

No. 14-24-00753-CV

IN THE FOURTEENTH COURT OF APPEALS
at Houston, Texas

CAROLINE ALLISON
Appellant

V.

**BORUNDA, P.C., JORGE BORUNDA, NICHOLAS ABAZA,
LAW OFFICES OF NICHOLAS ABAZA, P.C., MICHAEL TREVINO,
AND LAW OFFICES OF MICHAEL TREVINO, PLLC**
Appellees

On Appeal from the 269TH Judicial District Court
Harris County, Texas
Trail Court Cause No. 2021-80256

APPELLANT CAROLINE ALLISON'S OPENING BRIEF

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TABLE OF CONTENTS

Identity of Parties and Counsel.....	i
Table of Contents.....	ii
Index of Authorities.....	v
References	xiii
Statement of the Case	1
Issues Presented.....	2
Statement of the Facts	3
Dr. Richard Allison creates a trust that is purportedly amended after his marriage and when his cognitive ability declines to create three separate trusts, including a family trust for the benefit of his children Caroline and Richard	3
After Dr. Allison dies, Caroline has difficulty obtaining information about the trusts and hires the Lawyers by hourly fee agreement (with no arbitration requirement) to assist her with understanding her beneficiary rights	4
The Lawyers convince Caroline to pursue aggressive and expensive estate litigation that puts her inheritance at risk.....	6
Caroline is dupped into switching to a contingency fee arrangement (with a purported arbitration requirement) without full disclosure of material facts after she expresses concern about funding litigation	8
Immediately after converting Caroline to the contingent fee arrangement, the Lawyers push for mediation while the Allisons demand more financial information which is never obtained.....	10
The Lawyers pressure the Allisons to settle at mediation and then refuse to revoke the settlement and instead work to enforce the settlement and secretly have their attorney's fees approved	11
After Caroline raises trust issues, the Lawyers, for the first time, advise Caroline to obtain separate counsel and then sue her and Rich for attorney's fees (instead of initiating arbitration).....	14

After Caroline sues the Lawyers, her claims are compelled to arbitration where the Lawyers assert their fee claim against the Allisons in their individual capacities	15
The Arbitrator agrees to follow Texas substantive law and issue a reasoned award but following a seven-day hearing fails to do both while finding in favor of the Lawyers and ordering non-parties to satisfy the judgment against the Allisons	17
The Allisons move to vacate the Awards but the trial court confirms the Awards in full, enters judgment against the Allisons and denies a new trial	19
Summary of Argument	20
Argument.....	21
I. The trial court should have declined compelling arbitration or vacated the Awards as to Caroline because the purported arbitration agreement was unenforceable.....	21
A. The uncontroverted evidence established that the arbitration agreement was procured by fraud during the existence of a fiduciary relationship	21
B. Because the arbitration agreement was procured by fraud in the inducement and unconscionable, there is no valid agreement delegating the issue of arbitrability to the arbitrator	27
II. The trial court erred by confirming an arbitration award that froze financial accounts held by non-parties and compelled nonparties to liquidate trust assets to satisfy the award	29
III. The trial court erred in confirming the award because the Arbitrator exceeded her powers by enforcing a contract that violates Texas public policy and misapplying Texas law when the parties' agreement required her to apply that law correctly.....	34
A. The Texas Supreme Court's opinions in <i>Nafta</i> and <i>Delgado</i> permit judicial review of the Arbitrator's decision	34

B. The trial court erred by enforcing an arbitration award based on a contingent fee agreement that violates strong Texas public policy and that was procured in violation of Texas law	36
C. The Arbitrator’s alternative awards under equitable theories likewise violate Texas public policy.....	41
D. The Arbitrator’s finding that the Lawyers did not engage in breach of fiduciary duty is against the great weight of the evidence	45
IV. The trial court erred in confirming the Awards because the Arbitrator exceeded her powers by ordering attorney’s fees and expenses not authorized by law or the parties’ agreement	50
V. The trial court erred by confirming the Awards because the Arbitrator exceeded her powers by not providing a reasoned basis for denying Caroline’s relief on her affirmative claims	58
VI. The trial court erred in confirming the Awards because they contain a material miscalculation regarding prejudgment interest.....	60
Conclusion and Prayer	62
Certificate of Compliance.....	64
Certificate of Service	65
Appendix	End of Brief

INDEX OF AUTHORITIES

Cases	Page(s)
<i>Abdel Hakim Labidi v. Sydow</i> , 287 S.W.3d 922 (Tex. App.—Houston [14th Dist.] 2009, no pet.).....	23
<i>Adam v. Marcos</i> , 620 S.W.3d 488 (Tex. App.—Houston [14th Dist.] 2021, pet. denied)	21, 24
<i>America Life, Inc. v. Myer</i> , 440 S.W.3d 18 (Tex. 2014)	50
<i>Archer v. Griffith</i> , 390 S.W.2d 735 (Tex. 1964)	23, 40
<i>Arthur Andersen & Co. v. Perry Equip. Corp.</i> , 945 S.W.2d 812 (Tex. 1997)	42
<i>Brackenridge Healthcare, Inc. v. Camero</i> , No. 04-22-00271-CV, 2023 Tex. App. LEXIS 2742, at *15 (Tex. App.—San Antonio Apr. 27, 2023, no pet. h.)	22
<i>Bundren v. Holly Oaks Townhomes Ass'n</i> , 347 S.W.3d 421 (Tex. App.—Dallas 2011, pet. denied)	57
<i>Burrow v. Arce</i> , 997 S.W.2d 229 (Tex. 1999)	40
<i>Chambers v. O'Quinn</i> , 305 S.W.3d 141 (Tex. App.—Houston [1st Dist.] 2009, pet. denied)	22
<i>City of Emerald v. Peel</i> , 920 S.W.2d 398 (Tex. App.—Houston [1st Dist.] 1996, no writ)	21
<i>Clearview Props., L.P. v. Prop. Tex. SC One Corp.</i> , 287 S.W.3d 132 (Tex. App.—Houston [14th Dist.] 2009, pet. denied)	51, 52
<i>City of San Antonio v. El Dorado Amusement Co.</i> , 195 S.W.3d 238 (Tex. App.—San Antonio 2006, pet. denied)	61
<i>Coinbase, Inc. v. Suski</i> , 602 U.S. 143 (2024)	28

<i>Cruse v. O'Quinn</i> , 273 S.W.3d 766 (Tex. App.—Houston [14th Dist.] 2008, pet. denied)	36, 37
<i>CVN Group v. Delgado</i> , 95 S.W.3d 234 (Tex. 2002)	35
<i>Daspit Law Firm, PLLC v. Herman</i> , No. 05-19-00615-CV, 2020 Tex. App. LEXIS 6847 (Tex. App.—Dallas Aug. 25, 2020, no pet.) (mem. op.)	26
<i>Davis Law Firm v. Bates</i> , No. 13-13-00209-CV, 2014 Tex. App. LEXIS 1582, (Tex. App.—Corpus Christi Feb. 13, 2014, no pet.)	40, 41
<i>De La Garza v. De La Garza</i> , 185 S.W.3d 924 (Tex. App.—Dallas 2006, no pet.)	61
<i>Deutsch v. Hoover, Bax & Slovacek, L.L.P.</i> , 97 S.W.3d 179 (Tex. App.—Houston [14th Dist.] 2002, no pet.)	1
<i>Elgohary v. Herrera</i> , 405 S.W.3d 785 (Tex. App.—Houston [1st Dist.] 2013, no pet.)	29
<i>Formosa Plastics Corp. United States v. Presidio Eng'rs & Contractors</i> , 960 S.W.2d 41 (Tex. 1998)	27
<i>Forest Oil Corp. v. McAllen</i> , 268 S.W.3d 51 (Tex. 2008)	21
<i>Fortune v. First Union Nat'l Bank</i> , 323 N.C. 146 (1988)	49
<i>Ginn v. NCI Bldg. Sys.</i> , 472 S.W.3d 80 (Tex. App.—Houston [1st Dist.] 2015, no pet.)	21, 22
<i>Granite Rock Co. v. Int'l Bhd. of Teamsters</i> , 561 U.S. 287 (2010)	28
<i>Greenberg Traurig, LLP v. Nat'l Am. Ins. Co.</i> , 448 S.W.3d 115 (Tex. App.—Houston [14th Dist.] 2014, no pet.)	23

<i>Gulf Oil Corp. v. Guidry</i> , 327 S.W.2d 406 (Tex. 1959)	29
<i>Hanschen v. Hanschen</i> , 605 S.W.3d 57 (Tex. App.—Dallas 2020, no pet.)	31
<i>Hill v. Shamoun & Norman, LLP</i> , 544 S.W.3d 724 (Tex. 2018)	36, 44
<i>Hoover Slovacek LLP v. Walton</i> , 206 S.W.3d 557 (Tex. 2006)	36, 38, 39, 42, 49
<i>In re C.A.K.</i> , No. 04-05-00487-CV, 2006 Tex. App. LEXIS 8, (Tex. App.—San Antonio Jan. 4, 2006, pet. denied)	50, 57
<i>In re Cyr</i> , 2020 U.S.Dist. LEXIS 257924 (W.D. Tex. 2020)	41
<i>In re Estate of Hendricks</i> , No. 05-02-00871-CV, 2002 Tex. App. LEXIS 4560, (Tex. App.—Dallas June 27, 2002, no pet.)	34
<i>In re Estate of Spiller</i> , No. 04-15-00449-CV, 2016 Tex. App. LEXIS 6811, (Tex. App.—San Antonio June 29, 2016, no pet.)	46
<i>In re Polybutylene Plumbing Litig.</i> , 23 S.W.3d 428 (Tex. App.—Houston [1st Dist.] 2000, pet. dismissed)	40
<i>In re Prudential Ins. Co. of Am.</i> , 148 S.W.3d 124 (Tex. 2004)	25
<i>In re Pham (Pham v. Letney)</i> , 314 S.W.3d 520 (Tex. App.—Houston [14th Dist.] 2010, no pet.)	22, 23
<i>In re Rapid Settlements, Ltd. v. BHG Structured Settlements, Inc.</i> , 202 S.W.3d 456 (Tex. App.—Beaumont 2006, pet. denied)	46
<i>In re Weekley Homes, L.P.</i> , 180 S.W.3d 127 (Tex. 2005)	27

<i>Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.</i> , 341 S.W.3d 323 (Tex. 2011)	27, 39, 40
<i>Izen v. Laine</i> , 614 S.W.3d 775 (Tex. App.—Houston [14th Dist.] 2020, pet. denied)	36
<i>Jefferson Cty. v. Jefferson Cty. Constables Ass’n</i> , 546 S.W.3d 661 (Tex. 2018)	35
<i>Johnson v. Brewer & Pritchard, P.C.</i> , 73 S.W.3d 193 (Tex. 2002)	37, 39
<i>Johnson v. Williams</i> , No. 01-05-00445-CV, 2006 Tex. App. LEXIS 5180, (Tex. App.—Houston [1st Dist.] June 15, 2006, pet. denied) (mem. op.)	36, 38
<i>Keck v. Nat’l Union Fire Ins. Co.</i> , 20 S.W.3d 692 (Tex. 2000).....	24, 25
<i>Lalo, LLC v. Hawk Apparel, Inc.</i> , Civil Action No. 3:18-cv-2502-L, 2022 U.S. Dist. LEXIS 72218, (N.D. Tex. 2022)	62
<i>Landis v. W. H. Fuqua, Inc.</i> , 159 S.W.2d 228 (Tex. Civ. App. – Amarillo 1942, writ ref’d)	43
<i>Law Office of Andrew L. Jones, P.C. v. Schachar</i> , No. 05-19-00188-CV, 2020 Tex. App. LEXIS 1160, (Tex. App.—Dallas Feb. 11, 2020, no pet.).....	37
<i>Lee v. Daniels & Daniels</i> , 264 S.W.3d 273 (Tex. App.—San Antonio 2008, pet. denied)	35, 38, 41
<i>Leshin v. Oliva</i> , No. 04-14-00657-CV, 2015 Tex. App. LEXIS 7802, (Tex. App.—San Antonio July 29, 2015, no pet.)	34
<i>Levine v. Bayne, Snell & Krause, Ltd.</i> , 40 S.W.3d 92 (Tex. 2001)	49

<i>Lopez v. Maldonado</i> , No. 13-15-00042-CV, 2016 Tex. App. LEXIS 13524, (Tex. App.—Corpus Christi Dec. 21, 2016, no pet.)	40, 41
<i>MBM Fin. Corp. v. Woodlands Operating Co.</i> , 292 S.W.3d 660 (Tex. 2009)	51
<i>McGibney v. Rauhauser</i> , 549 S.W.3d 816 (Tex. App.—Fort Worth 2018, pet. denied)	52
<i>Metro. Life Ins. Co. v. Haney</i> , 987 S.W.2d 236 (Tex. App.—Houston [14 Dist.] 1999, pet. denied)	51
<i>Nafta Traders, Inc. v. Quinn</i> , 339 S.W.3d 84 (Tex. 2011).....	34, 35, 45, 58
<i>Person v. MC-Simpsonville, SC-1-UT, LLC</i> , No. 03-20-00560-CV, 2021 Tex. App. LEXIS 7155, (Tex. App.—Austin Aug. 27, 2021, no pet.)	53
<i>Ponce v. Comm'n for Law. Discipline</i> , No. 04-20-00267-CV, 2022 Tex. App. LEXIS 3513, (Tex. App.—San Antonio May 25, 2022, no pet. h.)	39
<i>Quigley v. Bennett</i> , 227 S.W.3d 51 (Tex. 2007)	44
<i>Rainbow Tr. v. W. Am. Nat'l Bank, N.A.</i> , No. 2-02-347-CV, 2003 Tex. App. LEXIS 7153, (Tex. App.—Fort Worth Aug. 21, 2003, no pet.)	31
<i>Rapid Settlements, Ltd. v. Green</i> , 294 S.W.3d 701 (Tex. App.—Houston [1st Dist.] 2009, no pet.)	32, 34
<i>Ray v. T.D.</i> , No. 03-06-00242-CV, 2008 Tex. App. LEXIS 986, (Tex. App.—Austin Feb. 7, 2008, no pet.)	42, 43
<i>Rent-A-Center, W., Inc. v. Jackson</i> , 561 U.S. 63 (2010)	27

<i>Reich & Binstock, LLP v. Scates</i> , 455 S.W.3d 178 (Tex. App.—Houston [14th Dist.] 2014, pet. denied).....	36
<i>S & A Rest. Corp. v. Leal</i> , 892 S.W.2d 855 (Tex. 1995)	46
<i>Sanes v. Clark</i> , 25 S.W.3d 800 (Tex. App.—Waco 2000, pet. denied)	37
<i>Stage Stores, Inc. v. Gunnerson</i> , 477 S.W.3d 848 (Tex. App.—Houston [1st Dist.] 2015, no pet.)	58, 60
<i>Stanfield v. Neubaum</i> , 494 S.W.3d 90, 97 (Tex. 2016)	51
<i>Tomlinson v. Khoury</i> , 624 S.W.3d 601 (Tex. App.—Houston [1st Dist.] 2020, pet. denied)	32
<i>TotalEnergies E&P USA, Inc. v. MP Gulf of Mex., LLC</i> , 667 S.W.3d 694 (Tex. 2023)	27, 28
<i>Tony Gullo Motors I, L.P. v. Chapa</i> , 212 S.W.3d 299 (Tex. 2006)	52, 56
<i>Top Cat Ready Mix, LLC v. All. Trucking, L.P.</i> , No. 05-18-00175-CV, 2019 Tex. App. LEXIS 369, (Tex. App.— Dallas Jan. 22, 2019, no pet.)	57
<i>Trammel Crow Co. No. 60 v. Harkinson</i> 944 S.W.2d 631 (Tex. 1997)	43
<i>United States Fid. & Guar. Co. v. Goudeau</i> , 272 S.W.3d 603 (Tex. 2008)	31
<i>Willis v. Maverick</i> , 760 S.W.2d 642, 645 (Tex. 1988)	40
<i>2017 Yale Dev., LLC v. Steadfast Funding, LLC</i> , No. 01-20-00027-CV, 2023 Tex. App. LEXIS 2904, (Tex. App.—Houston [1st Dist.] May 2, 2023, pet. denied)	52

Rules

American Arbitration Association Commercial Rule

8.....	51
47(c)	51
47(d)	51
47(d)(ii)	57
53	58
54	58
55	58

Texas Disciplinary Rules of Professional Conduct

1.02	41
1.03 (b).....	22
1.04	36,
1.04(a)	37, 38
1.04(d).....	37
1.04(f)	37
1.08	36, 38, 39
1.08(a)	38

Statutes

Texas Civil Practice & Remedies Code

§171.048(c).....	51, 57
§171.088(a).....	58
§171.091(a).....	61

§171.088(a)(3)(a).....	34, 58
Texas Estates Code	
§112.054	14
§113.029	12
§240	14
Texas Finance Code	
§304.104	61, 62
Texas Government Code	
§82.065	37, 43
§82.065(a).....	36, 38
Texas Property Code	
§113.019	30
§115.001	33
§115.001(a).....	31, 33
§115.001(b)(4).....	33
United States Code	
9 U.S.C.	34, 45
10 U.S.C. (a) (4)	59
11 U.S.C.(a) –(c)	61

REFERENCES

__CR__	Clerk Record consisting of two volumes, the first number preceding CR represents the volume and the first number following CR represents the pinpoint cite within that record.
App. Tab __	Documents included in the Appendix to this Brief, which contains an index organized by numbered Tabs.
Allisons	The term “Allisons” means Caroline Allison and Richard “Rich” Allison, Jr. in their individual capacities.
Arbitrator	Hon. Anne Ashby (Ret.)
Lawyers	The term “Lawyers” is used to refer collectively to Appellees Jorge Borunda, Borunda, PC, Nicholas Abaza, Law Offices of Nicholas Abaza, PC, Michael Trevino, and Law Office of Michael A. Trevino, PLLC.

STATEMENT OF THE CASE

<i>Nature of the Case</i>	Dispute between lawyers and their clients involving claims for legal malpractice ¹ and counterclaims for legal fees.
<i>Trial Court</i>	The 269th Judicial District Court, Harris County, Texas; Honorable Corey Don Sepolio, Presiding.
<i>Course of Proceedings</i>	Caroline Allison sued the Lawyers for negligence, breach of fiduciary duty, unconscionable conduct, and declaratory relief, seeking to void a contingency fee agreement that the attorneys had her execute during the existence of an attorney-client relationship (Caroline had initially retained the Lawyers by the hour). 1CR8-27. The Lawyers moved to compel arbitration based on the arbitration clause contained in the new fee agreement (there was no arbitration clause in the initial agreement). 1CR179-92. Caroline opposed the motion with evidence. 1CR196-244. The trial court compelled arbitration and stayed the proceedings. 1CR257; App. Tab 1. In arbitration, the Lawyers asserted affirmative claims against Caroline and her brother Rich for breach of contract and quasi contractual claims, seeking contingency fees they claimed were due from underlying estate litigation. 1CR391-427. The Arbitrator entered an interim award and then a final award in favor of the Lawyers. 1CR267-293; App. Tab 2 (interim award); 1CR318-320; App. Tab 3 (final award). The Lawyers moved the trial court to enter judgment on the awards, 1CR260-264, and the Allisons moved to vacate them. 1CR522-608.
<i>Disposition</i>	The trial court denied the motion to vacate and entered final judgment on the awards. 2CR4142; App. Tab 4 (order denying motion to vacate); 2CR4139-4140; App. Tab 5 (order granting motion to enforce); 2CR4144-4147; App. Tab 6 (final judgment). And denied new trial. 2CR4381; App. Tab 7.

¹ We use this term as this Court has, “to refer 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.).

ISSUES PRESENTED

1. The trial court erred by compelling Caroline to arbitration and then declining to vacate the arbitration awards because the purported agreement to arbitrate was invalid since it was procured by fraud during the existence of an attorney-client relationship without full disclosure of all material facts and was not fair and reasonable.

2. The trial court erred by not vacating the arbitration awards because the Arbitrator exceeded her powers by granting relief that violates strong Texas public policy and misapplying Texas law when the parties' agreement required her to apply that law correctly.

3. The trial court erred by not vacating the arbitration awards when the Arbitrator exceeded her powers by (a) freezing financial accounts held by non-parties and compelling nonparties to liquidate trust assets to satisfy the awards; (b) ordering attorney's fees and expenses not authorized by law or the parties' agreement; and (c) failing to provide a reasoned basis for denying the clients relief on their affirmative claims as required by the parties' agreement.

4. Alternatively, the trial court erred by failing to modify or correct the arbitration awards because they contained a material miscalculation regarding prejudgment interest.

STATEMENT OF THE FACTS

Dr. Richard Allison creates a trust that is purportedly amended after his marriage and when his cognitive ability declines to create three separate trusts, including a family trust for the benefit of his children Caroline and Richard.

In the late 1980s, Dr. Richard Allison created the Richard Allison Trust (“the Allison Trust”) to hold real estate with the intention to leave the trust to his twin children, Caroline Allison and Richard Allison, Jr. (“Rich”). 1CR216, 802-03. Dr. Allison was the trustee until his death, upon which the trust would be irrevocable with all assets passing to Caroline and Rich free and clear of trust if they were of certain age. 1CR803, 1363-64.

In the early 1990s, Dr. Allison met Robin Alice Bump, and they married in 1992. 1CR216, 1737, 2398. Dr. Allison secured a prenuptial agreement and then a material agreement to avoid the creation of a marital estate. 1CR807, 2128. From the outset, Robin was antagonistic towards Caroline and Rich, and this resulted in significant familial friction in the following years. 1CR167-168, 216, 2398.

Beginning in 2008, Dr. Allison’s health and cognitive ability declined. 1CR216, 1402, 1405, 1032. Robin used the opportunity to create discord among the family, including between Dr. Allison and Caroline and Rich. 1CR216, 1032. Robin also used the opportunity to have Dr. Allison make three purported amendments to the Allison Trust. 1CR216. Two amendments were purportedly made in 2011, first to identify

Rich's children and change the order of successor trustees and then to carve out Robin's personal property and clothing acquired during marriage. 1CR804-05, 1366.

The third purported amendment occurred in 2013 and was far more significant. 1CR2581-2625. That amendment provided that, upon Dr. Allison's death, the Allison Trust would be separated into three trusts: the Surviving Grantor's Trust, the Allison Family Trust, and the Marital Trust. 1CR787, 2581-2625. In general, Dr. Allison's personal property and whatever personal property Robin placed into the trust would flow into the Grantor's Trust and remain there until Robin passed away and then distributed to Caroline, Rich or their children. 1CR787, 790-91. Dr. Allison's other assets that could pass free of estate tax, around \$5.4 million at the time, would pass to the Family Trust, and the remainder would pass to the Marital Trust. 1CR791-92. The Marital Trust required Robin to make distributions for the health, education, maintenance and support of Rich and Caroline after considering their resources. 1CR792. Upon Robin's death, the assets from the Marital Trust would pass to Caroline and Rich. 1CR793. Upon Dr. Allison's death, Robin would be the trustee and lifetime beneficiary of these three trusts. 1CR795-796.

After Dr. Allison dies, Caroline has difficulty obtaining information about the trusts and hires the Lawyers by hourly fee agreement (with no arbitration requirement) to assist her with understanding her beneficiary rights.

Dr. Allison died in April 2017. 1CR216, 725-26. At the time of Dr. Allison's death, Caroline did not know of the 2011 purported amendments to the Allison Trust

or understand the trusts or what rights she had under them. 1CR1856-58. Caroline asked Robin to review the trust documents, requested an accounting, and wanted to understand what Robin's plans were with the trusts. 1CR1856-57. Robin, however, did not provide Caroline with the requested information and instead directed Caroline to her lawyer, Michael Collins. 1CR1860-61; 2CR2706.

In January 2019, Caroline met with attorney Nicholas Abaza to discuss her dealings with Robin and Collins. 1CR1862-1864. Caroline gave Abaza information about her father's sizeable estate, and Abaza gave Caroline statutes to quote in an accounting request to Robin's lawyer. CR.1863-64. Abaza associated attorney Jorge Borunda to assist in the representation. 1CR1865. Borunda advised Caroline that his strategy would be to file a lawsuit against Robin. 1CR1867-1868. Borunda and Abaza did not explain to Caroline how the various trusts worked under the purported 2013 amendment, nor did they advise Caroline that she was a beneficiary under the Family Trust and that if she took Borunda's advice and contested the 2013 amendment, her inheritance rights could be put at risk due to the no-contest clause. 1CR1868-71.

In March 2019, Abaza proposed different fee arrangements to Caroline. 1CR1871. Neither Abaza nor Borunda explained to Caroline the terms of the engagement agreements, including the arbitration provision contained in the contingency fee agreement. 1CR1872-1873. Caroline made clear to Abaza and Borunda that if Robin "cave[d]" and settled the case, she would not pay a contingency fee. 1CR1255. After additional dialogue, Caroline, in her individual capacity, signed an

hourly fee contract with Borunda PC and Abaza which had no arbitration clause. 1CR1874-75; 2CR2748-52. Caroline's brother Rich was not a party to that agreement. 1CR2748-51.

Instead, Rich subsequently signed a separate representation agreement with Abaza that required Rich to pay a contingency fee of 35% of the amount recovered (excluding his existing ownership interests) to Abaza and Borunda, although Borunda did not sign the contingency fee agreement. 2CR2767-2771. Thereafter, Borunda and Abaza had a favorable arrangement: Caroline would pay Borunda and Abaza an hourly fee (and half the expenses), 2CR2754-57, while having a contingent fee with Rich on a \$15 million estate to which the Allisons were remainder beneficiaries 2CR.2767-71. Other than the form waiver contained in the fee agreement, neither Abaza nor Borunda advised Caroline about any conflict of interest (actual or potential) in representing the siblings under this fee arrangement. 1CR1588, 1591-92.

The Lawyers convince Caroline to pursue aggressive and expensive estate litigation that puts her inheritance at risk.

Borunda recommended that Caroline "create significant pressure" by filing suit and then "written discovery, deposition, motions to remove her as trustee, etc." 2CR2758-59. Caroline followed her lawyers' advice to aggressively pursue costly litigation without being advised that filing suit to remove Robin could trigger no-contest clauses. 1CR1878-79.

Borunda and Abaza sued on behalf of Caroline, individually, against Robin, both in Robin’s individual and trustee capacity as required. 2CR2774-82. The suit sought to “bust” the 2013 trust without knowing what rights Caroline had under the 2011 amendments. 1CR1887. The lawsuit requested declaratory relief, sought an accounting, alleged breach of fiduciary duty and asked for removal. 2CR2774-82. Even though the lawyers did not know what rights Caroline possessed under prior estate plans, Abaza advised Caroline that their father’s 2013 will was problematic and needed to be challenged. 1CR1888-89, 2383. Caroline did not understand what this meant, and she was not then advised that challenging the will could put her inheritance at risk. 1CR1889-1890. In response to the suit, Robin claimed that Caroline forfeited her right to inheritance by contesting the will. 1CR1890. Caroline was very concerned about losing her inheritance, but Borunda told her “Its’ a routine request and it’s routinely denied.” 1CR1890-93.

A year after filing, Borunda and Abaza added Rich as a party but still had taken no depositions. They gathered some medical and limited financial data, filed a few motions, and listed experts, but that was it. Throughout, the Allisons made many requests for Borunda to get a complete accounting from Robin. 1CR2394. Although Borunda acknowledged that financial discovery was incomplete, the case mediated in July 2020. 1CR2396-97. Collins reportedly claimed that Robin offered apartments (valued at \$6 million). 1CR2451, 2452-53. The lawyers did not disclose the offer and later claimed Collins lied about making it. CR.1533. The case did not settle.

Caroline is dupped into switching to a contingency fee arrangement (with a purported arbitration requirement) without full disclosure of material facts after she expresses concern about funding litigation.

Caroline's costs escalated to the point that she had paid \$67,275.38 in legal fees and expert costs. 1CR2540; 2CR2773, 2785-86, 2787, 2790-91, 2792--95, 2801-02, 2806-07, 2808-09. Abaza told Caroline that her dispute with Robin was "a war and is going to be fight." 2CR2814. Not having a "war chest," Caroline discussed with Borunda and Abaza alternate fee arrangements as costs continued increasing. 1CR1898-99; 2CR2796-97, 2803-04. She proposed that she be reimbursed the fees and expenses she had paid in exchange for switching to a contingency fee arrangement like her brother. 1CR1899. Abaza never advised Caroline about the pros, cons, advantages or disadvantages of switching to a contingency arrangement (or the arbitration requirement) or advised her to consult separate counsel. 1CR1900-01. Ultimately, however, Caroline continued the hourly arrangement because Borunda agreed to draw from the retainer, 2CR2803, Abaza deferred payment, 2CR2813, and mediation was approaching. 1CR1899-1900, 1903-1904.

After the first mediation failed, Caroline notified Borunda and Abaza that she was going to drop the case because she could not afford the legal fees and inquired again about a contingency arrangement if the case was not going to settle. 1CR1905-1906, 2552. Borunda met with Caroline to discuss the issue, but Borunda would not provide Caroline with a budget to complete the litigation, did not disclose that a second mediation deadline was approaching or that Robin wanted to mediate, and instead told

Caroline trial was imminent, and she would “go bankrupt funding a trial.” 1CR1899-1900, 1906-1911, 2069-2070.

Based on that fear and believing an expensive trial to be the only option, Caroline converted to a contingency fee that added Michael Trevino as counsel. 1CR217-218, 220-224, 1272-1273. The new agreement did not immediately refund Caroline the fees she paid (as promised), but provided that those fees would only be repaid in the event of a recovery, to be deducted from any contingency fee. 1CR220-224, 1271. That contingent fee would be 35% of the amount recovered “and/**or kept** that [Caroline] has an interest in.” 1CR220-224 (emphasis added). In other words, after convincing Caroline to file suit and “bust” the trusts, thereby placing Caroline’s inheritance at risk, the Lawyers were now claiming an interest on any inheritance Caroline ultimately kept. Like the old agreement, the new agreement was signed only by Caroline in her individual capacity and Abaza. 1CR223-224.

At no point during this fee conversion process was Caroline advised to seek the advice of independent counsel, advised of the pros, cons, advantages or disadvantages of the new agreement, or provided advice related to the arbitration provision. 1CR218, 396, 1900-02, 1907, 1911-12, 1944-45; 2CR2823, 2CR2829-30, 2CR2831. It is undisputed that the Lawyers never had Caroline consent to this new transaction in writing. 1CR1028-1029. Nor was Caroline advised about the upcoming mediation deadline or that Robin was wanting to conduct a second mediation even though Borunda “probably” discussed the issue with Trevino earlier. 1CR1530-31, 1908-09.

Immediately after converting Caroline to the contingent fee arrangement, the Lawyers push for mediation while the Allisons demand more financial information which is never obtained.

Just three days after Caroline's fee was converted, Collins wrote Trevino following up on a prior discussion about engaging in a second mediation before the mediation deadline. 1CR2421-22; *see also* 1CR1916-17. Trevino had more calls with Collins about this, but the Allisons were not told Robin wanted to mediate until days later. 1CR2425. Prior to converting to a contingent fee, Caroline would have embraced mediation, but, now on a contingent fee, Caroline wanted additional accounting data, *see* 1CR2423, and wanted to know about Robin's assets and estate planning. 1CR2427-28. Rich expressed his concerns about the lack of any defined progress on auditing the finances. 1CR2431-32. This information was important to evaluating transfers Robin had made to herself before and after Dr. Allison died and whether any portion of the Family Trust or principal of the Marital Trust would be invaded. Borunda responded with a long email that included a promise to "pursue a motion to compel on this and various other issues shortly." 1CR2436.

Seventeen months after having been retained, the Lawyers filed an amended pleading which asserted that Robin still had not provided a proper accounting and had misappropriated trust assets for herself. 1CR2837-50. Despite these ongoing allegations, the Lawyers never filed the promised motion to compel. In fact, between the date of Caroline's conversion to contingent fee and the second mediation, the Lawyers did not file any motions, took just one deposition, issued a few subpoenas,

attended and lost a hearing on Robin's motion, reviewed documents. 1CR1428-29, 1520-23, and scheduled mediation. 1CR2445. Not only did the amount of work reduce after Caroline was converted, but with Caroline not helping with expenses, Borunda was past due on litigation support invoices. 1CR2449-50.

In his mediation memorandum, Trevino admitted that "significant discovery [is] left to [be] conduct[ed] and [the Allisons] intend to pursue motions to compel proper responses if settlement is not achieved." 1CR2452. Trevino also admitted that "no expert witnesses or fact witnesses have been deposed" except one. 1CR2452. The Lawyers still had no idea of Robin's net worth or even whether she had health insurance in place to protect the Marital Trust. 1CR1127, 1537-38. Under those circumstances, the Lawyers urged the Allisons to attend a second mediation with Robin.

The Lawyers pressure the Allisons to settle at mediation and then refuse to revoke the settlement and instead work to enforce the settlement and secretly have their attorney's fees approved.

The Allisons succumbed to the pressure of counsel and agreed to a section mediation with Robin on April 13, 2021, that continued into the early morning the following day. 1CR922, 1048-49, 1289. The Allisons were tired, hungry and told the Lawyers that they could not "think anymore." 1CR889, 1759, 1931-32. In that state, the Lawyers advised the Allisons to sign a Mediated Settlement Agreement ("MSA"), erroneously telling them it provided them unfettered control over a brokerage account valued at \$9.5 million owned by Minaki Limited Partnership ("Minaki"), which would

be transferred to the Family Trust.² 1CR976-977, 1425, 2176, 2182. The Allisons relied on that advice and in their delirious state signed the MSA. 1CR218, 2176, 2185.

The relevant terms of the MSA were as follows. First, the MSA required court approval. 1CR405. Second, the Allisons would convey their partnership interests in various entities to Robin and Rich would convey his 1% interest in Minaki to the Family Trust. 1CR405-406. Third, Robin would resign as trustee of the Family Trust. 1CR406. Fourth, the MSA purported to amend the Family Trust to appoint the Allisons as co-trustees and provide them “access to all principal and income” of that trust, aside from \$1 million which they were required to keep in trust to pay for educational expenses of their children. 1CR407. Fifth, and finally, because Dr. Allison’s grandchildren were beneficiaries under the trusts to be amended, they were “necessary parties to approve the settlement.” 1CR405, 408.

Later the same day that the MSA was signed, Caroline told the Lawyers that she and Rich had been put in a “pressure cooker” at mediation, were not going to agree to anything, and that they wanted to rescind the “bad deal.” 1CR1060, 1934-35, 2475; 2CR2871; *see also* 1CR2558. Trevino met with the Allisons the next day and told them they did “not have a good-faith basis to revoke or rescind the MSA.” 1CR1600, 1765,

² That advice was legally wrong because section 113.029 of the Estates Code precludes unbridled access. *See* 2CR3354-61 (expert report from attorney Sarah Patel Pacheco), 3363, 3368, 3371, 3379, 3383-3384, 3389, 3402-3403, 3407 (expert report from attorney Kevin Spencer). The Arbitrator considered these reports evidence. 1CR268-269.

1935-36. The Allisons relied on Trevino's advice and moved forward with the MSA. 1CR1764-65, 1935-36.

Later, however, other issues arose to which the Allisons expressed concern, like how they were unaware of capital gains issues associated with the settlement and the "landmine of taxes getting this [the Minaki owned brokerage] account." 1CR2494; 1CR1076, 2499. Caroline stressed that she and Rich were "uncomfortable with the tax implications" and that the settlement is "not something [she] wants to proceed with." 1CR2498-99. Trevino and Borunda would again assuage the concerns and promise to work with the Allisons "to tackle the issues and limit [their] tax exposure." 1CR2494. This seesaw of being told the deal was good, believing it, and then having another issue arise continued for months.

Rather than follow their clients' instructions and work to revoke the settlement, the Lawyers engaged in self-serving conduct to garner settlement approval. 1CR1936. The Lawyers consciously omitted language in grandchildren consent forms because they did not want to "spook" them or get their "head[s] turning." 1CR1064, 1298-99, 2478. So, the adult grandchildren received watered-down consent forms giving no information to compare the benefits of signing versus not signing and that did not disclose the fees targeted at depleting the inheritance. 1CR460, 462, 1065-66. And as to the minor grandchild, Kensington, the Lawyers did not provide the ad litem with information to allow a reasonable analysis as to whether the settlement was in

Kensington's best interest or arrange for the minor's mother, Caroline, to talk to the ad litem. 1CR1075-76, 1939.

Although Trevino knew Caroline raised concerns over the fees the day after mediation, 1CR1463, he and Borunda added language into a proposed order that not only approved the MSA but found their fee "proper, reasonable and necessary." 1CR2481-92. The Lawyers did not disclose these secretive efforts to Allisons, 1CR1562, 1778, 1941, and the Allisons never asked the Lawyers to file a motion for approval. 1CR1057, 1941. Fortunately, Collins objected and filed the motion to approve the MSA without the Lawyers self-serving language, which was approved. 1CR464-465; 2CR2889-90, 2906-07.

After Caroline raises trust issues, the Lawyers, for the first time, advise Caroline to obtain separate counsel and then sue her and Rich for attorney's fees (instead of initiating arbitration).

The MSA required the Lawyers to amend the Family Trust, 2CR2895, which was irrevocable. So, under section 112.054 of the Estates Code, it could only be amended by a court on proof of the proper elements. The Lawyers missed this statute and prepared an ineffectual draft modification to the Family Trust. 2CR2926-27. The Lawyers also never prepared a disclaimer of Robin's interests under Chapter 240 of the Estates Code, and the MSA itself does not have disclaimer language, creating issues over Robin's interest. *See* 2CR3362-3415.

Borunda emailed the Allisons in September 2021 saying that Collins threatened contempt if they did not sign the ineffectual modification documents. 1CR1943-1944,

2558-2559; 2CR2913. Though Borunda admitted that the MSA had not been “implemented,” 1CR1069, 2479, he again told Caroline it could not be revoked. 1CR2558-59; 2CR2913, 2917-2918. Borunda also raised the fee conversion, saying it was Caroline’s idea but did not state that Caroline was advised of all material facts relating to the agreement or told to get outside counsel (because that never occurred). 1CR2558-59; 2CR2913.

In response, Caroline raised trust issues with Borunda, who for the first time ever advised Caroline to get another attorney. 1CR1945-1948, 2559. Caroline took that advice and a motion to substitute counsel was set for December 7, 2021. 1CR2504; *see also* 1CR1947-48. That same day, before the motion to substitute had been granted, Borunda filed a sworn intervention on behalf of himself, Abaza and Trevino against the Allisons seeking “approximately” \$3.5 million as a fee.³ 1CR227-33, 1948. Borunda sued Caroline and Rich individually, not in their capacities of co-trustees of the Family Trust. 1CR227-233. The court denied the intervention. 1CR218.

After Caroline sues the Lawyers, her claims are compelled to arbitration where the Lawyers assert their fee claim against the Allisons in their individual capacities.

Caroline, individually, then sued Borunda, Borunda PC, Abaza, Law Offices of Nicholas Abaza, PC, Michael Trevino and Michael A. Trevino, PLLC in the 269th

³ Borunda swore to that demand even though the purported fee later claimed in arbitration was more than \$730,934 less, Trevino has no written contingency fee agreement with Rich, and Caroline had no contingency fee agreement with Borunda individually. 1CR187-91, 331-335, 947-950, 953-954, 1519.

Judicial District Court of Harris County, Texas, alleging negligence, breach of fiduciary duty, violations of the Texas Deceptive Trade Practices Act and seeking declaratory relief. 1CR8-25. Caroline alleged that the Lawyers committed negligence with respect to the MSA, failed to comply with Caroline's directions to revoke the MSA, and failed to provide Caroline with adequate advice with respect to the MSA. 1CR17-18. Caroline alleged that the Lawyers breached their fiduciary duties and committed unconscionable conduct in violation of the DTPA by, among other things, "swindle[ing] her into a new contingency fee arrangement without adequate and full disclosure, and without advising her to obtain counsel to review the new transaction." 1CR18-20. Caroline sought damages and declaratory relief that "the [c]ontingency [a]greement [that contained the arbitration clause] 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." 1CR21.

The Lawyers answered and moved to compel arbitration based on the arbitration provision in the contingent fee agreement. 1CR179-191. Carolien responded, arguing that the arbitration agreement is invalid because it was procured by fraud and violations of legal and ethical standards and was therefore unconscionable. 1CR196-205. Caroline testified that the Borunda and Abaza fraudulently induced her to enter the arbitration provision without disclosing all material facts about the upcoming mediation or disclosing the advantages or disadvantages of the new transaction or advising her to

obtain separate counsel either orally or in writing. 1CR216-218. The Lawyers replied, relying on the conclusory affidavit of Borunda. 1CR246, 251-253.

After an oral non-evidentiary hearing where no record was taken, the trial court granted the motion to compel arbitration and stayed litigation. 1CR257; App. Tab 1.

Caroline initiated arbitration against the Lawyers and the Lawyers initiated arbitration against Rich, and the claims were consolidated. 2CR2987. Each of the three lawyers and their respective firms asserted claims against the Allisons, individually, for breach of contract and “quasi-contractual” claims. 1CR391-402. The lawyers did not assert claims against the Allisons in their capacities as co-trustees of the Family Trust, nor did they assert claims against Minaki. 1CR391-402. The Allisons asserted claims against the Lawyers for negligence, breach of fiduciary duty, violations of the DTPA and for declaratory relief. 1CR337-367, 369-389.

The Arbitrator agrees to follow Texas substantive law and issue a reasoned award but following a seven-day hearing fails to do both while finding in favor of the Lawyers and ordering non-parties to satisfy the judgment against the Allisons.

In arbitration, the parties and the Arbitrator agreed that Texas substantive law would apply and the procedural rules of the American Arbitration Association (“AAA”) and then Texas procedural law would apply. 2CR2991. The parties and Arbitrator also agreed that the Arbitrator would issue a reasoned award. 2CR2992. As the case proceeded through arbitration with the Arbitrator ordering temporary relief, including a “freeze” on the financial account owned by Minaki. 1CR293.

The Arbitrator held a seven-day evidentiary hearing where she heard live testimony from witnesses, 1CR640-2249, and was presented exhibits and expert reports, which she considered as evidence. 1CR2251-2650; 2CR2252-3050.

Following the hearing, the Arbitrator issued an Interim Award that (1) overruled Caroline's objection to arbitration; (2) found for the Lawyers on their breach of contract and quasi-contractual claims; (3) summarily overruled the Allisons' defenses to those claims and found against the Allisons on their affirmative claims. 1CR267-293, 83-87; App. Tab 2. The Arbitrator ordered that "Nicholas Abaza, Borunda, P.C., and Michael Trevino shall recover from [Caroline] the amount of \$1,352,149.80 as damages for [Caroline's] breach of contract" or alternatively Borunda, Abaza and Trevino shall recover that amount based on their claims for promissory estoppel, unjust enrichment, quantum meruit or money had and received. 1CR288-89. The Arbitrator similarly wrote that "Nicholas Abaza shall recover from [Rich] the amount of \$1,416,915.68 as damages for [Rich's] breach of contract...[or]...[a]lternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from [Richard] \$1,416,915.68 based on their claim for promissory estoppel...quantum meruit...unjust enrichment...money had and received." 1CR288-289.

The Arbitrator ordered that award to bear pre-judgment interest at a rate of 8.5% beginning on April 13, 2021, the day before the MSA was signed, 1CR922, 1048-49, and well before any cause of action even accrued, and continuing until the date of entry of the Final Award. 1CR289.

The Arbitrator also ordered the Allisons, to “within thirty days after entry of a Final Award (1) direct the trustee(s) of the Allison Family Trust [which was Caroline and Rich in their trustee capacities] to liquidate sufficient trust assets to pay the Final Award and all accrued interest in full and (2) shall pay the Final Award and all accrued interest in full.” 1CR289. At the same time, the Arbitrator ordered the “freeze” on the Schwab account belonging to Minaki “to continue in full force and effect until the Final Award and all accrued interest have been paid in full.” 1CR290.

Subsequently, the Arbitrator entered a Final Award that incorporated the Interim Award but also awarded the Lawyers \$273,595.93 in attorney’s fees and expenses, \$102,418 in expert witness fees, and \$78,456.27 in AAA administrative fees and arbitrator compensation. 1CR318-19; App. Tab 3.

The Allisons move to vacate the Awards but the trial court confirms the Awards in full, enters judgment against the Allisons and denies a new trial.

The Lawyers moved to confirm and enter judgment on the Interim and Final Awards (“the Awards”). 1CR260-64, 301-15. The Allisons opposed the motion and moved to vacate or modify the Awards. 1CR522-608. After an oral hearing in which no evidence was presented, the trial court granted the Lawyers’ motion, denied the Allisons’ motion to vacate or modify the Awards, and confirmed the Awards in full and entered final judgment. 2CR4142; App. Tab 4 (order denying motion to vacate); 2CR4139-40; App. Tab 5 (order granting motion to enforce); 2CR4144-47; App. Tab 6 (final judgment). The trial court then denied new trial. 2CR4381; App. Tab 5.

SUMMARY OF ARGUMENT

An arbitrator can only act within her authority as conferred by contract. Freezing the bank accounts of non-parties, directing the liquidation of trust funds when no party has been sued in any trustee capacity to satisfy the award, and disregarding exclusive court jurisdiction over trust matters goes well beyond an arbitrator's authority. So too does violating the public policy of the State of Texas by exceeding arbitral authority when damages are awarded based on a non-compliant and unconscionable contingency fee agreement procured by fraud. And awarding prejudgment interest to a date before a cause of action even accrued exceeds an arbitrator's authority. But that is only the beginning. The parties agreed that the Arbitrator would dutifully follow Texas substantive law. The Arbitrator utterly failed to do that here, and that failure permits expanded judicial review under binding authority from the Texas Supreme Court.

But Caroline should not have been in arbitration to begin with. The uncontroverted evidence established that the purported agreement to arbitrate was invalid and unenforceable as a matter of law. The lawyers fraudulently induced Caroline to switch from an hourly agreement (without arbitration provision) to a contingency fee agreement (with arbitration provision) without disclosing all material facts or making required disclosures. The lawyers failed to demonstrate that the new agreement, entered during the existence of an attorney-client relationship, was fair and reasonable to Caroline, rendering it void as a matter of law. That was an issue for the trial court, not the Arbitrator, to decide, and it was decided incorrectly.

ARGUMENT

I. The trial court should have declined compelling arbitration or vacated the Awards as to Caroline because the purported arbitration agreement was unenforceable.

A. The uncontroverted evidence established that the arbitration agreement was procured by fraud during the existence of a fiduciary relationship.

“A court may not enforce an agreement to arbitrate if the court finds the agreement was unconscionable at the time the agreement was made.” TEX. CIV. PRAC. & REM. CODE § 171.022. Moreover, “an arbitration agreement procured by fraud is unenforceable [if] the party opposing arbitration [shows] that the fraud relates to the arbitration provision specifically, not to the broader contract in which it appears.” *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 56 (Tex. 2008). A failure to disclose information is fraudulent if the person “has an affirmative duty to disclose, such as where a confidential or fiduciary relationship exists.” *City of Emerald v. Peel*, 920 S.W.2d 398, 403 (Tex. App.—Houston [1st Dist.] 1996, no writ).

Here, there is no dispute that a fiduciary relationship between Caroline and Borunda and Abaza existed at the time the arbitration agreement was entered given the prior engagement agreement. 1CR217-218, 252. Thus, Borunda and Abaza were required to disclose to Caroline all material facts concerning the arbitration agreement. *See Adam v. Marcos*, 620 S.W.3d 488, 504 (Tex. App.—Houston [14th Dist.] 2021, pet. denied) (the fiduciary has “the burden to establish that [the client] was informed of all material facts relating to the agreement.”); *Ginn v. NCI Bldg. Sys.*, 472 S.W.3d 802, 836

(Tex. App.—Houston [1st Dist.] 2015, no pet.) (when party stands in “a fiduciary relationship” they, “as a matter of law, ha[ve] a duty to disclose all material facts”); *see also Brackenridge Healthcare, Inc. v. Camero*, No. 04-22-00271-CV, 2023 Tex. App. LEXIS 2742, at *15 (Tex. App.—San Antonio Apr. 27, 2023, no pet. h.) (mem. op.) (if a fiduciary relationship exists, the fiduciary has the “duty to explain the contents of the arbitration agreement”).

Complying with their fiduciary obligations required ensuring that Caroline was “aware of the significant advantages and disadvantages of arbitration and ha[d] sufficient information to permit [her] to make an informed decision about whether to agree to the arbitration provision.” *Abdel Hakim Labidi v. Sydon*, 287 S.W.3d 922, 929 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (quoting TEX. ETHICS COMM’N OP. NO. 586 (2008)); *see also* TEX. DISC. R. PROF’L COND. 1.03(b) (requiring the lawyer to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”).

This Court and others have issued several opinions regarding attorney-client arbitration agreements executed at the outset of the representation and have enforced such agreements. *See, e.g., In re Pham (Pham v. Letney)*, 314 S.W.3d 520, 526 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (combined appeal & orig. proceeding); *Chambers v. O’Quinn*, 305 S.W.3d 141, 149 (Tex. App.—Houston [1st Dist.] 2009, pet. denied); *Sydon*, 287 S.W.3d at 929. But under this line of opinions, a fiduciary relationship between attorney and client does not exist **before the client signs the employment**

contract containing the arbitration agreement, and therefore attorneys are not required to fully explain all implications of the arbitration clause. *See, e.g., Pham*, 314 S.W.3d at 526 (because the client did not present evidence of a preexisting fiduciary relationship, the court declined to hold that the attorney was obligated to disclose the implications of the arbitration provision in the retainer agreement between the parties).

This case, however, involves a **pre-existing** attorney-client relationship concerning the same subject matter, which was not at issue in *Pham* or any other Texas case. The only case to come close is *Greenberg Traurig, LLP v. Nat'l Am. Ins. Co.*, 448 S.W.3d 115 (Tex. App.—Houston [14th Dist.] 2014, no pet.), but even it is distinguishable. In *Greenberg*, this Court held that the law firm “did not have a fiduciary duty, in spite of its longstanding relationship with [the client], to disclose the implications of an arbitration provision in a retainer agreement for a **new representation**.” *Id.* at 121 (emphasis added). Thus, the court found the authorities relied on by the client, including Disciplinary Rule 1.08(a) and *Archer v. Griffith*, 390 S.W.2d 735 (Tex. 1964) to be “not helpful” because they “concern[ed] an attorney-client contract relating to compensation in a representation **already in existence**, not a new representation.” *Id.* at n. 1 (emphasis added).

Here, the arbitration agreement was not in an agreement for a “**new representation**” but contained in a second agreement for the **same** representation. 1CR217-218, 220-23 (“**change to** contingency fee agreement”) (emphasis added). Agreements, including arbitration agreements, “negotiated during the existence of the

attorney-client relationship are closely scrutinized.” *Keck v. Nat’l Union Fire Ins. Co.*, 20 S.W.3d 692, 699 (Tex. 2000). “Because the relationship is fiduciary in nature, there is a **presumption of unfairness or invalidity attaching to such contracts.**” *Id.* (emphasis added). Furthermore, “the **burden is on the attorney to prove the fairness and reasonableness of the agreement.**” *Adam*, 620 S.W.3d at 504 (emphasis added). The fiduciary has “the burden to establish that [the client] was informed of all material facts relating to the agreement.” *Id.* (citing *Keck*, 20 S.W.3d at 699). If that burden is not satisfied, the agreement, whatever the type, is “invalid and unenforceable.” *Id.* at 506.

The evidence in the record when the arbitration motion was decided demonstrated that the lawyers did not meet their burden with respect to the arbitration agreement and fraudulently withheld material information from Caroline relating to that provision. Caroline testified that the lawyers provided her no advice concerning the arbitration provision, including the pros, cons, advantages or disadvantages of arbitration, and never advised her to seek outside counsel to advise her on the arbitration provision. 1CR218. “In fact, the lawyers never once discussed the arbitration provision with [her].” 1CR218.

Borunda did not dispute this testimony. Although Borunda testified that switching to a contingency fee arrangement was Caroline’s idea, he did not testify that he advised Caroline about the arbitration provision, nor did he testify how the arbitration provision was fair and reasonable to her. 1CR252. Rather, Borunda merely testified that he told Caroline to read the agreement, and she could have it reviewed by

another attorney if she wanted. 1CR252. But merely advising a client that “independent representation” may be appropriate “is not sufficient to rebut the presumption of unfairness or invalidity” attaching to the agreement. *Keck*, 20 S.W.3d at 699.

Nor could the new requirement for Caroline to waive her right to a jury trial and arbitrate her dispute ever be fair or reasonable. The first agreement did not require arbitration, instead providing that Texas law would apply. 1CR212. The contingency fee agreement, however, provided that any dispute would be resolved by binding arbitration with the AAA in accordance with its commercial rules. 1CR222-223. Those rules required Caroline to pay several thousand dollars in administrative fees to the AAA and 1/3 of the arbitrator compensation (\$78,456.27) simply to arbitrate her dispute. 1CR319, 1999. Conversely, Caroline would have only paid minimal filing and citation fees in litigation. Caroline was never advised about the costs associated with arbitration prior to signing the contract containing the arbitration provision. 1CR218, 1914-15.

Moreover, requiring Caroline to waive her right to a jury trial without full and complete disclosure is not fair or reasonable. The right to a jury trial is a constitutional one and “a waiver of constitutional rights must be voluntary, knowing, and intelligent, with full awareness of the legal consequences.” *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 132 (Tex. 2004). Although they had the fiduciary obligation to, the record at the time the motion to compel arbitration was granted established that neither Borunda nor

Abaza advised Caroline of the “legal consequences” of the arbitration provision. 1CR218, 253.

After the arbitration hearing, Caroline asked the trial court to vacate the arbitration award because the arbitration provision was procured by fraud by nondisclosure. 1CR553-558. Caroline supported this request with testimony from the hearing, including her testimony that the lawyers never advised her of the arbitration provision, explained what it was, or told that she would be waiving her right to a jury trial. 1CR1914-15 (“No one discussed the provision with me.”). Caroline also attached Borunda’s testimony where he admitted he never advised Caroline about the arbitration provision when she entered into the new agreement. 1CR1039-1040. And although Abaza testified that he allegedly discussed arbitration with Caroline, he could not “recall the specifics of it.” 1CR988. Rather, Abaza could only testify as to what he always does to the best of his knowledge. 1CR1249-1250. Abaza admitted he could not recall whether he advised Caroline on the costs associated with arbitration or the governing rules. 1CR1250.

Because the evidence established that the arbitration provision was obtained through fraud by nondisclosure, the trial court erred, either by compelling arbitration or declining to vacate the award. *See Daspit Law Firm, PLLC v. Herman*, No. 05-19-00615-CV, 2020 Tex. App. LEXIS 6847, at *16-17 (Tex. App.—Dallas Aug. 25, 2020, no pet.) (mem. op.) (declining to enforce arbitration agreement that client was “tricked”

into arbitration agreement based on “materially misleading statement[s]” made by law firm employee in violation of ethical duties).

B. Because the arbitration agreement was procured by fraud in the inducement and unconscionable, there is no valid agreement delegating the issue of arbitrability to the arbitrator.

“[A]bsent unmistakable evidence that the parties intended the contrary, it is the courts rather than arbitrators that must decide ‘gateway matters’ such as whether a **valid** arbitration agreement exists.” *In re Weekley Homes, L.P.*, 180 S.W.3d 127, 130 (Tex. 2005) (emphasis). An arbitration agreement – including an agreement to delegate the issue of arbitrability to the arbitrator – procured by fraud is not a “valid” agreement to arbitrate because “a party is not bound by a contract procured by fraud.” *Formosa Plastics Corp. United States v. Presidio Eng'rs & Contractors*, 960 S.W.2d 41, 46 (Tex. 1998). It has long been held that “fraud vitiates whatever it touches.” *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 336 (Tex. 2011). “To immunize an arbitration agreement from judicial challenge on the ground of fraud in the inducement would be to elevate it over other forms of contract.” *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 71 (2010).

After the trial court compelled arbitration, the Texas Supreme Court held “**as a general rule**, an agreement to arbitrate in accordance with the AAA or similar rules constitutes a clear and unmistakable agreement that the arbitrator must decide whether the parties’ disputes must be resolved through arbitration.” *TotalEnergies E&P USA*,

Inc. v. MP Gulf of Mex., LLC, 667 S.W.3d 694, 707 & n.17, 712. (Tex. 2023) (emphasis added). But *Total Energies* did not involve an agreement to delegate arbitrability procured by fraud in the inducement, so that decision has no application here.

After *Total Energies*, the United States Supreme Court explained that while “a party seeking to avoid arbitration must directly challenge the arbitration or delegation clause,” that rule “**does not** require that a party challenge only the arbitration or delegation provision,” for “where a challenge applies ‘equally’ to the whole contract and to an arbitration or delegation provision, **a court must address that challenge.**” *Coinbase, Inc. v. Suski*, 602 U.S. 143, 150-51 (2024) (emphasis added); *see also Granite Rock Co. v. Int’l Bhd. of Teamsters*, 561 U.S. 287, 297 (2010) (“the **court must resolve** any issue that calls into question the formation or applicability of the specific arbitration clause that a party seeks to have the court enforce.”) (emphasis added).

This makes sense. “[A]rbitration is a matter of contract — a matter of consent, not coercion — parties cannot be compelled to arbitrate any controversy unless they have contractually agreed to do so.” *TotalEnergies, LLC*, 667 S.W.3d at 701. If the contract as a whole is the product of fraudulent inducement, so is the arbitration provision and the delegation provision contained within it. And if consent to those provisions was fraudulently obtained, there is no valid agreement to arbitrate, rendering arbitration improper under both the federal and Texas arbitration acts.

For these reasons, the trial court was required to decide the issue of whether the arbitration provision was valid. To the extent the trial court concluded otherwise, it

erred. The trial court also erred by concluding that there was a valid agreement to arbitrate when the arbitration agreement was procured by fraud and in violation of the disciplinary rules, rendering it unconscionable.

II. The trial court erred by confirming an arbitration award that froze financial accounts held by non-parties and compelled nonparties to liquidate trust assets to satisfy the award.

“Arbitrators exceed their powers when they decide matters not properly before them.” *Elgohary v. Herrera*, 405 S.W.3d 785, 789 (Tex. App.—Houston [1st Dist.] 2013, no pet.). “When the arbitrator issues an award against a party not subject to arbitration, [s]he has exceeded h[er] powers.” *Id.* That is what the arbitrator did here, and it was error for the trial court to confirm the award because it was void. *See Gulf Oil Corp. v. Guidry*, 327 S.W.2d 406, 408 (Tex. 1959) (when an arbitrator determines a matter outside of its authority, the arbitrator’s award is void).

Minaki was owned by Richard G. Allison Co, LLC (“RGA LLC”). 1CR1432. Minaki in turn owned cash and securities contained at that time in a Fidelity financial account. 1CR886. As part of the underlying settlement, RGA LLC transferred all interests in Minaki to the Family Trust. 1CR1432, 1478. As part of the underlying settlement, Caroline and Rich became co-trustees of the Family Trust. 1CR2628. The Allisons, in their capacities as co-trustees of the Family Trust, then transferred all assets from Fidelity to a brokerage account at Charles Schwab. 1CR1990-1991.

The individual lawyers originally sued Caroline and Rich in their individual capacities, not as co-trustees of the Family Trust. 1CR227-232. And Caroline sued the

lawyers in her individual capacity, not as co-trustee of the Family Trust. 1CR8-26. The lawyers compelled the dispute to arbitration and they and their respective law firms asserted claims against the Allisons individually, not as co-trustees of the Family Trust, and the lawyers did not sue Minaki. 1CR267-268, 391-402. This is because any purported agreement to arbitrate was between certain of the lawyers and the Allisons individually, not in their capacities as co-trustees of the Family Trust, and there was no arbitration agreement between the lawyers and Minaki. 1CR220-224, 331-335.

In the arbitration, however, the Lawyers requested, and the Arbitrator ordered, the Schwab account owned by Minaki frozen. 1CR293. Then in her Interim Award, the Arbitrator ordered the freeze of the financial account owned by Minaki to “continue in full force and effect until the Final Award and all accrued interest have been paid in full.” 1CR90. In addition, the Arbitrator ordered Caroline and Richard in their individual capacities to “direct the trustee(s) of the Allison Family Trust” – Caroline and Rich in their trustee capacities – to “liquidate sufficient trust assets to pay the Final Award and all accrued interest in full.” 1CR289. This exceeded the Arbitrator’s powers because neither Minaki nor the Allisons in their trustee capacities were parties to the arbitration agreement or the arbitration proceedings, and exclusive jurisdiction over claims related to the Family Trust lied with an appropriate court (versus an arbitrator).

It is true that “[a] trustee may compromise, contest, arbitrate, or settle claims of or against the trust estate or the trustee.” TEX. PROP. CODE § 113.019. But “only signatories to an arbitration agreement are bound by the agreement.” *Elgohary*, 405

S.W.3d at 789. Here, the Allisons contracted with certain of the lawyers only in their individual capacities, not in their capacities as trustees or on behalf of Minaki. 1CR2748, 2767. The fact that Caroline signed the arbitration agreement in one capacity is not clear and unmistakable evidence that the individual in separate capacity agreed to arbitrate. *See Elgohary*, 405 S.W.3d at 789. This is because at the time Caroline signed the arbitration agreement, she was not a trustee of the Family Trust. But even if she was, actions taken by an individual in a personal capacity are separate and distinct from actions taken in an individual's representative capacity. *See Hanschen v. Hanschen*, 605 S.W.3d 57, 57 (Tex. App.—Dallas 2020, no pet.). And it is well-settled that “a judgment cannot be entered against a trust when the trustee appeared solely in her individual capacity.” *United States Fid. & Guar. Co. v. Gondeau*, 272 S.W.3d 603, 609 (Tex. 2008).

Rather, “[t]o hold a trust liable, the trustee, not the trust, must be the named defendant, and the trustee must be sued in its capacity as the trustee, not just individually.” *Rainbow Tr. v. W. Am. Nat’l Bank, N.A.*, No. 2-02-347-CV, 2003 Tex. App. LEXIS 7153, at *5 (Tex. App.—Fort Worth Aug. 21, 2003, no pet.) (mem. op.). That was never done here. Nor could the Arbitrator have had jurisdiction over any claims against the Allisons in their trustee capacities. Not only because the Allisons did not agree to arbitration in that (or any other) capacity, but because a district court (and probate court) “has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts[.]” TEX. PROP. CODE § 115.001(a) (emphasis added).

In short, the lawyers made the decision to only sue the Allisons in their individual capacities, not in their trustee capacity, 1CR391, and did not make Minaki – the owner of the Schwab account⁴ – a party to the arbitration proceeding. 1CR381. Therefore, the Arbitrator could not enter award that purported to require these nonparties to the arbitration proceeding to make payments to satisfy the award. *See Rapid Settlements, Ltd. v. Green*, 294 S.W.3d 701, 707 (Tex. App.—Houston [1st Dist.] 2009, no pet.) (granting annuity issuer's motion to vacate arbitration award that purported to require the insurer, a nonparty to the arbitration proceeding, to make payments pursuant the award).

The recent case *Tomlinson v. Kboury*, 624 S.W.3d 601 (Tex. App.—Houston [1st Dist.] 2020, pet. denied) is instructive. There, the plaintiff sued a defendant in his individual capacity for a business investment gone wrong. *Id.* at 602. The plaintiff did not or sue any trust or name the defendant in his capacity as trustee of any trust. *Id.* The plaintiff appeared and answered only in his individual capacity. *Id.* Following a jury trial, the trial court entered judgment against the defendant for more than \$1 million. *Id.* The plaintiff then sought to collect the judgment through a turnover order from a trust that the defendant was the sole beneficiary of. *Id.* at 604. The trial court found the trust not valid and ordered the defendant to turn over assets “previously held out” as being part of the trust to the sheriff and ordered the sheriff to “treat all assets

⁴ 1CR886; 2CR4181.

previously held as trust property” as the defendant’s property. *Id.* at 604-605. The defendant appealed.

The First Court of Appeals reversed. Reiterating that “a trust is not a separate legal entity, but instead is a fiduciary relationship between the trustee and the trust property” and that “in all suits by or against a trustee and all proceedings concerning trusts, the trustee is a necessary party to the action.” *Id.* at 608 (citing TEX. PROP. CODE §§ 115.001(a), 115.011(b)(4)). “And where the trustee is not properly before the court as a result of service, acceptance, waiver of process, or an appearance, Texas courts have invalidated orders that grant relief against a trust.” *Id.* at 608. The court held the order of the trial court void because “[a]lthough [the defendant] was before the court in his individual capacity, he was not sued, and did not appear, in his capacity as trustee of the [t]rust.” *Id.* at 610. The trial court therefore “lacked jurisdiction over the [t]rust and thus . . . erroneously required the turnover of [t]rust assets.” *Id.*

The same is true in this case, where the Arbitrator exceeded her authority by ordering Caroline to act in her trustee capacity to “liquidate trust assets” and disregarding the jurisdictional deficiencies by rendering awards against parties not before the Arbitrator and who had not agreed to arbitrate.

Because Minaki and the Allisons in their trustee capacities were nonparties to the arbitration agreement or the arbitration proceedings, the arbitrator had no power to place a freeze on Minaki’s account or order the Allisons to act in a trustee capacity to “liquidate sufficient trust assets” from the Family Trust to satisfy improper awards

rendered against them individually. *See id.*; *see also Rapid Settlements*, 294 S.W.3d at 707 (“trial court did not err by vacating the arbitrator's award because the arbitrator exceeded his powers in issuing an award against a party not subject to arbitration.”); *Lesbin v. Oliva*, No. 04-14-00657-CV, 2015 Tex. App. LEXIS 7802, at *22 (Tex. App.—San Antonio July 29, 2015, no pet.) (arbitrator exceeded powers by determining that individual who signed arbitration agreement in trustee capacity “was a party to the arbitration agreement, and thereby bound by any award in his individual capacity.”); *In re Estate of Hendricks*, No. 05-02-00871-CV, 2002 Tex. App. LEXIS 4560, at *1-3 (Tex. App.—Dallas June 27, 2002, no pet.) (arbitration agreement signed by individual did not bind individual in her capacity as executrix of estate to arbitrate estate’s claims against the defendant). The trial court therefore erred in refusing to vacate or modify the arbitration award pursuant to the Federal and Texas Arbitration Acts.

III. The trial court erred in confirming the award because the Arbitrator exceeded her powers by enforcing a contract that violates Texas public policy and misapplying Texas law when the parties’ agreement required her to apply that law correctly.

A. The Texas Supreme Court’s opinions in *Nafta* and *Delgado* permit judicial review of the Arbitrator’s decision.

Both Texas and federal law require the trial court to vacate an arbitration award when the arbitrator “exceeded their powers.” TEX. CIV. PRAC. & REM. CODE § 171.088(a); 9 U.S.C. § 10(a)(4). “In arbitration conducted by agreement of the parties, the rule is well established that an arbitrator derives his power from the parties’ agreement to submit to arbitration.” *Nafta Traders, Inc. v. Quinn*, 339 S.W.3d 84, 90 (Tex.

2011) (internal quotations omitted). Here, the parties agreed, and the Arbitrator ordered, that Texas substantive law would be followed. *See* 1CR614; 2CR2991. Because the Arbitrator rendered a decision contrary to Texas substantive law in violation of the parties' agreement, expanded judicial review is available. *See Nafta*, 339 S.W.3d at 90; *Belfiore Developers, LLP v. Sampieri*, No. 01-17-00847-CV, 2018 Tex. App. LEXIS 1671, at *13 (Tex. App.—Houston [1st Dist.] Mar. 6, 2018, no pet.) (mem. op.) (assuming “the ‘consistent with Texas law’ language in the purchase contracts limited the [arbitration] [p]anel's power to that of a judge, and [reviewing] the Award under expanded judicial review to determine whether the [arbitration] [p]anel committed an error of law when it enforced the liquidated-damages provisions.”).

Moreover, an appellate court may set aside an arbitrator's award on public policy grounds where “the award clearly violates carefully articulated, fundamental policy.” *Cvn Grp. v. Delgado*, 95 S.W.3d 234, 234 (Tex. 2002). This is because “a contract's illegality forecloses its enforcement regardless of whether it has been blessed by an arbitrator[.]” *Jefferson Cty. v. Jefferson Cty. Constables Ass'n*, 546 S.W.3d 661, 665 (Tex. 2018). For this independent reason, the Court has appellate jurisdiction to review the record to determine whether the Arbitrator's decision comports with carefully articulated public policy. *See Lee v. Daniels & Daniels*, 264 S.W.3d 273, 279 (Tex. App.—San Antonio 2008, pet. denied) (notwithstanding narrow judicial review, vacating arbitrator's award that violated Texas public policy by awarding unconscionable fees).

B. The trial court erred by enforcing an arbitration award based on a contingent fee agreement that violates strong Texas public policy and that was procured in violation of Texas law.

While disciplinary rules do not provide a private right of action, “a court may deem these rules to be an expression of public policy, so that a contract violating them is unenforceable as against public policy.” *Cruse v. O’Quinn*, 273 S.W.3d 766, 775 (Tex. App.—Houston [14th Dist.] 2008, pet. denied). For instance, our Supreme Court has stated that fee agreement that fails to comply with the disciplinary rules “violates public policy and is unenforceable.” *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 205 (Tex. 2002); *see also Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 563 (Tex. 2006) (voiding contractual provision that violated Disciplinary Rules 1.04 and 1.08). Our Supreme Court has also held that contingency fee contracts which do not comply with section 82.065(a) of the Texas Government Code are void and unenforceable as a matter of law. *Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 733 (Tex. 2018).

And this very Court has refused to enforce contracts (or provisions thereof) that violate the disciplinary rules. *See Izen v. Laine*, 614 S.W.3d 775, 787 (Tex. App.—Houston [14th Dist.] 2020, pet. denied) (citing rules to hold contractual provision in attorney-client agreement allowing attorney to collect a 35% contingent fee on a settlement that had been accepted before the attorney was retained unconscionable); *Reich & Binstock, LLP v. Scates*, 455 S.W.3d 178, 181 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (“if the Agreement violated the Disciplinary Rules, it is unenforceable

as against public policy.”); *Cruse*, 273 S.W.3d at 776 (fee sharing agreement that violated disciplinary rules was “illegal and void as against public policy”).

Disciplinary Rule 1.04(f) and section 82.065 of the Texas Government Code require contingency fee agreements to **be in writing** and signed by the client **and the lawyer**. 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.”).

In this case, the facts were not disputed as to the contracting parties. Although there is a written contingency fee contract between Caroline signed by Abaza, that agreement is not signed by any of the other lawyers or their respective law firms. 1CR220-224. If the lawyer does not sign the contract, that attorney may not legally seek a contingent fee. *See Johnson*, 73 S.W.3d at 205; *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); *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). Accordingly, the Arbitrator's Interim and Final Awards, which order Caroline to pay Borunda, Borunda P.C., Trevino, and the Law Office of Michael A. Trevino, P.L.L.C., a contingent fee,

1CR626-27, 637-39, violates Texas public policy and is void. *See* TEX. GOV'T CODE § 82.065(a); TEX. R. PROF. CONDUCT 1.04(a), (d); *See Lee*, 264 S.W.3d at 279.

In addition, there is also a violation of Disciplinary Rule 1.08(a), which invalidates the contingent fee contract. *See Hoover Slovacek, LLP v. Walton*, 206 S.W.3d 557, 563-564 (Tex. 2006). That disciplinary rule provides that a lawyer shall not transact with a current client unless (a) the terms are fair and reasonable to the client and fully disclosed, (b) the client has a reasonable opportunity to consult independent counsel, and (c) the client consents in writing thereto. *See* TEX. DISC. R. PROF'L COND. 1.08(a) (2020). "[T]he writing consenting to a transaction with one's attorney [must] be separate from the transaction papers themselves." *Osherow v. Nelson Hensley & Consol. Fund Mgmt, L.L.C. (In re Pace)*, 456 B.R. 253, 281-82 (Bankr. W.D. Tex. 2011) ("If signing the transaction papers was sufficient to satisfy the consent requirement of Rule 1.08, that requirement would lose all meaning."). In other words, "an attorney must obtain written consent **prior to** entering a business transaction with a client[.]" *Johnson v. Williams*, No. 01-05-00445-CV, 2006 Tex. App. LEXIS 5180, at *21 (Tex. App.—Houston [1st Dist.] June 15, 2006, pet. denied) (mem. op.) (emphasis added).

These requirements were not satisfied as a matter of law. As demonstrated above, after fifteen months of litigation with Caroline having paid more than \$64,000 in fees, 1CR628, Abaza, Trevino, and Borunda PC took a 35% contingent fee via a contract with more favorable provisions for them, such as allowing them to obtain a recovery on assets already owned by Caroline and "kept" by her, adding a new arbitration

requirement that obligated Caroline to pay thousands in filing fees and arbitrator compensation simply to resolve her dispute, and retaining the fees Caroline paid unless the case favorably concluded. 1CR220-224, 1910-1911. The Lawyers have no written consent fully explaining the new agreement to Caroline, and did not advise her to seek independent counsel or give her reasonable opportunity to do so. 1CR1028-1029 (testimony from Borunda agreeing that no written consent was obtained), 1900-01, 1907, 1911, 1944-45 (testimony from Caroline about nondisclosure).

As a matter of law, the new agreement was unreasonable to Caroline, rendering it void and unenforceable. *See Hoover*, 206 S.W.3d at 563 (voiding fee provision that violated Rule 1.08); *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.”); *Johnson*, 2006 Tex. App. LEXIS 5180, at *20-21 (finding attorney breached fiduciary duty and violated Rule 1.08(a) because client did not consent in writing to the new transaction after full disclosure); *Osherow*, 456 B.R. at 282 (same).

Moreover, the evidence conclusively established the contingency fee agreement was procured by fraud and breach of fiduciary duty and is therefore unenforceable. *See Italian Cowboy*, 341 S.W.3d at 336 (“fraud vitiates everything it touches.”); *In re*

Polybutylene Plumbing Litig., 23 S.W.3d 428, 437 (Tex. App.—Houston [1st Dist.] 2000, pet. dismissed) (recognizing that attorney fee contracts will not be enforced even after full performance “in cases involving fraud or breach of a fiduciary duty by the attorney.”) (citing *Burrow v. Arce*, 997 S.W.2d 229, 232 (Tex. 1999) and *Archer v. Griffith*, 390 S.W.2d 735, 740 (Tex. 1964)).

Although Borunda was “obligated to render a full and fair disclosure”⁵ to Caroline, he would not provide Caroline with a budget to complete the litigation, did not disclose that a second mediation deadline was approaching, and instead told her trial was imminent and she would “go bankrupt funding a trial.” 1CR1899-1900, 1906-08, 1910-11, 2069-70. Moreover, it is undisputed that, prior to the contingency fee switch, Borunda never advised Caroline of an agreed order imposing another mediation deadline or that Robin wanted a second mediation. 1CR1904. This is true even though Borunda “probably” discussed the issue with Trevino earlier. 1CR1044-45. Caroline relied on Borunda’s and Abaza’s nondisclosure of material facts to make the decision to convert to the contingency fee arrangement. 1CR1935.

In addition, Texas law renders unenforceable as against public policy any fee agreement that prohibits a client from settling without the lawyers’ consent. *See Lopez v. Maldonado*, No. 13-15-00042-CV, 2016 Tex. App. LEXIS 13524, at *3 (Tex. App.—Corpus Christi Dec. 21, 2016, no pet.) (mem. op.); *Davis Law Firm v. Bates*, No. 13-13-

⁵ *Willis v. Maverick*, 760 S.W.2d 642, 645 (Tex. 1988)

00209-CV, 2014 Tex. App. LEXIS 1582, at *10-11 (Tex. App.—Corpus Christi Feb. 13, 2014, no pet.) (mem. op.); *In re Cyr*, 2020 U.S. Dist. LEXIS 257924 (W.D. Tex. 2020). Caroline’s contingent fee contract has the same unethical provision: “Client will not make a settlement or offer of settlement without the approval of Attorneys.” 1CR187, 1220. Abaza – the drafter⁶ - agreed this provision “runs afoul” of the disciplinary rules. 1CR998-1000. The contract has no severability clause, and cases that have considered a Rule 1.02 violation have not severed that provision to enforce the contract. *See Davis*, 2014 Tex. App. LEXIS 1582, at *10-11; *Lopez*, 2016 Tex.App. LEXIS 13524, at *3.

Because the Arbitrator’s award violates Texas substantive law and the public policy of Texas, the Lawyers’ claim for breach of contract and the breach of contract award set forth in the Interim and Final Awards should have been vacated and set aside. See *Lee*, 264 S.W.3d at 282 (trial court erred by enforcing arbitration award of unconscionable fees that violated Texas public policy). Because the Arbitrator awarded the Lawyers’ relief on that claim contrary to Texas law, she exceeded her powers, and the trial court erred in confirming those awards.

C. The Arbitrator’s alternative awards under equitable theories likewise violate Texas public policy.

Apparently recognizing that her breach of contract award rests on very shaky ground, the Arbitrator ruled that, even if the “contractual promises to pay a 35%

⁶ 1CR1219-20.

contingent fee ... were held to be unenforceable,” the Lawyers are entitled to recover under various quasi-contract/equitable theories. 1CR628-29 (awarding alternative relief under promissory estoppel, quantum meruit, unjust enrichment, and money had and received theories). However, in doing so, the Arbitrator again violated the strong public policy of the state and exceeded her authority.

First, under Texas law, to recover under the quasi-contract claims, the Lawyers were required to “present evidence of the reasonable value of [their] services.” *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 565-66 (Tex. 2006). Aside from the invoices Caroline paid to Borunda and Abaza before her fee arrangement was converted from hourly billing, no lawyer logged their hours, tasks, or gave hourly rates. 1CR1088-89 (Borunda), 1236 (Abaza), 1525 (Trevino). While Borunda testified that the value of the services rendered is the value of the 35% contingent fee, 1CR1091, which testimony the Arbitrator seemingly relied as she found the amount of the 35% contingency fee (\$1,352,149.80) to be the damages for the quasi-contractual claims, 1CR267, 285-87, as a matter of Texas law, an attorney cannot support quasi-contractual claims with mere contingent-fee percentages. *See Hoover*, 206 S.W.3d at 565-66 (Tex. 2006) (holding that law firm “no longer has a claim for quantum meruit” arising from services provided under contingent-fee contract where it failed to present evidence of reasonable value of those services); *cf. Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818-19 (Tex. 1997) (bare contingent-fee percentage is insufficient evidence of reasonable and necessary attorney's fees); *see also Ray v. T.D.*, No. 03-06-00242-CV, 2008 Tex. App.

LEXIS 986, at *26 (Tex. App.—Austin Feb. 7, 2008, no pet.) (mem. op.) (“In the absence of any attempt by [attorney] to quantify the value of any legal services he provided [client] beyond his bare reliance on a claimed contingent-fee percentage, the district court did not abuse its discretion in refusing to award [attorney] attorney's fees under quantum meruit.”).

Second, and perhaps more importantly, allowing licensed lawyers to utilize “quasi-contractual” theories to recover a contingent fee without legally compliant written contingency fee agreements signed by all attorneys and the clients renders section 82.065 and Disciplinary Rule 1.04 meaningless and violates Texas public policy as set by the Legislature. Indeed, the Supreme Court of Texas specifically instructs that the doctrine of promissory estoppel is not a valid “exception” to enforce contracts of licensed professionals where a licensed professional failed to comply with the applicable statutes governing its contracts. *See Trammel Crow Co. No. 60 v. Harkinson*, 944 S.W.2d 631, 636-37 (Tex. 1997) (holding that real estate brokers cannot “forbear from acting in reliance on anything less than a signed written commission agreement” and, when they do, “[they do] so at [their] own peril.”).

This has long been the rule in Texas. For example, in *Landis v. W. H. Fuqua, Inc.*, real estate brokers sued to recover a commission on an oral contract, asserting that they were entitled to a recovery in quantum meruit despite statutes requiring real estate contracts to be in writing and signed by the promisor. 159 S.W.2d 228, 228-29 (Tex. Civ. App.—Amarillo 1942, writ ref'd). The court rejected the argument because

permitting recovery to state licensed professionals governed by statute would render nugatory the statute requiring a written agreement. *Id.* at 230-31. Following rendition of the court of appeals' judgment, the real estate brokers petitioned the Supreme Court of Texas for review, which refused their petition for writ of error. *Id.* Accordingly, the Amarillo Court of Appeals' opinion and judgment holds the same precedential value as an opinion of the Texas Supreme Court. *See* THE GREENBOOK: TEXAS RULES OF FORM, Appendix E at 111(12th ed. 2010) ("Such cases have equal precedential value with the Texas Supreme Court's own opinions.").

Likewise, in *Hill v. Shamoun & Norman, LLP*, the Supreme Court of Texas held that, while an attorney working for a client without a written contract is entitled to recover the reasonable value for a reasonable number of hours worked for a client under a quantum meruit theory, a lawyer in such an instance **is not** entitled to a contingent fee based on the results of a case and that "neither the fee an attorney stood to earn under such an unenforceable fee agreement nor the specific result that would entitle the attorney to that contingent fee under the agreement constitutes evidence to be considered[.]" 544 S.W.3d 724, 744 (Tex. 2018); *see also Quigley v. Bennett*, 227 S.W.3d 51, 53 (Tex. 2007) (holding evidence of the value of an agreement that is unenforceable under the statute of frauds "cannot be given any weight or effect and legally cannot be considered as evidence supporting the jury's finding.").

Accordingly, pursuant the supreme court's precedents (and precedent bearing the precedential weight of a supreme court opinion), the Arbitrator exceeded her

authority and violated the public policy of Texas by awarding the Lawyers a 35% contingent fee (\$1,352,149.80) pursuant to the equitable theories asserted. 1CR285-87. The Arbitrator's violation of Texas public policy and Texas law, contrary to the parties' agreement, establishes that she exceeded her authority and that her quasi-contractual awards should be vacated. *See* 9 U.S.C. § 10.

D. The Arbitrator's finding that the Lawyers did not engage in breach of fiduciary duty is against the great weight of the evidence.

The Arbitrator summarily concluded, without any reasoning, that Caroline was not "entitled to any relief or recovery" on her affirmative claim of breach of fiduciary. 1CR287-88. This conclusion is so contrary to the overwhelming weight of the evidence, *see* 1CR570-90, that it is clearly wrong or unjust. *See Nafta*, 360 S.W.3d at 720-21. Because the conclusion was reached without consideration of Texas law, contrary to the arbitration agreement, the Arbitrator exceeded her powers in rendering it, it is subject to judicial review, and the trial court erred by declining to vacate it. *See id.*

The Lawyers did not dispute they owed Caroline fiduciary duties of loyalty, honesty, full disclosure, and to follow instructions if what was being requested is not illegal or unethical. 1CR965-66, 1571. Caroline demonstrated, as a matter of law, that Borunda, Abaza and Trevino violated these fiduciary duties in at least seven ways, 1CR570-579, four of which will be highlighted here.

First, the Lawyers refused to comply with reasonable requests from Caroline 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 Richard 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. 1CR1060, 1934, 2473. Trevino met with Caroline on April 16 and told her she did “not have a good-faith basis to revoke or rescind the MSA.” 1CR1600. That was untrue because “[a] party may revoke its consent to a settlement agreement at any time before judgment is rendered on the agreement,”⁷ and because the MSA required consent of the adult grandkids, approval by an ad litem for the minor grandkid, and court approval, 1CR405, 408, 1056, which had not yet occurred. 1CR1069, 1465. As a matter of law, a contract that requires court approval is “not effective until the trial court approves [the settlement].” *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.”). Even Borunda recognized in internal emails after the MSA was signed that the settlement had not yet been “implemented.” 1CR1069, 2479.

⁷ *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).

Rather than follow Caroline's instructions, the Lawyers continued to engage in self-serving conduct to garner settlement approval. 1CR1936. Trevino and Borunda purposefully omitted language in the consent forms sent to the adult grandkids because they did not want to "spook" them or get their "gears turning." 1CR1064-65, 1937-38, 2478. So, the adult 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. 1CR417, 421. There was also no information about the attorney's fees being sought that would deplete the inheritance. 1CR417, 421, 1065-1066. And the Lawyers did not provide the ad litem with any information to allow for a reasonable analysis as to whether the settlement was in the minor's best interest. 1CR1075-1076. Caroline was also given no opportunity to talk to the ad litem. 1CR1939.

Second, the Lawyers secretly sought to have the probate court approve their improper and disputed fees. 2CR3362, 3406-07. Trevino testified that Caroline raised issues about attorney's fees at the April 16, 2021 meeting. 1CR1458, 1463, 1600. Weeks after, Borunda and Trevino injected language into a proposed order approving the MSA that would find a joint 35% contingency fee "proper, reasonable and necessary," 1CR2481-92, even though the Lawyers acknowledged at the hearing that the amount requested was "incorrect." 1CR1074, 1560-61. This entire saga was never disclosed to Caroline, 1CR1562, 1778, 1941, who likewise never asked the Lawyers to file a motion to approve the settlement. 1CR1075, 1941. Fortunately, Collins objected and filed the

motion without the Lawyers self-serving language, which was approved. 1CR464-65. Still, Caroline's expert opined that "[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[.]" 2CR3405.

Third, the Lawyers refused to provide a settlement statement and, instead, sued Caroline for disputed and excessive amounts. 2CR3405-12, 3691-96. The fees should have been calculated prior to the MSA being signed so Caroline could make an informed decision about settling. 2CR3368, 3382, 3384-89. At a minimum, the standard of conduct required the Lawyers to provide a settlement statement upon conclusion of the matter. *See* 2CR3607-08, 3655-56 (testimony from legal expert on standard of conduct); *see also* TEX. DISC. R. PROF'L COND. 1.04. Trevino claimed the Lawyers had "completed" Caroline's representation "when the court approved the settlement." 1CR2504. The Lawyers did not provide a settlement statement at that time. Instead, individuals Trevino, Borunda, and Abaza filed a verified petition in the probate court seeking "approximately" \$3.5 million as a fee, 1CR227-233, which was more than \$730,934 over what was actually owed. 1CR953-954.

On December 9, 2021, Caroline requested an accounting in a letter and in her lawsuit. 1CR956; 2CR2934-36, 2952. Even though the Lawyers sued Robin for breaching her fiduciary duties in not providing an accounting, 1CR957, the Lawyers themselves did not comply with that obligation either. Rather, the Arbitrator had to order the Lawyers in pre-hearing discovery proceedings to prepare and produce one.

1CR1171-1172. It was not until August 17, 2023, two-years and four months after the MSA, that the Lawyers finally provided a defective, conglomerate settlement statement where all three of them and their three entities jointly sought \$1,416,915.68 from Rich (\$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 given to the probate court). 2CR2970-2973. However, there remained problems with the settlement statement such as several missing deductions.

Which leads to the fourth breach: the Lawyers refused to properly calculate the contingency fee allegedly owed. 2CR3378-3380, 3406-3411. The Texas Supreme Court required 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.” *Levine v. Bayne, Snell & Krause, Ltd.*, 40 S.W.3d 92, 94 (Tex. 2001). As fiduciaries, the burden is on the Lawyers to correctly calculate their fee. *See Hoover*, 206 S.W.3d at 565. They did not do so on multiple levels. *See* 1CR577-79.

For instance, Caroline gave up remainder interests in the Marital Trust and already had rights to support under the Family Trust. *See* 2CR3344, 3359-60 (testimony from legal expert Sarah Patel Pacheco on this issue). The Lawyers ignored those interests claiming they cannot be calculated. 1CR909, 1280. But a “remainder interest may be calculated by use of the mortuary tables...with the help of an expert witness if necessary.” *Fortune v. First Union Nat'l Bank*, 323 N.C. 146, 150-51 (1988). Caroline's expert Rob Hancock, whose reports the Arbitrator considered evidence, did that and

arrived at a present value of \$2,003,556 for the remainder Martial Trust interest alone. 1CR2640, 2649. The Lawyers did not include that interest or the fact that Caroline already had rights in the Family Trust when calculating the recovery even though Borunda agreed (despite the language in the fee agreement) that he had no right to collect a fee on assets Caroline “already owned.” 1CR906.

Because the great weight of the evidence established that the Lawyers engaged in breach of fiduciary duty under Texas law, the Arbitrator exceeded her power by disregarding Texas substantive law to reach an opposite conclusion, in violation of the arbitration agreement. For this reason, the trial court erred by confirming the arbitration awards.

IV. The trial court erred in confirming the Awards because the Arbitrator exceeded her powers by ordering attorney’s fees and expenses not authorized by law or the parties’ agreement.

An arbitrator exceeds its powers by awarding attorney’s fees and expenses not provided for in the agreement to arbitrate. *In re C.A.K.*, No. 04-05-00487-CV, 2006 Tex. App. LEXIS 8, at *4 (Tex. App.—San Antonio Jan. 4, 2006, pet. denied). That is what occurred here.

While the arbitration agreement is silent on the issue of attorney’s fees or expenses, it incorporates the AAA’s commercial rules. 1CR222-223. When an arbitration agreement incorporates by reference outside rules, those rules will apply unless they conflict with the express terms of the arbitration agreement. *America Life, Inc. v. Myer*, 440 S.W.3d 18, 24 (Tex. 2014). The AAA commercial rule addressing

awards of attorney's fees and expenses provides that in the final award, the arbitrator shall assess fees, expenses and compensation provided in Rules R-53, R-54, and R-55, and may include an award of attorneys' fees if "it is authorized by law or their arbitration agreement." AAA COMM. RULE R-47(c), (d). The AAA's commercial rules require the arbitrator to apply this rule "insofar as [it] relate[s] to the arbitrator's powers and duties." AAA COMM. RULE R-8. Here, the Arbitrator exceeded her powers by awarding fees and expenses not authorized by law or the parties' agreement.

Under Texas law, "[t]he arbitrators shall award attorney's fees as additional sums required to be paid under the award only if the fees are provided for: (1) in the agreement to arbitrate; or (2) by law for a recovery in a civil action in the district court on a cause of action on which any part of the award is based." TEX. CIV. PRAC. & REM. CODE § 171.048(c). The arbitration provision does not permit the Arbitrator to award attorney's fees. 1CR222-223. Therefore, the Arbitrator could award fees only if such fees were permitted by statute. *MBM Fin. Corp. v. Woodlands Operating Co.*, 292 S.W.3d 660, 669 (Tex. 2009).

However, no statute permits recovery of attorney's fees for defending against claims for legal malpractice, which "sound in tort." *Stanfield v. Neubaum*, 494 S.W.3d 90, 97 (Tex. 2016); *Metro. Life Ins. Co. v. Haney*, 987 S.W.2d236, 243-44 (Tex. App.—Houston [14th Dist.] 1999, pet. denied) ("Attorney's fees, however, are not recoverable on tort claims."). "Attorney's fees that relate solely to a claim for which fees are unrecoverable must be segregated." *Clearview Props., L.P. v. Prop. Tex. SC One Corp.*, 287

S.W.3d 132, 143 (Tex. App.—Houston [14th Dist.] 2009, pet. denied). It is undisputed, and indisputable, that the Lawyers incurred fees in the arbitration for prosecuting their breach of contract and quasi-contract claims as well as for defending against Caroline’s claims for legal malpractice and breach of fiduciary duty claims.

Despite Texas law mandating that such fees be segregated, the Arbitrator concluded segregation was not necessary because the “claims and defenses factually overlap, arise out of the same transactions, and are so intertwined and inseparable as to make segregation impractical or impossible.” 1CR318. However, intertwined facts do not make otherwise unrecoverable fees recoverable; instead, “it is only when discrete legal services advance both a recoverable and unrecoverable claim that they are so intertwined that they need not be segregated.” *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 311 (Tex. 2006). Even amongst intertwined claims, parties seeking attorney’s fees bear the burden of demonstrating that segregation is not required. *See 2017 Yale Dev., LLC v. Steadfast Funding, LLC*, No. 01-20-00027-CV, 2023 Tex. App. LEXIS 2904, at *85 (Tex. App.—Houston [1st Dist.] May 2, 2023, pet. denied). The record establishes that the Lawyers completely failed to meet that burden.

To begin with, the Lawyers’ fee invoices are so heavily redacted that it was impossible for the Arbitrator to have sufficient evidence to determine whether the amount requested advanced the contract claim or defense of the tort claims. *See McGibney v. Raubausser*, 549 S.W.3d 816, 824-25 (Tex. App.—Fort Worth 2018, pet. denied). While some of the billing entries showed with reasonable clarity the types of

tasks that were performed, the redactions eliminated virtually all specificity about those tasks and therefore largely prevent a meaningful evaluation of their reasonableness and necessity as to the recoverable breach of contract claim. *See Person v. MC Simpsonville, SC-L-UT, LLC*, No. 03-20-00560-CV, 2021 Tex. App. LEXIS 7155, at *22 (Tex. App.—Austin Aug. 27, 2021, no pet.). (mem. op.). For example:

1/10/2022	JRL	Telephone conference with clients [REDACTED].	0.50	\$150.00
1/19/2022	JRL	Telephone conference with clients [REDACTED].	0.60	\$180.00

3/9/2022	JRL	Correspondence to and from clients regarding [REDACTED].	1.20	\$360.00
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4/3/2023	JRL	Legal research regarding [REDACTED].	2.30	\$690.00
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7/11/2023	JRL	Telephone conference with clients regarding [REDACTED].	1.30	\$390.00
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	JRL	Research regarding [REDACTED].	5.60	\$1,680.00
8/17/2023	JRL	[REDACTED].	6.80	\$2,040.00

14367	TIME	Joe	0.10	200.00	20.00
12/7/2022		Communication/OUT	0.00	T@4	
Billed	G:10566	7/16/2023 Attorney Protective.Trev	0.00		
Correspondence to [REDACTED] regarding		L210 Pleadings	0.00		
14370	TIME	Joe	1.50	200.00	300.00
12/8/2022		Communication/CLI	0.00	T@4	
Billed	G:10566	7/16/2023 Attorney Protective.Trev	0.00		
Meeting with client regarding [REDACTED]		L120 Analysis/Strategy	0.00		

13112	TIME	Joe	0.40	200.00	80.00
2/7/2022		Communication/OUT	0.00	T@4	
Billed	G:10551	4/29/2023 Attorney Protective.Trev	0.00		
Telephone conference with [REDACTED]		regarding L120 Analysis/Strategy	0.00		
13130	TIME	Joe	3.10	200.00	620.00
2/14/2022		Research	0.00	T@4	
Billed	G:10551	4/29/2023 Attorney Protective.Trev	0.00		
Legal research regarding [REDACTED]		L120 Analysis/Strategy	0.00		
13135	TIME	Joe	0.60	200.00	120.00
2/15/2022		Communication/CLI	0.00	T@4	
Billed	G:10551	4/29/2023 Attorney Protective.Trev	0.00		
Telephone conferences with client regarding [REDACTED]		L120 Analysis/Strategy	0.00		

14760	TIME	Joe	0.60	200.00	120.00
3/9/2023		Research	0.00	T@4	
Billed	G:10575	8/25/2023 Attorney Protective.Trev	0.00		
Legal research regarding [REDACTED]		L120 Analysis/Strategy	0.00		

15162	TIME	Joe	0.20	200.00	40.00
5/30/2023		Communication/OUT	0.00	T@4	
Billed	G:10583	9/24/2023 Attorney Protective.Trev	0.00		
Telephone conference with [REDACTED]		regarding L420 Expert Witnesses	0.00		
15189	TIME	Joe	2.90	200.00	580.00
6/6/2023		Research	0.00	T@4	
Billed	G:10583	9/24/2023 Attorney Protective.Trev	0.00		
Research regarding [REDACTED]		L420 Expert Witnesses	0.00		

2CR3188, 3195, 3199, 3201.

Indeed, most entries in the redacted billing records show only that the Lawyers' counsel had a telephone conference with somebody about something, emailed somebody about something, discussed something with somebody, reviewed something, researched something, drafted something, coordinated something, or worked on something. *See* 2CR3181-3229. Accordingly, the record is not sufficient, in light of the supreme court's admonitions concerning the need to identify specific tasks performed,

to allow the Arbitrator to evaluate the reasonableness and necessity of hours worked and whether that work was performed related to the recoverable breach of contract claim or in defense of the tort claims.

Moreover, some of the unredacted entries establish that the Lawyer's counsel performed work **solely** related to the tort claims. For instance, entries relating to discussions with the "standard of care" expert to rebut Caroline's negligence claim:

15908	TIME	Joe	1.30	200.00	260.00
10/19/2023		Communication/OUT	0.00	T@4	
Billed	G:10623	1/4/2024 Attorney Protective.Trev	0.00		
Telephone conference with our standard of care expert regarding opinions.		L420 Expert Witnesses	0.00		

15911	TIME	Joe	4.30	200.00	860.00
10/20/2023		Plan and prepare for	0.00	T@4	
Billed	G:10623	1/4/2024 Attorney Protective.Trev	0.00		
Prepare for conference call with client and our standard of care expert regarding opinions.		L420 Expert Witnesses	0.00		

15912	TIME	Joe	2.00	200.00	400.00
10/20/2023		Appear for/attend	0.00	T@4	
Billed	G:10623	1/4/2024 Attorney Protective.Trev	0.00		
Attend conference call with client and our standard of care expert.		L420 Expert Witnesses	0.00		

15963	TIME	Joe	1.40	200.00	280.00
10/31/2023		Communication/OUT	0.00	T@4	
Billed	G:10623	1/4/2024 Attorney Protective.Trev	0.00		
Telephone conferences with our standard of care expert regarding trial testimony.		L420 Expert Witnesses	0.00		

16242	TIME	Joe	0.40	200.00	80.00
1/15/2024		Communication/OUT	0.00	T@4	
WIP		Attorney Protective.Trev	0.00		
Telephone conferences with damages expert and standard of care expert regarding reports.		L420 Expert Witnesses	0.00		

2CR3214, 3217, 3225. Or entries for time billed by counsel communicating with the "ethics expert" to rebut Caroline's claim for breach of fiduciary duty:

15731	TIME	Joe	0.20	200.00	40.00
9/13/2023		Communication/OUT	0.00	T@4	
Billed	G:10605	11/4/2023 Attorney Protective.Trev	0.00		
Telephone conference with ethics expert regarding	L420 Expert Witnesses		0.00		

15965	TIME	Joe	0.70	200.00	140.00
10/31/2023		Communication/OUT	0.00	T@4	
Billed	G:10623	1/4/2024 Attorney Protective.Trev	0.00		
Telephone conference with our ethics expert regarding recent depositions.	L420 Expert Witnesses		0.00		

2CR3209, 3217.

“[W]hen, as here, it cannot be denied that at least some of the attorney's fees are attributable only to claims for which fees are not recoverable, segregation of fees ought to be required[.]” *Tony Gullo Motors*, 212 S.W.3d at 314. Even though the Lawyers took the position in arbitration that segregation is not required, their counsel, in fact, segregated invoices relating to the recoverable “Fee Claims,” which were paid by the Lawyers, and those paid by Trevino’s insurer in defense of the malpractice claims. 2CR3175; *compare* 2CR3181-84 (“Fee Claim” invoices) *with* 2CR3186-3229 (invoices paid by Trevino’s insurance company). Notably, Trevino’s insurance policy would not pay to pursue Trevino’s breach of contract and related claims. 2CR3303. Rather, the policy only required Trevino’s insurer to pay for attorney’s fees and expenses incurred defending “an act, error or omission in [Trevino’s] performance of legal services for others.” 2CR3304.

Accordingly, the Arbitrator exceeded her authority by awarding fees not permitted by the contract or Texas law, and the trial court should have vacated the arbitration awards for that reason as void. Alternatively, the Arbitrator exceeded her

authority by awarding fees that clearly were incurred for defense of the tort claims—*i.e.*, the \$214,160 in fees paid by Trevino’s malpractice insurer and which the carrier and Lawyers clearly segregated as being related to the legal malpractice claim. Those fees are not recoverable under Texas law, could not properly be awarded by the Arbitrator, and, at the very least, the Arbitration award should be modified to vacate those fees. *See* AAA COMM. R. R-47(d)(ii); TEX. CIV. PRAC. & REM. CODE § 171.048(c); *see also In re C.A.K.*, 2006 Tex. App. LEXIS 8, at *4-5 (arbitrator exceeded its authority in ordering party to pay his own attorney’s fees when agreement only permitted an award to pay the legal fees of another party).

The Arbitrator also exceeded her powers by awarding \$39,035.93 in expenses, which include copy reproduction and travel expenses, and \$102,418.00 in fees paid to expert witnesses, including the standard of care and ethics experts used to defend against the tort claims. 1CR318-19; 2CR3176-77. Neither the arbitration agreement nor Texas law permits such an award.

Under Texas substantive law, “expert witness fees are not recoverable as costs of litigation.” *Bundren v. Holly Oaks Townhomes Ass’n*, 347 S.W.3d 421, 440 (Tex. App.—Dallas 2011, pet. denied). Additionally, expenses for reproduction, meals, and travel are also not recoverable as costs. *Top Cat Ready Mix, LLC v. All. Trucking, L.P.*, No. 05-18-00175-CV, 2019 Tex. App. LEXIS 369, at *18 (Tex. App.—Dallas Jan. 22, 2019, no pet.) (mem. op.). Although the arbitration agreement is silent on any expense award, the AAA commercial rules only allow the final award to include “fees, expenses, and

compensation provided in Sections R-53, R-54, and R-55.” AAA. COMM. R. R-47(c). Rules R-53 governs administrative fees paid to the AAA “for the cost of providing administrative services.” *Id.* at Rule R-53. Rule 55 governs arbitrator compensation. *Id.* at Rule R-55. Rule R-54 governs “expenses” but specifically provides that “[t]he expenses of witnesses for either side **shall be paid by the party producing such witnesses.**” *Id.* at Rule R-54 (emphasis added). Only “expenses of the arbitrator” or “any witness and the cost of any proof produced at the direct request for the arbitrator” may be assessed “against any specified party or parties.” *Id.*

The Arbitrator therefore did not have authority to award a “remedy not expressly provided for under existing state or federal law.” *Nafta*, 339 S.W.3d at 88; *Taylor Morrison of Tex., Inc. v. Fulcher*, No. 13-20-00332-CV, 2022 Tex. App. LEXIS 5521, at *16 (Tex. App.—Corpus Christi Aug. 4, 2022, pet. denied) (arbitrator exceeded authority and trial court erred by awarding expert witnesses fees as arbitration expenses). The Arbitrator exceeded her authority in doing so, which renders the arbitration awards void. TEX. CIV. PRAC. & REM. CODE § 171.088(a)(3)(A). For this reason too, the trial court erred by confirming the arbitration awards.

V. The trial court erred by confirming the Awards because the Arbitrator exceeded her powers by not providing a reasoned basis for denying Caroline’s relief on her affirmative claims.

A trial court must also vacate an award “if the arbitrators so imperfectly executed their powers that a mutual, final, and definite award upon the subject matter submitted was not made.” *Stage Stores, Inc. v. Gunnerson*, 477 S.W.3d 848, 855 (Tex. App.—Houston

[1st Dist.] 2015, no pet.) (quoting 9 U.S.C.A. § 10(a)(4)) (internal quotations omitted). That occurs when, for instance, the arbitrator agrees to, but fails to submit, a “reasoned award.” *See id.* at 863. That is what occurred here.

Although an arbitrator is generally not required to provide a reasoned award, “the arbitrator's notation in the scheduling order that the parties agreed to a reasoned award functions either as the consent of the arbitrator to amend the rules or as a determination by the arbitrator that a reasoned award was appropriate.” *Id.* at 857. Here, the Arbitrator agreed to provide a reasoned award. 2CR2992 (“Judge Ashby will write a reasoned final award.”). Therefore, the Arbitrator could not merely “announce[] a result without any reasoning or explanation.” *Id.* at 857. Rather, she was required to submit a reasoned award that contained a “detailed listing or mention of expressions or statements offered as a justification” for her decision respect to each of the claims or “key defenses.” *Id.* at 859-860. The Arbitrator failed to do that.

The Interim Award merely announces a result as to Caroline’s claims and defenses without any reasoning or explanation. 1CR287-288. Caroline asserted affirmative claims for negligence, breach of fiduciary duty, fraud, violations of the DTPA, declaratory relief and an accounting. 1CR355-360, 362. For each these affirmative claims, the Interim Award merely states the result: “Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for [negligence, breach of fiduciary duty, violations of the Texas Deceptive Trade Practices Act, fraud, declaratory relief, an accounting].” 1CR287-288. The Interim Award is even more

deficient as to Caroline's affirmative defenses, which alleged that the Lawyers' claims were barred by lack of recovery, defects in the underlying settlement giving rise to the recovery, prior material breach, fraud and estoppel, offset, credit or recoupment, and illegality or unconscionability. 1CR364-365. The Interim Award merely states that "[n]either Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on any defense asserted in his or her pleadings" without even mentioning what those defenses are. 1CR287-288.

Caroline disagrees with the result because she presented sufficient evidence to establish her affirmative claims, as set forth in her motion to vacate. 1CR522-609. Regardless, because the Interim Award does not provide any "listing or mention of expressions or statements offered as a justification" for why Caroline is not entitled to any relief on her affirmative claims or defenses, it is insufficient, and the Arbitrator exceeded her authority by issuing it in this manner. *See Stage Stores*, 477 S.W.3d at 863 (arbitrator exceeded authority when it disposed of claim and key defenses without "provid[ing] any amount of reasoning"). In turn, the trial court erred by confirming the deficient award. *See id.*

VI. The trial court erred in confirming the Awards because they contain a material miscalculation regarding prejudgment interest.

In the alternative, and in the event the Court were to conclude that the Arbitrator did not exceed her authority by freezing the account of a non-party, by ordering non-parties to liquidate trust assets, by awarding the Lawyers an unconscionable contingent

fee based on a contract procured by fraud that did not comply with the Disciplinary Rules or the Government Code, and by awarding attorney's fees and expenses in contravention of Texas law, there is also good cause to modify the arbitration awards and final judgment because the award and judgment include a "material miscalculation" that may be modified without effecting the merits. 9 U.S.C. § 11(a)-(c); TEX. CIV. PRAC. & REM. CODE § 171.091(a).

As noted above, the arbitration awards and judgment order prejudgment interest to begin on April 13, 2021, 1CR319, the day before the MSA was signed after midnight. 1CR415. There is no legal basis for prejudgment interest to begin on that date. Again, the parties agreed that "Texas substantive law governs the parties' claims and defenses." 1CR271. Under Texas law, "prejudgment interest awarded under common law should conform to the statutory accrual and compounding formulas applicable to suits for wrongful death, personal injury, and property damages." *De La Garza v. De La Garza*, 185 S.W.3d 924, 928 (Tex. App.—Dallas 2006, no pet.). Under that statute, "prejudgment interest accrues on the amount of a judgment during the period beginning on the earlier of the 180th day after the date the defendant receives written notice of a claim or the date the suit is filed and ending on the day preceding the date judgment is rendered." TEX. FIN. CODE § 304.104. A trial court abuses its discretion by awarding prejudgment interest "using the wrong accrual date." *City of San Antonio v. El Dorado Amusement Co.*, 195 S.W.3d 238, 248 (Tex. App.—San Antonio 2006, pet. denied).

The earliest date Caroline received written notice of the claim was on December 7, 2021, when the Lawyers filed the intervention in the underlying probate proceedings. *See* 1CR2508, 2513. However, Caroline did not receive an accounting and calculation of the fees allegedly owed until August 17, 2023, 2CR2970-73, after the Arbitrator ordered the Lawyers to provide a settlement statement. That accounting demonstrated that the December 7, 2021 demand was inaccurate and sought \$730,000 more from Caroline and Rich than what was actually owed. *Compare* 1CR2508-13 *with* 2CR2970-73; *see also* 1CR951-54. The Arbitrator should not have awarded pre-judgment interest before August 17, 2023, when the settlement statement and accounting identifying the amounts actually owed was produced. But if an earlier date was to be selected, the Arbitrator was required to use December 7, 2021, when the notice of the claim was made, not the day before the MSA was even signed, 1CR1048-49, or approved by a court. 2CR3121-22. *See* TEX. FIN. CODE § 304.104. Because the Arbitrator disregarded Texas law in calculating prejudgment interest, she exceeded her powers. *See Lalo, LLC v. Hawk Apparel, Inc.*, Civil Action No. 3:18-cv-2502-L, 2022 U.S. Dist. LEXIS 72218, at *10 (N.D. Tex. 2022) (concluding same Arbitrator applied incorrect interest rate to arbitration award). The trial court erred in refusing to vacate or modify the arbitration award on this ground.

CONCLUSION AND PRAYER

For these reasons, the Court should reverse the trial court's judgment, vacate the Arbitrator's Interim and Final Awards, and remand to the trial court for further

proceedings with instructions to deny the Lawyers' motion to compel arbitration as to Caroline Allison. In the alternative, the district court's judgment should be reversed and the Arbitrator's awards modified or corrected as requested herein.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Based on a word count run in Microsoft Word, this brief contains 14,985 words (excluding the items exempted under Texas Rule of Appellate Procedure 9.4(i)(1)).

/ s / David Eric Kassab
David Eric Kassab

CERTIFICATE OF SERVICE

I certify that on March 12, 2025, I electronically filed this brief with the Clerk of the Court using the eFile.TXCourts.gov electronic filing system which will send notification of such filing to all counsel of record.

/ s / David Eric Kassab
David Eric Kassab

No. 14-24-00753-CV

IN THE FOURTEENTH COURT OF APPEALS
at Houston, Texas

CAROLINE ALLISON
Appellant

V.

BORUNDA, P.C., JORGE BORUNDA, NICHOLAS ABAZA,
LAW OFFICES OF NICHOLAS ABAZA, P.C., MICHAEL TREVINO,
AND LAW OFFICES OF MICHAEL TREVINO, PLLC
Appellees

APPENDIX TO APPELLANT
CAROLINE ALLISON’S OPENING BRIEF

Table of Contents

Appendix Tab 1.....Trial Court Order Granting Motion to Compel Arbitration

Appendix Tab 2..... Arbitrator’s Reasoned Interim Award

Appendix Tab 3.....Arbitrator’s Final Award

Appendix Tab 4.....Trial Court Order Denying Motion to Vacate Arbitrator’s Awards

Appendix Tab 5.....Trial Court Order Granting Motion to Confirm Arbitrator’s Awards

Appendix Tab 6..... Trial Court’s Final Judgment

Appendix Tab 7.....Trial Court’s Order Denying Motion for New Trial

APPENDIX TAB 1

STPRX
ARBIX

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

269TH JUDICIAL DISTRICT

Defendants

On the ____ day of _____, 2022, this Court considered the Motion to Compel Arbitration and Stay All Proceedings filed by Defendants (“this motion”). After considering this motion, any responses and/or replies thereto, the pleadings and evidence before the Court and the arguments of counsel, this Court is of the opinion that this motion is meritorious and should be GRANTED in all respects.

It is therefore ORDERED, ADJUDGED and DECREED that Defendants' Motion to Compel Arbitration and Stay All Proceedings is GRANTED.

It is further ORDERED, ADJUDGED and DECREED that all proceedings in this case are stayed until an arbitration decision is rendered in accordance with the parties' arbitration agreement.

~~It is further ORDERED, ADJUDGED and DECREED that Plaintiff must initiate arbitration
in accordance with the parties' arbitration agreement within fourteen days of the date of this Order,
or the Court will DISMISS this case with prejudice.~~

Signed on this _____ day of _____, 2022. Signed: _____
5/13/2022
4:44 PM

PRESIDING JUDGE

APPENDIX TAB 2

Richard Allison, Jr. (“Mr. Allison”). The arbitration proceedings were consolidated. The parties conducted substantial pre-hearing discovery, including written discovery and oral depositions.

II. THE ARBITRATION HEARING AND EVIDENCE

The Arbitrator held a seven-day evidentiary arbitration hearing on November 13, 14, 15, 16, 17, 20, and 21, 2023, in Houston, Texas. Ms. Allison appeared in person and was represented by attorneys Lance Kassab and David Kassab of The Kassab Law Firm. Mr. Allison appeared in person and was represented by attorneys Dale Jefferson and Raul Suazo of Martin, Disiere, Jefferson, and Wisdom, L.L.C. Jorge Borunda, Nicholas Abaza, and Michael Trevino all appeared in person on behalf of themselves and as representatives of their respective law firms and were all represented by attorney Joseph R. Little of The Little Law Firm, P.L.L.C. The Official Record of the evidentiary hearing was transcribed by Laurie Carlisle, CSR, CM, CRR and Delicia Struss, CSR, TCRR of Monarch Reporting, Inc. Testimony from multiple witnesses was presented and hundreds of exhibits consisting of thousands of pages of documents were admitted into evidence.

At the time of the arbitration hearing, the live pleadings were: (1) Mr. Allison’s Answering Statement and Statement of Claims, filed on December 2, 2022; (2) Ms. Allison’s Second Amended Complaint and First Amended Answering Statement to Counter-claim, filed on December 7, 2022; (3) the Lawyers’ Amended Statement of Claims, filed on April 3, 2023; and (4) the Lawyers’ Consolidated and Amended Answering Statement to the Clients’ Statements of Claims, filed on May 1, 2023.

In accordance with the orders of the Arbitrator, the parties submitted the following expert reports: (1) an October 6, 2023, report from Rob Hancock; (2) a November 10, 2023, report from Lillian B. Hardwick; (3) a November 12, 2023, report from Karl Schwabauer; (4) a November 19, 2023, supplemental report from Mr. Hancock; (5) a December 20, 2023, report

from Daniel D. Tostrud; (6) a December 20, 2023, report from Kevin Spencer; (7) a December 20, 2023, report from Sarah Pacheco; (8) a January 17, 2024, supplemental report from Mr. Schwabauer; (9) a January 17, 2024, rebuttal report from Mr. Tostrud; and (10) a January 17, 2024, report from P. Keith Staubus.

In accordance with the orders of the arbitrator, the parties submitted post-hearing briefs on February 23, 2024, reply briefs on March 8, 2024, and draft Reasoned Interim Awards on March 29, 2024.

The arbitration record was closed on March 29, 2024.

III. MATTERS CONSIDERED

The Arbitrator has considered all pleadings (including all claims and all defenses of all parties), all hearing testimony and exhibits, all expert reports, and all briefs. The Arbitrator has also assessed the credibility of the witnesses. The factual and legal findings and conclusions set out in this Interim Award are determined by the Arbitrator to be true and necessary to the award. To the extent that the factual and legal findings and conclusions set out in this Interim Award differ from a position of any party, that is a result of the Arbitrator's determinations as to credibility, burdens of proof, relevance, and the weight of the testimony and other evidence.

IV. CREDIBILITY OF THE HEARING WITNESSES

With respect to the credibility of the witnesses who testified at the hearing: (1) Jorge Borunda was a credible witness who provided credible testimony; (2) Nicholas Abaza was a credible witness who provided credible testimony; (3) Michael Trevino was a credible witness who provided credible testimony; (4) Ms. Allison, although credible at times, was not always a credible witness; and (5) Mr. Allison was not a credible witness and his testimony was not credible.

V. RULING REGARDING OBJECTIONS TO ARBITRATION

Mr. Allison and/or Ms. Allison have objected to arbitration. The Arbitrator has considered these objections and finds them to be without merit. All objections to arbitration are overruled.

After Ms. Allison sued the Lawyers in state district court, the trial court granted the Lawyers' motion to compel arbitration. Ms. Allison argued in the district court, as she argued in this proceeding, that her contingent fee contract, which contains an arbitration agreement, is invalid and unenforceable. "The Texas Supreme Court has held that the validity of the contract as a whole must be submitted to arbitration as long as the arbitration provision is valid." *Petroleum Analyzer Co. v. Olstowski*, No. 01-09-00076-CV, at *17 (Tex.App.—Houston [1st. Dist.] 2010, no pet.). "The United States Supreme Court has explained that arbitration and forum-selection clauses should be enforced, even if they are part of an agreement alleged to have been fraudulently induced, as long as the specific clauses were not themselves the product of fraud or coercion." *In re Prudential Ins. Co. of America*, 148 S.W.3d 124, 134 (Tex. 2003).

After careful consideration of the law, the evidence, and the parties' conflicting testimony, the Arbitrator finds:

1. that the contingent fee contracts containing the arbitration agreements (Lawyers' Exhibit 106 for Mr. Allison and Lawyers' Exhibit 169 for Ms. Allison) are fair, reasonable, valid, and enforceable;
2. that the arbitration agreements contained in these contracts (Lawyers' Exhibits 106 and 169) are also fair, reasonable, valid, and enforceable;
3. that any and all necessary or appropriate advice and disclosures regarding these contingent fee contracts (Lawyers' Exhibits 106 and 169) were provided;
4. that any and all necessary or appropriate advice and disclosures regarding the arbitration agreements contained in these contracts (Lawyers' Exhibits 106 and 169) were provided;

5. that Mr. Allison was not fraudulently induced to sign Lawyers' Exhibit 106;
6. that Ms. Allison was not fraudulently induced to sign Lawyers' Exhibit 169;
7. that the arbitration agreement in Lawyers' Exhibit 106 was not the product of fraud or coercion;
8. that the arbitration agreement in Lawyers' Exhibit 169 was not the product of fraud or coercion; and
9. that, as in other circumstances in which the parties' testimony conflicted, the Lawyers' evidence and testimony on these issues was credible and Mr. Allison's and Ms. Allison's evidence and testimony on these issues was not credible.

All claims and all defenses asserted in this arbitration proceeding are within the scope of the parties' arbitration agreements. The arbitration agreement in each of the contracts (Lawyers' Exhibit 106 and Lawyers' Exhibit 169), standing alone, is independently sufficient to compel arbitration of all claims and all defenses of all parties. The Lawyers did not waive their right to arbitration. The applicable arbitration rules are the American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures, Including Procedures for Large Complex Commercial Disputes as amended and in effect October 1, 2013, ("the Commercial Rules"). The arbitrator has been designated, appointed, and qualified in accordance with the Commercial Rules.

Jurisdiction over all parties, and all claims and all defenses of all parties, exists. Texas substantive law governs the parties' claims and defenses. The burden of proof is by a preponderance of the evidence unless otherwise stated.

VI. FACTUAL AND LEGAL FINDINGS AND CONCLUSIONS

Mr. Allison and Ms. Allison had a difficult and complicated relationship with their father. For many reasons, their father restructured his estate plan in 2013 to leave sole access to -- and

sole control of -- all of his assets to Robin, his wife of (at that time) approximately 21 years. And he did so without telling Mr. Allison and Ms. Allison.

Based on estate planning documents that their father had signed before he married Robin, and/or based on their father's much earlier representations to them, Mr. Allison and Ms. Allison believed that when their father died they would each inherit half of his assets. Mr. Allison and Ms. Allison didn't find out about their father's restructured estate plan -- which gave them no access to, and no control of, any of their father's assets as long as Robin was alive -- until after their father died in 2017.

Mr. Allison and Ms. Allison had no guarantee of any inheritance under their father's 2013 estate plan. As long as Robin was alive, Mr. Allison and Ms. Allison had a right to request discretionary distributions from the Allison Family Trust ("the Family Trust") and limited recourse if Robin declined. Robin repeatedly demonstrated a disinclination to make discretionary distributions to Mr. Allison and Ms. Allison. As "descendants" and contingent remainder beneficiaries, Mr. Allison and Ms. Allison also stood to inherit at least some of whatever was left of their father's assets when Robin died. But their contingent remainder interests depended on numerous variables, all or almost all of which were not only unknown but also unknowable.

When Mr. Allison and Ms. Allison -- especially Ms. Allison -- discovered that they would have no access to, and no control of, any of their father's assets until after Robin died, they were perhaps understandably surprised and upset. They realized that Robin, who was 62 years old when Dr. Allison died, might reasonably be expected to live for another 20 or 25 years (or more) -- meaning that Mr. Allison and Ms. Allison might be in their mid-60s or early-70s (or older) before they gained access to, and control of, whatever was left of their father's assets.

Further, Mr. Allison and Ms. Allison were legitimately concerned that “whatever was left” after Robin’s death might end up being very little or literally nothing.

Mr. Allison and Ms. Allison were convinced that their father’s 2013 estate plan was not what he had intended. They insisted that this estate plan was a result of Robin’s undue influence over their father during a time when he lacked testamentary capacity. So, in 2019, Mr. Allison and Ms. Allison sought legal counsel to help them remedy this perceived injustice.

Before Mr. Allison and Ms. Allison (hereafter collectively referred to in this Interim Award as “the Clients”) retained counsel, they generally understood their inability to access or to control any of their father’s assets as long as Robin was alive. Mr. Abaza and Mr. Borunda answered the Clients’ questions and explained additional details about (1) the Clients’ rights (or lack of them) regarding their father’s assets and (2) various arrangements for paying attorneys’ fees, including an hourly fee contract, a contingent fee contract, or a hybrid arrangement. Mr. Allison elected to proceed on a contingent fee basis and signed a contingent fee contract. He read the contract carefully -- as evidenced by his numerous handwritten notes and interlineations, which were eventually incorporated into a second contingent fee contract that he signed later. Thinking that the dispute would be quickly resolved, Ms. Allison elected at that time to proceed on an hourly fee basis and signed an hourly fee contract.

The Lawyers prosecuted probate litigation designed to achieve Mr. Allison and Ms. Allison’s stated goals of (1) invalidating their father’s 2013 estate plan (which included a will, a trust, and a beneficiary designation in a retirement account) and (2) reverting to the result that they asserted their father had intended: that Mr. Allison and Ms. Allison would each receive 1/2 of his assets free of trust.

As the Clients’ litigation against Robin progressed, Ms. Allison quickly got behind on paying her legal fees and expenses. Eventually, Ms. Allison made the decision to switch from an

hourly fee contract to a contingent fee contract like Mr. Allison's. Ms. Allison claims that she made this decision because Mr. Borunda "deceived" her. However, her words and actions -- and Mr. Borunda's -- at the time that the events at issue transpired are inconsistent with her hearing testimony. None of the Lawyers ever requested, suggested, or implied that Ms. Allison should switch to a contingent fee contract. None of the Lawyers ever raised this issue. Ms. Allison raised the issue multiple times.

Mr. Abaza and Mr. Borunda repeatedly offered Ms. Allison accommodations to help her manage the financial burden of the litigation and maintain her hourly contract. However, Ms. Allison ultimately chose to switch to a contingent fee contract because she believed -- with good reason -- that it was to her advantage to do so. She received a draft contingent fee contract, considered it, reviewed it carefully (catching two typographical errors), and then initialed each page of the draft contract and signed it at the end. She then talked to Mr. Abaza and Mr. Borunda to confirm that she would no longer be responsible for outstanding hourly fees and litigation expenses for which these lawyers had already sent invoices and expected payment. Ms. Allison's switch to a contingent fee contract eliminated all of her explicitly stated concerns about cash flow, crushing legal fees, keeping up with hourly invoices, paying expenses, funding a trial, not having a "war chest," being forced to drop the case, feeling overwhelmed, feeling worried, being stressed, being scared and having migraines. The Lawyers now bore those burdens -- just as they undertook the risk that they could work on the case for years and obtain no payment.

Ms. Allison's contingent fee contract (Lawyers' Exhibit 169) is now, and was at the time it was signed, valid, enforceable, fair, and reasonable. Likewise, Mr. Allison's contingent fee contract (Lawyers' Exhibit 106) is and was valid, enforceable, fair, and reasonable. These contingent fee contracts satisfy the requirements of applicable Texas law, including but not

limited to Texas Government Code § 82.065(a), and the Texas Disciplinary Rules of Professional Conduct, including but not limited to Rule 1.04(d). The divisions of fees between the Lawyers, as referenced in the contingent fee contracts, satisfy the requirements of Texas Disciplinary Rule of Professional Conduct 1.04(f). Ms. Allison's contingent fee contract also complies with Texas Disciplinary Rule of Professional Conduct 1.08. Mr. Trevino had no attorney-client relationship with Ms. Allison prior to her signing her contingent fee contract, so Rule 1.08 does not apply to Mr. Trevino. Further, the terms of the contingent fee contract that Ms. Allison reviewed, revised, approved, and initialed on each page and signed at the end were fair and reasonable to her and were fully disclosed in a reasonably understandable manner. Ms. Allison had a reasonable opportunity to seek the advice of independent counsel. That is all that is required by Rule 1.08. Although they were not required to do so -- by Rule 1.08 or any other rule -- both Mr. Abaza and Mr. Borunda did advise Ms. Allison to seek the advice of independent counsel.

The Lawyers' risk of working for years without receiving any payment increased as the Clients' case developed. Mr. Allison and Ms. Allison had assured the Lawyers that everyone in the family "hated" Robin and would testify favorably both regarding Robin's undue influence and Dr. Allison's lack of capacity. Those assurances proved false. During her deposition, Mr. Allison's ex-wife Kim did not support the Clients' positions on these issues. Conversations with Mr. Allison's children did not yield helpful evidence. Hundreds of pages of medical records obtained included only a single note that might have supported a lack of capacity argument: a lone reference in a 2014 record that Dr. Allison had been having memory issues for a year or so. The Lawyers subpoenaed a pre-marital and a marital agreement, but those documents did not yield the hoped-for benefit. The corporate books and records that Mr. Trevino inspected contained evidence that Dr. Allison had been keeping partnership financial records by hand after

2013, and that Robin's involvement in Dr. Allison's business affairs did not substantially increase until after 2013.

These negative developments accentuated complications in the Clients' case that had manifested earlier. The Clients had gone years at a time with literally no contact with their father. Dr. Allison kept a file of letters to and from his children, some of which Robin used as summary judgment exhibits -- and which would likely have been trial exhibits if the Clients had not accepted Robin's last and best settlement offer at mediation. These letters would have been decidedly unfavorable for the Clients if their case against Robin had gone to trial. While the Clients' case against Robin was not unwinnable, substantial evidence existed that could (and more likely than not would) have led a jury reasonably to conclude that Dr. Allison changed his estate plan for reasons other than a lack of capacity and Robin's undue influence. Additionally, had Mr. Allison and Ms. Allison prevailed at trial, the most likely result would have been that they each would have received one sixth of their father's assets, after those assets had been significantly reduced by a carveout for Robin, estate taxes, and community property claims.

After almost two years of contentious litigation, at a mediation on April 13, 2021, Robin made a last and best settlement offer to Mr. Allison and Ms. Allison. Mr. Allison and Ms. Allison chose to accept Robin's last and best offer. Mr. Allison, Ms. Allison, and Robin signed a Mediated Settlement Agreement ("the MSA") in which they agreed to settle their disputes.

The parties' April 13, 2021, mediation was discussed at length during the hearing. Before the Clients signed the MSA, the Lawyers and the Clients discussed, and the Clients knew and understood, (1) the total value of all assets at issue in their dispute with Robin, (2) that their settlement recovery was to include a brokerage account that contained cash and securities, and (3) that there were potential capital gains issues with the assets in the brokerage account. (Capital gains taxes would be incurred only if a trust asset was eventually sold for more than the

applicable tax basis at the time of the sale, which might or might not ever have happened.) After full explanation by the Lawyers and significant input from the mediator, Jeffrey Yates, the Clients made an informed decision to accept Robin's last and best offer to settle the case. The Clients thus gained complete control of the Minaki Limited Partnership and recovered various items of personal property and a Fidelity brokerage account in the name of the Minaki Limited Partnership. On the date of the settlement, the Fidelity brokerage account had an asset balance of \$9,900,609.53. This Fidelity brokerage account, which was the main asset in the Clients' settlement recovery, was allocated to the Family Trust.

The Clients have attempted to fashion an argument that they received no "personal" or "individual" recoveries. That argument is devoid of merit. The MSA defined Mr. Allison and Ms. Allison only in their individual capacities. Mr. Allison and Ms. Allison signed the MSA in their individual capacities. The recovery obtained by Mr. Allison and Ms. Allison pursuant to the MSA was obtained in their individual capacities. Robin signed the MSA both individually and as trustee of the Family Trust (and as trustee of all other trusts that were established when Dr. Allison died). The MSA provided that, in addition to various items of personal property, Mr. Allison and Ms. Allison -- in their individual capacities -- "have the right to access all principal and income from the Family Trust" except for a \$1,000,000.00 holdback for their children's educational expenses. Lawyers' Exhibit 193, ¶ 3.1.p)iii.

In the immediate aftermath of the settlement, Ms. Allison sent two e-mails expressing concerns. Mr. Trevino met with the Clients at a restaurant in Sugar Land and addressed any concerns raised by Mr. Allison or by Ms. Allison. At the conclusion of this dinner meeting, the Clients expressed their understanding of, and appreciation for, the settlement recovery that they had achieved. Ms. Allison had a waiter take a picture of her and Mr. Allison and Mr. Trevino.

The next day, Ms. Allison sent Mr. Trevino a text message exclaiming “We are excited! Thanks for everything you guys have done!” Lawyers’ Exhibit 201.

Over the next couple of months, the Lawyers and the Clients worked cooperatively to obtain court approval of the MSA. Mr. Trevino drafted consents for Mr. Allison’s children and sent them to the Clients, asking whether the Clients wanted him to contact the children or “if you think it is better coming from you. Basically, the consent agreements are to make sure the kids are aware of the settlement and are fine with everything.” Lawyers’ Exhibit 203. Mr. Allison chose to take the lead on communicating with his children, and at least two of them indicated that they were going to seek independent legal advice before signing the consent agreements. All three of Mr. Allison’s children eventually signed the consent agreements -- which read in part that “I have had the opportunity to review [the MSA] and have it explained to me to my satisfaction by the attorney of my choosing. I affirm that I understand the [MSA]. I accept and agree to the [MSA’s] effect on the structure and terms of [Dr. Allison’s estate, his will, his assets, and all of his trusts]. It is my wish and intent that the [MSA] resolve all disputes, claims, and controversies of any nature by any party regarding [Dr. Allison’s estate, his will, his assets, and all of his trusts]. To that end, I waive and release any and all claims I may have against any and all parties in any capacity regarding [Dr. Allison’s estate, his will, his assets, and all of his trusts].” Lawyers’ Exhibits 206, 207, 208, 210, 211.

Ms. Allison wanted to be sure that all issues regarding “baby Kensington” were addressed and communicated with Mr. Trevino regarding the guardian ad litem for her minor daughter. Lawyers’ Exhibit 202. In May, Ms. Allison formed Kensington Station, L.L.C., her sole member LLC that owns some of the houses in the real estate portfolio that Ms. Allison has amassed since the settlement. Ms. Allison voiced no complaints about the settlement when Mr. Trevino delivered the paintings that the Clients received as part of their recovery. The Lawyers

consulted with tax advisors to try to minimize any tax burden of the settlement on the Clients by offsetting capital gains against attorneys' fees. On May 27, 2021, -- about three weeks before court approval of the MSA -- Mr. Abaza e-mailed to Mr. Allison and Ms. Allison contact information for Scott Robertson and a message from this CPA explaining that attorneys' fees might be used to offset any potential capital gains when trust assets were eventually sold. The subject line of the e-mail was "Scott Robertson's Zoom Meeting." Lawyers' Exhibit 217. The Lawyers repeatedly attempted to get the Clients to participate in a Zoom meeting or a conference call with the CPA, but the Clients never agreed.

On June 14, 2021, with the consent and approval of every person who had, or might have had, an interest in the settlement, Judge Weldon Copeland approved the MSA. Lawyers' Exhibit 220. Judge Copeland further ordered the parties to "execute each and every document needed to effectuate the agreements set forth in the MSA on or before **June 30, 2021**, and if there is any problem as to a form of any document to be executed, same should be brought to the attention of the Court to resolve the disagreement in order to finalize the MSA." Lawyers' Exhibit 220, bold in original. In fact, the MSA was approved by all affected or potentially-affected parties -- including the surviving settlor of the Family Trust and all contingent remainder beneficiaries of the Family Trust -- and by as many as nine attorneys: (1) Mr. Allison, (2) Ms. Allison, (3) the Lawyers (the first three attorneys), (4) Robin, (5) Robin's attorney Michael Collins (the fourth attorney), (6) mediator Jeffrey Yates (the fifth attorney), (7) Mr. Allison's three adult children, at least two of whom apparently obtained advice from their own attorneys (the sixth and seventh attorneys), (8) guardian ad litem Jack Wilburn on behalf of Ms. Allison's minor child (the eighth attorney), and (9) the Honorable Weldon Copeland, presiding judge of Probate Court No. 1 of Collin County, Texas (the ninth attorney).

After Judge Copeland approved the MSA and ordered all parties to sign all documents necessary to effectuate the settlement as set out in the MSA, the Clients began “ghosting” the Lawyers, refusing to meet and/or to discuss the final settlement documents that were supposed to be signed before the end of June. On November 3, 2021, Judge Copeland conducted a video hearing regarding enforcement of the MSA. By this time, the Clients had relieved the Lawyers of their duty -- and their authority -- to represent the Clients. The Clients, by November 3, 2021, had prohibited the Lawyers from taking any further action or performing any further work on the Clients’ behalf.

No later than November 10, 2021, Ms. Allison hired a lawyer named Jeff Crouch to review the final settlement documents. No later than November 15, 2021, Ms. Allison hired The Kassab Firm to sue the Lawyers, although she didn’t disclose that fact to them. The extent to which Mr. Crouch and Mr. Kassab collaborated in advance of the Clients’ subsequent signing of the final settlement documents -- which Mr. Crouch reviewed, revised, and eventually approved - - is unknown.

The final settlement documents that Mr. Crouch reviewed, revised, and eventually approved included a trust “Modification and Amendment” that was consistent with the terms of the MSA, specifically ¶ 3.1.p)iii. Again, that provision of the MSA stated that Mr. Allison and Ms. Allison -- in their individual capacities -- “have the right to access all principal and income from the Family Trust” except for a \$1,000,000.00 holdback for their children’s educational expenses. Similarly, the trust “Modification and Amendment” (1) defined the trust “Beneficiaries” as “Ms. Allison and Mr. Allison.” and (2) provided that the trustee(s) of the trust -- whoever that might be -- “shall distribute the income and principal of the trust to the Beneficiaries in such amounts as the Beneficiaries, in their discretion, may direct.” Lawyers’ Exhibit 275. Thus, like the MSA, the trust “Modification and Amendment” also provided that

Mr. Allison and Ms. Allison -- in their individual capacities -- could direct the trustee(s) to distribute trust assets, with the sole exception of the \$1,000,000.00 educational holdback, based on a pure discretionary standard.

At a final December 7, 2021, hearing, Mr. Crouch, as the new attorney for the Clients, approved the final settlement documents -- including the above-referenced trust “Modification and Amendment.” Judge Copeland had explicitly ordered on June 14, 2021, that “if there is any problem as to a form of any document to be executed, same should be brought to the attention of the Court to resolve the disagreement in order to finalize the MSA.” Lawyers’ Exhibit 220. Nevertheless, despite having had several weeks to prepare for the December 7 hearing, Mr. Crouch did not say at the hearing that there was any problem with the form of any of the final settlement documents. He did not say that there was any dispute or disagreement that needed to be resolved by court ruling. He did not say that the court needed to sign any additional order or take any additional action to finalize the MSA. For example, he did not say that a formal judicial modification was necessary or appropriate -- although there was no one then (and there remains no one now) who could object to a judicial modification that followed the intent of the parties as expressed in the MSA. In fact, Mr. Crouch did not make even one of the arguments or allegations that the Clients or their expert witnesses have made in this arbitration proceeding. Instead, Mr. Crouch as the new attorney for the Clients simply approved the final settlement documents. Ms. Allison signed the documents that day. Mr. Allison signed them the next day.

Despite their repeated representations and sworn testimony to the contrary, Mr. Allison and Ms. Allison -- especially Ms. Allison -- have accepted the benefits of their settlement recovery. The Clients received, and have never returned, items of personal property that they recovered in the settlement. In December 2021, less than three weeks after Ms. Allison signed the final settlement documents on the advice of her new attorney Jeff Crouch, Ms. Allison

transferred the assets in the Fidelity brokerage account -- which by that time had appreciated to almost \$11,000,000.00 -- to a new brokerage account at Schwab (where she used to work). Ms. Allison used some of the income and/or principal of the Clients' settlement recovery to amass significant real estate holdings that are owned by Kensington Station, L.L.C., a sole-member L.L.C. that Ms. Allison formed on May 25, 2021, about six weeks after she signed the MSA. Ms. Allison admitted that she has unilaterally -- i.e., acting without Mr. Allison -- withdrawn principal from the Schwab account, loaned that money to Kensington Station, L.L.C., and then used the money to make real estate purchases for her sole-member L.L.C. Mr. Allison and Ms. Allison have also used Family Trust assets to pay lawyers, expert witnesses, and other expenses that they, in their individual capacities, have incurred in this arbitration proceeding.

In summary:

- The Lawyers have earned and are immediately entitled to the recoveries set out in this Award;
- The Clients are immediately obligated to pay the recoveries set out in this Award;
- All conditions precedent to the Clients' payment of the recoveries set out in this Award have occurred and/or have been fully performed and/or fully satisfied;
- The MSA is now, and was as of April 13, 2021, a valid and enforceable contract that is binding on Mr. Allison and Ms. Allison;
- Judge Copeland approved the MSA;
- Judge Copeland ordered the parties to "execute each and every document needed to effectuate the agreements set forth in the MSA on or before June 30, 2021";
- The Lawyers repeatedly asked the Clients to meet with them, and with other professionals such as tax advisors, to discuss the final settlement documents that Judge Copeland ordered the parties to sign;
- The Clients refused to meet with the Lawyers and with other professionals to discuss the final settlement documents;
- On or before November 3, 2021, the Clients relieved the Lawyers of their duty -- and their authority -- to represent the Clients;

- No later than November 10, 2021, the Clients retained a new attorney to review the final settlement documents that Judge Copeland ordered them to sign;
- The Clients' new attorney reviewed, revised, and eventually approved the final settlement documents;
- On the advice of their new attorney, Mr. Allison and Ms. Allison signed the final settlement documents in December 2021;
- Mr. Allison and Ms. Allison are the beneficiaries of the Family Trust;
- As the beneficiaries of the Family Trust, Mr. Allison and Ms. Allison have the right to direct the trustee(s) of the Family Trust to distribute all trust income and principal with the exception of the \$1,000,000.00 educational holdback;
- Mr. Allison and Ms. Allison have the present right, and the immediate obligation, to direct the trustee(s) of the Family Trust to pay the Lawyers the recoveries set out in this Award;
- No one has a right to object to the terms of the MSA, the implementation of the terms of the MSA, or Mr. Allison's and Ms. Allison's enjoyment of the benefits they received in the MSA -- in fact, all such objections have been waived;
- No claim or allegation asserted by the Clients in this proceeding affects, or could subsequently affect, the Lawyers' immediate entitlement to the recoveries set out in this Award;
- No claim or allegation asserted by the Clients in this proceeding affects, or could subsequently affect, the Clients' immediate obligation to pay the recoveries as set out in this Award;
- No relief that could be awarded in the Clients' pending judicial modification proceeding affects, or could subsequently affect, the Lawyers' immediate entitlement to the recoveries set out in this Award;
- No relief that could be awarded in the Clients' pending judicial modification proceeding affects, or could subsequently affect, the Clients' immediate obligation to pay the recoveries set out in this Award.

VII. DETERMINATION OF THE PARTIES' CLAIMS AND DEFENSES

A. The Lawyers' Breach of Contract Claim

Mr. Allison and Nicholas Abaza agreed that Mr. Allison would pay a 35% contingent fee on his settlement recovery, which was to be split 60% to Jorge Borunda and 40% to Nicholas

Abaza, and that Mr. Allison would pay 50% of any costs and expenses incurred in obtaining a recovery. Lawyers' Exhibit 106. See, Texas Pattern Jury Charge ("PJC") 101.1. Mr. Allison failed to comply with his agreement. See, PJC 101.2. Mr. Allison's failure to comply is not excused. See, PJC 101.7. Mr. Allison was not fraudulently induced to enter into his agreement. See, PJC 101.31. The sum of money, if paid now in cash, that would fairly and reasonably compensate Nicholas Abaza for his damages, that resulted from Mr. Allison's failure to comply is \$1,416,915.68. See, PJC 115.3. Mr. Allison's settlement recovery, reduced by all appropriate credits and offsets, is accurately set out in the settlement statement provided by the Lawyers in compliance with Texas Disciplinary Rule of Professional Conduct 1.04(d). Lawyers' Exhibit 304. Mr. Allison's settlement recovery is \$4,001,795.62. The 35% contingent fee that Mr. Allison owes is therefore \$1,400,628.47. Mr. Allison also owes 50% of the Lawyers' litigation expenses, which is an additional \$16,287.21. Therefore, Mr. Allison's contractual debt on the date of the settlement (April 13, 2021) was \$1,416,915.68. Pursuant to Texas Disciplinary Rule of Professional Conduct 1.04(g)(1), Mr. Trevino is entitled to recover the reasonable value of legal services provided to Mr. Allison despite the absence of Mr. Allison's written consent to a fee division including Mr. Trevino (although this recovery must come out of the \$1,416,915.68 owed by Mr. Allison).

Ms. Allison and Nicholas Abaza, Borunda, P.C., and Michael Trevino agreed that Ms. Allison would pay a 35% contingent fee on her settlement recovery, which was to be split 40% to Jorge Borunda, 30% to Nicholas Abaza, and 30% to Michael Trevino, that Ms. Allison would pay 50% of any costs and expenses incurred in obtaining a recovery, and that Ms. Allison would receive a credit for previously-paid hourly fees if she obtained a recovery. Lawyers' Exhibit 169. See, PJC 101.1. Ms. Allison failed to comply with her agreement. See, PJC 101.2. Ms. Allison's failure to comply is not excused. See, PJC 101.7. Ms. Allison was not fraudulently

induced to enter into her agreement. See, PJC 101.31. Michael Trevino had no fiduciary relationship with Ms. Allison prior to her signing Lawyers' Exhibit 169. The sum of money, if paid now in cash, that would fairly and reasonably compensate Nicholas Abaza, Borunda, P.C., and Michael Trevino for their damages that resulted from Ms. Allison's failure to comply is \$1,352,149.80. See, PJC 115.3. Ms. Allison's settlement recovery, reduced by all appropriate credits and offsets, is accurately set out in the settlement statement provided by the Lawyers in compliance with Texas Disciplinary Rule of Professional Conduct 1.04(d). Lawyers' Exhibit 304. Ms. Allison's settlement recovery is \$4,001,795.62. The 35% contingent fee that Ms. Allison owes is therefore \$1,400,628.47. Ms. Allison also owes 50% of the Lawyers' litigation expenses, which is an additional \$16,287.21. Ms. Allison is entitled to a credit or offset of \$64,765.88 for attorneys' fees and expenses previously paid. Therefore, Ms. Allison's contractual debt on the date of the settlement (April 13, 2021) was \$1,352,149.80.

B. The Lawyers' Promissory Estoppel Claim

Even if the Clients' contractual promises to pay a 35% contingent fee plus costs and expenses were held to be unenforceable, Mr. Abaza, Mr. Borunda, and Mr. Trevino would be entitled to recover based on promissory estoppel. These lawyers substantially relied to their detriment on Mr. Allison's promise to pay a 35% contingent fee on his settlement recovery plus 50% of any costs and expenses incurred in obtaining a recovery. This reliance was foreseeable by Mr. Allison. See, PJC 101.41. The sum of money, if paid now in cash, that would fairly and reasonably compensate these lawyers for their damages that resulted from their reliance on Mr. Allison's promise is \$1,416,915.68. See, PJC 115.6. In addition, these lawyers substantially relied to their detriment on Ms. Allison's promise to pay a 35% contingent fee on her settlement recovery plus 50% of any costs and expenses incurred in obtaining a recovery. This reliance was foreseeable by Ms. Allison. See, PJC 101.41. The sum of money, if paid now in cash, that

would fairly and reasonably compensate these lawyers for their damages that resulted from their reliance on Ms. Allison's promise is \$1,352,149.80. See, PJC 115.6.

C. The Lawyers' Quantum Meruit Claim

Even if the Clients' contingent fee contracts were held to be unenforceable, Mr. Abaza, Mr. Borunda, and Mr. Trevino would be entitled to recover based on quantum meruit. These lawyers performed compensable work for Mr. Allison for which these lawyers were not compensated. These lawyers rendered valuable services to Mr. Allison; Mr. Allison accepted, used, and benefitted from the services; and, under the circumstances, Mr. Allison was reasonably notified that these lawyers expected to be compensated for the services. See, PJC 101.42. The reasonable value of such compensable work at the time and place it was performed was \$1,416,915.68. See, PJC 115.7. In addition, these lawyers performed compensable work for Ms. Allison for which these lawyers were not compensated. These lawyers rendered valuable services to Ms. Allison; Ms. Allison accepted, used, and benefitted from the services; and, under the circumstances, Ms. Allison was reasonably notified that these lawyers expected to be compensated for the services. See, PJC 101.42. The reasonable value of such compensable work at the time and place it was performed was \$1,352,149.80. See, PJC 115.7.

D. The Lawyers' Unjust Enrichment Claim

Even if the Clients' contingent fee contracts were held to be unenforceable, Mr. Abaza, Mr. Borunda, and Mr. Trevino would be entitled to recover based on unjust enrichment. Mr. Allison obtained a benefit from these lawyers by fraud, duress, or the taking of undue advantage. Mr. Allison has wrongfully secured a benefit or has passively received one which it would be unconscionable to retain. The sum of money, if paid now in cash, that would fairly and reasonably compensate these lawyers for their damages that resulted from Mr. Allison's unjust enrichment is \$1,416,915.68. See, PJC 101.44. In addition, Ms. Allison obtained a benefit from

these lawyers by fraud, duress, or the taking of undue advantage. Ms. Allison has wrongfully secured a benefit or has passively received one which it would be unconscionable to retain. The sum of money, if paid now in cash, that would fairly and reasonably compensate these lawyers for their damages that resulted from Ms. Allison's unjust enrichment is \$1,352,149.80. See, PJC 101.44.

E. The Lawyers' Claim for Money Had and Received

Even if the Clients' contingent fee contracts were held to be unenforceable, impossible, not fully performed, thwarted by mutual mistake, or void for other legal reasons, Mr. Abaza, Mr. Borunda, and Mr. Trevino would be entitled to recover based on money had and received. Mr. Allison holds money that in equity and good conscience belongs to these lawyers. The sum of money, if paid now in cash, that would fairly and reasonably compensate these lawyers for their damages relating to this claim against Mr. Allison is \$1,416,915.68. See, PJC 101.43. In addition, Ms. Allison holds money that in equity and good conscience belongs to these lawyers. The sum of money, if paid now in cash, that would fairly and reasonably compensate these lawyers for their damages relating to this claim against Ms. Allison is \$1,352,149.80. See, PJC 101.43.

F. The Clients' Claims and Defenses

Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for negligence. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for breach of fiduciary duty. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for alleged violations of the Texas Deceptive Trade Practices Act. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for fraud. Neither Mr. Allison nor Ms. Allison is entitled to declaratory relief. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a request for an accounting. Neither

Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on any defense asserted in his or her pleadings. To be clear, (1) nothing that was alleged in Mr. Allison's live pleading entitles him to any relief or any recovery of any kind, and (2) nothing that was alleged in Ms. Allison's live pleading entitles her to any relief or any recovery of any kind.

VIII. AWARD

Nicholas Abaza shall recover from Mr. Allison the amount of \$1,416,915.68 as damages for Mr. Allison's breach of contract. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Mr. Allison \$1,416,915.68 based on their claim for promissory estoppel. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Mr. Allison \$1,416,915.68 based on their claim for quantum meruit. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Mr. Allison \$1,416,915.68 based on their claim for unjust enrichment. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Mr. Allison \$1,416,915.68 based on their claim for money had and received. The award of \$1,416,915.68 shall bear pre-judgment interest at 8.5% compounded annually beginning on April 13, 2021, and continuing until the date of the entry of a Final Award.

Nicholas Abaza, Borunda, P.C., and Michael Trevino shall recover from Ms. Allison the amount of \$1,352,149.80 as damages for Ms. Allison's breach of contract. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Ms. Allison \$1,352,149.80 based on their claim for promissory estoppel. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Ms. Allison \$1,352,149.80 based on their claim for quantum meruit. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Ms. Allison \$1,352,149.80 based on their claim for unjust enrichment. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover

from Ms. Allison \$1,352,149.80 based on their claim for money had and received. The award of \$1,352,149.80 shall bear pre-judgment interest at 8.5% compounded annually beginning on April 13, 2021, and continuing until the date of the entry of a Final Award.

The Lawyers are entitled to recover from Mr. Allison and Ms. Allison, jointly and severally, reasonable and necessary attorneys' fees and expenses in an amount to be determined in a Final Award. These attorneys' fees and expenses shall include those incurred (1) in the lawsuit filed by Ms. Allison on December 9, 2021, (2) in the arbitration proceedings before consolidation and after consolidation into this proceeding, (3) to obtain a judgment based on, and/or to enforce, this Interim Award and/or the Final Award, (4) any subsequent proceedings with additional courts or tribunals shall set the fees.

The Lawyers are entitled to recover from Mr. Allison and Ms. Allison, jointly and severally, (1) all administrative arbitration fees paid, (2) all expert witness fees and expenses incurred for the preparation of the reports that were produced at the direct request of the arbitrator, and (3) all arbitrator compensation paid. Pre-judgment interest will be calculated for the Final Award. The amount of these fees, expenses, compensation and pre-judgment interest shall be determined in the Final Award.

The total amount awarded in the Final Award shall bear post-judgment interest at 8.5% compounded annually beginning on the date of the Final Award until paid in full.

Mr. Allison and Ms. Allison shall, within thirty days after entry of a Final Award (1) direct the trustee(s) of the Allison Family Trust to liquidate sufficient trust assets to pay the Final Award and all accrued interest in full and (2) shall pay the Final Award and all accrued interest in full. Pursuant to the MSA and the documents signed to effectuate the MSA, Mr. Allison and Ms. Allison have the legal right -- and the legal obligation -- to make this direction to the trustee(s) of the Family Trust. Mr. Allison and Ms. Allison are hereby ordered to do so.

The “freeze” on the Charles Schwab One account of the Minaki Limited Partnership referenced in the arbitrator’s September 14, 2023, order (attached as Exhibit A) shall continue in full force and effect until the Final Award and all accrued interest have been paid in full. In order to ensure compliance with this Award, and to prevent any withdrawals or disbursements in violation of this Award, Mr. Allison and Ms. Allison are both ordered (1) to provide to appropriate personnel at Charles Schwab One a copy of this Interim Award, the Final Award, and any judgment based on either or both of these Awards, and (2) to provide to the Lawyers’ counsel, Joseph R. Little, each monthly statement for the Charles Schwab One account within five business days of the date of each statement, until the Final Award and all accrued interest have been paid in full.

On February 23, 2023, the arbitrator signed a protective order. That protective order is vacated to the extent that otherwise-confidential information is either admissible or discoverable in any legal proceeding in which (1) either or both of the Clients attempt to modify the Family Trust in a manner that is inconsistent with the MSA and/or (2) either or both of the Clients attempt to delay or to avoid paying this Interim Award and/or the Final Award and/or any judgment based on either or both of these awards and/or (3) any one or more of the Lawyers participate in order to defend or to collect amounts awarded in this Interim Award and/or the Final Award and/or any judgment based on either or both of these awards.

This Interim Award is in full settlement of the merits of all claims submitted to this Arbitration, except for the determination of reasonable attorney fees and costs in favor of the Lawyers as set forth above. The Arbitrator retains jurisdiction to address the Lawyers’ claims for reasonable attorney fees and costs. The Lawyers shall submit their accounting of such reasonable attorney fees and costs and any supporting documents related thereto to the Arbitrator within 7 business days of the date of this Interim Award. The Clients shall submit any responsive

statement and supporting documents within 7 business days of receipt of the Lawyers' fees submission. Upon and after such submissions, the matter shall be deemed submitted to the Arbitrator for determination in a Final Award.

This Interim Award shall remain in full force and effect until the Arbitrator renders a Final Award.

Signed this 29th day of April, 2024.

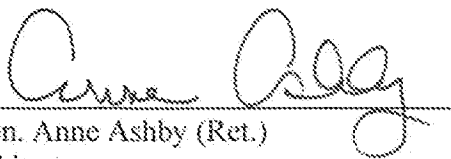

Hon. Anne Ashby (Ret.)
Arbitrator

Exhibit A

**AMERICAN ARBITRATION ASSOCIATION
IN THE MATTER OF THE ARBITRATION OF**

NICHOLAS ABAZA, JORGE	§	
BORUNDA AND MICHAEL TREVINO	§	
(“LAWYERS”)	§	
Claimant,	§	
vs.	§	CASE NO. 03-22-0002-4507
RICHARD ALLISON, JR. AND	§	
CAROLINE ALLISON (“CLIENTS”)	§	
	§	
Respondents.	§	

ARBITRATION ORDER NO. 6; OMNIBUS ORDER NO. 2

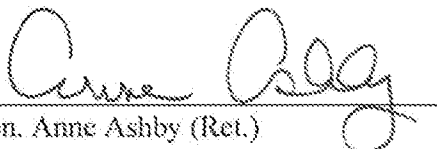
On the 13th day of September, 2023, following multiple Discovery Hearings were conducted among Joseph Little, Esq., David Kassab, Esq. and Raul Suazo, Esq. via Zoom. Following many discussions, the following is Ordered, Adjudged, and Decreed:

Charles Schwab One Account of The Minaki LTD Partnership, A Partnership, account number unknown, is frozen from any withdrawals, orders, or exchanges from Clients. No withdrawals or transfers are to take place pending further orders of the Arbitrator, Anne Ashby.

1. All clients shall produce personal and company tax returns, bank statements, sales from stock and all investment account documents from 2020,2021,2022, and 2023. This production shall be on a rolling basis and are due by September 12, 2023.
2. Lawyers and clients are to produce all documents an communications pertaining to this cause of action that are not privileged.
3. Depos are to be scheduled according to calendars.

It is so **Ordered**.

Signed this 14th day of September, 2023.


Hon. Anne Ashby (Ret.)
Arbitrator

APPENDIX TAB 3

Allison on December 9, 2021, and in the arbitration proceedings are \$273,595.93. This amount includes recoverable fees of \$234,560.00 plus recoverable expenses in the amount of \$39,035.93.

- Expert witness fees and expenses that were produced at the request of arbitrator are \$102,418.00. This amount includes \$15,023.00 in recoverable fees and expenses relating to the expert reports of Karl Schwabauer, \$34,295.00 in recoverable fees and expenses relating to the expert reports of Dan Tostrud. \$53,100.00 in recoverable fees and expenses relating to the expert report of Keith Staubus.
- Incurred AAA administrative fees and arbitrator compensation in the amount of \$78,456.27.

The total value of these attorneys' fees and expenses that are recoverable is \$454,470.20. Clients shall be liable, jointly and severally, for these fees and expenses.

Recoverable pre-judgment interest (at 8.5% compounded annually beginning on April 13, 2021, and continuing to Thursday, June 20, 2024) on the \$1,416,915.68 award against Richard Allison, Jr. is **\$421,133.32**. Therefore, the award against Mr. Allison with accrued pre-judgment interest shall be **\$1,838,049.00**.

Recoverable pre-judgment interest at 8.5% compounded annually beginning on April 13, 2021, and continuing until June 20, 2024, on the **\$1,416,915.68** award against Richard Allison, Jr. is calculated as follows.

- $\$1,416,915.68 \times .085 = \$120,437.83$. Thus, the amount of the award plus pre-judgment interest as of April 13, 2022, is \$1,537,353.51.
- $\$1,537,353.51 \times .085 = \$130,675.05$. Thus, the amount of the award plus pre-judgment interest as of April 13, 2023, is \$1,668,028.56.
- $\$1,668,028.56 \times .085 = \$141,782.43$. Thus, the amount of the award plus pre-judgment interest as of April 13, 2024, is \$1,809,810.99.
- $\$1,809,810.99 \times .085 = \$153,833.93 / 365 = \$421.4628$. Thus, the amount of pre-judgment interest that accrues daily until April 13, 2025, is \$421.4628.
- Additional pre-judgment interest will be calculated as: Interest for 67 days from April 14, 2024, through June 20, 2024, will be 67 days times \$421.4628 = \$28,238.01.

Recoverable pre-judgment interest (at 8.5% compounded annually beginning on April 13, 2021, and continuing to Thursday, June 20, 2024) on the \$1,352,149.80 award against Caroline Allison is **\$401,883.72**. Therefore, the award against Ms. Allison with accrued pre-judgment interest shall be **\$1,754,033.52**.

Recoverable pre-judgment interest at 8.5% compounded annually beginning on April 13, 2021, and continuing until June 20, 2024, on the **\$1,352,149.80** award against Caroline Allison is calculated as follows.

- $\$1,352,149.80 \times .085 = \$114,932.73$. Thus, the amount of the award plus pre-judgment interest as of April 13, 2022, is \$1,467,082.53.
- $\$1,467,082.53 \times .085 = \$124,702.02$. Thus, the amount of the award plus pre-judgment interest as of April 13, 2023, is \$1,591,784.55.
- $\$1,591,784.55 \times .085 = \$135,301.69$. Thus, the amount of the award plus pre-judgment interest as of April 13, 2024, is \$1,727,086.24.
- $\$1,727,086.24 \times .085 = \$146,802.33 / 365 = \$402.1982$. Thus, the amount of pre-judgment interest that accrues daily until April 13, 2025, is \$402.1982
- Additional pre-judgment interest will be calculated as: Interest for 54 days from April 14, 2024, through June 20, 2024, will be 67 days times \$402.1982 = \$26,947.28.

Therefore, I AWARD as follows:

Clients shall be liable, jointly and severally, to pay Lawyers the sum of **\$376,013.93** for attorneys' fees and expenses.

Mr. Allison shall pay to Lawyers the sum of **\$421,133.32** for pre-judgment interest. The award against Mr. Allison with accrued pre-judgment interest shall be **\$1,838,049.00**.

Ms. Allison shall pay to Lawyers the sum of **\$401,883.72** for pre-judgment interest. The award against Ms. Allison with accrued pre-judgment interest shall be **\$1,754,033.52**.

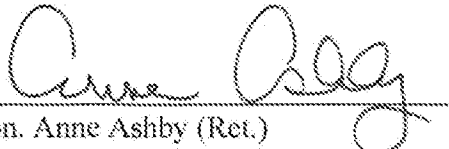
The administrative fees of the American Arbitration Association (AAA) totaling \$56,225.00 shall be borne by Clients, jointly and severally, and the compensation of the arbitrator totaling \$133,318.81 shall be borne by Clients, jointly and severally. Therefore, in addition to the other sums awarded above, Clients (jointly and severally) shall reimburse Lawyers the sum of \$78,456.27, representing that portion of said fees, compensation, and expenses in excess of the apportioned costs previously incurred by Lawyers.

The above sums are to be paid on or before 30 days from the date of this Award.

Clients shall be liable, jointly and severally, to pay Lawyers post-judgment interest at the rate of 8.5% per annum commencing 31 days from the date of this Award until paid in full.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are, hereby, denied.

Signed this 20th day of June, 2024.


 Hon. Anne Ashby (Ret.)
 Arbitrator

APPENDIX TAB 4

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APPENDIX TAB 5

CAUSE NO. 2021-80256

Pgs-3

CAROLINE ALLISON

Plaintiff

VS.

BORUNDA, P.C., JORGE BORUNDA,
NICHOLAS ABAZA, LAW OFFICES OF
NICHOLAS ABAZA, P.C., MICHAEL
TREVINO AND LAW OFFICE OF
MICHAEL A. TREVINO, P.L.L.C.

Defendants

§
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§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

269TH JUDICIAL DISTRICT

MTEDX
MCAAX

ORDER

On the ____ day of _____, 2024, this Court considered Defendants' Motion to Confirm, Enforce, and Enter Judgment on Arbitration Awards, including the supplement to the motion (collectively, "Defendants' motion"). After considering Defendants' motion, any responses and/or replies thereto, the pleadings and evidence before the Court, and the arguments of counsel, this Court is of the opinion that Defendants' motion is meritorious and should be GRANTED in all respects.

It is therefore ORDERED, ADJUDGED, and DECREED that Defendants' Motion is GRANTED.

It is further ORDERED, ADJUDGED, and DECREED that the Reasoned Interim Award signed by the arbitrator, former Dallas County district court judge Anne Ashby ("the arbitrator"), on April 29, 2024 is CONFIRMED.

It is further ORDERED, ADJUDGED, and DECREED that the Final Award signed by the arbitrator on June 20, 2024 is also CONFIRMED.

It is further ORDERED, ADJUDGED, and DECREED that both Richard Allison, Jr. and Caroline Allison shall, within five days of the date of this Order, provide to appropriate

personnel at Charles Schwab One a copy of the arbitrator's Reasoned Interim Award, the arbitrator's Final Award, and any Final Judgment entered on the awards.

It is further ORDERED, ADJUDGED, and DECREED that both Richard Allison, Jr. and Caroline Allison shall, within five days of the date of this Order, provide to Defendants' counsel, Joseph R. Little, each monthly statement for the second settlement recovery account beginning with the statement for July 2023 and continuing through the most recent statement.

It is further ORDERED, ADJUDGED, and DECREED that both Richard Allison, Jr. and Caroline Allison shall continue to provide to Defendants' counsel, Joseph R. Little, each monthly statement for the second settlement recovery account until the Final Award and all accrued interest have been paid in full.

Signed on this ____ day of _____, 2024.

Signed:
7/15/2024



PRESIDING JUDGE

APPENDIX TAB 6

CAROLINE ALLISON

Plaintiff

VS.

BORUNDA, P.C., JORGE BORUNDA,
NICHOLAS ABAZA, LAW OFFICES OF
NICHOLAS ABAZA, P.C., MICHAEL
TREVINO AND LAW OFFICE OF
MICHAEL A. TREVINO, P.L.L.C.

Defendants

VS.

RICHARD ALLISON, JR.

Intervenor

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

269TH JUDICIAL DISTRICT

MONEX
ATFEX
8I

FINAL JUDGMENT

By Order dated _____, 2024, this Court granted the Motion to Confirm, Enforce, and Enter Judgment on Arbitration Awards (including a supplement to that motion) filed by Defendants Borunda, P.C., Jorge Borunda, Nicholas Abaza, Law Offices of Nicholas Abaza, P.C., Michael Trevino, and Law Office of Michael A. Trevino, P.L.L.C. (collectively, "Defendants").

By Order dated _____, 2024, the Court likewise denied the Motion to Vacate or Alternatively Modify or Correct Awards filed by Plaintiff Caroline Allison and Intervenor Richard Allison, Jr.

The Court now enters this Final Judgment. The arbitrator's confirmed Interim Award is attached hereto as Exhibit A and is incorporated by reference as if fully set out in this Final Judgment. The arbitrator's confirmed Final Award is attached hereto as Exhibit B and is also incorporated by reference as if fully set out in this Final Judgment. The confirmed Interim

Award and the confirmed Final Award are referred to collectively in this Final Judgment as “the Awards.”

It is ORDERED, ADJUDGED, and DECREED that, in conformity with the Awards:

1. Nicholas Abaza shall recover from Richard Allison, Jr. the amount of \$1,416,915.68 as damages for Mr. Allison’s breach of contract. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Mr. Allison \$1,416,915.68 based on their claim(s) for promissory estoppel, quantum meruit, unjust enrichment, and/or money had and received.
2. Nicholas Abaza shall recover from Richard Allison, Jr. the amount of \$421,133.32 for pre-judgment interest. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Mr. Allison the amount of \$421,133.32 for pre-judgment interest.
3. Nicholas Abaza, Borunda, P.C., and Michael Trevino shall recover from Caroline Allison the amount of \$1,352,149.80 as damages for Ms. Allison’s breach of contract. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Ms. Allison \$1,352,149.80 based on their claim(s) for promissory estoppel, quantum meruit, unjust enrichment, and/or money had and received.
4. Nicholas Abaza, Borunda, P.C., and Michael Trevino shall recover from Caroline Allison the amount of \$401,883.72 for pre-judgment interest. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Ms. Allison the amount of \$401,883.72 for pre-judgment interest.
5. Nicholas Abaza, Jorge Borunda, Borunda, P.C., and Michael Trevino shall recover from Richard Allison, Jr. and Caroline Allison, jointly and severally, \$376,013.93 for attorneys’ fees and expenses.
6. Nicholas Abaza, Jorge Borunda, Borunda, P.C., and Michael Trevino shall recover from Richard Allison, Jr. and Caroline Allison, jointly and severally, \$78,456.27 for administrative arbitration fees and arbitrator compensation.
7. The above sums are to be paid on or before 30 days from the date of the Final Award.
8. The above sums shall accrue post-judgment interest at the rate of 8.5% per annum commencing 31 days from the date of the Final Award until paid in full.
9. Nicholas Abaza, Jorge Borunda, Borunda, P.C., and Michael Trevino shall recover from Richard Allison, Jr. and Caroline Allison, jointly and severally, reasonable and necessary attorneys’ fees and expenses incurred to obtain this Final Judgment and/or to enforce the Interim Award and/or the Final Award

and/or this Final Judgment. Any subsequent proceedings with additional courts or tribunals shall set the fees.

10. Mr. Allison and Ms. Allison shall, within thirty days after entry of the Final Award, (1) direct the trustee(s) of the Allison Family Trust to liquidate sufficient trust assets to pay the Final Award and all accrued interest in full and (2) shall pay the Final Award and all accrued interest in full. Pursuant to the MSA and the documents signed to effectuate the MSA, Mr. Allison and Ms. Allison have the legal right -- and the legal obligation -- to make this direction to the trustee(s) of the Family Trust. Mr. Allison and Ms. Allison are hereby ordered to do so.
11. The “freeze” on the Charles Schwab One account of the Minaki Limited Partnership referenced in the arbitrator’s September 14, 2023, order (attached to the Interim Award as Exhibit A) shall continue in full force and effect until this Final Judgment and all accrued interest have been paid in full. In order to ensure compliance with this Final Judgment, and to prevent any withdrawals or disbursements in violation of this Final Judgment, Mr. Allison and Ms. Allison are both ordered (1) to provide to appropriate personnel at Charles Schwab One a copy of this Final Judgment with all exhibits, and (2) to provide to Defendants’ counsel, Joseph R. Little, each monthly statement for the Charles Schwab One account within five business days of the date of each statement, until this Final Judgment and all accrued interest have been paid in full.
12. On February 23, 2023, the arbitrator signed a protective order. That protective order is vacated to the extent that otherwise-confidential information is either admissible or discoverable in any legal proceeding in which (1) either Ms. Allison or Mr. Allison or both of them attempt to modify the Family Trust in a manner that is inconsistent with the MSA and/or (2) either Ms. Allison or Mr. Allison or both of them attempt to delay or to avoid paying the Interim Award and/or the Final Award and/or this Final Judgment and/or (3) any one or more of the Defendants participate in order to defend or to collect amounts awarded in the Interim Award and/or the Final Award and/or this Final Judgment.
13. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for negligence.
14. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for breach of fiduciary duty.
15. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for alleged violations of the Texas Deceptive Trade Practices Act.
16. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for fraud.
17. Neither Mr. Allison nor Ms. Allison is entitled to declaratory relief.

18. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a request for an accounting.
19. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on any defense asserted in his or her pleadings.
20. Nothing that was alleged in Mr. Allison's live arbitration pleading entitles him to any relief or any recovery of any kind.
21. Nothing that was alleged in Ms. Allison's live arbitration pleading entitles her to any relief or any recovery of any kind.

It is further ORDERED, ADJUDGED and DECREED that Defendants are entitled to all writs and processes as may be necessary to enforce or to collect this Final Judgment, for which let execution issue.

This is a final judgment that disposes of all claims of all parties and is immediately appealable.

Signed on this ____ day of _____, 2024.

Signed:
7/15/2024



PRESIDING JUDGE

APPENDIX TAB 7

COUNTRY

269TH JUDICIAL DISTRICT

Automated Certificate of eService

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Filing Description: Appellant Caroline Allison's Opening Brief

Status as of 3/13/2025 8:21 AM CST

Associated Case Party: Caroline Allison

Name	BarNumber	Email	TimestampSubmitted	Status
Lance Kassab		eserve@kassab.law	3/12/2025 9:29:02 PM	SENT

Associated Case Party: Borunda, P.C.

Name	BarNumber	Email	TimestampSubmitted	Status
Joseph R. Little		jrl@littlelawtexas.com	3/12/2025 9:29:02 PM	SENT

Associated Case Party: Richard Allison

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