

AMERICAN ARBITRATION ASSOCIATION

NICHOLAS ABAZA AND	§	
JORGE BORUNDA	§	
Claimant / Counter-Respondent	§	
	§	
VS.	§	NO. 01-22-0000-9524
	§	
RICHARD ALLISON	§	
Respondent/Counter-Claimant	§	

CAROLINE ALLISON	§	
Claimant / Respondent	§	
	§	
VS.	§	NO. 02-22-0002-4507
	§	
BORUNDA, P.C., JORGE BORUNDA,	§	
NICHOLAS ABAZA, LAW OFFICES OF	§	
NICHOLAS ABAZA, PC, MICHAEL	§	
TREVINO and LAW OFFICE OF MICHAEL	§	
A. TREVINO, PLLC	§	
Respondent / Counter-Claimant	§	

CAROLINE AND RICHARD ALLISON'S POST-HEARING BRIEF

TO THE HONORABLE ARBITRATOR ANNE ASHBY:

Without waiving their objection to arbitration, Caroline Allison and Richard Allison submit this Post-Hearing Brief for the Arbitrator's consideration.

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REFERENCES

Clients	The term “Clients” means Caroline and Rich Allison.
Lawyers	The term “Lawyers” or “Six Claimants” is used to refer to the six separate claimants who brought claims against Rich and Caroline for breach of contract and includes (a) Jorge Borunda, (b) Borunda, PC, (c) Nicholas Abaza, (d) Law Offices of Nicholas Abaza, PC, (e) Michael Trevino, and (f) Law Office of Michael A. Trevino, PLLC.
__RR__	Reporter Record of the final hearing. The number preceding RR represents the volume and the number following RR represents the page of that volume.
CX	Client’s Exhibits submitted at the final hearing. The number following CX represents the exhibit number.
LX	Lawyer’s Exhibits submitted at the final hearing. The number following LX represents the exhibit number.
AAA	Means the American Arbitration Association.

SUMMARY

This case has two varying perspectives. The first is from the Lawyers, saying they made no errors and that a conspiracy exists among several people (including professionals like Sarah Pacheco) to not pay them a fee that they themselves did not calculate via an accounting until three months before the hearing. The Clients claim the Lawyers provided either no advice or bad advice and then had them sign a document causing them to give up valuable assets such as a remainder interest in a \$5.8 million marital trust for a deal that did not give them the promised unbridled access to \$9 million in a Family Trust (to which they already had HEMS distribution rights).

Following the two separate phases of this arbitration (in person fact testimony and expert submissions by report), the Arbitrator should enter an award in favor of the Clients on their affirmative claims, order that each of the Six Claimants take nothing on their claims and otherwise rule in favor of the Clients because the evidence has established:

- The Six Claimants that do not have contracts with Rich or Caroline cannot prevail on their claims. As shown on the Demonstrative Exhibit 1, those claims should be rejected.
- As to the Claimants that have a contract with Rich or Caroline, those agreements are unenforceable as a matter of law since (1) the agreement with Caroline is unfair and unreasonable to her and entered into during the attorney-client relationship without full disclosure of all material facts or advice to consult independent counsel; and (2) the agreements have unethical provisions rendering the entire agreements unenforceable. As the contracts are invalid, the Clients should prevail on each of the six Claimants' claims and the declaratory judgment request relating to the validity of the agreements.
- Even if the contracts could be enforced despite public policy, the Lawyers with contracts clearly and seriously breached fiduciary duties by (1) entering into a presumptively invalid new transaction with Caroline without required disclosures; (2) using contracts with illegal provisions; (3) entering into fee sharing agreements in violation of Rule 1.04; (4) refusing to comply with reasonable client requests to revoke the settlement and misrepresenting (for their own benefit) that the settlement could not be revoked; (5) secretly attempting to have probate court approval of their disputed fees; and (6) refusing to provide a settlement statement and, instead, suing for amounts well in excess of what could be owed. This clear and serious conduct warrants fee forfeiture.

- The Lawyers each violated the DTPA by (1) misrepresenting to Caroline the nature of the dispute, the status of the case, and the expected cost of litigation to induce her into a contingency fee agreement; (2) refusing to follow the Clients' instructions to revoke the settlement, instead making misrepresentations about the finality of the settlement, and secretly attempting to have their disputed fees approved by the probate court which would prohibit the Clients from disputing the fees. Thus, the Clients should be awarded actual damages and Caroline should be awarded restoration. Because the conduct was committed knowingly and intentionally, the Clients should be awarded treble damages.
- The Lawyers each committed malpractice because (1) they advised the Clients to settle based on incorrect legal advice that Rich and Caroline could access trust assets without any limitation down to \$1,000,000.00; (2) attempted to modify the 2013 Trust in a way that violated Texas law; (3) failed to get proper tax analysis before mediation but advised the Clients to sign a MSA that caused tax losses; (4) failed to garner a clear disclaimer from Robin to any interest in the Family Trust; and (5) caused the Clients to needlessly give up valuable interests. This negligence proximately caused the Clients' damages.
- None of the Six Claimants established their claims. Some of the Lawyers have no contract with Rich or Caroline, who also personally received no recovery. And none of the Six Claimants have contracts with or sued Rich or Caroline as Trustees. The Lawyers likewise put on no evidence which would allow a quantum meruit recovery.
- The Clients should prevail on their accounting claim as an accounting was ordered.
- Because the Clients should prevail on all or some of the claims, they should be awarded attorney's fees and all costs of arbitration should be assessed against the Six Claimants.

REQUESTED RELIEF

I. The Arbitrator should conclude that the contingency fee agreements are void and unenforceable as a matter of law.

While disciplinary rules do not provide a private right of action, "courts may examine [them] to discern the policies and protections embodied in them as an aid in deciding questions of attorney civil liability."¹ To that end, contracts not complying with disciplinary rules are void and unenforceable at the client's election.² The Supreme Court has also held that contingency fee contracts which do not comply with TEX. GOV'T CODE § 82.065(a) are void and unenforceable as a matter of law.³ Under these principles, none of the Six Claimants can prevail on a breach of

contract claim, and Caroline is entitled to declaratory relief.⁴ As the contingency fee agreements violate both § 82.065 and the disciplinary rules, they are unenforceable as a matter of law.

First, both Rule 1.04(f) and TEX. GOV'T CODE § 82.065 require contingency fee agreements to **be in writing** and signed by the client **and the lawyer**.⁵ Though there are written contingency fee contracts between Rich and Caroline signed by Abaza as “Attorney for Nicholas Abaza,” those agreements are not signed by any of the other lawyer-claimants.⁶ Again, “a contingent fee contract for legal services **must be in writing** and **signed by the attorney** and client.”⁷ According to our Supreme Court, a fee sharing agreement between lawyers not in the same firm that does not meet these requirements “violates public policy and is unenforceable.”⁸ If the lawyer does not sign the contract, that attorney may not legally seek a contingent fee.⁹ Rule 1.04 is an expression of public policy, so a contract made in violation of these rules is unenforceable, as Hardwick opines.¹⁰

Second, assuming the lack of a signature could be excused, Trevino and his PLLC seek a contingency fee of \$425,075.70 from Rich but admit they have no agreement or compliant consent to associate.¹¹ So, Trevino’s attempt to collect a fee from Rich is disallowed as a matter of law.¹²

Third, as Trevino admits he has no agreement with Rich and neither Trevino, Borunda or their entities signed the fee agreements, they did not comply with Rule 1.04(f). The Arbitrator should thus disallow the contract claim.¹³ Abaza, the facilitator of this non-compliance, should not be rewarded with a windfall of receiving all the fee interests. Rather, the unrecoverable fees go to the Clients who the rules protect regardless of any alleged performance by the Lawyers.¹⁴

In addition to those violations, Texas law renders unenforceable as against public policy any fee agreement that prohibits a client from settling without the lawyers’ consent.¹⁵ The contracts at issue here have this unethical provision.¹⁶ Abaza – the drafter – agrees this provision “runs afoul” of the disciplinary rules.¹⁷ The contracts have no severability clause, and cases that have

considered a Rule 1.02 violation have not severed to enforce the contract.¹⁸ These cases support Hardwick's opinion that this unethical provision renders the entire agreement unenforceable.¹⁹

There is also a violation of Rule 1.08, which invalidates the contracts.²⁰ Rule 1.08 says that a lawyer shall not transact with a client unless (a) the terms are fair and reasonable to the client, (b) are fully disclosed in an understandable manner, and (c) the client has a reasonable opportunity to consult independent counsel.²¹ Here, after 15 months of litigation with Caroline having paid \$67,275.38, Abaza, Trevino, and Borunda PC took a 35% contingent fee via a contract with more favorable provisions for them (such as expanding the scope of the fee claim from Rich's contract, adding a new arbitration clause, and retaining the fees Caroline paid unless the case favorably concluded.²² Borunda agrees that even though Caroline asked to switch to a contingency fee, he was required to advise her to consult with outside counsel.²³ The lawyers have no writing explaining the new agreement to Caroline, and did not advise her to seek independent counsel or give her reasonable opportunity to do so.²⁴ Thus, the contract is void and unenforceable.²⁵

Finally, Caroline and Rich were not explained how the Six Claimants each calculated their fee or how a "recovery" would be calculated. In the six months between Caroline's conversion and the settlement, the Lawyers turned their fee into \$1,352,149.80. There is no fairness in this unconscionable charge and outcome.²⁶ Hardwick properly concluded the Lawyers violated the public policy expressed by these disciplinary rules.²⁷ Given the many violations, the Arbitrator should find the fee contracts to be void and unenforceable. With no valid contract, none of the Six Claimants can prevail on their claims and Caroline is also entitled to declaratory relief.

II. The Lawyers engaged in clear and serious breaches of fiduciary duty.

The attorney client relationship is one of most abundant good faith, requiring absolute perfect candor, openness and honesty, and the absence of any concealment or deception.²⁸ There

are many ways an attorney can breach a fiduciary duty; one is subordinating the clients' interests to his own.²⁹ "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."³⁰ The Lawyers cannot dispute they owed the Clients fiduciary duties of loyalty, honesty, full disclosure, and to follow instructions as long as what is being requested is not illegal or unethical.³¹ The Clients demonstrated at the hearing that Borunda, Abaza and Trevino violated these fiduciary duties in at least seven ways.

First, the Lawyers entered into a presumptively invalid new transaction with Caroline without required disclosures, using contracts that contain illegal and unethical provisions, and entering into fee sharing agreements in violation of Rule 1.04, as already discussed above and set forth in detail in Hardwick's reports.³² Notably, the Lawyers are improperly attempting to enforce agreements that violate Rule 1.04 even though they had been sued for that very same conduct,³³ which demonstrates intent to disregard their fiduciary duties.³⁴

Second, as Kevin Spencer and Hardwick explain, the Lawyers had conflicts of interest by having Caroline pay half their time and expenses while representing Rich via a contingency fee.³⁵

Third, the Lawyers concealed information and made misrepresentations about the nature of the dispute, the status of the case, and the expected cost of litigation to induce Caroline into the new contingency fee arrangement. Leading up to the contingency fee conversion, Caroline was led to believe that trial was imminent and was told she would "go bankrupt funding a trial."³⁶ Caroline was not told about the upcoming mediation deadline or advised to engage in a second mediation before being converted.³⁷ Caroline requested that if she did switch, she be promptly refunded the fees already paid. But the Lawyers injected a provision that Caroline would only be repaid if there was a recovery,³⁸ otherwise there would be no reimbursement.³⁹ Worse, the Lawyers did not

disclose that Robin was seeking another mediation. Robin's counsel sent a letter to Trevino three days after Caroline's conversion proposing mediation,⁴⁰ but Borunda "probably" discussed this with Trevino earlier.⁴¹ Caroline was not told about Robin's request to mediate until much later.⁴²

Fourth, the Lawyers refused to comply with reasonable requests from the Clients to revoke the MSA and instead devised untrue reasons why the settlement could not be revoked to further their own interests. Days after signing the MSA, Caroline told the Lawyers that she and Rich had remorse over the deal, felt like they were put in a "pressure cooker" at mediation, and it was a bad deal that they wanted to rescind.⁴³ Trevino met with Caroline and Rich on April 16 and told them they did "not have a good-faith basis to revoke or rescind the MSA."⁴⁴ That was untrue because "[a] party may revoke its consent to a settlement agreement at any time before judgment is rendered on the agreement."⁴⁵ Moreover, the MSA required consent of the grandkids, approval by an ad litem for one of the minor grandkids and court approval which had not yet occurred.⁴⁶ A contract that requires court approval is "not effective until the trial court approves [the settlement]" and because that had not yet occurred, there was no binding agreement.⁴⁷ Even Borunda recognized in internal emails after the MSA was signed that the settlement had not yet been "implemented."⁴⁸ The advice given to the Clients about the enforceability of the MSA was wrong. The Clients relied on that advice and believed they could do nothing but move forward to effectuate the MSA.⁴⁹

Rather than follow the Clients' instructions, the Lawyers continued to engage in self-serving conduct to garner settlement approval.⁵⁰ Trevino and Borunda purposefully omitted language in the consent forms sent to the grandkids because they did not want to "spook the kids" and get their "gears turning."⁵¹ So, the grandkids were only sent a watered-down one-page consent form and the MSA that did not provide them with any information to compare what the benefits of signing versus not signing the agreement. There was also no information about the attorney's

fees being sought that would deplete the inheritance.⁵² And the Lawyers did not provide the ad litem with any information either to allow for a reasonable analysis as to whether the settlement was in the minor's best interest.⁵³ Caroline was also given no opportunity to talk to the ad litem.⁵⁴

Fifth, the Lawyers secretly sought to have the probate court approve their improper and disputed fees.⁵⁵ Trevino testified that Caroline raised issues about the fee at a meeting on April 16.⁵⁶ Two months later, Borunda and Trevino injected language into a proposed order approving the MSA that would find a joint 35% contingency fee "proper, reasonable and necessary"⁵⁷ even though the Lawyers acknowledged at the hearing that the amount requested was "incorrect."⁵⁸ This entire saga was never disclosed to the Clients,⁵⁹ who likewise never asked the Lawyers to file a motion to approve the settlement.⁶⁰ Although the Lawyers now manufacture the excuse that the fee language was for tax purposes, the internal emails do not state that and even Borunda admitted that nobody told the Lawyers to put fee approval language into the proposed motion and order.⁶¹ In truth, the language was secretly inserted to improperly limit their liability⁶² and garner a finding of reasonableness and necessity for any future fee dispute by bolstering a res judicata defense knowing the clients had already complained.⁶³ Fortunately, Robin's attorney objected and filed the motion without it which was approved.⁶⁴ Still, "[a]ttempting to get the opposing counsel, and later the Court, to adopt this language into its order is an egregious breach of fiduciary duty[.]"⁶⁵

Sixth, the Lawyers refused to provide a settlement statement and, instead, sued the Clients for disputed and excessive amounts.⁶⁶ The fees should have been calculated prior to the MSA being signed so the Clients could make an informed decision about settling.⁶⁷ At a minimum, the standard of conduct required the Lawyers to provide a settlement statement upon conclusion of the matter.⁶⁸ Trevino claimed the Lawyers had "completed Rich and Caroline's representation in the matter when the court approved the settlement."⁶⁹ The Lawyers did not provide a settlement

statement at that time. Instead, on December 7, 2021, individuals Trevino, Borunda, and Abaza intervened in the probate court lawsuit despite their own arbitration and Harris County venue provisions.⁷⁰ In a petition verified by Borunda, all three Lawyers claimed they were entitled to “approximately” \$3.5 million as a fee.⁷¹ Borunda made this sworn request even though (1) the purported fee now being claimed is actually 20% less (\$730,934.52),⁷² (2) Trevino did not have a written contingency fee agreement with Rich for his portion,⁷³ and (3) Caroline had no contingency fee agreement with Borunda personally.⁷⁴ The Lawyers filed that suit against Rich even though he never indicated he would not pay a valid fee,⁷⁵ and Borunda continued to communicate with Rich directly about paying the fees without telling him about the intervention.⁷⁶

On December 9, 2021, Caroline requested an accounting in a letter⁷⁷ and a lawsuit.⁷⁸ Even though the Lawyers sued Robin for breaching her fiduciary duties in not providing an accounting,⁷⁹ they did not comply with those requests either. The Arbitrator had to order the Lawyers to prepare and produce one. On August 17, 2023, two-years and four months after the MSA, the Lawyers finally provided a defective, conglomerate settlement statement where all Six Claimants jointly sought \$1,416,915.68 from Rich (\$140,584.32 less than the “reduced demand” 18 months earlier and \$333,085.00 less than the verified amount given to the probate court), and \$1,352,149.80 from Caroline (or \$397,851.00 less than the verified amount Borunda gave the probate court).⁸⁰ However, there remained problems with the settlement statement such as missing deductions.

Which leads to the seventh breach: the Six Claimants refuse to properly calculate the contingency fee allegedly owed.⁸¹ The Texas Supreme Court specified that as to a contingency fee, “the amount of the client's recovery is computed net of any offset, such as a recovery by an opposing party on a counterclaim.”⁸² As fiduciaries, the burden is on the Six Claimants to each correctly calculate their own separate fee.⁸³ They did not do so on multiple levels.

First, the Minaki account was not cash; it was securities. The statement nearest the mediation shows the value of the securities at \$9,561,019.20⁸⁴ with a \$6,423,870.41 cost basis.⁸⁵ So, the account was burdened with a \$3,137,148.79 unrealized taxable gain.⁸⁶ Once the securities were liquidated, the \$3,137,148.79 would be subject to a capital gains tax. It is no different than receiving a \$100,000.00 home with a \$20,000.00 lien against it. The burden came with the Minaki account and totaled \$560,000.00.⁸⁷ The Lawyers gave no tax advice on the front end and no reduction for the tax encumbrance that burdened the account on the date of settlement.

Second, the Lawyers committed Rich and Caroline to serve as trustees for 18 years until the youngest child turned 25.⁸⁸ So, Rich and Caroline received an 18-year obligation to do things like abiding by fiduciary duties and applying ascertainable standards for distributions they did not previously have, now requiring them to keep lawyers on retainer, to properly invest Trust property, to oversee accountings, and to deal with Collins threatening lawsuits. The lawyers give no credit against their alleged fee for saddling Rich and Caroline with this long-term fiduciary job, which is wrong. If a lawyer gets a client a \$100 settlement but the client must pay someone to mow the payor's yard, the lawyer has not really gotten the client a \$100 settlement. A corporate trustee would charge between 1-3% annually of the gross value of the assets under management.⁸⁹ Assuming that Rich and Caroline had only to manage \$1 million as the lawyers suggest, that equals a fiduciary fee of \$20,000 annually over 18 years (\$360,000). All these are other legal issues facing Rich and Caroline over the next almost two decades caused solely by the Lawyers who either did not know what they were doing, were outside their expertise or just did not care to pay attention to detail. Rich and Caroline did not get the benefit of the bargain they were told they were entering, and the Lawyers should not be rewarded for such shoddy legal work.

Third, the Clients gave up remainder interests in the Marital Trust and already had Family Trust HEMS rights. The Lawyers ignored those interests claiming they cannot be calculated.⁹⁰ But a “remainder interest may be calculated by use of the mortuary tables...with the help of an expert witness if necessary.”⁹¹ Accounting expert Rob Hancock did that and arrived at a present value of \$2,003,556 for the remainder Marital Trust interest alone.⁹² The Lawyers did not include this or the fact that the Clients already had HEMS rights in the Family Trust when calculating the recovery even though Borunda said they were not collecting a fee on assets “already owned.”⁹³

Fourth, after the MSA, Robin issued K-1s to Rich and Caroline for the partnership interests given up in the amount of \$200,000.00.⁹⁴ The Lawyers gave no front end explanation of this prior to mediation and there is no credit in the fee calculation for this item.

The Six Claimants calculate their 35% fee on a recovery of \$8,603,591.24. That leaves off many deductions further identified on Demonstrative Exhibit 2. Even if it could be assumed that Rich and Caroline have received a distribution (which they have not), or that disciplinary rule violations and missed applicable statutes can be excused, and that Trevino or his PLLC can collect a fee from Rich when they have no contract with him, then the fee should be calculated at a far lower base. The Lawyers had a fiduciary obligation to include these deductions when calculating the fee but failed to do so. The fact that the Lawyers continue seeking more than what they could be owed under any calculation is another instance of self-dealing and breach of fiduciary duty.⁹⁵

A lawyer engaging in a clear and serious violation of duty to a client may be required to forfeit compensation.⁹⁶ A violation is clear if a reasonable lawyer, knowing the relevant facts and law reasonably accessible to the lawyer, would have known that the conduct was wrongful.⁹⁷ “The determination of whether a clear and-serious breach of fiduciary duty has occurred is a

discretionary call that **does not** require: (1) actual damages caused by the breach; or (2) an intentional breach; or (3) inadequacy of other available remedies.”⁹⁸

There are unethical provisions in fee contracts; lawyers are seeking contingency fees without written agreements; there are misrepresentations about the expense and status of the litigation to induce Caroline to switch fee arrangements without full disclosure; there are misrepresentations about the finality of the MSA, attempts to limit liability with language in approval orders, excessive fee demands, and untimely accountings which comprise clear and serious breaches of fiduciary duty.⁹⁹ Thus, complete or partial fee forfeiture is warranted.¹⁰⁰

III. The Arbitrator should conclude that the lawyers engaged in false, misleading and deceptive acts and practices and unconscionable conduct in violation of the Deceptive Trade Practices Act.

The Clients brought DTPA claims based on “the use or employment by any person of a false, misleading, or deceptive act or practice that is...specifically enumerated in a subdivision of [Section 17.46(b)].”¹⁰¹ Borunda, Abaza and Trevino violated § 17.46(b) in three ways.

First, § 17.46(b)(12) prohibited the Lawyers from “representing that [the MSA] confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.”¹⁰² The Lawyers told the Clients that the MSA gave unfettered access to the Family Trust, which is untrue as explained by Pacheco¹⁰³ and Spencer.¹⁰⁴ Trevino admitted the clients could rely on this statement,¹⁰⁵ and it is undisputed the Clients did rely on it to enter into the MSA.¹⁰⁶

Second, § 17.46(b)(23) prohibited the Lawyers from “filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for...services...in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract” absent exceptions not applicable here.¹⁰⁷ Brounda, Abaza and Trevino

violated this section by filing suit against Caroline and Rich in Collin County, which is not they county that Caroline and Rich reside or where the contract was signed.¹⁰⁸

Third, the Lawyers “fail[ed] to disclose information” which “was known at the time of the transaction” and concealed “to induce the [the clients] into a transaction into which the [clients] would not have entered had the information been disclosed[.]”¹⁰⁹ Specifically, Caroline was induced to convert to a contingency fee based on statements by Borunda that she would go “bankrupt” funding litigation because Robin’s desire to mediate again was not disclosed.

Separately, attorneys can violate the DTPA and “be found to have engaged in unconscionable conduct by the way they represent their clients.”¹¹⁰ “Unconscionable action or course of action” means “an act or practice which, to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.”¹¹¹ That requirement is satisfied if “the resulting unfairness [is] glaringly noticeable, flagrant, complete and unmitigated.”¹¹² For instance, the Supreme Court has recognized that an attorney can unconscionably take advantage of a client to a grossly unfair degree when they knowingly fail to take action they are obligated to take or making material misrepresentations of fact to the client.¹¹³ “Unconscionability under the DTPA is an objective standard for which scienter is irrelevant.”¹¹⁴ “Further, the unconscionable act or practice does not have to occur simultaneously with the purchase or lease of goods or services by the consumer.”¹¹⁵

Here, (as outlined in Spencer and Pacheco’s reports) the Lawyers took advantage of the lack of knowledge and experience of Caroline and Rich to a grossly unfair degree by: (1) making misrepresentations about the nature of the dispute, the status of the case, and the expected cost of litigation to induce Caroline into a contingency fee; (2) using contingency fee agreements with unethical provisions and seeking contingency fees without written agreements; (3) refusing to

follow the clients' instruction to revoke the settlement, (4) misrepresenting the finality of the settlement, (5) not disclosing their attempts to have excessive and disputed fees approved by the probate court in an effort to limit their liability; and (6) suing their own former clients asserting excessive demands beyond what is even now claimed. The Lawyers committed this conduct "knowingly" because objective manifestations indicate that they acted with actual awareness of the falsity, deception, or unfairness.¹¹⁶ Thus, treble damages are appropriate.¹¹⁷

IV. The Arbitrator should conclude that the Lawyers were negligent.

A. The Lawyers were negligent and fell below the standard of care by advising the Clients to sign the MSA based on incorrect legal advice.

The Lawyers claim that they advised Rich and Caroline at the April 2021 mediation that aside from the \$1,000,000.00 educational holdback for the grandchildren, Rich and Caroline would have the right to distribute any or all of the monies to themselves without qualification.¹¹⁸ It was a breach of the standard of care to give this legal advice because it was not correct under Texas law.

Nobody disputes that the Family Trust had a HEMS standard.¹¹⁹ So, TEX. PROP. CODE § 113.029 applies. It says that "unless the terms of the trust expressly indicate that...this subsection does not apply: (1) a person, other than a settlor, who is a beneficiary and trustee...of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's...personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's...individual health, education, support, or maintenance..."¹²⁰ The 2013 Trust does not say that § 113.029 does not apply, nor does the "amendment" the Lawyers drafted.¹²¹

The MSA also does not refer to § 113.029 (assuming the MSA could be considered "the trust" per the statute). It purports to provide the Trustee the ability to "access" Trust funds, which the Trustee should have. As Trustees, Rich and Caroline have obligations, for example, to protect trust assets, to diversify the portfolio with prudent investments (such as JET Lending), and to make

HEMS based distributions per § 113.029 and the Trust Agreement. Both Pacheco and Spencer affirm that access as a Trustee does not equate to unfettered withdrawal rights under § 113.029 despite the Lawyers' insistence that it does.¹²² Borunda acknowledges this - saying it is "axiomatic" (1) a person acting in a trustee capacity differs from a person acting in an individual capacity, and (2) assets of a trust are different than assets being held in an individual capacity.¹²³

Prior to engaging the Lawyers, Rich and Caroline were beneficiaries of the Family Trust entitled to HEMS based distributions. Under the MSA, they now are purportedly Trustees too. Having both roles, § 113.029 applies because no document ruled out its applicability. As a matter of law, Rich and Caroline can only make distributions "in accordance with an ascertainable standard relating to the trustee's...individual health, education, support, or maintenance."¹²⁴ With fiduciary obligations to grandchildren, Rich and Caroline cannot strip out 90% of the trust assets and take it for themselves, which is basic trust law that the Lawyers do not understand.¹²⁵ If there ever was a breach of fiduciary duty, it would be a trustee taking trust property for himself or herself. And the Lawyers cannot rightly calculate a fee based on Trust funds that Rich and Caroline cannot freely distribute to themselves in fee simple. Stated differently, the Lawyers have no contingency fee agreement with Rich and Caroline as Trustee, nor could they because they did not possess that capacity when the Lawyers were hired. Absent a contingency fee with the Co-Trustees of the Trust that owns legal title to its property, the Lawyers cannot take a percentage of the Trust's property.¹²⁶

The Lawyers have no valid reply. They first argue that the law is unimportant because Judge Copeland would have disregarded it, which is fundamentally false speculation. Second, they inject verbal hearsay that Collins reportedly made to his former law partner (the Lawyers' expert here). Never mind the tardiness of the purported hearsay from someone on the Lawyers' witness list. Forget that the hearsay was injected after the Lawyers complained about the Clients' expert

disclosures. More importantly, Collins represents a grandchild with a Family Trust interest. He reportedly said that Rich and Caroline can deplete 90% of the Family Trust to his client's detriment. If this was true, and there is no written verification, Collins senselessly demanded a formal accounting from Rich and Caroline when all he needed to know is that there was \$1 million in the account. It is understandable that Collins did not put his purported statement in writing. Further, Collins is the same man the lawyers claim lied about (1) telling the court that mediation went until 2:00 a.m. and (2) that Robin offered the Lawyers \$6 million worth of apartments to settle before Caroline was converted to a contingency fee.¹²⁷ The Lawyers cannot pick-and-choose when Collins is a liar, particularly on hearsay that is at odds with his actions since the settlement.

Since there is no basis to disregard §113.029, the Lawyers cannot claim that Rich and Caroline (in their individual capacities) gained unrestricted access to the Family Trust assets. They blatantly missed the applicable statute, which is clear because no documents generated after the MSA even mention it. This missed statute (among others) led Rich and Caroline to give up valuable rights while still receiving no distributions.¹²⁸ It is self-evident that an attorney can only take a contingency fee on an actual recovery, and 35% on zero recovery is zero.

B. The Lawyers were negligent in attempting to modify the 2013 trust in a way that violated Texas law.

The Lawyers self-servingly suggest that it would be easy to get a judicial modification so the Clients can withdraw \$9,000,000.00 from the Family Trust, have a “recovery,” and then pay a 35% contingent fee. That position, while certainly optimistic, requires them to clairvoyantly predict the future action of the Judge of the Statutory Probate Court of Collins County.¹ But there are legal restrictions other than § 113.029 undermining this claim. Everyone agrees the Family

¹ Judge Copeland has retired and been replaced by Judge Sara Duff, who will serve through the next court term. There is no way anyone can predict her approach or decision on this “crystal ball” assertion by the attorneys.

Trust could only be judicially modified¹²⁹ under narrow grounds found at TEX. PROP. CODE § 112.054, none of which include allowing a Trustee or beneficiary to strip \$9,000,000.00 away.

The nearest ground under § 112.054 to modify the 2013 Trust is “that the terms of the trust may be modified...if...modification of administrative, non-dispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust’s administration.” Allowing a beneficiary recently named as trustee to withdraw most of the assets without regard to a pre-existing HEMS standard in violation of § 113.029 is not a modification that prevents waste. As Pacheco and Spencer opine, Rich and Caroline cannot rationally argue this in court or here.¹³⁰

Section 112.054 is another example of a statute that the Lawyers just missed. In the eight months between the mediation and their withdrawal, the Lawyers generated no documents or emails referencing this statute. The Lawyers never even began drafting a compliant § 112.054 modification. And the document they did draft does not reference it or try to satisfy its burdens.¹³¹ Pacheco confirms that the Family Trust “had not been properly modified by the [l]awyers when she was engaged.”¹³² This was another standard of care violation that led Rich and Caroline to give up valuable rights while receiving no distributions from the Family Trust.¹³³ Making matters worse, the Lawyers want to take 35% of the property Rich and Caroline never received. The Arbitrator should deny the Six Claimants’ breach of contract claims in their entirety.

C. The Lawyers negligently advised the Clients to sign a MSA without full explanation that would cause the loss of tax benefits.

Even if the Lawyers were right that applicable statutes would have been ignored, which is not conceded since they could not be ignored, and the 2013 Trust could have been legally amended to allow Rich and Caroline to deplete all assets but \$1,000,000.00, then certain tax exemptions would be lost (leading to another standard of care violation). Pacheco notes the following:

It is my opinion that seeking to modify the Family Trust to allow for Caroline and Rich to have unfettered control over the trust's assets would be malpractice, as it would cause the Decedent to lose the benefit of applying the Decedent's estate tax credits.¹³⁴

Spencer added that the Lawyers “should have consulted with an expert or advised [c]lients prior to executing the MSA to consult with an expert so the expert could properly inform Clients how the MSA may affect the [Generation Skipping Transfer] Tax and [c]lients' children.”¹³⁵ Yet, these issues were not brought up until well after the Lawyers advised Rich and Caroline to sign the MSA.¹³⁶ It is yet another error by these Lawyers that has created problems for Rich and Caroline.

D. The Lawyers negligently advised the Clients to sign a MSA without considering capital gains taxes or calculating a net recovery.

The Lawyers also negligently advised the Clients to settle without calculating the net recovery. The Lawyers duty of full disclosure¹³⁷ required them to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”¹³⁸ That required the Lawyers to calculate the amount going to the Clients. Spencer opined that “Rich & Caroline could not have given informed direction to their counsel or informed consent to a settlement without knowing the value they would receive, and Attorneys admit they lacked that information both at mediation and in calculating their purported fee.”¹³⁹ For example, the Lawyers consulted a tax professional, but never received a written tax opinion.¹⁴⁰ Rich and Caroline were not told at mediation how capital gain taxes would reduce any recovery,¹⁴¹ and the Lawyers could only guess there “might be capital gains taxes.”¹⁴² The Lawyers also didn't disclose what a “recovery” was or what date would be used to calculate the value of the assets recovered so the Clients could understand their net.¹⁴³ A lawyer handling complex cases like this just should not miss these items. Hardwick agreed in opining the Lawyers “breached the duty of loyalty in general or communication in particular in failing to clarify the nature of their undertaking and the recovery, how it would be calculated for purposes of their fees, and how they did calculate it.”¹⁴⁴

E. The Lawyers negligently advised the Clients to sign the MSA without a disclaimer from Robin as to the Family Trust.

In the 2013 Trust, Robin was a beneficiary of the Family Trust entitled to distributions after she depleted her own assets and the Marital Trust under a HEMS standard. The Lawyers say Robin “was giving up all rights whatsoever” and would have “no interest in the Family Trust.”¹⁴⁵ The Lawyers base this “disclaimer” claim on § 3.1(k) of the MSA which calls for Robin to “waive all rights to receive any interest, income, and/or principal whatsoever from the Family Trust.”¹⁴⁶ But under Texas law and the 2013 Trust, a disclaimer must comply with Chapter 240 of the TEX. PROP. CODE.¹⁴⁷ Robin gave no disclaimer, let alone one compliant with § 240.103. The Lawyers just overlooked this statute, which, Spencer opines is yet another breach of the standard of care.¹⁴⁸

If compliance with Chapter 240 could be excused (it cannot), that leaves only the MSA language. There, Robin waived “rights to receive interest, income and/or principal whatsoever from the Family Trust.”¹⁴⁹ She did not denounce beneficiary status, waive rights to accounting, or discard power to remove a trustee. This all magnified when corporate trustees turned down the job because Robin was arguably still a beneficiary.¹⁵⁰ Spencer emphasized that if a disclaimer was not accomplished, Robin would remain a beneficiary owed fiduciary duties by Rich and Caroline.¹⁵¹

But if a disclaimer was accomplished, then Robin would be treated as predeceasing Richard Sr.¹⁵² With that, the Family Trust would be “a spendthrift trust to the fullest extent allowed by law.”¹⁵³ As this provision was not amended, Rich and Caroline cannot, as the Lawyers contend, “disburse to themselves money on an unfettered basis.”¹⁵⁴ These are more missed statutes that add up to Rich and Caroline receiving no distributions from the Family Trust (and thus, no recovery).

Here are the pieces left behind. There was no disclaimer complying with the TEX. PROP. CODE. The MSA did not say Robin disclaimed beneficiary status (only waiving her right to interest, income, or principal). So, Rich and Caroline owe Robin a fiduciary duty. But, if there was a

disclaimer, Rich and Caroline would not have unfettered access because of the spendthrift clause in the 2013 Trust. Either way, Rich and Caroline have received no distributions, and 35% on zero is zero. The Arbitrator should deny each of the Six Claimants breach of contract claims.

F. The lawyers were negligent in causing the clients to give up valuable interests that they did not need to relinquish.

Because of the Lawyers' advice, Rich and Caroline gave up interests in entities with a value of \$600,000.00.¹⁵⁵ They also gave up remainder interests in a Marital Trust which Abaza agreed has value¹⁵⁶ and that has been calculated to have a present value in 2021 of \$2,003,556.00.¹⁵⁷ The Clients received the possible right to become trustees of a Family Trust with a HEMS distribution standard,¹⁵⁸ which Pacheco explained was not "not a good deal at all for Caroline and Rich."¹⁵⁹

Rich and Caroline also gave up their existing rights to HEMS based distributions and accountings from the Family Trust. These are valuable rights as Robin did not have unqualified discretion to arbitrarily deny distributions. She had to exercise discretion reasonably and in good faith, consistent with the terms and purposes of the trust and interests of the beneficiaries:¹⁶⁰

The trustee was obligated to base her decision after considering indicia such as (1) the size of the trust, (2) the beneficiary's age, life expectancy, and condition in life, (3) his present and future needs, (4) the other resources available to him or his individual wealth, and (5) his present and future health both mental and physical, to name a few.¹⁶¹

Under these factors, these rights were not valueless as the Lawyers urge. Any assertion or inference that Rich, Caroline, and professionals such as Pacheco conspired to file sham pleadings and deprive the lawyers of a fee is absurd and offensive, totally unproven and should be stricken and disregarded. This is a case, plain and simple, involving lawyers missing statutes and clients giving up valuable rights based on faulty legal advice that has led to lingering problems beyond there being no distributions. The Lawyers were blinded by attempting to obtain their own benefits, which prevented them from doing their job. They should be ashamed to direct accusations to their

Clients that are unfounded and ridiculous – Clients they should have been protecting. Regardless, they should not be allowed to benefit by such an approach, dishonorable to themselves and the profession. The Arbitrator should deny the Lawyers’ claims and award the Clients damages.

Repeatedly, the Lawyers motivated by erroneous analyses speculated that the outcome the Clients received was better than any possible outcome at trial. Their argument describes the lawsuit as a charade, essentially frivolous from the outset.² If the best outcome for Rich and Caroline was to receive no distributions and give up valuable rights, then the Lawyers should not have accepted representation at all and told Rich and Caroline they would be “shooting themselves in the foot” if they filed. If the latter was truly Rich and Caroline’s best outcome, then the bar the Lawyers set for their representation was very low. It would be expected that the Lawyers would have delivered a written explanation to Rich and Caroline, pre-dating the settlement outlining these problems. But there are none. As often occurs, the warts on an underlying case do not arise until after malpractice claims are made and the Lawyers underscore the problems by their own position and arguments.

Here, there is no reference in mediation statements or emails that the case lacks merit, and the Lawyers had many chances to say this. Rather, they kept the hourly fees, converted Caroline’s bad claim to a contingency, and then failed miserably to get a good result after investigating (not “litigating”) for 17 months. They even encouraged continuing what they now call a charade lawsuit saying they “like their chances at trial,” Robin was likely to lose everything,¹⁶² and the following:

We can already establish ***her intent to deceive*** your dad based on her refusal to fund the surviving grantor’s trust and, instead, creating an entirely different trust this year that she has funded.¹⁶³

This type of fraud would have warranted Robin’s removal as Trustee, resulted in actual damages, made exemplary damages available, and allowed attorneys’ fees under the Texas Declaratory

² The Lawsuit was not a charade if it had been pursued correctly, but this is the Lawyers’ argued position from which they cannot now deviate.

Judgment Act. Anyone claiming that juries are sympathetic to people who acted with an intent to deceive is ignoring reality, and that is particularly true when the deceiver was or is a fiduciary.

Regardless and unfortunately, for the Lawyers, this case is not about comparing settlements, results, or guessing about trial outcomes. The Lawyers advised Rich and Caroline to sign a settlement that has led to them receiving no distributions, caused them to give up valuable rights, put them in the crosshairs of beneficiary oversight, created obligations they never had, and has left them with fiduciary exposure and tax problems. To suggest that the MSA was better than **any and all** outcomes is grossly incorrect and locks the Lawyers into being required to explain why they advised Rich and Caroline to pursue a case with no ability to improve their position.

The Arbitrator cannot indulge presumptions in favor of an attorney over the client.¹⁶⁴ The Lawyers drafted the fee agreements; they are the attorneys; the Clients are not. So, the Arbitrator must construe the contract in the Clients' favor.¹⁶⁵ Lawyer-client contracts are strictly construed against the lawyer, so if there is a disputed issue over a "recovery," the Arbitrator must resolve all inferences in favor of the Clients.¹⁶⁶ Resolving the Lawyers' speculation in favor of the Clients, the inference is that the settlement is not at all better than a speculative trial outcome.

V. Each of the lawyers failed to establish an enforceable contract with each of the clients that has been breached.

The Six Claimants each sued both Caroline and Rich for breach of contract.¹⁶⁷ As shown on Demonstrative Exhibit 1, there are gaping contract holes among the parties. Trevino and his PLLC seek \$425,075.70 from Rich, but they have no written fee contract or compliant consent to associate. Trevino's PLLC likewise has no contract or consent with Caroline but is suing her. Abaza's P.C. is defunct and has no fee contract or compliant consent, but it is a Claimant. Borunda has no fee contract with Caroline but is suing her. And Borunda PC has no fee contract with Rich.

“Except for third-party beneficiary status, which is not alleged here, in order to maintain an action to recover for breach of contract, privity must exist between the party damaged and the party sought to be held liable.”¹⁶⁸ While none of the Six Claimants have an enforceable contract, several of the Six Claimants do not even have the contractual relationship to bring a claim as they are doing. For these reasons, the Arbitrator should deny all of the Six Claimants’ contract claims.

VI. Each of the lawyers’ claims fail because there are no contracts with Rich and Caroline as trustees nor have they been sued in that capacity.

The Six Claimants’ contract claims fail because the Clients received no recovery in their individual capacity (the only capacity they retained anyone and in which they are sued).¹⁶⁹ “When a lawyer has contracted for a contingent fee, the lawyer is entitled to receive the specified fee only when and to the extent the client receives payment.”¹⁷⁰ Merely because Rich and Caroline may access Family Trust assets **as trustees** does not mean they had a recovery in an individual capacity. “A person in his individual capacity is a stranger to his rights and liabilities as a fiduciary or in a representative capacity.”¹⁷¹ Borunda recognized this undeniable distinction as an axiomatic rule.¹⁷² As the Clients have personally received no distributions, did not hire the Lawyers as Trustees, have no arbitration provision in their individual capacity, and have not been sued in a Trustee capacity, the Arbitrator should reject the Six Claimants’ contract claims.¹⁷³ The law does not authorize a judgment against a trust to be executed against an individual beneficiary or vice-versa.¹⁷⁴

VII. The Lawyers’ “quasi-contractual” claims fail as a matter of law and because the Lawyers failed to meet their burden to prove the claims.

The Six Claimants each sued for “quasi-contractual and/or equitable claims and concepts such as quantum meruit, promissory estoppel, unjust enrichment, money had and received, a constructive trust, etc.”¹⁷⁵ These claims/concepts fail as a matter of law or for want of evidence.

First, “when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory.”¹⁷⁶ Here, there is no question that there are some express contracts covering the services at issue.¹⁷⁷ Accordingly, any “quasi contractual” claims like quantum meruit, unjust enrichment and promissory estoppel fail as a matter of law.¹⁷⁸

The fact that those contracts are unenforceable under § 82.065 and Rule 1.04 does not revive the Lawyers’ unproven quantum meruit claim. In *Landis v. W. H. Fuqua, Inc.*, the plaintiffs sued to recover a commission on an oral contract urging that quantum meruit permitted recovery despite statutes requiring real estate contracts to be in writing and signed by the promisor.¹⁷⁹ The Supreme Court rejected the argument because permitting recovery to state licensed professionals governed by statute would render nugatory the statute requiring a written agreement.¹⁸⁰ Later, the Supreme Court held in *Trammel Crow Co. No. 60 v. Harkinson* that the doctrine of promissory estoppel is not a valid “exception” to enforce contracts against licensed professionals that do not comply with statutes.¹⁸¹ The Court said that real estate brokers cannot “forbear from acting in reliance on anything less than a signed written commission agreement” but when they do, “[they do] so at [their] own peril.”¹⁸² Similarly, allowing licensed lawyers to use “quasi-contractual” theories without legally compliant written contingency fee agreements signed by all attorneys and the clients would render § 82.065 and Rule 1.04 meaningless.¹⁸³ Like licensed real estate agents, licensed attorneys cannot act or forbear from acting in reliance on anything less than a contingency fee agreement that is compliant with § 82.065 but when they do, they do so at their own peril.¹⁸⁴

Second, “quasi-contractual” are equitable,¹⁸⁵ and a party seeking such relief must come to court with clean hands.¹⁸⁶ A party has unclean hands when its conduct in “connection with the same matter or transaction has been unconscientious, unjust, marked by a want of good faith, or violates the principles of equity and righteous dealing.”¹⁸⁷ Equity does not support a recovery here,

where the lawyers rendered services based on unlawful fee agreements, one of which was procured through deceit and misrepresentation, and engaged in other wrongful, fee-motivated conduct.

Third, the Lawyers presented no evidence as to the proper measure of damages on a “quasi-contractual” claim. Nobody established the reasonable value of the work.¹⁸⁸ Aside from the invoices Caroline paid before being converted, no lawyer logged their hours, tasks, or gave hourly rates.¹⁸⁹ Borunda tried to say that the value of the service is the contingent fee contract.¹⁹⁰ But an attorney cannot support a quantum-meruit claim with bare contingent-fee percentages and no supporting evidence of the value of services rendered. The Lawyers quasi-contractual claims fail.

VIII. The Clients should prevail on their accounting claim.

The Clients requested an accounting in their Statement of Claim. The requests had been ongoing since December 2021 when Caroline’s lawyer made an accounting request. It took the Arbitrator to order one for an accounting to finally be delivered. Consequently, the Clients should prevail on their claim for an accounting given that one was ordered.

IX. As the prevailing parties, the clients should be awarded damages, reasonable attorney’s fees and costs of arbitration.

Spencer and Pacheco opine that the lawyers’ negligence, fiduciary violations, and unconscionable actions (DTPA) were the proximate or producing cause of damages to Rich and Caroline.¹⁹¹ Those damages amount to at least \$6,837,180.30 as outlined on Demonstrative Exhibit 2.

Damages to Caroline also include an amount equal to the difference between what she allegedly owes under the invalid contingency fee contract procured by deception (\$1,352,149.80) and what she would have paid Borunda and Abaza had she remained on an hourly fee. The lawyers did not calculate an hourly fee, but if Caroline had to pay the lawyers \$100,000 to complete the representation, her damages are \$1,252,149. These damages are in line with DTPA remedies,

including “orders necessary to restore to any party to the suit any money...which may have been acquired in violation of this subchapter.”¹⁹² Because the deceptive conversion was committed knowingly, these damages should be trebled, entitling Caroline to \$3,756,447.

The Court should apportion damages among the three lawyers (including their law firms) by one-third each, jointly and severally and otherwise apply fee forfeiture.

Also, the Clients’ seek attorney’s fees and that expenses related to this arbitration be assessed against the lawyers but reserve this issue for briefing in accordance with the Arbitrator’s attorney fee briefing schedule.¹⁹³ One item of note is that costs have been apportioned throughout the proceedings with Rich and Caroline bearing two-thirds of the arbitration and compensation costs and the Six Claimants one-third. That is unfair and inequitable. The Lawyers wanted arbitration, injected the provision into Caroline’s agreement, and opposed a consumer rule arbitration. The time allotments in the case were split evenly between the two sides even though the Lawyers have more parties. Yet, Rich and Caroline have consistently paid or been charged two-thirds of the costs. The Arbitrator should assess the costs against the Lawyers entirely, or at bare minimum, the costs should be split 75% to Six Claimants and 25% to the two Clients.

CONCLUSION & PRAYER

As Rich and Caroline sustained their burden on their claims for relief, the Arbitrator should award them damages and the equitable remedies as more fully outlined on the attached Demonstrative Exhibit 2 and award them attorney’s fees, expenses, and all costs of arbitration. Because the lawyers failed to establish their claims, the Arbitrator should award no recovery. Alternatively, the objection to arbitration should be sustained.³

³ Caroline objected to arbitration for reasons articulated in prior briefing, which she incorporates without repeating. Caroline re-urges her objection to arbitration, which Rich joins. Both further object to any effort to further expand the scope of the arbitration into their trustee capacities or in a manner that seeks relief as to any trust as that would be outside the boundaries of the arbitration provision and is objectionable.

CERTIFICATE OF SERVICE

Pursuant to the applicable rules, I certify that on this day a true and correct copy of the above and foregoing instrument has been forwarded to the following:

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David Eric Kassab

CITED RECORD, CASES AND STATUTES

¹ *Gillespite v. Hernden*, 516 S.W.3d 541, 547 (Tex. App.—San Antonio 2016, pet. denied); *Royston, Rayzor, Vickery & Williams, LLP v. Lopez*, 467 S.W.3d 494, 504 (Tex. 2015) (public policy may be informed by the disciplinary rules).

² *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 563 (Tex. 2006) (voiding contractual provision that violated Rules 1.04 and 1.08); *Reich & Binstock, LLP v. Scates*, 455 S.W.3d 178, 181 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (contract that violated disciplinary rule was unenforceable); *Dardas v. Fleming, Hovenkamp & Grayson, P.C.*, 194 S.W.3d 603 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (op. on reh'g) (explaining that a court may deem the Disciplinary Rules to be an expression of public policy such that a contract violating them is unenforceable as against public policy); *Lopez v. Maldonado*, No. 13-15-00042-CV, 2016 Tex. App. LEXIS 13524, at *8-9 (Tex. App.—Corpus Christi Dec. 21, 2016, no pet.) (mem. op.).

³ *Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 733 (Tex. 2018).

⁴ Caroline Sec. Am. Comp. ¶ 55 (seeking declaratory relief pursuant to Section 37.004 of the TCPRC “that the Contingency Agreement is invalid and unenforceable because the Lawyers entered into this new transaction with Caroline through fraudulent means and without proper disclosure or consent, in violation of their fiduciary duties.”).

⁵ TEX. GOV'T CODE § 82.065(a) (“[a] contingent fee contract for legal services must be in writing and signed by the attorney and client.”); TEX. R. PROF CONDUCT 1.04(a), (d) (“[a] division or arrangement for division of a fee between lawyers who are not in the same firm may be made only if ... the client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed.”).

⁶ LX106, 169

⁷ *Celmer v. McGarry*, 412 S.W.3d 691, 700 (Tex. App.—Dallas 2013, pet. denied) (emphasis added); TEX. GOV'T CODE § 82.065(a).

⁸ *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 205 (Tex. 2002)

⁹ *Johnson*, 73 S.W.3d at 205; *Sanes v. Clark*, 25 S.W.3d 800, 802 (Tex. App.—Waco 2000, pet. denied) (one attorney could not enforce contingency fee contract that was not in writing signed by him even though he was associated by other attorney); *Celmer*, 412 S.W.3d at 701-02; *Law Office of Andrew L. Jones, P.C. v. Schachar*, No. 05-19-00188-CV, 2020 Tex. App. LEXIS 1160, at *10-11 (Tex. App.—Dallas Feb. 11, 2020, no pet.) (affirming dismissal of breach of contract claim for oral fee sharing agreement).

¹⁰ November 10, 2023 Report of Lillian Hardwick (“Hardwick Rep.”) at 23-29; Hardwick Sup. Rep. 56-66.

¹¹ 2RR308-311 (admission by Borunda that there is no written contract but Trevino is seeking a contingency fee); 4RR880 (admission by Trevino that there is no written contract).

¹² “No attorney shall collect or seek to collect fees or expenses in connection with any such agreement that is not confirmed in that way [i.e., in writing and signed by the client].” TEX. R. PROF CONDUCT 1.04(a), (d).

¹³ *Johnson*, 73 S.W.3d at 205.

¹⁴ *Neese v. Lyon*, 479 S.W.3d 368, 381 (Tex. App.—Dallas 2015, no pet.) (clients could seek “rescission and restitution” of all fees paid under contract voided pursuant to section 82.065 of the Texas Government Code and “full performance of the fee agreements does not bar the [c]lients’ claims for rescission.”).

¹⁵ *Davis Law Firm v. Bates*, No. 13-13-00209-CV, 2014 Tex. App. LEXIS 1582, at *10-11 (Tex. App.—Corpus Christi Feb. 13, 2014, no pet.) (mem. op.); *Lopez*, 2016 Tex.App. LEXIS 13524, at *3; *Sanes v. Clark*, 25 S.W.3d 800, 805 (Tex. App.—Waco 2000, pet. denied) *In re Cyr*, 2020 U.S.Dist. LEXIS 257924 (W.D. Tex. 2020).

¹⁶ CX40, 60, 114(B) (“[c]lient will not make a settlement or offer of settlement without the approval of Attorneys.”).

¹⁷ 2RR359-361.

¹⁸ *Davis Law Firm v. Bates*, No. 13-13-00209-CV, 2014 Tex. App. LEXIS 1582, at *10-11 (Tex. App.—Corpus Christi Feb. 13, 2014, no pet.) (mem. op.); *Lopez*, 2016 Tex.App. LEXIS 13524, at *3.

¹⁹ December 20, 2023 Report of Lillian Hardwick (“Hardwick Sup. Rep.”), at 56.

²⁰ *See Hoover Slovacek, LLP v. Walton*, 206 S.W.3d 557, 563 (Tex. 2006).

²¹ Tex. Disc. R. Prof’l Cond. 1.08.

²² 6RR1271-1272.

²³ 2RR389.

²⁴ 6RR1261-62, 1268, 1272, 1305-1306.

²⁵ *See Ponce v. Comm’n for Law. Discipline*, No. 04-20-00267-CV, 2022 Tex. App. LEXIS 3513, at *10-11 (Tex. App.—San Antonio May 25, 2022, no pet. h.) (mem. op.) (finding Rule 1.08 violated when lawyer entered into a second contingency fee contract with client because client testified that attorney “did not explain the consequences of her retaining a second lawyer on a contingency fee basis” and “did not tell her to take any time to consider the contract or ask her to talk to another lawyer about the contract.”).

²⁶ Hardwick Sup. Rep. 29-36.

²⁷ Hardwick Rep. 23-47; Hardwick Sup. Rep. 56-66.

²⁸ *Perez v. Kirk & Carrigan*, 822 S.W.2d 261, 263-66 (Tex.App.—Corpus Christi 1991, writ denied).

²⁹ *Goffney v. Rabson*, 56 S.W.3d 186, 193 (Tex.App.—Houston [14th Dist.] 2001, pet. denied).

³⁰ *Jackson Law Office v. Chappell*, 37 S.W.3d 15, 22 (Tex. App.—Tyler 2000, pet. denied).

³¹ 2RR326-327; 4RR932.

³² Hardwick Rep. 23-44; Hardwick Sup. Rep. 71-84.

³³ CX27, 29.

³⁴ *See Spoljaric v. Percival Tours, Inc.*, 708 S.W.2d 432, 435 (Tex. 1986) (“intent . . . must be proven by circumstantial evidence.”).

³⁵ Spencer Rep. 20; Hardwick Rep. 35-36; Hardwick Sup. Rep. 73.

³⁶ 6RR1260-1261, 1267-1269, 1271-1272, 1430-1431.

³⁷ 6RR1269-1271, 1277-1278.

³⁸ LX169, p. 1.

³⁹ 6RR1271-1272.

⁴⁰ CX119.

⁴¹ 2RR406.

⁴² CX122.

⁴³ LX196.

⁴⁴ 4RR961; 5RR1126; 6RR1296-1297.

⁴⁵ *S & A Rest. Corp. v. Leal*, 892 S.W.2d 855, 857 (Tex. 1995); *In re Estate of Spiller*, No. 04-15-00449-CV, 2016 Tex. App. LEXIS 6811, at *8 (Tex. App.—San Antonio June 29, 2016, no pet.) (mem. op.) (trial court erred by enforcing settlement agreement when one party revoked consent prior to judgment).

⁴⁶ LX193 ¶¶ 3.1(a), (s).

⁴⁷ *In re Rapid Settlements, Ltd. v. BHG Structured Settlements, Inc.*, 202 S.W.3d 456, 462 (Tex. App.—Beaumont 2006, pet. denied) (“Because the agreement is not effective until the trial court approves the transfer in a final order, and it is undisputed that no such order exists, there is no agreement to arbitrate.”).

⁴⁸ CX178; 2RR430.

⁴⁹ 5RR1126; 6RR1296-1297.

⁵⁰ 6CR1297.

⁵¹ CX167; 4RR426.

⁵² LX203; 4RR426-427.

⁵³ 4RR436-437.

⁵⁴ 6RR1300.

⁵⁵ Spencer Rep. 44-45.

⁵⁶ 4RR824.

⁵⁷ CX191, 192, 193.

⁵⁸ 2RR435; 4RR921-922.

⁵⁹ 4RR923; 5RR1139; 6RR1302.

⁶⁰ 2RR436; 6RR1302.

⁶¹ 2RR434.

⁶² Tex. Disc. R. Prof’l Cond. 1.08(g) (prohibiting a lawyer from “mak[ing] an agreement prospectively limiting the lawyer’s liability to a client for malpractice” unless permitted by law with full disclosure to the client).

⁶³ *Stangel v. Perkins*, 87 S.W.3d 706, 710-11 (Tex. App.—Dallas 2002, no pet.) (court’s approval of attorney’s fees barred subsequent malpractice suit under principals of res judicata).

⁶⁴ LX218, 220.

⁶⁵ Spencer Rep. 44.

⁶⁶ Spencer Rep. 44-51; Hardwick Sup. Rep. at 71-84.

⁶⁷ Spencer Rep. 7, 21, 23-28.

⁶⁸ Tex. Disc. R. Prof'l Cond. 1.04; Hardwick Rep. 43-44; Hardwick Sup. Rep. 52-53.

⁶⁹ CX223.

⁷⁰ CX235; LX169.

⁷¹ CX235; LX169.

⁷² 2RR314-315

⁷³ 2RR308-311; 4RR880; LX304.

⁷⁴ LX169.

⁷⁵ 5RR1142.

⁷⁶ 5RR1200-1201; LX285.

⁷⁷ LX279.

⁷⁸ LX280 (requesting "a full accounting of any fees or expenses claimed to be owed along with documentary support for each claimed fee or expense.").

⁷⁹ 2RR318.

⁸⁰ LX304.

⁸¹ Spencer Report at 17-19, 45-50.

⁸² *Levine v. Bayne, Snell & Krause, Ltd.*, 40 S.W.3d 92, 94 (Tex. 2001).

⁸³ Hardwick Rep. 47-48; Hardwick Sup. Rep. 39-73.

⁸⁴ LX191.

⁸⁵ LX191.

⁸⁶ LX191.

⁸⁷ CX26, p. 8.

⁸⁸ 5RR1122.

⁸⁹ Spencer Rep. 49.

⁹⁰ 2RR270.

⁹¹ *Fortune v. First Union Nat'l Bank*, 323 N.C. 146, 150-51 (1988).

⁹² CX298.

⁹³ 2RR267.

⁹⁴ CX26.

⁹⁵ Spencer Rep. 50-51; Hardwick Rep. 43-44; Hardwick Sup. Rep. 73; *Riverwalk Cy Hotel Partners Ltd. v. Akin Gump Strauss Hauer & Feld, LLP*, 391 S.W.3d 229, 239 (Tex. App.—San Antonio 2012, no pet.) (charging excessive fees constitutes breach of fiduciary duty).

⁹⁶ *Burrow v. Arce*, 997 S.W.2d 229, 237 (Tex. 1999).

⁹⁷ *Id.*

⁹⁸ *Deutsch v. Hoover, Bax & Slovacek, L.L.P.*, 97 S.W.3d 179, 196 (Tex. App.—Houston [14th Dist.] 2002, no pet.)

⁹⁹ *See Heatley v. Red Oak 86, L.P.*, 629 S.W.3d 377, 395 (Tex. App.—Dallas 2020, no pet.) (clear and serious breach occurred when defendants "selectively disclosed" information "they knew they had a duty to disclose" and the "nondisclosed information went to the heart" of the dispute); *Jackson Law Office, P.C.*, 37 S.W.3d at 22-23 (affirming partial fee forfeiture under Burrow based in part on attorneys' breaches of fiduciary duty to fully disclose facts relating to conflicts of interest,

even though there were no damages and no apparent intentional breaches); *W. C. Turnbow Petroleum Corp. v. Fulton*, 199 S.W.2d 263, 264-65 (Tex. Civ. App.--Texarkana 1946, writ ref'd n.r.e.) (affirming fee forfeiture against attorney and stating that "'An attorney owes to his client an undivided allegiance . . . He cannot act both for his client and one whose interest is adverse to or conflicting with that of his client in the same general matter, however slight such adverse interest may be, nor is it material that the intention and motive of the attorney may have been honest.'"); *Bryant v. Lewis*, 27 S.W.2d 604, 607-8 (Tex. Civ. App.--Austin 1930, writ dismiss'd) (holding that attorney's failure to disclose material facts regarding conflict of interest and failure to disclose the legal consequences of those facts justified forfeiture of attorney's fee, even though attorney appeared not to have been aware of conflict and to have acted in good faith).

¹⁰⁰ *Burrow*, 997 S.W.2d at 241 ("A lawyer engaging in clear and serious violation of duty to a client may be required to forfeit some or all of the lawyer's compensation for the matter.").

¹⁰¹ TEX. CIV. PRAC. & REM. CODE § 17.50(a).

¹⁰² TEX. CIV. PRAC. & REM. CODE § 17.46(b)(12).

¹⁰³ Pacheco Rep. at 11-14.

¹⁰⁴ Spencer Rep. 2, 7, 16, 18, 22-23, 28, 41-42, 46.

¹⁰⁵ 7RR1546.

¹⁰⁶ 7RR1537 ("That was the whole point is that they wanted unfettered access.").

¹⁰⁷ TEX. CIV. PRAC. & REM. CODE § 17.46(b)(23).

¹⁰⁸ LX65 (Caroline resides in Harris County, Texas); LX106 (Rich resides and signed contract in San Diego County, California); LX169 (contract with Caroline enforceable in Harris County, Texas); CX235 (lawsuit filed by Borunda, Abaza and Trevino filed in Collin County, Texas).

¹⁰⁹ TEX. BUS. & COM. CODE § 17.46(b)(24); *Steptoe v. True*, 38 S.W.3d 213, 217 (Tex. App.—Houston [14th Dist.] 2001, no pet.) ("sometimes the failure to disclose may be actionable."); *Weitzel v. Barnes*, 691 S.W.2d 598, 601 (Tex. 1985) ("It is conceivable that in certain situations silence could amount to a misrepresentation.").

¹¹⁰ *Latham v. Castillo*, 972 S.W.2d 66, 68 (Tex. 1998)

¹¹¹ TEX. CIV. PRAC. & REM. CODE § 17.45(5).

¹¹² *Latham*, 972 S.W.2d at 68.

¹¹³ *Id.* (citing *DeBakey v. Staggs*, 605 S.W.2d 631, 633 (Tex. Civ. App.--Houston [1st Dist.] 1980), writ ref'd n.r.e. per curiam, 612 S.W.2d 924 (Tex. 1981) (finding an attorney unconscionably took advantage of a client to a grossly unfair degree when the attorney knowingly failed to obtain in a timely manner a name change for the client's minor child)).

¹¹⁴ *Martinez v. Herbert C. Martinez & Real Estate Execs. of Austin, LLC*, No. 13-19-00518-CV, 2020 Tex. App. LEXIS 7951, at *22 (Tex. App.—Corpus Christi Oct. 1, 2020, no pet.) (mem. op.).

¹¹⁵ *Id.* (citing *Flenniken v. Longview Bank & Tr. Co.*, 661 S.W.2d 705, 707 (Tex. 1983)).

¹¹⁶ TEX. CIV. PRAC. & REM. CODE § 17.45(9).

¹¹⁷ TEX. CIV. PRAC. & REM. CODE § 17.50(b)(1).

¹¹⁸ 2RR266; 4RR801.

¹¹⁹ LX11, Art V-B.

¹²⁰ TEX. PROP. CODE § 113.029 (emphasis added).
¹²¹ LX275.
¹²² Pacheco Dec. 11-14; Spencer Rep. 17-19.
¹²³ Spencer Rep. 18-19, and at Ex. D, Borunda Deposition 275:19-276:4; 2RR493-494.
¹²⁴ Pacheco Dec. 11-14; Spencer Rep. 17-19.
¹²⁵ Pacheco Dec. 11-14.
¹²⁶ *See, Report of Kevin Spencer dated December 20, 2023 at page 12's Report at page 12 citing Bradley v. Shaffer*, 535 S.W.3d 242, 247-48 (Tex.App.—Eastland 2017, no pet.) and numerous additional supporting authorities.
¹²⁷ 4RR 892-894, 908; CX 157.
¹²⁸ Pacheco Dec. 16-18.
¹²⁹ RR804; 7RR1538.
¹³⁰ Pacheco Dec. 10-16; Spencer Rep. 9, 17-18, 36, 41-42.
¹³¹ Pacheco Dec. 12-17; Spencer Rep. 8, 16, 37, 41-42.
¹³² Pacheco Dec. 10-11.
¹³³ 6RR1313-1314.
¹³⁴ Pacheco Dec. 15.
¹³⁵ Spencer Rep. 22.
¹³⁶ 5RR1132; 6RR1258, 1301.
¹³⁷ 3RR591-592
¹³⁸ TEX. DISC. R. PROF'L COND. 1.03(b).
¹³⁹ Spencer Rep. 7.
¹⁴⁰ 3RR678.
¹⁴¹ 5RR1121; 6RR1294.
¹⁴² 3RR512; 2RR340-341; 3RR628 (did not give the clients "specific" numbers).
¹⁴³ 2RR320-321 ("Q. ... When did you tell Caroline and Rich that your fee was going to be calculated based on the date that the court approved the settlement? A. I don't know that that was ever stated."); 6RR1298.
¹⁴⁴ Hardwick Rep. 1.
¹⁴⁵ 4RR794-795.
¹⁴⁶ CX158 ¶ 3.1(k).
¹⁴⁷ LX11, Art. XIII-D ("any disclaimer pursuant to this Section shall be made in the manner provided by law.");
¹⁴⁸ Spencer Rep. 39-41.
¹⁴⁹ CX159.
¹⁵⁰ CX271.
¹⁵¹ Spencer Rep. 40.
¹⁵² Spencer Rep. 40; *see also* TEX. PROP. CODE §§ 240.051(f), 240.0511(c), 240.0512(c), and 240.052(c).
¹⁵³ LX 11, Art. XII-C.

¹⁵⁴ See TEX. PROP. CODE § 112.035(b); Spencer Rep. 22-23 (discussing impact of spendthrift trust protections).

¹⁵⁵ CX26, p. 6.

¹⁵⁶ 3RR621-624.

¹⁵⁷ CX298.

¹⁵⁸ CX298.

¹⁵⁹ Pacheco Rep. 16-18.

¹⁶⁰ *State v. Rubion*, 308 S.W.2d 4, 9 (Tex. 1958).

¹⁶¹ *In re Estate of Dillard*, 98 S.W.3d 386 (Tex.App.—Amarillo 2003, pet. denied).

¹⁶² CX96, 157.

¹⁶³ LX173 (emphasis added).

¹⁶⁴ No presumption of innocence or improbability of wrongdoing will be indulged in the attorney's favor. *Bohn v. Bohn*, 455 S.W.2d 401, 412 (Tex.App.—Houston [1st Dist.] 1970, writ dism'd).

¹⁶⁵ “In some circumstances, however, courts will construe the contract to favor one party in light of the relationship of the parties or public policy. See *Temple-Eastex, Inc. v. Addison Bank*, 672 S.W.2d 793, 798 (Tex.1984) (“a writing is generally construed most strictly against its author and in such a manner as to reach a reasonable result consistent with the apparent intent of the parties.”).” *Lopez v. Munoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 866 (Tex. 2000).

¹⁶⁶ “Many other courts, however, have adopted as a rule of construction that lawyer-client contracts will be strictly construed against the lawyer. See, e.g., *Vans Agnew v. Fort Myers Drainage Dist.*, 69 F.2d 244, 246 (5th Cir.1934); *Waugh v. Q. & C. Co.*, 16 F.2d 363, 365 (7th Cir.1926); *Estate of Sparkman v. Smith*, 639 So.2d 1258, 1261 (Miss.1994); *Cardenas v. Ramsey County*, 322 N.W.2d 191, 193–94 (Minn.1982); *Hitchcock v. Skelly Oil Co.*, 201 Kan. 260, 440 P.2d 552, 554 (1968); *In re Irwin*, 162 Or. 221, 91 P.2d 518, 523 (1939); *Bennett v. Potter*, 180 Cal. 736, 183 P. 156, 157–58 (1919); *Falloon v. Miles*, 102 Neb. 843, 170 N.W. 191, 192 (1918).” *Lopez*, at 866.

¹⁶⁷ Lawyers Amend. Statement of Claims, §§ I(A), IV.

¹⁶⁸ *Chico Auto Parts & Serv., Inc. v. Crockett*, 512 S.W.3d 560, 569 (Tex. App.—El Paso 2017, pet. denied).

¹⁶⁹ LX106, 169.

¹⁷⁰ *Levine v. Bayne, Snell & Krause, Ltd.*, 40 S.W.3d 92, 94 (Tex. 2001)

¹⁷¹ *Elizondo v. Tex. Natural Res. Conservation Comm’n*, 974 S.W.2d 928, 931 (Tex. App.—Austin 1998, no pet.).

¹⁷² Spencer Rep. at Ex. D, Borunda Deposition 275:19-276:4; 2RR493-494.

¹⁷³ *Ray v. T.D.*, No. 03-06-00242-CV, 2008 Tex. App. LEXIS 986, at *22 (Tex. App.—Austin Feb. 7, 2008, no pet.) (mem. op.) (trial court properly rejected breach of contract claim against estate of minor because contingency fee agreement was signed by individual in their own behalf and not as representative).

¹⁷⁴ See *U.S. Fidelity Guar. Co. v. Goudeau*, 272 S.W.3d 603, 609 (Tex. 2008); *Wernver v. Colwell*, 909 S.W.2d 866, 870 (Tex. 1995); *McCamey v. Hollister Oil Co.*, 241 S.W. 689, 695 (Tex. App.—Fort Worth 1922), *aff'd sub nom*, *Hollister v. McCamey*, 115 Tex. 49, 274 S.W. 562 (1925).

¹⁷⁵ Lawyers Am. Statement of Claims, § IV.

¹⁷⁶ *Excess Underwriters at Lloyd's v. Frank's Casing Crew & Rental Tools, Inc.*, 246 S.W.3d 42, 50 (Tex. 2008).

¹⁷⁷ LX46, 58, 106, 169.

¹⁷⁸ See *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 683-84 (Tex. 2000) (holding unjust enrichment inapplicable when parties have express contract covering the subject matter of the parties' dispute); *Kam v. Karedia*, No. 03-18-00526-CV, 2019 Tex. App. LEXIS 10819 (Tex. App.—Austin Dec. 13, 2019, no pet.) (mem. op.) (quantum meruit and unjust enrichment claims failed because express contract existed).

¹⁷⁹ 159 S.W.2d 228 (Tex. Civ. App.—Amarillo 1942, writ ref'd).

¹⁸⁰ *Id.* at 230-31

¹⁸¹ 944 S.W.2d 631, 636 (Tex. 1997)

¹⁸² *Id.* at 637.

¹⁸³ See *id.* at 230-31; *but see Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 734 (Tex. 2018) (holding section 82.065(a) “does not preclude a law firm's quantum-meruit suit to recover the reasonable value of legal services performed under an unenforceable agreement.”).

¹⁸⁴ See *id.* at 637.

¹⁸⁵ *KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 87 (Tex. 2015) (constructive trust and unjust enrichment are “equitable, court-created” remedies); *Hill*, 544 S.W.3d at 732 (“Quantum meruit is an equitable remedy”); *In re Weekley Homes, L.P.*, 180 S.W.3d 127, 134 (Tex. 2005) (promissory estoppel is a “equitable doctrine”).

¹⁸⁶ *Truly v. Austin*, 744 S.W.2d 934, 938 (Tex. 1988).

¹⁸⁷ *Flores v. Flores*, 116 S.W.3d 870, 876 (Tex. App.—Corpus Christi—Edinburg 2003, no pet.).

¹⁸⁸ *LTS Group, Inc. v. Woodcrest Capital, LLC*, 222 S.W.3d 918, 920 (Tex. App.—Dallas 2006, no pet.).

¹⁸⁹ 2RR448-449 (Borunda); 3RR597 (Abaza); 4RR886 (Trevino).

¹⁹⁰ 2RR452.

¹⁹¹ Spencer Rep. 2, 22; Pacheco Rep. 16-18.

¹⁹² TEX. CIV. PRAC. & REM. CODE § 17.50(b)(3).

¹⁹³ AAA Commercial Rule R-47(d).

DEMONSTRATIVE EXHIBIT 1

CLIENTS' POST-HEARING BRIEF

STANDING TO BRING A BREACH OF CONTRACT CLAIM

THE LACK OF ATTORNEY-CLIENT CONTRACTS / 1.04(f) COMPLAINT CONSENTS

No.	Lawyer-Claimant	Rich	Caroline	No Basis To Even Assert a Claim
1.	Jorge Borunda	√	X	Caroline should prevail against Borunda based solely on the lack of a contract.
2.	Borunda, PC	X	√	Rich should prevail against Borunda PC based solely on the lack of a contract.
3.	Nicholas Abaza	√	√	Abaza is the only party who has a contract with Rich and Caroline each.
4.	Law Offices of Nicholas Abaza PC	X	X	The entity does not exist. Rich and Caroline prevail based solely on the lack of a contract.
5.	Michael Trevino	X	√	Rich should prevail against Michael Trevino based on the lack of a contract.
6.	Law Office of Michael A Trevino, PLLC	X	X	Rich and Caroline prevail against Law Office of Michael A. Trevino, PLLC given there is no contract.

DEMONSTRATIVE EXHIBIT 2

CLIENTS' POST-HEARING BRIEF

CAROLINE AND RICH ALLISON DAMAGE AND LOSS TABLE

(Page 1 of 2)

AMOUNT OF DISTRIBUTIONS RECEIVED FROM FAMILY TRUST SINCE MSA SIGNED

\$0.00

ITEMS OF DAMAGE, LOSS, OR BURDEN TO RICH AND CAROLINE ALLISON

No.	Item	Basis for Loss	Loss Amount	Supporting Exhibit
1.	Present Value of Remainder Interest in Marital Trust with approximately \$5.8 million in assets pre- MSA.	Relinquished in MSA.	\$2,003,556.00	CX 298.
2.	Capital Gains Tx Concerning Minaki Account.	Burden encumbering Minaki Account as of the MSA.	\$560,000.00	Compare LX191 account value vs cost basis. See, CX 26 page 8 line-item [L] for calculation.
3.	Working obligation to serve as or pay a trustee for 18 Years solely as to the grandchildren set aside.	Duty Imposed Because MSA	\$360,000.00	Spencer Report at page 49 specifying that the cost of a trustee is 1-3% of the value of the assets being administered.
Loss Sub-Total			\$2,923,556.00	
Six Lawyers' Combined Fee Calculation (Per LX 304)			\$2,769,065.48	
Amount Loss Sub-Total Already Exceeds Invalid Fee Claim			\$154,490.52	

Note: Damages to Caroline also include an amount equal to the difference between what she allegedly owes under the invalid contingency fee contract procured by deception (\$1,352,149.80) and what she would have paid Borunda and Abaza had she remained on an hourly fee., or \$1,252,149.

DEMONSTRATIVE EXHIBIT 2
CAROLINE AND RICH ALLISON DAMAGE AND LOSS TABLE
(Page 2 of 2)

FURTHER ITEMS OF DAMAGE, LOSS, OR BURDEN TO RICH AND CAROLINE ALLISON				
4.	Partnership Interests in CDR, Kingsman, Seville, and Lagarto Creek (MSA 3.1(e)).	Relinquished in MSA per paragraph 3.1(e).	\$600,000.00	CX 26 page 8 line-item [G] for calculation of interests.
5.	K-1s Issued by Robin for relinquished partnership interests.	Issued Because MSA.	\$200,000.00	CX 26
6.	Jeff Crouch (Pyke Firm) legal work.	Incurred as Initial Remedial Efforts.	\$21,871.30	CX 273, 274, 275, 276, 277, and 278.
7.	Caroline Expert Fee to Valbridge (not reimbursed) or contemplated in the lawyers' settlement statement.	Caroline advanced expenses while hourly client and not credited in settlement statement.	\$2,500.00	Compare LX 304 and CX 264 reflecting Caroline's payment of an expert invoice not credited by lawyers.
8.	49% interest in 41 st Street LP (MSA 3.1(f))	Interest via Family Trust relinquished in MSA.	\$1,140,290.00	CX. 26 at page 19
9.	Vanguard proceeds (MSA 3.1(d))	Claim To Funds Relinquished in MSA.	\$1,948,963.00	CX 26 at page 23.
10.	Pre-Existing Right to HEMS distributions under the Family Trust.	Pre-existing rights given up for rights under the MSA.	TBD	See LX 11 – Amended Trust specifying rights held.
Loss Total			\$6,837,180.30	

FUTURE LOSSES STILL TO BE INCURRED				
11.	Corrective Legal Work to Modify Trust.	Proceedings Ongoing.	TBD	Petition for Modification Already Filed.
12.	Blown generation Skipping Tax Issue.	Based on Lawyers' Assertion that Money Can Be Stripped from Trust	TBD	Pacheco Report at page 15. Amount calculated at a rate of 40% for everything above \$5.49 million in Richard Allison Sr's estate.
13.	Trust Administration Costs for 18 years.	Accounting, Legal, Other Professional Expenses.	TBD	
14.	Additional items specified in Rob Hancock's report.	Several ledgers identify items to which interests were relinquished.		Clients' Ex. 26.

TOTAL CALCULATED LOSSES SUSTAINED BY RICH AND CAROLINE	
Rich Allison	\$3,417,340.15
Caroline Allison	\$3,419,840.15
Total Damages	\$6,837,180.30