>78</u></a> First MOTION to Dismiss <i>Complaint</i> filed by Rik Wayne Munson. (Attachments: # <a href="#"><u>1</u></a> Exhibit, # <a href="#"><u>2</u></a> Exhibit, # <a href="#"><u>3</u></a> Exhibit, # <a href="#"><u>4</u></a> Exhibit, # <a href="#"><u>5</u></a> Exhibit, # <a href="#"><u>6</u></a> Proposed Order)(Munson, Rik) (Entered: 11/18/2016)
11/23/2016	<a href="#"><u>86</u></a>	RESPONSE to <a href="#"><u>81</u></a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Rik Wayne Munson. (Attachments: # <a href="#"><u>1</u></a> Exhibit, # <a href="#"><u>2</u></a> Exhibit, # <a href="#"><u>3</u></a> Exhibit, # <a href="#"><u>4</u></a> Proposed Order)(Munson, Rik) (Entered: 11/23/2016)
11/27/2016	<a href="#"><u>87</u></a>	RESPONSE to <a href="#"><u>83</u></a> First MOTION to Dismiss <i>Complaint</i> filed by Rik Wayne Munson. (Attachments: # <a href="#"><u>1</u></a> Exhibit, # <a href="#"><u>2</u></a> Exhibit, # <a href="#"><u>3</u></a> Exhibit, # <a href="#"><u>4</u></a> Exhibit, # <a href="#"><u>5</u></a> Proposed Order)(Munson, Rik) (Entered: 11/27/2016)
11/30/2016	<a href="#"><u>88</u></a>	NOTICE of Resetting. Parties notified. Motion Hearing set for 12/15/2016 at 11:30 AM in Courtroom 8C before Judge Alfred H Bennett, filed. (ledwards, 4) (Entered: 11/30/2016)
12/01/2016	<a href="#"><u>89</u></a>	RESPONSE to <a href="#"><u>84</u></a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Rik Wayne Munson. (Attachments: # <a href="#"><u>1</u></a> Exhibit, # <a href="#"><u>2</u></a> Exhibit, # <a href="#"><u>3</u></a> Exhibit, # <a href="#"><u>4</u></a> Exhibit, # <a href="#"><u>5</u></a> Exhibit, # <a href="#"><u>6</u></a> Exhibit, # <a href="#"><u>7</u></a> Exhibit, # <a href="#"><u>8</u></a> Exhibit, # <a href="#"><u>9</u></a> Exhibit, # <a href="#"><u>10</u></a> Exhibit Exhibits redacted, # <a href="#"><u>11</u></a> Exhibit, # <a href="#"><u>12</u></a> Proposed Order)(Munson, Rik) (Entered: 12/01/2016)
12/13/2016	<a href="#"><u>90</u></a>	REPLY to Response to <a href="#"><u>84</u></a> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Darlene Payne Smith. (Abrams, Barry) (Entered: 12/13/2016)
12/15/2016		Minute Entry for proceedings held before Judge Alfred H Bennett. MOTION HEARING held on 12/15/2016. Motions taken under advisement Appearances:Zander Foley, Amy

		Brunsting, Bob Harrell, Anita Brunsting, Adron Green, Erin Reed, Rick Musuin. Bobbie G Bayless, Laura Beckman Hedge, Adraon DelJohn Greene, Cory S Reed, Bernard Lipse Mathews, III, Jason B Ostrom, Barry Abrams, Martin Samuel Schexnayder, Rafe A Schaefer.(Court Reporter: K. Metzger), filed.(ledwards, 4) (Entered: 12/15/2016)
05/16/2017	<a href="#">91</a>	ORDER granting <a href="#">35</a> Motion to Dismiss for Failure to State a Claim; granting <a href="#">36</a> Motion to Dismiss for Failure to State a Claim; granting <a href="#">39</a> Motion to Dismiss; granting <a href="#">40</a> Motion to Dismiss; denying as moot <a href="#">43</a> Motion to Consolidate Cases; granting <a href="#">53</a> Motion to Dismiss for Failure to State a Claim; denying as moot <a href="#">61</a> Motion to Consolidate Cases; denying <a href="#">72</a> Motion for Sanctions; granting <a href="#">78</a> Motion to Dismiss; granting <a href="#">81</a> Motion to Dismiss for Failure to State a Claim; granting <a href="#">83</a> Motion to Dismiss; granting <a href="#">84</a> Motion to Dismiss for Failure to State a Claim; granting <a href="#">19</a> Motion to Dismiss for Failure to State a Claim; granting <a href="#">20</a> Motion to Dismiss; granting <a href="#">23</a> Motion to Dismiss for Failure to State a Claim; granting <a href="#">25</a> Motion to Dismiss for Failure to State a Claim; granting <a href="#">30</a> Motion to Dismiss for Failure to State a Claim.(Signed by Judge Alfred H Bennett) Parties notified.(ledwards, 4) (Entered: 05/16/2017)
05/26/2017	<a href="#">92</a>	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit by Candace Louise Curtis, Rik Wayne Munson, filed. (olindor, 4) (Entered: 05/26/2017)
05/26/2017		Confirmation of receipt of payment from Rick Munson, Candace Luis Curtis in the amount of \$ 505 Receipt date: 5/26/2017. Receipt number HOU72706. Purpose Description: Notice of Appeal. (olindor, 4) (Entered: 05/26/2017)



District Court: Southern District of Texas District Court Docket No. 4:16-cv-1969  
 Short Case Title: Curtis et al., v Kunz-Freed et al., Court Reporter: Heather Alcaraz

**ONLY ONE COURT REPORTER PER FORM**

Date Notice of Appeal Filed by Clerk of District Court: 05/30/2017 Court of Appeals No.: 17-20360

**PART I.** (To be completed by party ordering transcript. Do not complete this form unless financial arrangements have been made.)

**A. Complete the Following:**

No Hearings  Transcript is unnecessary for appeal purposes  Transcript is already on file in the Clerk's Office  
 or

**Check All of the Following that Apply, Enter the date of the proceeding in the blank line.**

This is to Order a Transcript of the following proceedings:  Bail Hearing: \_\_\_\_\_  Voir Dire: \_\_\_\_\_

Opening Statement of Plaintiff: \_\_\_\_\_  Opening Statement of Defendant: \_\_\_\_\_

Closing Argument of Plaintiff: \_\_\_\_\_  Closing Argument of Defendant: \_\_\_\_\_

Opinion of court: \_\_\_\_\_  Jury Instructions: \_\_\_\_\_  Sentencing: \_\_\_\_\_

Hearing Date(s)	Proceeding	Judge/Magistrate
10/28/2016	Rule 26(f) Conference	Hon. Alfred H. Bennett

**Failure to specify in adequate detail those proceedings to be transcribed, or failure to make prompt satisfactory financial arrangements for transcript, are grounds for DISMISSAL OF APPEAL.**

**B. This is to certify that satisfactory financial arrangements have been completed with the court reporter for payment of the transcript.** The method of payment will be:

Private Funds;  Criminal Justice Act Funds (**Enter Authorization-24 to USDC eVoucher**);

Other IFP Funds;  Advance Payment waived by reporter;  U.S. Government Funds

Other Check mailed 6/2/2017

Signature \_\_\_\_\_ Date Transcript Ordered 6/2/2017

Print Name Rik Munson Phone: 925-349-8348

~~Counsel for~~ Pro se

Address 218 Landana St. American Canyon CA 94503

**PART II. COURT REPORTER ACKNOWLEDGEMENT** (To be completed by the Court Reporter and filed with the Court of Appeals within 7 days after receipt. Read instructions on page 2 before completing.)

Date Transcript Order Received	If arrangements not yet made, date contact made w/ ordering party	Estimated Completion Date	Estimated number of Pages

Satisfactory Arrangements for payment were made on \_\_\_\_\_

Payment Arrangements have NOT been made. Reason:  Deposit not received  Unable to contact ordering party

Other (Specify) \_\_\_\_\_

Date: \_\_\_\_\_ Signature of Reporter: \_\_\_\_\_ Tel. \_\_\_\_\_

Address of Reporter: \_\_\_\_\_

**Part III. NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN THE DISTRICT COURT** (To be completed by court reporter on date of filing transcript in the District Court and this completed form e-filed with the Court of Appeals.)

This is to certify that the transcript has been completed and filed at the District Court today.

Actual Number of Pages: \_\_\_\_\_ Actual Number of Volumes: \_\_\_\_\_

Date: \_\_\_\_\_ Signature of Reporter: \_\_\_\_\_ **17-20360.3362**



District Court: Southern District of Texas District Court Docket No. 4:16-cv-1969  
 Short Case Title: Curtis et al., v Kunz-Freed et al., Court Reporter: Kathy Metzger

**ONLY ONE COURT REPORTER PER FORM**

Date Notice of Appeal Filed by Clerk of District Court: 05/30/2017 Court of Appeals No.: 17-20360

**PART I.** (To be completed by party ordering transcript. Do not complete this form unless financial arrangements have been made.)

**A. Complete the Following:**

No Hearings  Transcript is unnecessary for appeal purposes  Transcript is already on file in the Clerk's Office  
 or

**Check All of the Following that Apply, Enter the date of the proceeding in the blank line.**

This is to Order a Transcript of the following proceedings:  Bail Hearing: \_\_\_\_\_  Voir Dire: \_\_\_\_\_

Opening Statement of Plaintiff: \_\_\_\_\_  Opening Statement of Defendant: \_\_\_\_\_

Closing Argument of Plaintiff: \_\_\_\_\_  Closing Argument of Defendant: \_\_\_\_\_

Opinion of court: \_\_\_\_\_  Jury Instructions: \_\_\_\_\_  Sentencing: \_\_\_\_\_

Hearing Date(s)	Proceeding	Judge/Magistrate
12/15/2017	Hearing on Motions to Dismiss	Hon. Alfred H. Bennett

**Failure to specify in adequate detail those proceedings to be transcribed, or failure to make prompt satisfactory financial arrangements for transcript, are grounds for DISMISSAL OF APPEAL.**

**B. This is to certify that satisfactory financial arrangements have been completed with the court reporter for payment of the transcript.** The method of payment will be:

Private Funds;  Criminal Justice Act Funds (**Enter Authorization-24 to USDC eVoucher**);

Other IFP Funds;  Advance Payment waived by reporter;  U.S. Government Funds

Other \_\_\_\_\_

Signature \_\_\_\_\_ Date Transcript Ordered 5/23/2017

Print Name Rik Munson Phone: 925-349-8348

~~Counsel for~~ Pro se

Address 218 Landana St. American Canyon CA 94503

**PART II. COURT REPORTER ACKNOWLEDGEMENT** (To be completed by the Court Reporter and filed with the Court of Appeals within 7 days after receipt. Read instructions on page 2 before completing.)

Date Transcript Order Received	If arrangements not yet made, date contact made w/ ordering party	Estimated Completion Date	Estimated number of Pages

- Satisfactory Arrangements for payment were made on \_\_\_\_\_  
 Payment Arrangements have NOT been made. Reason:  Deposit not received  Unable to contact ordering party  
 Other (Specify) \_\_\_\_\_

Date: \_\_\_\_\_ Signature of Reporter: \_\_\_\_\_ Tel. \_\_\_\_\_

Address of Reporter: \_\_\_\_\_

**Part III. NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN THE DISTRICT COURT** (To be completed by court reporter on date of filing transcript in the District Court and this completed form e-filed with the Court of Appeals.)

This is to certify that the transcript has been completed and filed at the District Court today.

Actual Number of Pages: \_\_\_\_\_ Actual Number of Volumes: \_\_\_\_\_

Date: \_\_\_\_\_ Signature of Reporter: \_\_\_\_\_ **17-20360.3363**



TRANSCRIPT ORDER FORM INSTRUCTIONS

INSTRUCTIONS FOR ANYONE FILING A NOTICE OF APPEAL

1. Complete Part 1. (Whether or not transcript is ordered)
2. Contact each court reporter involved in reporting the proceedings to make arrangements for payment. (A separate transcript order must be completed for each court reporter.)
3. Send a copy of the form to the court reporter. (via email or mail, ask court reporter) CJA Counsel must also enter an Authorization-24 in the U. S. District Court's eVoucher System.
4. File a copy with the U.S. Court of Appeals for the Fifth Circuit (Attorneys must e-file. Pro Se filers must mail form unless authorized to e-file.)
5. File a copy with the District Court.
6. Send a copy(ies) to appellee(s).
7. Retain a copy for your files.

SHOULD SATISFACTORY ARRANGEMENTS FOR TRANSCRIPT PRODUCTION, INCLUDING NECESSARY FINANCIAL ARRANGEMENTS, NOT BE MADE WITHIN TEN (10) DAYS AFTER FILING YOUR NOTICE OF APPEAL, YOUR APPEAL CAN BE DISMISSED.

INSTRUCTIONS TO COURT REPORTER

**This is an electronic version of the original 8-page multipart carbon-less form. The court reporter is responsible for ensuring that the correct number of copies are made to meet the distribution requirements.**

To assure the Court of Appeals that the ordering party has fulfilled his or her obligations under FRAP 10(b), for ordering and making adequate financial arrangements with the court reporter, you are requested to complete Part II and file with the Court of Appeals within seven (7) days after receipt.

It is the appellant's responsibility to contact you and make financial arrangements before filling out the form. However, if financial arrangements have not been made within ten (10) days after receipt of transcript order, complete Part II and file with the Court of Appeals. If financial negotiations with the ordering party are still in progress when the 10 days expire, and the chances for completion within a short period of time appears to be good, contact a Deputy Clerk for additional time to complete this form. Link to contact information: [Contact Clerk's Office About My Case](#) or call:

NORTHERN AND WESTERN TEXAS CASE TEAM: 504-310-7806

SOUTHERN AND EASTERN TEXAS CASE TEAM: 504-310-7807

LOUISIANA, MISSISSIPPI, & AGENCY CASE TEAM: 504-310-7808

If financial arrangements are made after you send the acknowledgement form to the Court of Appeals, immediately notify the Court in writing of the fact, furnishing the estimated delivery date.

THE JUDICIAL COUNCIL'S 60-DAY DISCOUNT DATE BEGINS TO RUN FROM THE DATE SATISFACTORY FINANCIAL ARRANGEMENTS HAVE BEEN MADE.

WRITTEN REQUEST FOR EXTENSION OF TIME WITH EXPLANATION OF CIRCUMSTANCES AND A REQUEST FOR WAIVER OF DISCOUNT MUST BE ADDRESSED TO THE CLERK OF THE CIRCUIT COURT FOR ANY TRANSCRIPTS WHICH CANNOT BE COMPLETED WITHIN 60 DAYS.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Candace Louise Curtis, et al.

Plaintiff,

v.

Case No.: 4:16-cv-01969

Judge Alfred H Bennett

Candace Kunz-Freed, et al.

Defendant.

Official Transcript Filed

An official transcript has been filed. It may contain information protected from public disclosure by law. See E-Government Act of 2002, Fed. R. Civ. P. 5.2(a) or Fed. R. Crim. P. 49.1(a).

Ninety days after a transcript has been filed, it will be electronically available to the public on PACER. To comply with the rules on privacy, the parties must redact protected information before it is available on PACER.

If redaction is needed, the parties must file a statement listing the items to be redacted, with the transcript's docket number and the item's location by page and line. It must be filed within 21 days of the transcript being filed. A suggested form is at [www.txs.uscourts.gov](http://www.txs.uscourts.gov).

Only these portions of data may be visible:

- Last four digits of a social security number or taxpayer identification number;
- Year of a person's birth;
- Initials of a minor's name;
- Last four digits of an account number; and
- City and state of a home address in criminal cases.

Additional redactions require a separate motion and court approval.

A party may view the transcript at the public terminals in the clerk's office or buy it through [www.txs.uscourts.gov](http://www.txs.uscourts.gov) or by calling (713) 250-5500. A party is only responsible for reviewing the:

- Opening and closing statements made for his party;
- Statements by his party;
- Testimony of witnesses called by his party; and
- Other parts ordered by the court.

Redaction is your responsibility. The court, clerk, court reporter, or transcriber will not review this transcript for compliance.

David J. Bradley, Clerk



**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Candace Louise Curtis, et al.

Plaintiff,

v.

Case No.: 4:16-cv-01969

Judge Alfred H Bennett

Candace Kunz-Freed, et al.

Defendant.

**Official Transcript Filed**

An official transcript has been filed. It may contain information protected from public disclosure by law. See E-Government Act of 2002, Fed. R. Civ. P. 5.2(a) or Fed. R. Crim. P. 49.1(a).

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- Opening and closing statements made for his party;
- Statements by his party;
- Testimony of witnesses called by his party; and
- Other parts ordered by the court.

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*David J. Bradley*, Clerk

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

1		)	
2		)	
3		)	
4	CANDACE LOUISE CURTIS AND	)	
5	RIK WAYNE MUNSON,	)	
6	Plaintiffs,	)	
7		)	CIVIL ACTION NO.
8	VS.	)	4:16-CV-1969
9		)	
10	CANDACE KUNZ-FREED, ET AL.,	)	8:59 A.M.
11	Defendants.	)	
12		)	

INITIAL CONFERENCE  
BEFORE THE HONORABLE ALFRED H. BENNETT  
OCTOBER 28, 2016

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Proceedings recorded by mechanical stenography, transcript  
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08:50:02 1 (Call to Order of the Court.)

08:59:34 2 **THE COURT:** Good morning. Thank you. Please have a  
3 seat.

09:00:53 4 Cause number 16-CV-1969, *Candace Curtis versus --*  
5 *et al., versus Candace Freed, et al.* Come on up.

09:01:09 6 You can stay there. I can hear your -- there's a  
7 microphone there for you.

09:01:15 8 All right. Counsel, please announce your appearances  
9 for the record.

09:01:21 10 **MR. HARRELL:** Bob Harrell representing Jill Young.

09:01:23 11 **MS. HEDGE:** Good morning, Your Honor. Laura Beckman  
12 Hedge. I represent the Honorable Judge Christine Riddle Butts,  
13 Judge Clarinda Comstock and Toni Biamonte.

09:01:36 14 **MS. FOLEY:** Your Honor, Zandra Foley and Cory Reed.  
15 We represent Candace Kunz-Freed, Al Vacek and Vacek & Freed.

09:01:41 16 **THE COURT:** Who's Mr. Reed?

09:01:42 17 **MR. REED:** Your Honor, right here.

09:01:44 18 **THE COURT:** Very well.

09:01:44 19 **MS. BAYLESS:** Bobbie Bayless, Your Honor. I'm here on  
20 behalf of myself.

09:01:48 21 **MR. REID:** Your Honor, Eron Reid for Neal Spielman.

09:01:51 22 **MR. GREENE:** Adraon Greene, Your Honor, for Stephen  
23 Mendel and Bradley Featherston.

09:01:57 24 **MR. MUNSON:** I'm Rik Munson, pro se plaintiff.

09:01:59 25 **MS. CURTIS:** Candace Curtis, pro se plaintiff.

09:02:03 1           **THE COURT:** Very well.

09:02:07 2           Anyone else?

09:02:11 3           *(No response.)*

09:02:19 4           **THE COURT:** Are you here on a case I just called?

5           Make your --

09:02:22 6           **MR. OSTROM:** I am, Your Honor.

09:02:23 7           **THE COURT:** Make your appearance for the record.

09:02:23 8           **MR. OSTROM:** Jason Ostrom representing Jason Ostrom,  
9           pro se.

09:02:26 10          **THE COURT:** Very well.

09:02:31 11          This is your initial conference. Give me the status  
12          of the case in 90 seconds from your version.

09:02:41 13          **MR. MUNSON:** Well, we filed a RICO complaint alleging  
14          a number of predicate acts and aiding and abetting, and we are  
15          here today for a status conference. We did not -- somehow  
16          didn't manage to get together on the Rule 26(f). It wasn't for  
17          lack of some of us trying.

09:02:56 18          So we're here for status for -- for docket control  
19          order, and there are pending motions, motions to dismiss,  
20          motions to strike, motions for consolidation.

09:03:06 21          **THE COURT:** On the motions to dismiss, have you  
22          responded to each and every one?

09:03:10 23          **MR. MUNSON:** Yes, I have. All the ones that have been  
24          filed, I have responded to.

09:03:13 25          **THE COURT:** Okay. So they're ripe.

09:03:15 1 Ma'am, anything from you?

09:03:18 2 **MS. CURTIS:** No.

09:03:18 3 **THE COURT:** Very well.

09:03:19 4 Mr. Harrell, let's start with you.

09:03:22 5 **MR. HARRELL:** Judge, so yes, we have filed motions to  
6 dismiss. I think all of us feel very strongly that this case  
7 should be dismissed. We've also filed a motion for stay, and we  
8 would ask the Court to stay the expenditure of more money on  
9 this case until we know we have a real case here. And in our  
10 motions to dismiss, we've shown that there's jurisdictional  
11 issues under RICO and also that this case is just -- it is  
12 clearly a frivolous case.

09:03:56 13 I won't re-argue our motions here, but I think all of  
14 us feel very strongly that this is not the typical motion to  
15 dismiss that everybody just files. We feel very seriously that  
16 these are motions to dismiss that should be granted to put an  
17 end to this.

09:04:13 18 **THE COURT:** I believe I was told that there are  
19 approximately 12, 11 motions to dismiss. How many?

09:04:23 20 **MR. HARRELL:** Yes, Your Honor.

09:04:24 21 **THE COURT:** Are they ripe, ready to go from --

09:04:27 22 **MR. HARRELL:** I believe so.

09:04:28 23 **THE COURT:** All right. Ms. Hedge, anything from you?

09:04:31 24 **MS. HEDGE:** I don't have anything to add, Your Honor.

09:04:33 25 **THE COURT:** All right. Anyone else?

09:04:34 1 (No response.)

09:04:35 2 **THE COURT:** All right. Oh, you said a motion to stay.  
3 Why is it necessary at this point to enter a motion to stay?

09:04:47 4 **MR. HARRELL:** Judge, we think it's -- we think that is  
5 the best way to do things because we feel confident that the  
6 Court will dismiss this case.

09:04:59 7 **THE COURT:** Well, what currently is happening that  
8 you're seeking a stay from? Is there ongoing discovery that  
9 you're seeking a stay from?

09:05:06 10 **MR. HARRELL:** There's no ongoing discovery. We would  
11 just ask that discovery not start, and so -- I guess that's  
12 really what we're asking is before we get into discovery, let's  
13 determine whether this Court has jurisdiction and whether this  
14 case should survive the motions to dismiss.

09:05:27 15 **THE COURT:** So there is nothing that you're -- you  
16 just want a stay in general. There's nothing that you're  
17 currently specifically seeking a stay from, such as discovery or  
18 anything like that?

09:05:37 19 **MR. HARRELL:** That's correct, Your Honor.

09:05:38 20 **THE COURT:** Very well.

09:05:45 21 Well, if the motions to dismiss are ripe, it seems  
22 that the most logical thing to do, before we get too far down  
23 the road in this case, is to get those sorted out.

09:06:02 24 **MR. MUNSON:** I agree.

09:06:02 25 **THE COURT:** And so I'm not prepared to hear all these

1 motions to dismiss this morning and a response, so I think it  
2 probably would be appropriate to set a date to do so, and then  
3 have everyone come back when I can devote a significant amount  
4 of time to hearing everyone out and, obviously, hearing your  
5 response.

09:06:26 6 Other than that, is there anything else that we think  
7 that we need to take care of today, sir?

09:06:32 8 **MR. MUNSON:** We need a docket control order, but they  
9 don't want to have one, apparently.

09:06:37 10 **THE COURT:** Well, I tell you what. Why don't we do it  
11 this way: Why don't we set a date certain for the motions to  
12 dismiss --

09:06:45 13 **MR. MUNSON:** Okay.

09:06:45 14 **THE COURT:** -- and in the event that the motions to  
15 dismiss are denied, then we can have a docket control order  
16 entered at the conclusion of that hearing.

09:06:59 17 **MR. MUNSON:** That's fine.

09:07:00 18 **THE COURT:** All right.

09:07:01 19 **MR. MUNSON:** I think that's fine.

09:07:01 20 **THE COURT:** All right. How soon can we get back? Can  
21 we do this sometime next month?

09:07:09 22 **MR. HARRELL:** Yes, Your Honor. The way we look at it,  
23 the sooner the better, Judge.

09:07:13 24 **MR. MUNSON:** We just need time to get a rate on  
25 transportation. We just need time to get a rate on



1 transportation. If we book too short, it costs a lot of money  
2 more.

09:07:21 3 **THE COURT:** Yeah. That was my next question. Where  
4 are you coming in from?

09:07:25 5 **MR. MUNSON:** The Bay Area, California.

09:07:27 6 **THE COURT:** Okay. All right. What -- what type of  
7 time lead do you need?

09:07:36 8 **MS. CURTIS:** Three weeks, 21 days -- 21 days.

09:07:39 9 **THE COURT:** So 30 days out would be good?

09:07:41 10 **MR. MUNSON:** That's fine.

09:07:41 11 **THE COURT:** All right. Let's find -- yes, sir?

09:07:46 12 **MR. MUNSON:** There's also motions to dismiss due  
13 November 7th or answers. One of the other. So I don't know if  
14 that's a consideration or not.

09:07:53 15 **THE COURT:** Well, yeah, because I want to try to get  
16 it all in one swoop.

09:07:56 17 **MR. MUNSON:** Okay. So they should probably answer  
18 those first.

09:07:58 19 Well, they're due to answer or move to dismiss by the  
20 7th.

09:08:02 21 **THE COURT:** Hold on. I'm -- they filed a motion to  
22 dismiss. Is there a response due November the 7th?

09:08:08 23 **MS. CURTIS:** No, there is a motion -- there is a  
24 motion to dismiss or an answer due on the 7th.

09:08:12 25 **THE COURT:** Oh, I see. Someone hadn't answered as of

1 yet?

09:08:15 2 **MR. MUNSON:** That's correct.

09:08:16 3 **THE COURT:** I would assume they didn't make their  
4 appearance this morning. Is that correct?

09:08:20 5 **MS. CURTIS:** I believe that's right, Your Honor. They  
6 have not made their appearances.

09:08:26 7 **THE COURT:** But they have been properly served?

09:08:32 8 **MR. MUNSON:** Yes. They asked for --

09:08:33 9 **THE COURT:** An extension?

09:08:34 10 **MR. MUNSON:** Yes, and we didn't oppose it.

09:08:38 11 **THE COURT:** All right. Well, I really don't want to  
12 hold up everybody for that because if they answer and then file  
13 a motion to dismiss, we might be looking at, you know, early  
14 next year, and I -- let's --

09:08:52 15 **MR. MUNSON:** Let's do it first.

09:08:53 16 **THE COURT:** -- let's do this. And -- all right. Look  
17 at your calendars. December the 9th, 10:00 a.m.

09:09:11 18 **MR. MUNSON:** This room?

09:09:11 19 **THE COURT:** Yes, sir, this courtroom.

09:09:13 20 **MR. MUNSON:** Thank you.

09:09:13 21 **THE COURT:** December the 9th, 10:00 a.m. Does it work  
22 for everybody?

09:09:22 23 *(No response.)*

09:09:22 24 **THE COURT:** All right. Hearing no objection, December  
25 the 9th, 10:00 a.m., will be the oral hearings on all pending

1 motions to dismiss with responses filed. And, obviously, if you  
2 have not filed a reply to the response, you have plenty of time  
3 to get that done.

09:09:44 4 And given that you've already filed your response, I  
5 will assume that there are no discovery issues, especially if  
6 we're talking jurisdictional issues and things of that nature.

09:09:53 7 Sir, ma'am, anything else?

09:09:55 8 *(No response.)*

09:09:58 9 **THE COURT:** Are you an attorney?

09:09:59 10 **MR. MUNSON:** No, sir.

09:10:00 11 **THE COURT:** Are you an attorney?

09:10:01 12 **MS. CURTIS:** No, sir.

09:10:06 13 **THE COURT:** I don't want to call it a word of -- well,  
14 it's a word of caution. You have the right to represent  
15 yourself, and as you look across the room, you see a table full  
16 of attorneys. While you have the right to represent yourself,  
17 and there is some leniency in regards to making sure you adhere  
18 to the rules of procedure and evidence, you are obligated to  
19 educate yourselves on the proper procedure and rules for not  
20 only pleadings, but argument in this case.

09:10:45 21 I have, on my website, some do's and dont's, so please  
22 go take a look at that. If for any reason you have any  
23 questions, call Ms. Edwards, who is my case manager, ahead of  
24 time, and we will be happy to provide you any information that  
25 you need such that you can come in and effectively participate

1 in the proceedings as pro se plaintiffs. Understood?

09:11:12 2 **MR. MUNSON:** I understand that. Thank you very much.

09:11:13 3 **THE COURT:** Yes, sir.

09:11:13 4 Ma'am, anything else --

09:11:15 5 **MS. CURTIS:** I understand.

09:11:15 6 **THE COURT:** -- from you?

09:11:16 7 **MS. CURTIS:** No.

09:11:16 8 **THE COURT:** Very well.

09:11:17 9 Counsel, anything else?

09:11:19 10 **ALL DEFENSE COUNSEL:** No, Your Honor.

09:11:21 11 **THE COURT:** Have a good weekend. You're excused.

09:12:04 12 Ms. Hedge, you'll have to just take one of the

13 attorney ready rooms and keep it for yourself.

09:12:09 14 **MS. HEDGE:** I know, Your Honor. Bring a pillow and a

15 blanket.

09:12:12 16 **THE COURT:** That's right.

09:12:12 17 *(Proceedings concluded at 9:12 a.m.)*

18 -o0o-

19 I certify that the foregoing is a correct transcript

20 from the record of proceedings in the above matter.

21

22 Date: July 5, 2017

23 /s/ Heather Alcaraz

24 Signature of Court Reporter

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUIS CURTIS, ET AL . C.A. NO. H-16-1969  
VS. . HOUSTON, TEXAS  
. DECEMBER 15, 2016  
CANDACE KUNZ-FREED, et al . 11:50 A.M. to 1:00 P.M.

TRANSCRIPT of MOTION HEARING  
BEFORE THE HONORABLE ALFRED H. BENNETT  
UNITED STATES DISTRICT JUDGE

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1 P R O C E E D I N G S

2 *THE COURT:* Cause No. 16-cv-1969, Candace Curtis,  
3 et al, versus Candace Freed, et al. Come on up.

4 We have a third table over here as well, with a  
5 microphone, so, please.

6 *UNIDENTIFIED SPEAKER:* This one over here?

7 *THE COURT:* Yes. And given the size, I do not mind if  
8 you take a seat on this side of the table with your back to me,  
9 I understand. I'm not going to be offended, I understand.

10 Having called Cause No. 16-cv-1969, I'm now going  
11 to take the appearance of counsel, starting from my right.

12 *MR. ABRAMS:* Good morning, Your Honor. Barry Abrams  
13 for the defendant Darlene Payne Smith.

14 *MS. BAYLESS:* Bobbie Bayless on my own behalf.

15 *MR. HARRELL:* Bob Harrell and Rafe Schaefer on behalf  
16 of Jill Young.

17 *THE COURT:* Wait. I didn't hear the name.

18 *MR. HARRELL:* Jill Young.

19 *THE COURT:* Very well.

20 *MS. BECKMAN HEDGE:* Hello, Your Honor. Laura Beckman  
21 Hedge. I'm here on behalf of Judge Christine Riddle Butts,  
22 Judge Clarinda Comstock and Toni Biamonte.

23 *THE COURT:* Very well.

24 *MS. CURTIS:* Candace Curtis here --

25 *THE COURT:* Use the microphone so that --



1           *MS. CURTIS:* Candace Curtis on behalf of myself.

2           *THE COURT:* Very well.

3           *MR. MUNSON:* My name is Rik Munson. I'm a private  
4 attorney general plaintiff, pro se.

5           *THE COURT:* Very well.

6           *MR. REID:* Eron Reid on behalf of Neal Spielman.

7           *THE COURT:* I'm sorry, on behalf of?

8           *MR. REID:* Neal Spielman.

9           *THE COURT:* Counsel?

10           *MR. GREENE:* Adraon Greene, Your Honor, on behalf of  
11 Stephen Mendel and Bradley Featherston.

12           *THE COURT:* Counsel? Oh, right here.

13           *MR. SPIELMAN:* Oh, Your Honor, I'm just -- I'm the  
14 client -- or the defendant, Neal Spielman.

15           *THE COURT:* Oh, very well.

16           *UNIDENTIFIED SPEAKER:* I'm likewise a client of  
17 Mr. Greene.

18           *THE COURT:* Very well.

19           *MR. REED:* Cory Reed on behalf of Candace Freed and Al  
20 Vacek.

21           *MS. FOLEY:* Zandra Foley on behalf of Candace Freed  
22 and Al Vacek.

23           *MR. MATHEWS:* Bernard Mathews. I'm representing  
24 myself, Your Honor.

25           *MR. OSTROM:* Your Honor, Jason Ostrom on behalf of my

1 myself and Gregory Lester.

2 *THE COURT:* You said on behalf of yourself?

3 *MR. OSTROM:* Myself and Gregory Lester.

4 *THE COURT:* Are you an attorney?

5 *MR. OSTROM:* I am.

6 *THE COURT:* Very well.

7 *MS. ANITA BRUNSTING:* Anita Brunsting on behalf of  
8 myself.

9 *THE COURT:* Very well.

10 *MS. AMY BRUNSTING:* Amy Brunsting on behalf of myself.

11 *THE COURT:* Very well.

12 Counsel, for today's hearing there are a number  
13 of motions to dismiss and I'm going to call them out,  
14 hopefully, and I won't miss them. Defendants Candace Freed and  
15 Albert Vacek's motion to dismiss for failure to state a claim.

16 *MS. FOLEY:* Yes, Your Honor.

17 *THE COURT:* Defendants Candace Freed and Albert  
18 Vacek's motion to dismiss for lack of subject matter  
19 jurisdiction.

20 *MS. FOLEY:* I just said yes, Your Honor.

21 *THE COURT REPORTER:* Can you state your name?

22 *THE COURT:* Oh, state your name.

23 *MS. FOLEY:* Zandra Foley.

24 *THE COURT:* Yes, when you speak, state your name  
25 again. With this cast of Spartacus before us, the court

1 reporter will greatly appreciate the assist.

2           Bobbie Bayless's motion to dismiss for failure to  
3 state a claim.

4           *MS. BAYLESS:* Bobbie Bayless, yes, Your Honor.

5           *THE COURT:* Defendant Brunsting's motion for access to  
6 electronic filing. Is that in this?

7           *UNIDENTIFIED SPEAKER:* Which one?

8           *THE COURT:* Oh, Anita.

9           *MS. ANITA BRUNSTING:* Yes.

10          *THE COURT:* Is that on today's docket?

11          *MS. ANITA BRUNSTING:* I believe that was approved.

12          *THE COURT:* Okay. Defendant Jill Willard Young's  
13 12(b) (6) motion to dismiss.

14          *MR. HARRELL:* Bob Harrell. Yes.

15          *THE COURT:* Defendant Anita Brunsting's Rule 12(b) (6)  
16 motion to dismiss for plaintiffs' failure to state a claim.

17          *MS. ANITA BRUNSTING:* Yes.

18          *THE COURT:* And you are?

19          *MS. ANITA BRUNSTING:* I'm Anita Brunsting.

20          *THE COURT:* Very well.

21                 Defendant Amy Brunsting's Rule 12(b) (6) motion to  
22 dismiss for plaintiffs' failure to state a claim.

23          *MS. AMY BRUNSTING:* Amy Brunsting. Yes, Your Honor.

24          *THE COURT:* Defendants Mendel and Featherston's Rule  
25 12(b) (6) motion to dismiss for plaintiffs' failure to state a

1 claim.

2 *MR. GREENE:* Adraon Greene. Yes, Your Honor.

3 *THE COURT:* Defendant Jill Willard Young's motion to  
4 strike plaintiffs' addendum and memorandum in support of RICO  
5 complaint.

6 *MR. HARRELL:* Bob Harrell. Yes, Your Honor.

7 *THE COURT:* And that's on today's --

8 *MR. HARRELL:* It's part of the motion to dismiss, so,  
9 yes, Your Honor.

10 *THE COURT:* Very well.

11 Defendant Neal Spielman's motion to dismiss.

12 *MR. REID:* Eron Reid. Yes, Your Honor.

13 *THE COURT:* And there was also Defendant Neal  
14 Spielman's motion to dismiss based on lack of subject matter  
15 jurisdiction.

16 *MR. REID:* Eron Reid. Yes, Your Honor.

17 *THE COURT:* I also have in my folder plaintiffs'  
18 motion for consolidation of related cases pursuant to 28 U.S.C.  
19 Section 1367, Rule 42(a) of the Federal Rules of Civil  
20 Procedure and Local Rule 7.6 with supporting memoranda.

21 *MS. CURTIS:* Yes, Your Honor. Candace Curtis.

22 *THE COURT:* Defendant Judge Christine Butts, Judge  
23 Comstock, et al, motion to dismiss complaint pursuant to  
24 Federal Rule of Civil Procedure 12(b)(1) and (6).

25 *MS. BECKMAN HEDGE:* Laura Beckman Hedge. Yes, Your

1 Honor.

2 *THE COURT:* Plaintiffs' motion for -- I covered that  
3 one.

4 Defendants Mendel and Featherston's joinder in  
5 Jill Willard Young's motion to strike plaintiffs' addendum to  
6 memorandum in support of RICO complaint.

7 *MR. GREENE:* Adraon Greene. Yes, Your Honor.

8 *THE COURT:* And Defendant Jill Willard Young's motion  
9 for sanctions.

10 *MR. HARRELL:* Bob Harrell. And we filed it. I don't  
11 know if it's technically on the docket today but --

12 *THE COURT:* For today. Okay. Thank you.

13 Defendant Jason Ostrom's motion to dismiss  
14 complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

15 *MR. OSTROM:* Yes, Your Honor. Jason Ostrom.

16 *THE COURT:* Motion to dismiss Defendant Bernard  
17 Mathews.

18 *MR. MATHEWS:* Bernard Mathews. That is correct, Your  
19 Honor.

20 *THE COURT:* Very well.

21 And Defendant Gregory Lester's motion to dismiss  
22 pursuant to Federal Rule of Civil Procedure 12(b)(6).

23 *MR. OSTROM:* Jason Ostrom. Yes, that's correct.

24 *THE COURT:* And, finally, Defendant Darlene Payne  
25 Smith, motion to dismiss for lack of subject matter

1 jurisdiction and failure to state a claim.

2 *MR. ABRAMS:* Barry Abrams. Yes, Your Honor.

3 *THE COURT:* Okay. Did I miss anyone's motion to  
4 dismiss?

5 *MS. FOLEY:* Your Honor, Zandra Foley. We also had a  
6 motion to dismiss for lack of subject matter jurisdiction that  
7 was filed separately from the motion to dismiss for failure to  
8 state a claim.

9 *THE COURT:* Very well.

10 Anyone else on this side, did I miss your motion  
11 that was under consideration for today?

12 *MS. BECKMAN HEDGE:* Laura Beckman Hedge, Your Honor.  
13 The defendants, Judge Butts, Judge Comstock, and Toni Biamonte  
14 joined in the motion that you mentioned earlier that Jill  
15 Willard Young filed, striking -- motion to strike plaintiffs'  
16 addendum of memorandum in support of RICO complaint.

17 *THE COURT:* Very well.

18 *MS. BECKMAN HEDGE:* Thank you.

19 *THE COURT:* Well, to be most efficient, we have a lot  
20 of 12(b)(6) motions, which I assume making similar arguments.  
21 There may be individual facts for each defendant. So, why  
22 don't we pick someone to present a motion, perhaps the first  
23 one that was filed, and then we can move from that and you can  
24 tell me if there are specifics, but you do not need to reurge  
25 the essence of the legal arguments in the first motion. That

1 way we can save a little time.

2 Mr. Harrell, I see you rising to your feet.

3 *MR. HARRELL:* Yes, Your Honor. If it please the  
4 Court, we're prepared to give an overview of the motions and  
5 the law. And if it please the Court, our lawyer, Rafe  
6 Schaefer, would like to make that presentation.

7 *THE COURT:* All in accord with that? Any objections  
8 from any of the defendants? Very well.

9 *MR. SCHAEFER:* Thank you, Your Honor. My name is Rafe  
10 Schaefer with Norton Rose Fulbright, along with Bob Harrell.  
11 We represent Defendant Jill Willard Young, who is in the  
12 courtroom here today, who is an attorney with the law firm of  
13 MacIntyre, McCulloch, Stanfield and Young here in Houston. She  
14 practices probate law.

15 Plaintiffs in this matter have sued, as you can  
16 see, more than 15 defendants who are lawyers, judges, other  
17 legal professionals, like court reporters, and other  
18 participants in a probate matter who practice in Harris County  
19 Probate Court No. 4.

20 Plaintiffs' claims in their complaint consist of  
21 an allegation that the defendants collectively are members of a  
22 secret society and what plaintiffs call a cabal that they call  
23 Harris County Tomb Raiders Association. They also call it the  
24 Harris County Probate Mafia.

25 Plaintiffs' allegation comes down to a RICO

1 claim, and plaintiffs allege that the folks in this courtroom  
2 are members of a shadow organization that engage in poser  
3 advocacy. And plaintiffs appear to say that poser advocacy is  
4 the fake practice of law by the attorneys and lawyers -- or the  
5 attorneys and judges and court reporters in this room that's  
6 designed to, in plaintiffs' words, highjack familiar wealth  
7 from decedent's estates in the probate system.

8           Effectively, Your Honor, the best I can tell,  
9 plaintiffs allege that the folks in this room are in this  
10 probate mafia and they engage in the fake practice of law in  
11 Probate Court No. 4 to generate attorneys' fees, which  
12 plaintiffs say defund the estates in the probate court. And  
13 that's plaintiffs' theory of the case and theory of how they're  
14 entitled to damages.

15           Against Ms. Young, plaintiffs purport to allege  
16 ten causes of action. They allege a RICO cause of action;  
17 three claims for honest services fraud; a claim for wire fraud;  
18 a claim for fraud under 18 U.S.C. Section 1001; a Hobbs Act  
19 claim; and three conspiracy claims.

20           Now, those claims all fail for three very simple  
21 reasons. The first reason they fail is a reason that applies  
22 to everyone in this room; and that is, that plaintiffs have  
23 simply failed to state a claim on which relief can be granted  
24 under Twombly and Iqbal and the plausibility standard of Rule  
25 12, but also just that plaintiffs' complaint itself is



1 delusional and fanciful and this Court should use its inherent  
2 powers to dismiss that complaint.

3           The second basis and the second reason  
4 plaintiffs' complaint should be dismissed also applies to  
5 everyone in this room, and it's that plaintiffs have failed to  
6 show they have standing to sue for RICO and the other causes of  
7 action that they've sued for are criminal causes of action that  
8 aren't privately actionable in federal court. And we've cited  
9 a lot of case law, that they can't bring it. And so the only  
10 claim that they really can bring is the RICO claim, and they've  
11 alleged no direct injury that would give them standing to sue.

12           The third reason why plaintiffs' complaint should  
13 be dismissed against Ms. Young is -- particularly Ms. Young and  
14 some other folks in here, but Ms. Young is protected by Texas's  
15 attorney immunity doctrine, which I'll talk about very briefly,  
16 Your Honor. I mentioned plaintiffs' allegations. They appear  
17 to relate to a probate matter in Harris County Probate Court  
18 No. 4. Plaintiffs call that the Curtis v. Brunsting matter.  
19 They don't ever mention a cause number. I think, Your Honor,  
20 since they've sued Ms. Young, the only matter Ms. Young was  
21 ever involved in that involved plaintiff Curtis is the matter  
22 of *In re: Estate of Nelva Brunsting*, which is in Probate Court  
23 No. 4.

24           But Plaintiff Munson wasn't a party to that  
25 matter. He wasn't a beneficiary to that estate. He doesn't

1 have any relationship to Ms. Young. He doesn't appear to have  
2 standing to sue at all in this matter.

3           In the Brunsting matter, Ms. Young, my client,  
4 was an attorney for Temporary Administrator Lester, who is also  
5 a defendant here today. Temporary Administrator Lester was  
6 appointed by Probate Court No. 4 to prepare a single written  
7 report. Ms. Young assisted him as his attorney in preparation  
8 of that single report, and that's all she did. All of the  
9 actions taken by Ms. Young in that probate matter were in her  
10 role as attorney to Ms. -- I'm sorry, to Mr. Lester. The  
11 plaintiffs don't dispute that. Ms. Young never had a fiduciary  
12 relationship with either plaintiff. Plaintiffs don't dispute  
13 that.

14           In fact, nowhere in their entire complaint do  
15 plaintiffs allege Ms. Young committed a single wrongful act or  
16 did anything other than act as an attorney for Temporary  
17 Administrator Lester.

18           So, I want to go through very briefly, Your  
19 Honor, the three bases for dismissal that I mentioned earlier.  
20 The first is that plaintiffs' complaint doesn't state a claim  
21 for relief. And that's under Twombly and Iqbal, but also just  
22 that it's delusional, Your Honor, and that this Court should  
23 use its powers to dismiss that. Under Rule 12, as this Court  
24 knows, plaintiffs' complaint must be dismissed under Twombly  
25 and Iqbal if it's too implausible to state a claim for relief.

1 This means that the Court should ignore all legal conclusions  
2 in the complaint, and it has to look at whether the  
3 well-pleaded facts permit the Court to infer more than the mere  
4 possibility of misconduct.

5 Here there is nothing in the complaint but  
6 boilerplate legal conclusions, Your Honor. There are no  
7 allegations of wrongful acts by Ms. Young. There are no  
8 allegations of wrongful acts, you know, pleaded with any sort  
9 of specificity that can identify an alleged actual wrongful act  
10 by plaintiffs, other than plaintiffs' allegation that there's  
11 this probate mafia engaging in poser advocacy, but there's no  
12 actual examples of what that is or how that took place.

13 *THE COURT:* Is the operative complaint Document No. 1?

14 *MR. SCHAEFER:* Yes, Your Honor.

15 *THE COURT:* Very well.

16 *MR. SCHAEFER:* Other courts in this district have  
17 dismissed RICO cases very similar for this exact same reason.  
18 There's a matter that we cited to in our motion to dismiss  
19 called *Freeman v. Texas*, which is a 2008 case decided by Judge  
20 Rosenthal, where Judge Rosenthal dismissed is a complaint  
21 alleging a probate court was a RICO enterprise comprised of  
22 judges who, quote, conspired against pro se litigants that  
23 virtually looted the pro se litigant's homestead through a  
24 probate proceeding. And the Court -- Judge Rosenthal held that  
25 even if all of those allegations were true, they failed to

1 state a racketeering activity because plaintiff hadn't alleged  
2 sufficient facts to raise a colorable claim that any violation  
3 of any of the predicate RICO acts had actually occurred. So,  
4 the Court held in light of the absence of any well-pleaded  
5 facts sufficient to state a RICO claim, that claim was  
6 dismissed.

7           The same is true here, Your Honor. But in  
8 addition to just being implausible on its face, the complaint  
9 is frivolous and delusional, and just a facial reading of the  
10 complaint shows the Court that that's true. And this Court has  
11 inherent authority to dismiss a pro se litigant's frivolous or  
12 malicious complaint.

13           To determine whether a complaint is frivolous or  
14 malicious, a court has to look at the complaint and see whether  
15 the allegations are clearly baseless, which means the  
16 allegations are fanciful, fantastical, or delusional. Here,  
17 again, plaintiffs allege that the folks in this courtroom are  
18 members of a secret society called the Harris County Tomb  
19 Raiders that defraud estates through poser advocacy by all  
20 these mafia members -- probate mafia members. Your Honor,  
21 these allegations are fanciful and delusional.

22           I would direct you to a very recent decision from  
23 an order from Judge Hoyt, who considered an almost identical  
24 case, called *Sheshtawy versus Conservative Club of Houston*. We  
25 have cited that. I have the order, if you would like to see a

1 copy of it.

2           There the Court was considering, you know, almost  
3 identical allegations, Your Honor, although dealing with  
4 Probate Court No. 1 instead of Probate Court No. 4. And the  
5 Court held in that order that the allegations that Probate  
6 Court No. 1 in Harris County and all the litigants and parties  
7 in that court were a RICO enterprise. The Court said that  
8 legal theory is, quote, "pure zanyism." The same is true here.  
9 We've cited the *Sheshtawy* order in our briefing. You now have  
10 a copy of it. This allegation, too, is pure zanyism. It's  
11 fanciful, it's delusional, and it fails to state a claim for  
12 relief that can be granted by this Court.

13           The second basis that -- for why plaintiffs'  
14 claim fails, is they don't have standing to sue on any of the  
15 causes of action they've alleged. First, I want to talk about  
16 RICO. And, again, this applies to everyone in this courtroom.  
17 Plaintiffs don't have standing to bring suit under RICO,  
18 because RICO requires a direct injury in order for a party to  
19 sue. A plaintiff can only sue if they can show some RICO  
20 violation was a direct and but for cause of the injury. The  
21 court in *Sheshtawy*, in that same order I just handed to you,  
22 Your Honor, held that plaintiffs had failed to show they had  
23 standing to bring a RICO case because, quote, "Routine  
24 litigation conduct cannot become a basis for a RICO suit."

25           That's all that's going on here. Ms. Young

1 represented Temporary Administrator Lester, who was appointed  
2 by the Court. But even if they alleged real allegations of  
3 wrongdoing, their assertion that the way there's damage is  
4 through this poser advocacy that defunds estates, it's not  
5 actionable by them individually as potential beneficiaries of  
6 the estate. There's a Sixth Circuit case that we've cited to  
7 titled *Firestone*, Your Honor. And in that case the  
8 beneficiaries of the Firestone Tire family estate asserted RICO  
9 claims against the executor of the estate and the trustee of  
10 the estate. And the Sixth Circuit affirmed the district  
11 court's dismissal, saying that those plaintiffs, the  
12 beneficiaries, didn't have standing to sue. The alleged RICO  
13 harm was that the executor of the estate and the trustee of the  
14 estate had lowered the value of the estate, such that when the  
15 estate paid out, the beneficiaries of the estate didn't get as  
16 much money as they should have.

17           The Court said this is basically like a  
18 corporate -- like a corporate -- corporation versus shareholder  
19 lawsuit, and there aren't derivative claims here where  
20 shareholders can bring the claims. The injury is to the  
21 estate. Like when a corporation is injured, the injury is to  
22 the corporation. The shareholders to a corporation can't bring  
23 suit for an injury that happens to the corporation, just like  
24 the beneficiaries of an estate can't bring suit for harm to the  
25 estate.

1           Here it couldn't be more clear. The allegation  
2 is all of these people engaged in this advocacy that lowered  
3 the value of the estate. If that is a real harm that is really  
4 actionable, it's the estate's claim. It's not these  
5 individuals' claim.

6           And then, again, for everyone in this room, Your  
7 Honor, the other claims asserted by plaintiffs, the Hobbs Act  
8 claim, wire fraud, fraud under 18 U.S.C. Section 1001, honest  
9 services fraud, none of those causes of action create -- I'm  
10 sorry, none of those statutes create private causes of action.  
11 They're all federal criminal statutes that can only be brought  
12 by the government. We've cited a plethora of case law in our  
13 motion to dismiss, showing that plaintiffs can't bring those  
14 claims. That hasn't been responded to. And they should be  
15 dismissed.

16           The third reason that is particular to Ms. Young  
17 for why plaintiffs' claims should be dismissed is that  
18 Ms. Young is protected by Texas's attorney immunity doctrine.  
19 Under Texas law, an attorney is immune from civil liability to  
20 a non-client, quote, "for actions taken in connection with  
21 representing a client in litigation even when that conduct is  
22 wrongful conduct in the underlying litigation." That's a Texas  
23 Supreme Court case that held that, *Cantey Hanger versus Byrd*.  
24 Here, again, there's no allegation that Ms. Young did anything  
25 other than assist Temporary Administrator Lester in his

1 preparation of this report. That is action she took as an  
2 attorney for someone else. She didn't owe a fiduciary duty to  
3 plaintiffs. She is immune from suit under Texas's attorney  
4 immunity doctrine.

5           Your Honor briefly mentioned earlier the motion  
6 for sanctions that we had filed. Actually in the *Sheshtawy*  
7 matter that I mentioned to you, the Court yesterday -- Judge  
8 Hoyt yesterday issued an order granting sanctions against the  
9 plaintiffs in that matter. We served plaintiffs with our  
10 motion for sanctions on September 27th, 2016. Under Rule 11,  
11 the safe harbor provision, we waited until October 27th, 2016,  
12 to file that motion. Plaintiffs haven't even bothered to  
13 respond to that motion. Thus, we ask that when this Court  
14 dismisses plaintiffs' complaint, it also grant the motion for  
15 sanctions.

16           *THE COURT:* Very well.

17           *MR. SCHAEFFER:* Thank you, Your Honor.

18           *THE COURT:* Let's start from my right. Counsel, are  
19 there any individual arguments that need to be made on behalf  
20 of your client other than what have been asserted by way of  
21 this general background?

22           *MR. ABRAMS:* The only factual point --

23           *THE COURT:* Name and client.

24           *MR. ABRAMS:* Thank you, Your Honor. Barry Abrams for  
25 Darlene Payne Smith. The only factual point I want to make is



1 there's one -- only one paragraph in the complaint mentioning  
2 Ms. Smith. And the conduct attributed to Ms. Smith was  
3 opposing a motion for protection, which is conduct as a lawyer  
4 in a litigated matter that falls within the immunity. That's  
5 the only factual allegation with regard to Ms. Smith. I join  
6 in all the other arguments counsel has made.

7 *THE COURT:* Very well.

8 Ms. Bayless?

9 *MS. BAYLESS:* Yes, Your Honor. Bobbie Bayless on my  
10 own behalf.

11 The only point I will make is that factually the  
12 only allegation made against me -- I represent one of the  
13 Brunsting siblings. And the only allegation made against me is  
14 that I withdrew or passed a hearing on a motion for partial  
15 summary judgment that I had filed on my client's behalf when he  
16 resigned as executor. So, not only did it need to be passed,  
17 because at that point there was a vacancy in that position and  
18 it would have only been a partial hearing on a partial motion  
19 for summary judgment on only his individual claims and not the  
20 estate's claims until that vacancy could be filled, but it's  
21 also my own motion and I can pass at any time I want to. And  
22 that is the allegation against me.

23 *THE COURT:* Very well. Ms. Hedge?

24 *MS. BECKMAN HEDGE:* Yes, Your Honor. May I approach  
25 the lecturn?

1           *THE COURT:* Yes.

2           *MS. BECKMAN HEDGE:* Thank you. Laura Beckman Hedge.  
3 I represent Judge Comstock, Judge Butts, and Toni Biamonte.

4           Your Honor, there's -- I want to talk about some  
5 specific things to my clients and then there's just a few other  
6 additional arguments that I would like to add to what's already  
7 been discussed that hasn't actually been covered, but that I  
8 would want the Court to consider in its ruling.

9           The claims that have been made against the judges  
10 and against the court reporter who -- Toni Biamonte, Your  
11 Honor, was a substitute court reporter, not the one that's  
12 normally assigned to this probate judge, but actually covered a  
13 single hearing and for that has been sued in this case.

14           They have all been accused of being blatantly  
15 corrupt, conspiring to loot assets, exploiting the elders of  
16 society, and unjustly enriching the attorneys in this case.  
17 The predicate acts that have been alleged in this case against  
18 the judges is referral of a case to what the plaintiffs refer  
19 to Judge Davidson as an extortionist, thug mediator, and  
20 removing a motion for summary judgment from a hearing docket.

21           With regard to Mr. Biamonte, he has been alleged  
22 to have knowingly and willfully destroyed some unidentified  
23 material evidence. Your Honor, when a response was filed to  
24 our motion to dismiss, the grounds that were given why  
25 Mr. Biamonte was sued was because they were not satisfied with

1 his response concerning the unavailability of a transcript from  
2 the single hearing that he recorded. They said that he was  
3 sued because he didn't respond to their e-mail. Clearly that  
4 is frivolous, and I would argue sanctionable, Your Honor, for  
5 bringing him into this lawsuit.

6           The plaintiffs have sued my clients for at least  
7 15 different claims. With respect to the subject matter  
8 jurisdiction argument, counsel's already covered the fact that  
9 there was no direct injury. You must have a tangible financial  
10 loss. Even the plaintiffs have stated in their pleadings that  
11 they are suing for threats of injury to property rights of what  
12 Ms. Curtis has, as she has defined, an expectancy interest.

13           Mr. Munson has no expectancy interest, period.  
14 He has identified himself as the domestic partner of  
15 Ms. Curtis.

16           Further, Your Honor, they have alleged fraud,  
17 various counts of fraud. They are unspecified. And under Rule  
18 9(b), it requires specificity. They have to state the who,  
19 what, when, where, and how. They have a 59-page complaint, 217  
20 paragraphs. They have not been specific and have not met the  
21 requirements. There has not been any unlawful act alleged.  
22 There are no facts supporting any actionable predicate act.  
23 The numerous claims they've made are generalized, and they are  
24 not predicate acts of racketeering activity. The claims  
25 against my client to which I would refer, and I'm not going to

1 list them all by name, I'll just refer to them by number,  
2 Claims 12, 38, 23, 44, 46, and 47.

3           The judges, Your Honor, have a unique immunity in  
4 this case, and that is judicial immunity. There is case law  
5 cited in our motion concerning judicial immunity. The  
6 plaintiffs have attempted to get around the judicial immunity  
7 argument, because they know it's a winner, by trying to contend  
8 that the actions were nonjudicial. However, when you look at  
9 the acts they've actually complained of, they are clearly  
10 judicial. The factors that are considered are: Is the action  
11 normally performed by a judge? Did the act occur in the  
12 courtroom? Does the controversy center on a pending case  
13 before a judge? Does the act arise from an exchange with the  
14 judge in his or her official capacity?

15           Now, importantly, Your Honor, those factors are  
16 construed broadly in favor of immunity, and not all of them are  
17 required. In fact, just one factor alone would be sufficient  
18 for a finding of judicial -- that there was a judicial act.

19           The only two exceptions to judicial immunity are:  
20 Number one, if it's nonjudicial; or, number two, if the  
21 judicial act was taken in a complete absence of jurisdiction.  
22 There has been no allegation that any of the actions taken were  
23 done in a complete absence of jurisdiction. And there's  
24 certainly no facts supporting that.

25           Additionally, Your Honor, the judges are entitled

1 to the Eleventh Amendment protection and governmental immunity  
2 for claims for them acting in their official capacity. The  
3 Fifth Circuit in *Kirkendall versus Grambling* at 4 F.3d 989,  
4 that involved a case of RICO violations against three judges  
5 and the court's secretary. The court in that case found that  
6 they were entitled to judicial immunity and that the court's  
7 secretary was entitled to quasi-judicial immunity. The court  
8 in that case rejected the plaintiffs' arguments that immunity  
9 did not apply as frivolous.

10           The actions complained of, Your Honor, concerning  
11 the judges, that they have obstructed justice by removing the  
12 summary judgment motion from the calendar and creating what  
13 they call stasis, for conspiring to redirect the litigation  
14 away from the public record to a staged mediation, which, Your  
15 Honor, actually never took place. Those actions that I've just  
16 described, those are functions normally performed by a judge.  
17 Clearly what they are complaining about are judicial acts.

18           Your Honor, I want to turn now to Toni Biamonte,  
19 the substitute court reporter. He is entitled to official  
20 immunity. He is entitled to that because they have sued him as  
21 the, quote, "official court reporter for the probate court."  
22 They have not alleged that he's been sued in any individual  
23 capacity. When you sue an official in their official capacity,  
24 it is the same as suing the county. And Harris County cannot  
25 be liable for a RICO violation. And the reason for that is

1 because, number one, they cannot form the mens rea to commit a  
2 criminal act, and intent is required under RICO. And, number  
3 two, because RICO is punitive in nature. And municipal  
4 entities have common law immunity from punitive damages.

5 In fact, Your Honor, it was mentioned a minute  
6 ago that Judge Hoyt issued an order yesterday of sanctions.  
7 And I just want to direct the Court to one thing in particular.  
8 And I do have a copy of that order, if it please the Court.

9 And, Your Honor, I apologize. We do not have a  
10 copy of that for the plaintiffs. But I can get that for them  
11 as soon as the hearing is over.

12 *MR. SCHAEFER:* Your Honor, Rafe Schaefer. I've got a  
13 copy. I can pass one on.

14 *MS. BECKMAN HEDGE:* Your Honor, what I would just like  
15 to point the Court to, on the first page of the order granting  
16 sanctions, when the Court granted it, it said it's based on the  
17 following findings of fact and conclusions of law. And the one  
18 paragraph in here that I want to my highlight for the Court is  
19 Paragraph 18. And I just want to read two sentences out of  
20 that.

21 "This motion for a new trial comes on the  
22 backdrop of additional claims that were frivolous and that  
23 Mr. Cheatham and Mr. Gabel" -- those were the lawyers for the  
24 plaintiffs, Your Honor -- "should have known lacked basis.  
25 Those include the following: One, there was no basis for

1 breach of a fiduciary duty claim against opposing attorneys,  
2 such as CCJ attorneys; two, there is a litigation privilege in  
3 Texas for opposing attorneys like CCJ attorneys with no general  
4 fraud exception; three, that the honorable judges and court  
5 coordinator are entitled to immunity; four, Harris County, as a  
6 governmental entity, cannot be liable under RICO."

7           Your Honor, there is precedent. As I just read,  
8 even Judge Hoyt agrees, that there is immunity that applies and  
9 that Harris County cannot be liable. And, therefore, Toni  
10 Biamonte in this case cannot be liable.

11           Finally, Your Honor, there is another immunity  
12 that applies here and that is called qualified immunity. It  
13 requires the plaintiff to allege that there has been a  
14 constitutional violation. There has been no such allegation  
15 made and certainly no facts to support it. In, *Bagby versus*  
16 *King*, a case out of the Western District of Texas, the court  
17 there held that the claims against the judges, the district  
18 clerk, the appeals court clerk were barred by judicial or  
19 qualified immunity. In that particular case, Your Honor, there  
20 were allegations regarding the way that the case had been  
21 handled and the disposition of the cases.

22           Finally, Your Honor, with respect to the failure  
23 to state a claim, which is applicable to all of the defendants  
24 here, a few additional points I just want to add. One is that  
25 the plaintiffs have failed to allege a conspiracy. They have

1 used only conclusory language throughout their complaint. The  
2 civil conspiracy that they have alleged is a derivative tort.  
3 It requires an agreement to commit predicate acts. There are  
4 no allegations of any agreement and certainly no facts to  
5 support that.

6           Additionally, Your Honor, they have failed to  
7 allege the existence of an enterprise or of an association, in  
8 fact, also required for a RICO violation. They contend that  
9 Probate Court 4 is an enterprise because it's involved in  
10 various aspects of interstate and foreign commerce by a  
11 adjudicating suits involving persons and property outside of  
12 Texas. A conclusion, Your Honor. There is no facts to support  
13 that there is an enterprise in Probate Court 4. It is not a  
14 legal entity and cannot be an enterprise.

15           Additionally, Your Honor, they have also not pled  
16 that there has been any pattern of racketeering activity. They  
17 only make conclusory allegations.

18           Thank you, Your Honor. I appreciate your time.

19           *THE COURT:* Continuing to move to my left as to  
20 defendants as to specific facts or arguments that need to be  
21 articulated on behalf of the defendants that you represent -- I  
22 don't need to hear a repeat. **If you want to adopt what has**  
23 **been said,** note that; and if there's anything additional that  
24 you need to say, let me know that. So, first, counsel.

25           *MR. REID:* Your Honor, Eron Reid for Neal Spielman.



1 My client represented Amy Brunsting in the Probate Matter 4.  
2 The only allegations -- the specific factual allegations him  
3 are for his conduct in the March 9th status conference hearing.  
4 That's the only additional thing I would add is covered under  
5 the attorney immunity.

6 *THE COURT:* Very well. Hold it. Anything else?

7 *MR. REID:* Nothing other than I adopt everything else.

8 *THE COURT:* Very well.

9 Counsel?

10 *UNIDENTIFIED SPEAKER:* Yes, sir --

11 *THE COURT:* Hold on.

12 *UNIDENTIFIED SPEAKER:* I'm sorry.

13 *THE COURT:* I'm going to go here, across the front.

14 *MR. GREENE:* Your Honor, Adraon Greene for Defendants  
15 Stephen Mendel and Bradley Featherston. The only thing we  
16 would like to add, Your Honor, is our clients also represented  
17 Mrs. Anita Brunsting as of November 2014. All of the acts  
18 alleged against my clients arose from that representation,  
19 specifically disseminating -- the dissemination of voice  
20 recordings, which they're required to do under the Texas Rules  
21 of Civil Procedure, because those voice recordings are  
22 witness -- are witness statements.

23 The objection that was filed to trust  
24 distributions, which the court in the probate court sustained,  
25 because the court found that that request for a distribution

1 was not for the health, education, maintenance, and support of  
2 any trustee, instead it was for a request to pay attorney's  
3 fees.

4 And, finally, the last act was simply to schedule  
5 mediation, which obviously pursuant to the representation of  
6 Mr. Brunsting, they thought that was the appropriate thing to  
7 do. Otherwise, Your Honor, we adopt all the previously made  
8 arguments.

9 *THE COURT:* Very well. Coming around this way.

10 *MS. AMY BRUNSTING:* Me?

11 *THE COURT:* Yes, ma'am.

12 *MS. AMY BRUNSTING:* Amy Brunsting.

13 *THE COURT:* Why don't you have that mike -- there you  
14 go. Thank you.

15 *MS. AMY BRUNSTING:* Amy Brunsting. There are just two  
16 issues that haven't been addressed yet. The first one is  
17 regarding the recordings on the phone. The plaintiff has not  
18 shown any evidence or provided any facts that show that I had  
19 any knowledge or handling or anything to do with those  
20 recordings. Yet I'm accused of doing wiretapping and  
21 possessing these things, and I have never seen them. So,  
22 there's no basis in fact on that.

23 And the other one is that they refer to a heinous  
24 extortion instrument, which in reality is a qualified  
25 beneficiary trust that was prepared for my mother by her and

1 her attorneys. I had no authority -- I had no business doing  
2 any of the preparation of that document at all. That was done  
3 while my mother was alive. And that was her private affairs.

4           On my mother's death, my sister Anita and I  
5 became trustees of the Brunsting Family Trust, and that is the  
6 only reason that I'm being involved in all of this. But prior  
7 to that time, I had no fiduciary responsibility towards the  
8 plaintiff. One of the plaintiffs, I've never met before,  
9 Mr. Munson. Until this case happened, I had never met him, had  
10 any kind of dealings with him. I have no fiduciary  
11 responsibility to him that I know of. I've never had any kind  
12 of business dealings with him at all. And they cannot -- or  
13 have not explained how -- with any kind of facts, as to how I'm  
14 connected to him.

15           *THE COURT:* And you represent yourself?

16           *MS. AMY BRUNSTING:* Yes, sir.

17           *THE COURT:* Very well. Ma'am?

18           *MS. ANITA BRUNSTING:* Anita Brunsting, representing  
19 myself. And I adopt what's been said.

20           *THE COURT:* Very well.

21           Counselor?

22           *MR. OSTROM:* Yes, Your Honor. I've got two clients,  
23 myself and Mr. Lester. I'm going to break them out separately.  
24 With regard to myself, I'm a little different situated than the  
25 other parties to this proceeding, because I, in fact, was the

1 attorney for Ms. Curtis in the underlying proceeding.

2           The other unique part about it, is that I was  
3 terminated before most of the alleged predicate acts that she  
4 complains of. So, my termination of role and role in the case  
5 has ceased and her facts really don't go to me. To the extent  
6 that the facts do go to me, it involves the movement of the  
7 case and filing the pleading in Probate Court 4 that asserts  
8 claims as to a trust and the defects in a trust. That's  
9 important, because we're talking about damage under RICO and  
10 her claims, as I understand, still exist. The same claims that  
11 she believes she's been harmed or deprived of are still  
12 currently pending. They're active claims. The same -- the  
13 pleadings she complains that I didn't adequately represent her  
14 in support of a conspiracy with the other counsel assert the  
15 same claims, and it's still pending. So, I can't see how she  
16 can indicate that I've harmed her in any way.

17           With regard to Mr. Lester, we adopt, and myself,  
18 we adopt the arguments already presented. Thank you.

19           *THE COURT:* Very well.

20           *MR. MATHEWS:* Your Honor, Bernard Mathews, Your Honor.  
21 I guess I am alleged to be -- oh, I'm sorry.

22           *THE COURT:* No, no. Microphone.

23           *MR. MATHEWS:* You can't hear.

24           I guess I'm alleged to be one of the card  
25 carrying members of the probate mafia in Houston, which I would

1 have to say I would be proud to be a part of in this particular  
2 case, because all I can see is hardworking attorneys and court  
3 officials trying to bring some resolution to this very bitter  
4 dispute between the siblings of this trust.

5 I personally had about two months of involvement  
6 in this case back in 2012 when I represented Anita and Amy  
7 Brunsting. I made an appearance in Judge Hoyt's court with  
8 respect to a motion to lift a lis pendens so a fair market  
9 value sale could occur, and then later communicated some  
10 financial information to Ms. Bayless. I'm had no direct  
11 representation of the defendants, and I had nothing whatsoever  
12 to do with the probate proceedings in Court 4.

13 So, I would then, again, adopt the attorney  
14 immunity doctrine on behalf of both Ms. Brunstings here and all  
15 the other arguments which have been made.

16 *THE COURT:* Thank you, counselor.

17 *MS. FOLEY:* Zandra Foley for Candace Freed and Al  
18 Vacek. They are the lawyers who drafted the trust agreements  
19 in this case, and so they were not a part of any lawsuit in  
20 Probate Court 4. They are not a party, and they never  
21 represented any of the parties in Probate Court 4. So, I adopt  
22 the arguments that have been made everyone else. However, with  
23 respect to the immunity, that wouldn't apply to my clients.  
24 But something kind of similar would, and that is the *Barcelo*  
25 case, *Barcelo versus Elliot*, which is a Texas Supreme Court

1 case from 1996. And that case essentially held that  
2 beneficiaries are not permitted to sue the estate planning  
3 lawyer, simply because it relies on the age old rule of  
4 privity. Meaning you have to have privity with the lawyer in  
5 order to sue them. And so that argument is a little bit  
6 different.

7           The only other thing I'll mention is that  
8 specifically with respect to Mr. Munson, in response to our  
9 motion to dismiss the plaintiff, in Paragraph 69, specifically  
10 states, "One thing plaintiffs and defendants appear to agree on  
11 is that Munson is not a party to any of the prior lawsuits nor  
12 is he a beneficiary of the Brunsting family trust, and that" --  
13 and he's quoting our motion -- "it is inconceivable that he  
14 could be injured as a result of V & F's," that's Vacek and  
15 Freed, "drafting of the estate planning documents." And based  
16 on that admission and all the other arguments, we believe that  
17 these claims should be dismissed.

18           *THE COURT:* Very well. And?

19           *MR. FEATHERSTON:* Your Honor, I'm Brad Featherston.

20           *THE COURT:* Very well. And?

21           *MR. MENDEL:* I'm represented by Mr. Greene, Your  
22 Honor.

23           *THE COURT:* Very well.

24           All right. You heard the motions to dismiss, the  
25 presentation, Ms. Curtis; is that correct?

1           *MS. CURTIS:* Yes.

2           *THE COURT:* That gives you the opportunity to respond  
3 to any of the arguments that you've heard regarding why your  
4 case -- why your cause of action should be dismissed. If you  
5 want to stand at the table, that's fine, but just pull the mike  
6 up, so that we can hear you.

7                     And, first of all, just to get this clear, so I  
8 understand, are you a licensed attorney?

9           *MS. CURTIS:* No, sir.

10           *THE COURT:* Okay. So, you're just an individual  
11 representing yourself and you filed this law enforcement on  
12 behalf of yourself?

13           *MS. CURTIS:* Yes, I did.

14           *THE COURT:* Very well. You may proceed.

15           *MS. CURTIS:* I'd like for Mr. Munson to respond to  
16 these, if it's okay.

17           *THE COURT:* Okay. Now, Mr. Munson, are you an  
18 attorney?

19           *MR. MUNSON:* No, sir.

20           *THE COURT:* Okay. Mr. Munson cannot represent you.  
21 He's not an attorney. And so to the extent that there is a  
22 response by you, it has to come from you. And Mr. Munson, to  
23 the extent that he has causes of action, he can assert those or  
24 respond to those on his own behalf, but he's not allowed to  
25 speak for you. Do you understand?

1           *MS. CURTIS:* Yes.

2           *THE COURT:* All right. So with that being said, do  
3 you have anything you wish to say to me?

4           *MS. CURTIS:* Okay. May I wait until he's done?

5           *THE COURT:* Yes.

6           *MS. CURTIS:* Okay.

7           *THE COURT:* And you're Mr. Munson?

8           *MR. MUNSON:* Yes, sir, I am.

9           *THE COURT:* And, Mr. Munson, you're going to come up  
10 to the podium. Very well. And you told me you're not an  
11 attorney, correct?

12           *MR. MUNSON:* No, sir.

13           *THE COURT:* And you're representing yourself in this  
14 matter?

15           *MR. MUNSON:* Yes, sir.

16           *THE COURT:* Very well.

17           *MR. MUNSON:* I'm representing myself, and I'm a  
18 private attorney general representing the public interests as  
19 well.

20           *THE COURT:* What does that mean, a private attorney  
21 general?

22           *MR. MUNSON:* Well, the RICO statutes under 1964(c)  
23 provide a private cause of action for private plaintiffs. 1963  
24 is the cause of action for public prosecutors. The Congress  
25 when they drafted the RICO statutes mentioned in the



1 legislative committee reports, that they didn't believe that --  
2 and it's in all kinds of case law, that they didn't believe  
3 that the public prosecutor resources were adequate to address  
4 organized crime. They didn't say why they didn't think they  
5 were adequate, and I'm not going to address those issues.

6 *THE COURT:* But that's what your explanation as to  
7 what private attorney general is for --

8 *MR. MUNSON:* A private attorney general is someone who  
9 advances a matter in the public interest.

10 *THE COURT:* All right. So, now in regards to the  
11 arguments articulated on behalf of the defendants who are  
12 seeking motions to dismiss, what is your response on behalf of  
13 yourself, not on behalf of Ms. Curtis, because you cannot  
14 represent --

15 *MR. MUNSON:* I'm aware of that. Okay.

16 *THE COURT:* Okay.

17 *MR. MUNSON:* But they are the same issues, technically  
18 speaking.

19 *THE COURT:* Very well.

20 *MR. MUNSON:* All of these defendants have entered  
21 plenary admissions in this matter, and you've heard them all  
22 repeat them today. They insist a probate matter, that this  
23 arises from a probate matter. *Curtis v. Brunsting* in the Fifth  
24 Circuit, that's -- I'm been in Texas for five years. And when  
25 I see the Brunsting Trust, there is no probate. If we read the

1 wills, which none of these defendants who claim probate even  
2 bother to do, you'll find out that everything that the will  
3 authorized to be done was completed five days before the  
4 so-called probate matter was filed. The inventory was  
5 submitted on April 4th. It was approved and filed with a drop  
6 order on April 5th. Five days later, the same day Judge Hoyt  
7 issued an injunction to Mrs. Curtis in the probate -- in the  
8 trust related case in the federal court, Bobbie Bayless filed  
9 her probate matter.

10 Now, nothing in the so-called probate matter  
11 addresses anything but the trust, and none of the claims  
12 contained in the so-called probate matter are contained in the  
13 list of inventory and assets. There is no probate matter.  
14 *Curtis v. Brunsting* is related to the Brunsting Trust. It is  
15 not property belonging to the estate of Nelva Brunsting or  
16 Elmer Brunsting. That was settled by the Fifth Circuit Court  
17 of Appeals. And I don't think we're going against the Fifth  
18 Circuit in regard to that judgment in this case.

19 I'm not here to try the case, but there is no  
20 probate matter, because there's no jurisdiction in the probate  
21 court. We have two problems with 12(b)(6) and 12(b)(1). The  
22 first one is 12(b)(6) relies upon --

23 *THE COURT REPORTER:* Can you slow down?

24 *MR. MUNSON:* Okay. Have to rely upon the statement of  
25 facts made in the complaint. All of the defendants offer a

1 contrary view of the facts. They're not allowed to do that  
2 under 12(b)(6). They can do that under a factual challenge  
3 under 12(b)(1), but they have to support it with affidavits and  
4 documents outside the record. They do none of those things.

5           So, the whole idea of immunity is based upon  
6 subject matter jurisdiction. Nothing in the probate court  
7 involved anything but the Brunsting Trust. If you were to ask  
8 these defendants to identify a probate claim pending in the  
9 probate matter, the only thing that comes out of their mouth is  
10 trust. The trust is not an asset belonging to the estate. I  
11 have no have interest in the probate. There was no probate.  
12 It was completed before the probate matter was filed. I have  
13 no interest in the trust. However, I have an interest in my  
14 household.

15           Plaintiff Curtis and I are domestic partners.  
16 And this case is robbing assets from my home and redirecting  
17 them to courts in Texas in order for her to defend her property  
18 interest. It is not an expectancy. It is a property right.  
19 The expectancies come from the estate. Now, I heard one of the  
20 lawyers mention Foster (phonetic). There was a will challenge  
21 in Foster. There's no will challenge in the Brunsting case.  
22 If you read the wills, none of the five Brunstings are heirs to  
23 the estate. Only the trust is an heir to the estate. The  
24 Fifth Circuit did read the will. But none of these defendants  
25 in their 200 some pages of motions to dismiss, they all say

1 probate matter, probate matter, probate matter. Not one of  
2 them mentions the will. The reason for that is to give the lie  
3 to the claim that it's a probate matter.

4           They also claim they have no idea what *Curtis v.*  
5 *Brunsting* is. *Curtis v. Brunsting* is the case that was in  
6 possession of the Brunsting Trust, beginning on 2-12-20 --  
7 2-27-2012 and continuing until this remand to the so-called  
8 probate matter. You cannot remand a plaintiff for  
9 consolidation with a case where she is a defendant. Dicey's  
10 rules of parties to action number five says that a plaintiff  
11 cannot be a defendant in the same action.

12           Bobbie Bayless named plaintiff Curtis a  
13 defendant in the probate matter. The whole notion that she  
14 could be remanded to probate to consolidate with Carl Brunsting  
15 in non-litigation, where she was a defendant, is a false  
16 thesis.

17           Under 12(b)(6) the Court is compelled to accept  
18 the facts in the complaint. Under 12(b)(1), they can't  
19 challenge those facts without support. They've done neither  
20 one of those. And yet they come in here insisting a completely  
21 different set of facts. Their immunity claims are based upon  
22 the notion of subject matter jurisdiction. There is no subject  
23 matter jurisdiction over the Brunsting Trust in the probate  
24 court. The Fifth Circuit is controlling. They address that.  
25 It's only seven pages. But I don't think any of these people

1 ever read it. I'm not sure they've ever read anything, because  
2 they keep repeating themselves like they're broken records.  
3 And yet, there is no probate matter.

4           There was never about a probate matter after the  
5 inventory and listed claims were submitted and the matter  
6 dropped. In fact, it was a year later that the Brunsting case  
7 was remanded to probate and suddenly became the estate of Nelva  
8 Brunsting, which the Fifth Circuit said it's not. It was six  
9 months later that Carl Brunsting applied for letters  
10 testamentary the second time. That's October 17th, 2014. So  
11 when it was filed, he filed it individually, but he has no  
12 standing as an heir of the estate and as executor for the  
13 estate, which was closed, and he had no letters testamentary  
14 for.

15           This is all just one big scam from chumming to  
16 bring in people who want to protect their assets, to promising  
17 them peace of mind, and then deciding which ones would be  
18 subject to redirection to the probate for now to be looted.  
19 And the defendants all object to the record of proceedings.  
20 But the record of proceedings is conclusive. We believe that  
21 on the record this case is subject to -- you know, is ripe for  
22 summary judgment on the pleadings, but we also know there is  
23 more that we can obtain by discovery.

24           There's lots of obfuscation in terms of the  
25 accounting for the Brunsting Trust. All of these lawyers have

1 gotten in the way. And if we look at the transcript of the  
2 March 9th, I was personally present and witnessed that little  
3 charade, I was so offended by the conduct. These grinning  
4 jackals, like we're going to rip you off and what are you going  
5 to do about it. That's what your misplaced notions of immunity  
6 have generated, a bunch of people who have no concern for the  
7 administration of justice or the rule of law, and that's what  
8 this case is about. It's about public corruption, and that's  
9 why I'm here as a private attorney general.

10 *THE COURT:* I only have one question. You stated that  
11 you were a domestic partner to Ms. Curtis?

12 *MR. MUNSON:* Yes.

13 *THE COURT:* As to a domestic partner, what legal  
14 rights under Texas law does that give you a connection with the  
15 issues in this case? I just want to -- because I assume when  
16 you say "domestic partner," you didn't use the word "husband"  
17 or --

18 *MR. MUNSON:* No, or spouse.

19 *THE COURT:* Or spouse.

20 *MR. MUNSON:* No.

21 *THE COURT:* You just said "domestic." So, what legal  
22 rights does that give you?

23 *MR. MUNSON:* I believe I addressed that in the Docket  
24 89, where I mentioned Judiciary Rule 1927. It's codified at 28  
25 U.S.C. 1927. And it gives you three instances in which

1 Mrs. Curtis is entitled to compensation for her expenses.  
2 Okay? And I have been asked by Mrs. Curtis to step in as act  
3 as the trust protector and to assist her in trying to figure  
4 out this very, very intentionally convoluted case. I mean,  
5 they made a mess of the finances, claimed to have them  
6 straightened out and then dumped everything in a big box for --

7 *THE COURT:* Hold on. Because I want to make sure  
8 we're --

9 *MR. MUNSON:* Okay.

10 *THE COURT:* -- we're on the same page.

11 *MR. MUNSON:* Okay.

12 *THE COURT:* You acknowledged early on before you began  
13 your remarks, that you cannot represent -- legally represent  
14 Ms. Curtis, only an attorney can do that or only Ms. Curtis can  
15 do that.

16 *MR. MUNSON:* Yes -- well --

17 *THE COURT:* Let me finish. In connection with your  
18 interest in -- if I heard you correctly, and correct me if  
19 I'm wrong, you stated that you were a domestic partner to  
20 Ms. Curtis. And I'm trying to get an understanding as to what  
21 you are asserting by --

22 *MR. MUNSON:* We have shared finances.

23 *THE COURT:* Don't interrupt me --

24 *MR. MUNSON:* Sorry.

25 *THE COURT:* -- by asserting that you are a domestic

1 partner to Ms. Curtis. So, what --

2 *MR. MUNSON:* We have a joint household. We have  
3 joined financial considerations. I don't handle any of the  
4 finances. I have renters, but I don't collect any of the  
5 rents. I have Mrs. Curtis do all of that. Okay? She's my  
6 partner. She handles that part of it. I'm a saxophone player.

7 *THE COURT:* When you say "partner" --

8 *MR. MUNSON:* Yes, domestic partner. We sleep in the  
9 same bed. We live together.

10 *THE COURT:* Well, I'm not trying to get that familiar.  
11 But partner also has a commercial context to it. So, you're  
12 not business partners?

13 *MR. MUNSON:* No, no, no, not specifically. We do have  
14 some plans that are being interfered with, but we're not able  
15 to pursue those at the moment.

16 *THE COURT:* Okay. Now I understand. Thank you, sir.

17 *MR. MUNSON:* And as far as these attorneys claiming  
18 that no one can assist without -- I think it was Docket Entry  
19 90, the one -- the document filed untimely, just before this  
20 hearing, where they bring up the mention of this unlicensed  
21 practice of law. I would love to hear a definition of that, as  
22 well as a definition of probate from these defendants. Because  
23 my understanding is that I do have standing. And I'm relying  
24 on Supreme Court precedent. I did draft all of the drafts for  
25 all of the motions in this case, because Mrs. Curtis works in



1 the daytime. So, I've been involved in this for five years.  
2 I've had my time redirected to this matter, and it is all one  
3 big public corruption fraud.

4 *THE COURT:* Thank you, sir.

5 Ms. Curtis?

6 *MS. CURTIS:* I just know that I'm here today because  
7 all of these people are standing between me and my property.  
8 And I've been trying to get it and get information about it  
9 since right after my mother passed away on November 11th, 2011.  
10 As far as I'm concerned, all five of the Brunsting siblings are  
11 victims here, because there's attorneys here that have extended  
12 them credit to continue to avoid their responsibility.

13 I was directed to hire an attorney, because my  
14 domestic partner was in a coma and I could not prepare for a  
15 hearing in October of 2013 properly. So, I failed miserably,  
16 and Judge Hoyt directed me to hire an attorney so the discovery  
17 process could go forward. And after he got out of the  
18 hospital, it was a couple of months before he could even think  
19 straight. When you have open heart surgery, it's a serious  
20 matter. And we looked high and low to find an attorney to  
21 represent me, and couldn't until finally we contacted  
22 Mr. Ostrom, who convinced us that he would be the person to  
23 take this over and immediately proceeded to do things against  
24 my instructions, not keep me informed of what was going on and  
25 then somehow managed to get me out of the federal court into

1 the probate court where there is no jurisdiction and there  
2 wasn't.

3           So, I was stuck in a nightmare for two and a half  
4 years and I couldn't get out. I tried to file summary judgment  
5 and declaratory judgment motions, which I filed, but I couldn't  
6 get a hearing for those. But they could hear whether they were  
7 going to have another mediation, so that they could unentrench  
8 me from my belief that this property belonged to me and they  
9 were holding it. So, that's why I'm here today.

10           Mr. Munson has been helping me since the very  
11 beginning. I've known him for almost ten years now, and that  
12 was my only choice.

13           *THE COURT:* The defendants in this case have made some  
14 very specific legal arguments as to why your case should be  
15 dismissed as to their various clients, from judicial immunity  
16 to failure to state a claim and a host of issue legal issues  
17 that you heard in between. So, in regards to a response to  
18 those specific legal assertions by these defendants, judicial  
19 immunity, failure to state a claim, do you have any specific  
20 response other than what you've put on paper already?

21           *MS. CURTIS:* Well, I believe that if there's no  
22 jurisdiction, there are no judges, there are no lawyers, and  
23 there is no litigation. And if there is no litigation, then  
24 there is no immunity. And I don't believe that there is  
25 litigation relating to the trust in Probate Court No. 4.

1 Although, the report from Greg Lester, which was supposed to  
2 evaluate the merits of the claims in state court, said nothing  
3 about the estate of Nelva Brunsting. All they talked about is  
4 the trust and how Ms. Curtis and her brother Carl are going to  
5 be disinherited by the no contest clause in this mysterious  
6 qualified beneficiary designation, that they can't even produce  
7 the original signed document of and for which there are three  
8 different signature pages.

9           So, I'm here because I was at wit's end. I was  
10 stuck in probate court and being pushed towards a mediation  
11 where they were going to unentrench me from going after what  
12 belongs to me, what my parents gave to me that is mine now and  
13 they're holding it.

14           *THE COURT:* Thank you. And just by way of  
15 housekeeping, just I'm trying to get a better sense of the  
16 players on the chess board, are you related to these two ladies  
17 over here?

18           *MS. CURTIS:* These are my two youngest sisters.

19           *THE COURT:* Okay. And so --

20           *MS. CURTIS:* Carl is my brother, who was represented  
21 by Bobbie Bayless.

22           *THE COURT:* Is he here?

23           *MS. CURTIS:* No.

24           *THE COURT:* Okay. So, you have -- all right. Very  
25 well. Thank you.

1           What I would like to do -- what I'm going to do,  
2 I'm going to wade into the specific motions to dismiss, to get  
3 an understanding as to who is going to remain in this case,  
4 maybe none of you, maybe all of you, I don't know. I'm going  
5 to -- I wanted to hear your oral arguments. And you cited some  
6 additional considerations for me to look at, and so I'm going  
7 to do that. Once I made a determination as to what motions to  
8 dismiss -- how to dispose of them, being granted, being denied,  
9 then we can, if necessary, make a plan going forward as far as  
10 some type of managed discovery. Right now I think that would  
11 be unwieldy given the number of players on this chess board  
12 and also given the fact that some of you may not be here --  
13 some of the defendants may not be here. Some of the -- you  
14 know, one of the ones that I was troubled by, and I'm going to  
15 get a better explanation for it -- and obviously this is oral  
16 argument and everything is short-circuited to that, but the  
17 court reporter. And to the extent that someone is sitting  
18 there just taking down a record, I'm not sure of the legal  
19 causes of action to which that person may have subjected  
20 himself. And as to some of the attorneys, I'll look at that,  
21 as well as the judges, that's separate and apart. But, for  
22 instance, the court reporter, who was a substitute court  
23 reporter, as described, just sticks out, and I just wanted to  
24 see exactly what his involvement was in the case. No need to  
25 comment.

1           And so I just need to dive -- lawyers,  
2 representatives say something in court and my review may reveal  
3 a different determination, and so that's what I need to do.  
4 But because of that alert going off, that maybe there's someone  
5 who doesn't belong here, we're going to keep -- we're going to  
6 hold off on discovery. Because I don't want people to  
7 participate in discovery if they're not going to be here for  
8 the long-haul. I think that manages the cost for everyone and  
9 conserves resources for the individual clients. So, I think  
10 that's the best way to proceed.

11           Now, having said that, that puts on me a burden  
12 of being timely and making sure that these motions to dismiss  
13 are disposed of such that the plaintiffs, if this case goes  
14 forward, are entitled to some type of discovery for the  
15 remaining defendants on the causes of actions that remain.  
16 And, so, we cannot delay that process forever, if it's going to  
17 go forward. So, I will endeavor to be efficient as I can in  
18 getting these motions to dismiss disposed of, so we'll know  
19 who's left on the board, and then we can move forward with some  
20 type of managed discovery plan that makes sense. That's what  
21 I'm going to do.

22           I assume, before I walked out here, that that  
23 covered all of the motions to dismiss. Were there any other  
24 motions to dismiss that were not addressed today? All right.

25           Are there any other motions that were not

1 addressed today that needed to be addressed?

2 Mr. Munson, Ms. Curtis, any other motions,  
3 pending motions on my docket? All right.

4 So let me again address the motions that have  
5 been presented. Anything else that we need to address before  
6 we adjourn today, starting on my right?

7 *MR. ABRAMS:* No, Your Honor.

8 *THE COURT:* No?

9 *MS. BAYLESS:* Well, I do have this question. My name  
10 came up a lot more than I expected it to in this hearing, and  
11 some things were said which I did not realize were allegations,  
12 this allegation that there's no probate proceeding when there  
13 is. I don't know if the Court wants to entertain some brief --

14 *THE COURT:* No.

15 *MS. BAYLESS:* Okay.

16 *THE COURT:* I don't want any additional briefing.

17 *MS. BAYLESS:* All right. Well, thank you, Your Honor.

18 *THE COURT:* To the extent that I dig into this and I  
19 determine that additional briefing is necessary on a specific  
20 point, my clerk will contact you and ask for it. But as a  
21 general rule, I don't want you to submit additional briefing on  
22 what you've already briefed. There may be something that I'll  
23 dig into that I will ask for additional briefing on, but as of  
24 right now, there's no need to submit additional briefing.

25 Anything else from this side?

1           *MR. HARRELL:* No, Your Honor.

2           *THE COURT:* Very well.

3           *MS. BECKMAN HEDGE:* Nothing, Your Honor.

4           *THE COURT:* Ms. Curtis, anything else?

5           *MS. CURTIS:* No, Your Honor.

6           *THE COURT:* Mr. Munson?

7           *MR. MUNSON:* I would like leave, sir -- I'm sorry. I  
8 would like leave to file a brief on the public attorney  
9 general.

10           *THE COURT:* Not necessary. During your presentation  
11 you made some specific cites. We have a record. So, I will  
12 check that. If it's turns out that I have additional  
13 questions, I will have my clerk contact you for additional  
14 information. Anything else, Mr. Munson?

15           *MR. MUNSON:* Yeah, we do have a private attorney  
16 general statute in California. It's government code -- it's  
17 California Business and Professions Code 17204 and 17535, which  
18 also address the issues.

19           *THE COURT:* So, in regard -- and since you cited that  
20 to me, I'm just going to ask the question, we're sitting in a  
21 Federal District Court in Texas. How does the California  
22 statute work in this case?

23           *MR. MUNSON:* It mimics the Supreme Court on the  
24 subject.

25           *THE COURT:* Okay. Very well.

1           Anything else, issues from this side of the room  
2 that the Court needs to be aware of before we adjourn? Yes,  
3 ma'am.

4           *MS. AMY BRUNSTING:* Amy Brunsting. I just wanted to  
5 clarify how many siblings were involved. Candy is the oldest.  
6 There's another one --

7           *THE COURT REPORTER:* Can she use the microphone?

8           *THE COURT:* Hold on. Use the microphone.

9           *MS. AMY BRUNSTING:* Sorry. There's five siblings in  
10 our family. Candy is the oldest. Carole Brunsting is next.  
11 Carl Brunsting is the third. I'm the fourth, Amy Brunsting,  
12 and Anita Brunsting. So, we're the five siblings. I think  
13 only four of them were mentioned. Just clarity.

14           *THE COURT:* You said Candace Brunsting?

15           *MS. AMY BRUNSTING:* Candace -- Candy Curtis, I'm  
16 sorry.

17           *THE COURT:* Okay. All right. Very well. Thank you.

18           Any other clarifications, any other additional  
19 information that I need? Over there?

20           *MR. MUNSON:* Standing of a private attorney general  
21 under civil rights is different than under RICO. RICO is the  
22 only situation where a private attorney general does not also  
23 have to be an attorney.

24           *THE COURT:* Thank you, sir.

25           All right. We are adjourned. You are excused.



1 Happy holidays to you.

2 *(Concluded at 1:00 p.m.)*

3 \* \* \*

4 I certify that the foregoing is a correct transcript from the  
5 record of proceedings in the above-entitled cause, to the best  
6 of my ability.

7

8 /s/ *Kathy L. Metzger*  
Kathy L. Metzger  
9 Official Court Reporter

6-27-2017  
Date

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