

its registered agent, Jorge Borunda, at 2444 Times Blvd., Suite 270, Houston, Texas, or wherever he may be found.

4. Defendant, Jorge Borunda, is an attorney licensed to practice law in Texas and may be served with citation at his principal place of business, Borunda, P.C., 2444 Times Blvd., Suite 270, Houston, Texas, or wherever he may be found.

5. Defendant, Nicholas Abaza, is an attorney licensed to practice law in Texas and may be served with citation at his principal place of business, Law Offices of Nicholas Abaza, P.C., 2444 Times Blvd., Suite 270, Houston, Texas, or wherever he may be found.

6. Defendant, Law Offices of Nicholas Abaza, P.C., is a Texas Professional Corporation with its principal office in Harris County, Texas and may be served with citation by serving its registered agent, Nicholas Abaza, at 2444 Times Blvd., Suite 270, Houston, Texas, or wherever he may be found.

7. Defendant, Michael Trevino, is an attorney licensed to practice law in Texas and may be served with citation at his principal place of business, Law Office of Michael A. Trevino, PLLC, 1345 Campbell Road, Suite 100, Houston, Texas, or wherever he may be found.

8. Defendant, Law Office of Michael A. Trevino, PLLC, is a Texas Professional Limited Liability Company with its principal office in Harris County, Texas and may be served with citation by serving its registered agent, Michael Trevino, at 1345 Campbell Road, Suite 100, Houston, Texas, or wherever he may be found.

III JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over the controversy because the claims asserted in this Petition arose, in whole or in part, in Texas and the amount in controversy exceeds the minimum jurisdictional limits of this Court.

10. This Court has personal jurisdiction over each Defendant because the acts and/or omissions complained of herein occurred in Texas, each Defendant does business in Texas and/or committed a tort, in whole or in part in Texas.

11. Venue is properly laid in Harris County, Texas because Defendants reside in, and/or have a principal office and headquarters in Harris County, Texas. *See* TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1), (2), (3). Venue is also appropriate pursuant to the original and only valid fee agreement that Plaintiff entered into with one or more of the Defendants which provides that all obligations of the parties are performable in Harris County, Texas.

IV FACTUAL BACKGROUND

12. This is a legal malpractice¹ lawsuit arising out of an estate dispute. In short, various lawyers originally agreed to represent Plaintiff on an hourly basis but then fraudulently induced her into a contingency fee arrangement just months before they case settled, without providing adequate disclosure, and based on misrepresentation and deceit. Plaintiff agreed to the settlement based on inadequate

¹ The term “legal malpractice” refers to “any claim brought by a client against that client's attorney, regardless of whether the claim asserts negligence, fraud, breach of fiduciary duty, breach of contract, or any other allegation.” *Deutsch v. Hoover, Bax & Slovacek, L.L.P.*, 97 S.W.3d 179, 184 n.1 (Tex. App.—Houston [14th Dist.] 2002, no pet.)

advice but later wanted to revoke her agreement after additional information was discovered, which she had a right to do. Again looking out for their own interests, the lawyers refused to revoke the settlement because they wanted to secure their fraudulent contingency fee without any further litigation. Plaintiff hired new counsel to dispute the settlement, but the damage was already done. Perhaps worse, the lawyers attempted to sue Plaintiff for the contingency fees, claiming amounts owed far in advance of what they would be entitled to even if the contingency fee was valid. “Cause, not self. That is the sworn duty of every member of the legal profession—to subordinate their own interests to those of their clients.” *Rohi v. Brewer (In re ABC Dentistry, P.A.)*, 978 F.3d 323, 324 (5th Cir. 2020). The lawyers violated this cardinal principle when they attempted to maximize their fees at the expense of their client.

13. Plaintiff, Caroline Alison (“Caroline”), is the surviving daughter of Richard Gerard Allison (“Richard”) who passed away on April 17, 2017, at the age of 76 years. Prior to his death, Richard was married to Irene Drake Allison (“Irene”). Richard and Irene had two children together, Caroline and her brother Richard Gerard Allison, Jr. (“Rich Jr.”). Richard and Irene’s marriage ended in divorce. Richard obtained sole custody of Caroline and Rich Jr. and then moved with his children to Alice, Texas.

14. In Texas, Richard established a successful medical practice and became a successful real estate investor. Richard eventually made Caroline and Rich Jr. minority partners in his real estate investments. On May 26, 1989, Richard created the “Richard Allison Trust” (“the Trust”) and placed his real estate holdings into the

Trust, including several apartment complexes and other assets. Richard told his children that he planned to leave the Trust containing his real estate holdings to them.

15. Richard eventually moved to Bonham, Texas and got married for a second time to Robin Alice Allison (“Robin”). Once married, Robin attempted to destroy Richard’s relationship with his children to secure for herself the benefits of Richard’s financial success which, by that point, accounted for millions of dollars. Despite Robin’s efforts, Richard did not cease caring for his children and grandchildren.

16. Unfortunately, Richard’s health and cognitive abilities began to decline and between 2008 and 2012, Richard’s cognitive abilities, speech, and mobility became noticeably, significantly impaired. As Richard’s cognitive abilities and health declined, Robin took the opportunity to drive a wedge between Richard and his children, at times succeeding in creating discord among different family members.

17. Between June 3, 2011 and April 11, 2013, Richard purportedly amended the Trust three separate times. The net effect of the third amendment to the Trust was to purportedly make Robin the lifetime beneficiary of all assets owned by Richard at the time of his death, rendering Caroline and Rich Jr. remainder beneficiaries. Also, on April 11, 2013, Richard purportedly executed a will (“the Will”) which purported to leave the bulk of his estate to the Trust.

18. When Richard died on April 17, 2017, Robin attempted to probate the purported Will in Cause No. PB1-1332-2019, In the Estate of Richard Gerard Allison,

in the Probate Court Number 1 of Collin County, Texas. Caroline and Rich Jr. disputed the purported amendments to the Trust and the Will. Accordingly, Caroline hired Defendants Jorge Borunda of Borunda, P.C. (“Borunda”) and Nicholas Abaza of the Law Offices of Nicholas Abaza, P.C. (“Abaza”) to represent her in connection with any and all disputes, legal claims and causes of action concerning the Trust or related to Richard’s estate.

19. On May 29, 2019, Caroline executed a formal “Engagement Agreement for Legal Services” with Borunda and Abaza wherein she agreed to pay them an hourly rate for the services that they performed along with any reasonable and necessary expenses (“the Hourly Agreement”). The Hourly Agreement did not have an arbitration clause and provided that Texas law was to apply to any dispute, with the parties performing their obligations in Harris County, Texas.

20. In June 2019, Rich Jr. also engaged Borunda and Abaza to protect his interests in the estate proceeding. Unlike Caroline, Rich Jr. did not have the funds to pay the attorneys by the hour, so he engaged Borunda and Abaza on a contingency fee basis. Rich Jr. agreed to pay the lawyers 35% of the amount of money and property recovered for his benefit, excluding the interests that Rich Jr. indisputably owned, and 50% of the expenses with Caroline paying the other half. The lawyers agreed to share the attorney’s fee with 60% going to Borunda and 40% going to Abaza and also agreed to “assume joint responsibility” for the representation.

21. Borunda and Abaza associated another attorney, Michael Trevino of Law Office of Michael A. Trevino, PLLC (“Trevino”), to represent Caroline and Rich

Jr. in the estate claims. Between June 2019 and October 2020, the lawyers worked on estate matter on behalf of both Caroline and Rich Jr. During that time, the lawyers billed Caroline more than \$70,000 in attorney's fees for work that they performed plus fees and expenses.

22. By October 2020, the lawyers determined that estate was worth more than \$18 million, and Caroline and Rich Jr. were entitled to a substantial portion of that. They also determined that the case was close to being settled. Unsatisfied with their current arrangement with Caroline, and with dollar signs in their eyes, the lawyers set upon a course of conduct to fraudulently induce Caroline to change her agreement from an hourly rate to a contingency fee. Borunda made false representations to Caroline about the cost to continue the litigation and the hourly fees that she would need to pay in the coming months, and that the settlement was unlikely, so the case was going to trial. These representations were made to scare Caroline into agreeing to a contingency fee arrangement, which she reluctantly did.

23. Therefore, on October 16, 2020, the lawyers presented to Caroline, and she executed, a "Change to Contingency Fee Agreement" ("the Contingency Agreement"). The Contingency Agreement provided that Borunda, Abaza and Trevino ("Defendants") would receive a 35% contingency fee from any money or property that Caroline has an interest of, less the property that indisputably belonged to Caroline. It provided that the fee would be split 40% to Borunda, 30% to Abaza, and 30% to Trevino, and that each lawyer agreed to "assume joint responsibility" for the representation. It also provided that Caroline would be reimbursed for any

attorney fees she had already paid out. The Contingency Agreement also contained an arbitration clause in the event of a dispute. The lawyers failed to give Caroline any advice prior to entering into this new transaction with a current client, and failed to advise Caroline to seek outside counsel to advise her on this new agreement. The agreement is therefore invalid.

24. Within months of Caroline signing the new Contingency Agreement, the lawyers secured an agreement from Robin to mediate the dispute in April 2021. The mediation lasted more than 10 hours and went late into the night and resulted in a Mediated Settlement Agreement (“MSA”). The lawyers advised Caroline and Rich Jr. to sign the MSA, and they did on advice of counsel, coercion, and duress. The lawyers never went over the MSA with Caroline and instead represented to her that it was the best deal she was going to get and that she needed to sign it.

25. Upon signing the MSA, however, Caroline reviewed it more carefully and advised the lawyers shortly after she signed it that she wanted out of the settlement because it contained inaccuracies and omitted assets that Caroline initially understood she was going to receive. Although they had opportunity to, and although they still represented Caroline, the lawyers refused to revoke the MSA because they wanted their inflated and fraudulent contingency fee. As a result, Caroline and Rich Jr. retained a new lawyer to contest the MSA, while Robin filed a motion to enforce the MSA and sought sanctions and attorney’s fees against Caroline and Rich Jr. Notwithstanding her new lawyer’s best efforts, the judge in the estate

proceeding enforced the MSA and ordered Caroline and Rich Jr. to pay Robin nerly \$11,000 in attorney's fees.

26. On December 7, 2021, Defendants attempted to sue their own clients, Caroline and Rich Jr., when they attempted to file an intervention in the estate proceeding requesting temporary and injunctive relief “to protect their 35 percent contingent fee interest.” Borunda swore to the allegations in the intervention and claimed that Defendants were entitled to 35% of the value of the assets they recovered pursuant to the MSA, which was more than \$9.5 million. Thus, the lawyers sought injunctive relief “pending arbitration” and requested the estate court to require Caroline and Rich Jr. to deposit \$3.5 million into the registry of the court. Borunda falsely claimed that Caroline and Rich Jr. “will not pay” the fee when, at that time, Caroline and Rich Jr. had never stated they would not pay. The estate court denied the requested intervention and, based on information and belief, there is no other related claim on file.

V OBJECTION TO ARBITRATION

27. The arbitration clause in the Contingency Agreement is invalid and unenforceable because (1) the Contingency Agreement is invalid and unenforceable, along with all of its terms, including the arbitration clause, and (2) the agreement to arbitrate was fraudulently induced.

VI STATEMENT OF CLAIMS

28. Therefore, it has become necessary to bring this suit to collect a legal debt of money damages owing to Plaintiff due to the Defendants' actions. The actions of Defendants constitute negligence, breach of fiduciary duty, fraud, and violate the Texas Deceptive Trade Practices Act ("DTPA"). In addition, Plaintiff seeks declaratory relief pursuant to the Uniform Declaratory Judgments Act.

A. Negligence

29. Plaintiff incorporates those facts set forth above as if recited herein verbatim. Defendants agreed to represent Plaintiff in relating to her estate claims and therefore Defendants owed Plaintiff various duties of as a matter of law. In addition to the allegations outlined above, the following errors and/or omissions by Defendants in the underlying representation fell below the standard of care for attorney's practicing law in Texas and constitute negligence:

- Failure to protect Plaintiff's interest;
- Failure to properly and diligently represent Plaintiff;
- Failure to competently represent Plaintiff;
- Failure to look out for the best interests of Plaintiff;
- Failure to conduct adequate discovery regarding disputed assets prior to advising Plaintiff to enter into the MSA;
- Failure to adequately advise Plaintiff relating to the MSA; and
- Failure to comply with Plaintiff's directions and revoke the MSA.

Of course, nothing Plaintiff did, or failed to do, caused or in any way contributed to cause the occurrences that resulted in losses and damages to Plaintiff. On the contrary, Defendants fell below the standard of care for attorneys practicing law in Texas and their conduct was the sole proximate cause of Plaintiff's losses and damages as outlined herein.

B. Breach of Fiduciary Duty

30. Plaintiff sues Defendants for breach of fiduciary duty. "Attorneys owe their clients a fiduciary duty of most abundant good faith, requiring absolute perfect candor, openness and honesty, and the absence of any concealment or deception." *Deutsch v. Hoover, Bax & Slovacek, L.L.P.*, 97 S.W.3d 179, 197 (Tex. App.—Houston [14th Dist.] 2002, no pet.). "Breach of fiduciary duty by an attorney most often involves the attorney's failure to disclose conflicts of interest, failure to deliver funds belonging to the client, placing personal interests over the client's interests, improper use of client confidences, taking advantage of the client's trust, engaging in self-dealing, and making misrepresentations." *Goffney v. Rabson*, 56 S.W.3d 186, 193 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). "A fiduciary has much more than the traditional obligation not to make any material misrepresentations; he has an affirmative duty to make a full and accurate confession of all his fiduciary activities, transactions, profits, and mistakes." *Jackson Law Office, P.C. v. Chappell*, 37 S.W.3d 15, 22-23 (Tex. App. – Tyler 2000, pet. denied).

31. Defendants acted as Plaintiff's lawyers and therefore owed Plaintiff fiduciary duties as a matter of law. Defendants knowingly and intentionally breached

one or more of the above-described fiduciary duties by placing their own interests ahead of Plaintiff's interests and swindled her into a new contingency fee arrangement without adequate and full disclosure, and without advising her to obtain counsel to review the new transaction. Defendants also breached their fiduciary duties by knowingly engaging in conflicts of interest. Specifically, Caroline wanted to revoke the MSA at a time when revoking the MSA would still be possible. Yet, Defendants refused to revoke the MSA because they wanted to secure their fraudulent contingency fee and did not want to perform anymore work for Caroline.

32. Finally, Defendants knowingly and intentionally breached their fiduciary duty by overbilling Caroline. First, Defendants claim that Caroline owes a contingency fee on assets that were indisputably owned by Caroline even though those assets were not "recovered" because Caroline already owned them. Second, the Contingency Agreement did not state whether the attorney's fee would be based on the net or gross recovery, but the lawyers improperly claim an interest on the gross recovery even though Caroline will not "recover" those amounts because of taxes or other fees.

33. Defendants' knowing and intentional breaches of fiduciary duty proximately caused damages to Plaintiff and/or resulted in improper benefits to Defendants as stated in more detail below.

C. Violations of the DTPA

34. Defendants are liable under the DTPA and pursuant to *Latham v. Castillo*, 972 S.W.2d 66 (Tex. 1998) because Defendants engaged in an

unconscionable action or course of action that cannot be characterized as advice, judgement, or opinion. Although Defendants are professionals, Defendants failed to disclose known information in violation of Section 17.46(b)(24) as herein.

35. Plaintiff is a consumer under the DTPA because Plaintiff acquired legal services from Defendants.

36. Defendants violated the DTPA because they engaged in false, misleading, unconscionable, or deceptive acts or practices. More specifically, Defendants made express misrepresentations about the nature of the dispute, the status of the case, and the expected cost of litigation to induce Plaintiff into the new Contingency Agreement. These misrepresentations and affirmative concealment were made to further their own interests and the interests. Defendants' actions were the producing cause of damages to Plaintiff as outlined herein. The misrepresentation and failure to disclose was intended to induce Plaintiff to enter into the new Contingency Agreement and Plaintiff would not have entered into this transaction had this material information been disclosed.

37. Defendants took advantage of Plaintiff's lack of knowledge, ability and experience to a grossly unfair degree in that they fraudulently induced Plaintiff into the new Contingency Agreement to obtain a higher fee to the detriment of Plaintiff, their own client. *See* TEX. BUS. & COM. CODE § 17.45(5).

38. Because Defendants' conduct, as described herein, was committed knowingly and intentionally and cannot be characterized as advice, judgment, or opinion, Defendants are liable for additional damages, treble damages and

reasonable attorneys' fees, all of which are being sought herein. Additionally, Plaintiff seeks the equitable remedy of restoration of the Hourly Agreement. *See* TEX. BUS. & COM. CODE § 17.50(b)(3).

D. Declaratory Judgment Action

39. Section 37.004 of the Texas Civil Practice & Remedies Code provides that “[a] person interested under a ... written contract ... whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the ... contract, ... and obtain a declaration of rights, status, or other legal relations thereunder.” TEX. CIV. PRAC. & REM. CODE § 37.004. Plaintiff seeks a declaration that the Contingency Agreement is invalid and unenforceable because Defendants entered into this new transaction with Plaintiff through fraudulent means and without proper disclosure or consent, in violation of their fiduciary duties.

**VII
DAMAGES AND REMEDIES SOUGHT**

40. Regarding the causes of action and conduct alleged above, Plaintiff has sustained pecuniary losses that were proximately caused by Defendants' conduct that are within the jurisdictional limit of this Court. Plaintiff seeks actual damages, exemplary damages, complete fee forfeiture and restitution, attorney's fees, treble damages, and an accounting.

A. Actual Damages

41. Plaintiff sustained actual damages in the amount of the difference between what she allegedly owes under the Contingency Agreement (approximately

\$1.75 million) and what she would have paid Defendants had they remained on the hourly agreement (approximately \$100,000). Accordingly, Plaintiff's actual damages in this respect are more than \$1.65 million.

42. Plaintiff also sustained actual damages in the amount of what she received under the MSA and what she should have received under the MSA or by way of judgment in the underlying estate proceeding but for Defendants' conduct. These damages are being calculated as discovery progresses.

43. Additionally, Plaintiff sustained damages in the amount of approximately \$11,000 she owes to Robin as attorney's fees as a result of Defendants' refusal to revoke the MSA, and in excess of \$10,000 that Caroline paid to a new lawyer for work performed relating to the MSA.

B. Exemplary Damages

44. Due to Defendants' breach of fiduciary duty, Plaintiff is entitled to exemplary damages which she seeks herein. *See Bennett v. Reynolds*, 315 S.W.3d 867, 872 (Tex. 2010) (holding exemplary damages may be awarded in money-damages case because "exemplary damages are not reserved solely for cases that inflict ruinous physical or fiscal calamity."). Exemplary damages are sought to the maximum extent of the law.

C. Treble Damages

45. Due to Defendants' intentional and/or knowing violations of the DTPA, Plaintiff is entitled to treble damages for which she seeks herein.

D. Fee Forfeiture and Restoration

46. Due to Defendants' intentional and/or knowing breach of fiduciary duty, Plaintiff seeks complete fee and expense forfeiture. Additionally, Plaintiff seeks restoration in the amount over \$1.65 million in fees. *See* TEX. BUS. & COM. CODE § 17.50(b)(3) (trial court may sign "orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter.").

E. Attorney's Fees

47. Defendants' violation of the DTPA entitles Plaintiff to reasonable attorney's fees necessary to prosecute this action, which Plaintiff seeks herein. Additionally, Plaintiff seeks reasonable and necessary attorney's fees and costs incurred in seeking the declaratory relief. *See* TEX. CIV. PRAC. & REM. CODE § 37.009.

F. Request for Accounting

48. Plaintiff files this action to require Defendants to deliver to Plaintiff a full accounting of any fees or expenses claimed to be owed along with documentary support for each claimed fee or expense.

**VIII
DISCOVERY AND TOLLING RULE**

49. To the extent necessary, Plaintiff affirmatively pleads the discovery rule and the *Hughes* tolling rule to any defense of limitations raised by Defendants in response to these claims.

**IX
RESPONDEAT SUPERIOR**

50. At all times material hereto, all of the specific acts complained of herein are attributable to the conduct of the individual attorneys associated with their respective law firms as partners, agents, servants, representatives and/or employees. Thus, the liability and responsibility Defendants is vicarious, and joint and several, and, further, Plaintiff pleads the legal theory of *respondeat superior* as between the individual lawyers named herein and their law firms.

**X
JURY DEMAND**

51. Plaintiff desires to have a jury decide this case and makes this formal request pursuant to Texas Rule of Civil Procedure 216. This request is filed more than thirty days before this case has been scheduled for trial and all fees have been paid.

**XI
NOTICE OF INTENT TO USE PRODUCED DOCUMENTS**

52. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, each party is hereby given notice of Plaintiff's intent to use any and all documents produced by any and all parties at any pretrial hearing, deposition, proceeding, the trial of this matter, or any combination thereof.

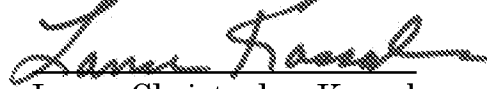
**XII
PRAYER**

WHEREFORE, Plaintiff prays that after trial herein, that judgment be entered against Defendants jointly and severally as prayed for, that costs of court be taxed against Defendants, that Plaintiff be given prejudgment as well as post

judgment interest, and for such other and further relief, at law and in equity to which Plaintiff may show herself to be justly entitled.

Respectfully submitted,

THE KASSAB LAW FIRM

A handwritten signature in cursive script, appearing to read "Lance Kassab", written over a horizontal line.

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ATTORNEYS FOR PLAINTIFF

Automated Certificate of eService

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Associated Case Party: Caroline Allison

Name	BarNumber	Email	TimestampSubmitted	Status
Lance Kassab		eserve@kassab.law	12/9/2021 1:48:17 PM	SENT