PROBATE COURT 4

NO. 412.249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	IN PROBATE COURT
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 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	§	NUMBER FOUR (4) OF 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

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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"),[1] and his mother, Nelva E. Brunsting ("Nelva").[2] 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

[1]Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

[2]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.

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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.

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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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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 resistence 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

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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 multimiliion 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.

<u>Demand for Trust Accounting</u>

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 minium 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

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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.

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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: _____

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Attorneys for Plaintiff

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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 8th day of April, 2013, to certify which witness my hand and official seal.

SHAWN M. TEAGUE
MY COMMISSION EXPIRES
April 3, 2015

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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