

NO. D-1-GN-11-001733

**ALICIA SANCHEZ; YASMIN
SANCHEZ; AND MERARY
"MARTY" SANCHEZ**
Plaintiffs,

VS.

**ROSENTHAL & WATSON, P.C.;
MARC ROSENTHAL, INDIVIDUALLY;
SOLIS & ROBLES, L.L.C.; JOSE
SANTIAGO SOLIS, INDIVIDUALLY;
AND ABEL CORRAL LIMAS,
INDIVIDUALLY**
Defendants,

§ IN THE DISTRICT COURT OF
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§ TRAVIS COUNTY, TEXAS
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§ 250TH JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION, REQUEST FOR DISCLOSURE
AND DEMAND FOR JURY TRIAL**

TO THE HONORABLE JUDGE AND JURY OF SAID COURT

Come Now Alicia Sanchez, Yasmin Sanchez, and Merary "Marty" Sanchez, Plaintiffs herein, complaining of and about Rosenthal & Watson, P.C., Marc Rosenthal, Individually, Solis & Robles, L.L.C., Jose Santiago Solis, Individually, and Abel Corral Limas, Individually, Defendants herein, and would show the Court and Jury as follows:

I. Discovery-Control Plan

Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure and affirmatively pleads that they seek monetary relief aggregating more than \$50,000.00.

II. Parties

Plaintiffs, **Alicia Sanchez** (last four digits of social security number is 0029), **Yasmin Sanchez** (last four digits of social security number is 2487, and **Merary "Marty" Sanchez** (last four digits of social security number are 6957), are residents of Harlingen, Texas, residing at 1717 Carter Street, Harlingen, Texas 78550.

Hereinafter, each Plaintiff identified above will be referred to collectively as "Plaintiffs."

Defendant, **Rosenthal & Watson, P.C.**, is a Professional Corporation doing business in and around the State of Texas, and maintains an office in Travis County, Texas at 6601 Vaught Ranch Rd., Suite 200, Austin, TX 78730. Said Defendant may be served with citation by serving its registered agent for service, Marc Rosenthal, at his place of employment, Rosenthal & Watson, P.C., 6601 Vaught Ranch Rd., Suite 200, Austin, TX 78730. Hereinafter, said Defendant will be referred to as "Rosenthal & Watson."

Defendant, **Marc Rosenthal, Individually**, is a partner in the law firm of Rosenthal & Watson, P.C. and maintains an office in Travis County, Texas at 6601 Vaught Ranch Rd., Suite 200, Austin, TX 78730. Said Defendant is a resident of Travis County, Texas. Said Defendant may be served with citation herein at his place of employment, Rosenthal & Watson, P.C., 6601 Vaught Ranch Rd., Suite 200, Austin, TX 78730. Hereinafter, said Defendant will be referred to as "Rosenthal."

Defendant, **Solis & Robles, L.L.C.**, is a Limited Liability law firm and maintains an office in Cameron County, Texas at Westoria Building, 1st Floor, 402 S."F" Street, Harlingen, TX 78550. Said Defendant may be served with citation by serving its registered agent, Jim Solis, at his place of employment, Solis & Robles, L.L.C., Westoria Building, 1st Floor, 402

S."F" Street, Harlingen, TX 78550. Hereinafter, said Defendant will be referred to as "Solis & Robles."

Defendant, **Jose Santiago Solis, Individually**, is a resident of Cameron County, Texas, residing at 14847 South Valencia Circle, Harlingen, Texas 78662. Said Defendant may be served with citation herein by serving him at his place of business at Westoria Building, 1st Floor, 402 S."F" Street, Harlingen, TX 78550, or his place of residence at 14847 South Valencia Circle, Harlingen, Texas 78662. Hereinafter, said Defendant will be referred to as "Solis."

Defendant, **Abel Corral Limas, Individually**, is a resident of Cameron County, Texas, residing at 1274 Sandy Hill Drive, Brownsville, Texas 78520. Said Defendant may be served with citation herein by serving him at his home at 1274 Sandy Hill Drive, Brownsville, Texas 78520. Hereinafter, said Defendant will be referred to as "Limas."

Defendants, **Rosenthal & Watson, P.C., Marc Rosenthal, Individually, Solis & Robles, L.L.C., Jose Santiago Solis, Individually, and Abel Corral Limas, Individually**, will also hereinafter be referred to collectively as "Defendants."

III. Jurisdiction and Venue

This Court has jurisdiction and venue over this case because Rosenthal & Watson and Marc Rosenthal maintain a principal place of business and/or reside in Travis County, Texas, and the other individual Defendants, Solis, and Limas, are Texas residents. Solis & Robles also maintains a principal place of business in Texas. The damages being sought by Plaintiffs exceed the minimum jurisdictional limits of the Court.

IV. Facts

All factual allegations and causes of action pled herein are a matter of public record and/or Defendants' confession. They are all made in good faith. Some Federal District Court

records in the criminal proceedings against Solis and Limas are publically available. Defendant, Rosenthal, individually, is referred to in those records as "Person A."

On or about February 5, 2008, Michael T. Sanchez and Raul Garcia were members of the emergency medical team on board medical services helicopter that crashed in the Laguna Madre near South Padre Island, Texas. Both Sanchez and Garcia perished as a result of injuries sustained in that accident. Michael T. Sanchez was survived by his wife, Alicia Sanchez, and children, Yasmin and Marty.

On or about February 15, 2008, the Sanchez and Garcia families hired Rosenthal and Solis to represent them. These families also entrusted Rosenthal and Solis with the cherished reputation and memories of Michael and Raul. Solis and Rosenthal sued Metro Aviation, Inc. and South Texas Emergency Foundation. That suit was filed suit in Cameron County and it was assigned to the 404th District Court. At that time, Abel Limas was the presiding judge of that Court.

As a part of their representation of the Sanchez and Garcia families, Rosenthal and Solis used a scheme for bribing Judge Limas. They wanted favorable rulings from Judge Limas. They got them. The bribes even included future employment for Limas at Rosenthal's law firm. After losing his reelection bid, Limas exercised employment options while still on the bench. *See Exhibit 1 attached hereto, Solis Plea Packet Memo at 2.* Limas was offered an "of counsel" position with "the firm," as well as cash payments cryptically referred to as "golf balls." The consideration was Limas' past and continued favorable rulings. Ultimately, Judge Limas was also paid additional sums of money after settlement was obtained. *See Exhibit 2 attached hereto, Limas Plea Packet Memo at 6.* These additional sums were a continuation of the bribery payments from Solis and Rosenthal and came out of the Garcia and Sanchez families' recovery.

The claims of the Sanchez and Garcia families were settled on or about October 17, 2009 and the Defendants pocketed approximately \$5,288,000.00 in total fees and approximately \$408,267.43 in total "expenses." The criminal acts of Defendants do not reflect the purpose for their employment and, in fact, jeopardized Plaintiffs' rights and interests. They are unquestionably a breach of these lawyers' fiduciary duty to their clients. Total forfeiture of the attorneys fees retained by Defendants from the settlement proceeds is mandated by Texas law.

Coincidentally, even before the helicopter crash case was filed, federal authorities had started an investigation into Limas' bribery and corruption in court. Certain lawyers were paying money through a middle man to Limas for favorable treatment in his court (<http://www.valleycentral.com/news/story.aspx?id=606664>). Federal authorities got recordings of lawyers engaged in this unseemly practice. Solis was one of those lawyers. Solis is on tape bribing Judge Limas. Now, Solis has confessed, and implicated Rosenthal. Rosenthal was also engaged in this bribery scheme. (<http://www.themonitor.com/articles/brownsville-48751-rulings-casts.html>).

The helicopter crash case was specifically identified as a case in which Limas was paid bribes from Solis, and had an unidentified co-conspirator, "Person A," *i.e.*, Rosenthal. See *Exhibit 2, Limas Plea Packet Memo*; see also (<http://www.brownsvilleherald.com/news/solis-125889-state-former.html>). Solis' plea packet memo detailed how many of Limas' favorable rulings were motivated by his efforts to assist the law firm, to which he was already committed to be employed as "of counsel" after leaving the bench. See *Exhibit 1, Solis Plea Packet Memo* at 2. How do we know Rosenthal is "Person A?" Answer: The "Firm's" principal is identified as "Person A" in the federal indictment of Solis. *Id.* In statements made to newspapers following the indictments of Solis and Limas, Rosenthal confirmed that Limas was indeed "of counsel" to

Rosenthal & Watson for some time following his term on the bench. <http://www.themonitor.com/articles/brownsville-48751-rulings-casts.html>). Rosenthal is the principal of the firm, Rosenthal & Watson. *Id.* Rosenthal is one of two attorneys identified as representing the Garcia and Sanchez families in the helicopter crash case. Solis is the other attorney. Solis admits paying bribe money to Limas at the direction of "Person A." *See Exhibit 1, Solis Plea Packet Memo* at 3. The only person fitting the description of "Person A" is Marc Rosenthal, defendant herein.

Limas and Solis have plead guilty to the federal criminal charges levied against them. (<http://www.brownsvilleherald.com/news/solis-125889-state-former.html>); http://www.chron.com/CDA/archives/archive.mpl?id=2011_4966085). These pleas and confessions leave no doubt that the Lawyers/Defendants herein intentionally and grievously breached their fiduciary duty owed to their clients. Plaintiffs are innocent and without prior knowledge of Defendants' criminal acts. Not only did Defendants breach their fiduciary duties to their clients, but in doing so they dishonored the memories of Michael T. Sanchez and Raul Garcia. The Sanchez and Garcia families entrusted Defendants with something far more valuable than a legal cause of action. They, like the public they personify, expected Defendants to honor the memory and reputation of Michael T. Sanchez and Raul Garcia by executing their duties with the utmost integrity, honesty, fairness, and professionalism. Instead, Defendants used the Plaintiffs' claims and story as vehicle to turn honest labor into a crooked scheme for a substantial fee to them. Like the recent Wall Street financial crisis, Defendants' conduct fosters a far reaching and severe distrust of those in the legal profession. Defendants' criminal acts are just another brick in the already glaring wall that greedy and dishonest lawyers are building between the judicial system and the public it is meant to serve and protect. Defendants' actions represent

a realization of the public's absolute worst fears in the legal profession and judicial system. The stakes are higher than Defendants' ill-gotten fees, and the public is looking for justice. Defendants should not be allowed to retain the profits of their own criminal acts in violation of their fiduciary duties to Plaintiff.

V. Attorney-Client Relationship

At all times material hereto, Rosenthal, Solis, and Limas were partners, shareholders, "of counsel" attorneys, representatives, agents and/or associate attorneys engaging in the practice of law at either Rosenthal & Watson and/or Solis & Robles. Rosenthal & Watson and Solis & Robles co-ventured Plaintiffs' representation in the helicopter crash case. All of the specific acts complained of herein are attributable to the conduct of the individual Defendants, who were attorneys associated with Rosenthal & Watson and/or Solis & Robles as a partner, agent, servant, "of counsel" attorney, representative and/or employee, as well as Rosenthal & Watson and/or Solis & Robles. The liability and responsibility of the Defendants are vicarious and joint and several. Further, Plaintiffs plead the legal theory of *respondeat superior* as between the individual Defendants and Rosenthal & Watson and/or Solis & Robles. Also, at all times material, Rosenthal & Watson and/or Solis & Robles, whether acting directly, indirectly, or vicariously through their partners, agents, servants, "of counsel" attorneys, representatives and/or employees acted as attorneys for Plaintiffs. As attorneys for Plaintiffs practicing within the same firm, information known to any individual Defendant herein or any other member of the firm not specifically named herein is imputed to each other individual defendant and member of the firm. Likewise, Plaintiffs were clients of Defendants and were entitled to absolute fidelity from all of the Defendants because of their fiduciary duty to Plaintiffs.

VI. Statement of Claims

A. Liability of Attorneys

All of the allegations contained in the above paragraphs are re-alleged and incorporated herein as though they were fully set forth.

1. Breach of Fiduciary Duty: Fee Forfeiture

At all times material to Defendants' representation of Plaintiffs, the then-existing attorney-client relationship created a fiduciary duty which required Defendants to exercise the highest degree of care, good faith, and honest dealing, and obligating them to commit no act of deception or misrepresentation no matter how slight. *Beck v. Law Offices of Edwin J. (Ted) Terry, Jr., P.C.*, 284 S.W.3d 416, 429 (Tex. App.—Austin 2009, no pet. h.). For that reason, the conduct of Defendants complained about herein above, constitutes a breach of their fiduciary duty to the Sanchez family, Plaintiffs herein. Such breach entitles Plaintiffs to actual damages proximately caused thereby, as well as to a forfeiture of legal fees paid to Defendants.

The starting point in any analysis of a breach of fiduciary duty claim brought by clients against lawyers is whether the lawyers in question acted with integrity and fidelity. *Id.*; *Murphy v. Gruber*, 241 S.W.3d 689, 693 (Tex. App.—Dallas 2007, pet. denied); *Kilemco Pet., Inc. v. Morrison & Shelton, P.C.*, 91 S.W.3d 923 (Tex. App.—Fort Worth 2002, pet. denied). It is axiomatic that a lawyer that engages in criminal activity as a part of and during that lawyer's representation of a client(s) breaches his fiduciary duty to those clients. *Beck*, 284 S.W.3d at 429; *Trousdale v. Henry*, 261 S.W.3d 221, 229 (Tex. App.—Houston [14th Dist.] 2008, pet. denied); *Deutsch v. Hoover, Bax & Slovacek, L.L.P.*, 97 S.W.3d 179, 190 (Tex. App.—Houston [14th Dist.] 2002, no pet.); *Avila v. Havana Painting Co.*, 761 S.W.2d 398, 399-400 (Tex. App.—Houston 1988, writ denied); *Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 160 (Tex. 2004).

Defendants' participation in the criminal act of bribery of a judge, all the while concealing their crimes from their clients, is a most egregious breach of fiduciary duty. By committing this crime during their representation of Plaintiffs, Defendants unnecessarily and illegally put their clients at risk of losing an otherwise meritorious claim for damages resulting from the death of their loved ones. This breach of loyalty in and of itself constitutes a breach of fiduciary duty and these lawyers cannot legally retain the benefits they derived from such a breach. *See Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 160 S.W.2d 509, 512 (Tex. 1942); *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999).

As a result of this breach of fiduciary duty, Plaintiffs seek forfeiture of the entire fee obtained by Defendants from the settlement of the underlying helicopter crash. The violation of the fiduciary duty owed to Plaintiffs is clear and serious and requires total forfeiture. Factors to be considered in determining fee forfeiture, including the amount to be forfeited, are as follows:

- 1) The gravity and timing of the violation
- 2) The willfulness of the violation; whether it was intentional
- 3) The effect of the violation on the value of the lawyer's work for the client
- 4) Any threatened or actual harm to the client
- 5) The adequacy of other remedies available to client (although forfeiture is available even if client suffers no actual harm)
- 6) The public interest in maintaining the integrity of attorney-client relationships. (This factor is to be given great weight)

Burrow v. Arce, 997 S.W.2d 229, 243-44 (Tex. 1999).

These factors are to be weighed together and are not to be applied mechanically. *Id.* at 243. Applying these factors appropriately, one cannot readily envision a more appropriate set of

circumstances for total forfeiture of the fees obtained by lawyers than the situation presented by the instant case. The lawyers and the judge intentionally set about to commit a serious felony crime that was directly tied to the litigation in which the lawyers were representing their clients, plaintiffs herein. The underlying case was highly meritorious and the value of same was put at grave risk by this criminal activity. Further, on information and belief, Defendants 'reimbursed' themselves for their expenditure of bribe money by creating and charging false case expenses, recouped from the clients at the time of settlement, to cover the costs of the bribes given to Judge Limas. The claim for those actual damages is more specifically set out herein below. Finally, the most important of the fee forfeiture factors, the public policy interest in maintaining the integrity of the attorney/client relationship, and, indeed, the integrity of the legal profession as a whole, dictates absolute and complete forfeiture of these fees.

2. Penal Code Violations - Texas Penal Code (Commercial Bribery)

Further, in the alternative and without waiving any of the foregoing, Defendants' acts are a violation of Penal Code Section 32.43. Specifically, that statute, in pertinent part, states:

- (b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, intentionally or knowingly solicits, accepts or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.
- (c) A person commits an offense if he offers, confers, or agrees to confer any benefit, the acceptance of which is an offense under Subsection (b).

TEX. PEN. CODE § 32.43 (West 2011).

The acts of Defendants, fall squarely within the statutory definition of commercial bribery set forth above. This violation of this section of the Penal Code, a statute, forms an

additional basis for Plaintiffs' assertion that such acts constitute a breach of fiduciary duty and negligence per se.

Public Policy

As is evident in the Texas courts' emphasis on the public's trust in the legal profession when considering fee forfeiture in breach of fiduciary duty cases, Defendants' violated not only Plaintiffs' trust and confidence in Defendants and the greater legal profession and system, but also the community's trust in the legal system. At the heart of our system of justice is the ideal of a fair and impartial adjudication of disputes. Defendants completely disregarded this most basic tenet of the American justice system and, putting their own personal interests above all others, sought to influence Judge Limas through bribery in what is turning out to be a very public display of greed and corruption in the legal profession and justice system in Texas. See news articles cited above.

Additionally, it is well established public policy in Texas that criminals, such as Defendants, shall not profit, in any way, from their criminal acts. *Peeler v. Hughes & Luce*, 909 S.W.2d 494, 499 (Tex. 1995); *Owens v. Harmon*, 28 S.W.3d 177, 178-79 (Tex. App.—Texarkana 2000, pet. denied); *See also Wessinger v. Fire Ins. Exchange*, 949 S.W.2d 834 (Tex. App.—Dallas 1997, no writ) (insured cannot benefit from a wrongful act by claiming it was voluntary). Defendants should forfeit any attorneys fees derived from their criminal acts because without forfeiture, Defendants would benefit greatly from their own criminal acts and breaches of fiduciary duty.

3. Aiding and Abetting Breach of Fiduciary Duty

Defendants are liable under all three doctrines of aiding and abetting a breach of fiduciary duty: (1) assisting and encouraging; (2) assisting and participating; and (3) concert of action.

Plaintiffs will show that Defendants aided and abetted under these doctrines by personally assisting and participating in the plot and execution of bribery payments made to Judge Limas. Defendants' assistance and participation was substantial. This activity was highly deviant and not only likely to cause damage it did actually cause Plaintiffs' damages by Defendants' recovery of bribe money via inflated expenses paid out of Plaintiffs' portion of settlement proceeds.

4. Conversion/Fraud

To the extent Defendants used false case expenses to recover money Defendants had previously used to bribe Limas, these funds so taken from Plaintiffs at the time of settlement were converted or stolen from Plaintiffs. To the extent such false descriptions were used by the lawyers to repay themselves, Defendants committed fraud upon Plaintiffs for which this suit is also maintained.

5. Deceptive Trade Practices

All of the foregoing acts also amount to and constitute violations of the Texas DTPA. Plaintiffs will show that Defendants are liable under the Texas Deceptive Trade and Practices Act (hereinafter "DTPA") because (i) Plaintiffs were consumers, (ii) Defendants violated specific provisions of the DTPA, and (iii) the violation was a producing cause of Plaintiffs' damages.

Pursuant to *Latham v. Castillo*, 972 S.W.2d 66, 68 (Tex. 1998), an express misrepresentation constitutes an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion, and thus violates Section 17.49(c)(3) of the DTPA. Defendants violated the DTPA by knowingly committing criminal acts of bribery to secure favorable rulings in Plaintiffs' case and in doing so also placed Plaintiffs' entire case and

recovery as risk of total loss. At all times relevant to Plaintiffs' claims, Defendants represented to Plaintiffs that the case was being handled properly and in accordance with all applicable Texas laws. Moreover, on information and belief, Defendants paid themselves back the bribe money by misrepresenting and inflating expenses to Plaintiffs that were ultimately paid out of Plaintiffs' portion of the settlement. Clearly, this constitutes a clear, knowing, and/or intentional violation of the Texas DTPA.

Furthermore, in violation of the Texas DTPA, Defendants failed to disclose to Plaintiffs' information material to their legal representation and/or handling of Plaintiffs' case. Specifically, Defendants failed to disclose the egregious conflict of interest they created by bribing Judge Limas thereby putting their own personal interests in a greater contingency fee recovery above those of Plaintiffs in securing a legally viable and properly obtained recovery on their meritorious claims. Thus, Plaintiffs would show that the Defendants' conduct, described herein, was committed knowingly and intentionally as those terms are defined by TEX. BUS. & COMM. CODE ANN. § 17.46 et seq. Accordingly, the Defendants are liable to Plaintiffs for additional damages as provided by the DTPA, including treble damages and reasonable attorneys' fees necessary to bring this cause of action, all of which are being sought herein.

6. Conspiracy

Plaintiffs will also show that Defendants conspired to engage in organized criminal activity, a breach of the fiduciary duty the lawyer Defendants owed to Plaintiffs and to commit fraud against Plaintiffs. Specifically, Defendants conspired to pay bribes to Limas and recoup such payments from Plaintiffs by inflating and/or manufacturing expenses to be paid out of Plaintiffs' portion of settlement proceeds. Defendants had the specific intent to agree to

accomplish their goal on behalf of all conspirators by making misrepresentations of expenses and receiving inflated expense recoveries from Plaintiff. Defendants' actions caused damages to these Plaintiffs for which they seek recovery herein. Defendants acted with malice.

7. Negligence

In the alternative and without waiving any of the foregoing, Plaintiffs assert that Rosenthal and Rosenthal & Watson were negligent by participating in and/or failing to prevent, protect, and/or take other measures to stop Solis and/or Limas from endangering Plaintiffs' claims or potential recovery through the criminal acts as set forth herein above and in Solis' and Limas' criminal plea agreements. Such failure falls below the applicable standard of care Rosenthal and Rosenthal & Watson owed to Plaintiffs as their attorneys and caused Plaintiffs actual damages.

8. Gross Negligence/Malice

Alternatively, all of the errors and omissions complained about herein, including the factual analysis set forth above, were done with such conscious indifference or reckless disregard of each Defendants' responsibility as attorneys so as to constitute an entire want of care, ill will, or malice as those terms are understood in law. Specifically, Plaintiffs incorporate as the factual basis for these claims all of the factual allegations set forth above. Therefore, such conduct constitutes gross negligence and/or malice sufficient to justify the imposition of punitive or exemplary damages and to serve as an instruction to Defendants that they cannot act or fail to act when required and expect to escape the consequences of their conduct. The same facts that support Plaintiffs' negligence claims as set forth above, support gross negligence claims; the only difference is the actor's state of mind. Willful or wanton negligence means more than

momentary thoughtlessness, inadvertence, or error of judgment. It means such an entire want of care as to establish that the act or omission complained of was the result of actual conscious indifference to the rights, safety, or welfare of the persons affected by it.

The entire definition of "gross negligence" is such an entire want of care as to establish that the act or omission was the result of actual conscious indifference to the rights, safety or welfare of the person affected. The definition of gross negligence includes two elements: (a) viewed objectively from the standpoint of the actor, the act or omission must involve an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and (b) the actor must have actual, subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety or welfare of others.

B. Liability of Limas

Defendant, Limas, is liable to Plaintiffs for unjust enrichment, conversion, and aiding & abetting a breach of fiduciary duty.

1. Unjust Enrichment

By accepting bribes in connection with Plaintiffs' case and agreeing to further be compensated in an amount based on Plaintiffs' recovery in the underlying case, Limas has improperly and illegally received money that belongs to Plaintiffs. Limas, like the other Attorney Defendants that represented Plaintiffs in the underlying case, should not be allowed to profit from his criminal acts at the expense of Plaintiffs and in clear violation of public policy.

2. Conversion

Defendant Limas has received and exercised dominion and control over Plaintiffs' personal property (their settlement proceeds) by his various violations of Texas law and other criminal acts described herein. Defendant Limas wrongfully accepted bribery money

representing funds that would be accounted for or taken from Plaintiffs' recovery in the underlying case. Plaintiffs have been damaged by such conduct of Limas to the extent that any of Plaintiffs' settlement proceeds paid for, either directly or indirectly, any bribes paid to Limas.

3. Aiding and Abetting Breach of Fiduciary Duty

Defendant Limas is liable under all three doctrines of aiding and abetting a breach of fiduciary duty: (1) assisting and encouraging; (2) assisting and participating; and (3) concert of action. Plaintiffs will show that Defendant Limas aided and abetted under these doctrines by personally assisting and participating in the plot and execution of bribery payments made to him. Defendant Limas' assistance and participation was substantial – he was the demand that created the market for bribery. This activity was highly deviant and not only likely to cause damage it did actually cause Plaintiffs' damages by Defendant Limas' recovery of bribe money via inflated expenses paid out of Plaintiffs' portion of settlement proceeds.

4. Penal Code Violations - Texas Penal Code (Commercial Bribery)

Further, in the alternative and without waiving any of the foregoing, Defendant's acts are a violation of Penal Code Section 32.43. Specifically, that statute, in pertinent part, states:

- (b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, intentionally or knowingly solicits, accepts or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.
- (c) A person commits an offense if he offers, confers, or agrees to confer any benefit, the acceptance of which is an offense under Subsection (b).

TEX. PEN. CODE § 32.43 (West 2011).

The acts of Defendant Limas, fall squarely within the statutory definition of commercial bribery set forth above. On information and belief, Limas, while acting "of counsel" to Rosenthal & Watson and/or Solis & Robles, accepted payments representing an extension of the bribery payments made to him for favorable rulings in the underlying case and which were improperly paid from Plaintiffs' portion of settlement proceeds. This violation of this section of the Penal Code, a statute, forms an additional basis for Plaintiffs' assertion that such acts constitute a breach of fiduciary duty and negligence per se.

5. Conspiracy

Plaintiffs will also show that Defendant Limas conspired with the other Defendants named herein to commit fraud against Plaintiffs. Specifically, Defendant Limas conspired to receive bribes paid by other named Defendants that were paid from Plaintiffs' portion of settlement proceeds via inflated and/or manufactured expenses. Defendant Limas and other named Defendants had the specific intent to agree to accomplish their goal on behalf of all conspirators by making misrepresentations of expenses and receiving inflated expense recoveries from Plaintiffs. Defendants' actions caused damages to these Plaintiffs for which they seek recovery herein.

VII. Damages

Plaintiff seeks damages as set forth below in an amount within the jurisdictional limits of the Court.

7A. Actual Damages

To the extent Defendants reimbursed themselves for bribery money expended by falsifying case expenses to be deducted from the settlement, Plaintiffs have suffered actual

damage. These actual damages were proximately caused by the acts of Defendants as set out more fully herein above, for which suit is maintained.

7B. Punitive damages

Plaintiffs seek recovery of exemplary damages for the intentional breaches of fiduciary duty, as allowed by law. *International Bankers Life Ins. Co. v. Holloway*, 368 S.W.2d 567, 584 (Tex. 1963); *Brosseau v. Ranzau*, 81 S.W.3d 381, 396 (Tex. App.—Beaumont 2002, pet denied). Plaintiffs also seek punitive damages from Defendants under their fraud, conspiracy, and conversion causes of action. TEX. CIV. PRAC. & REM. CODE § 41.003(a)(1) (punitive damages available for common law fraud); *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 306 (Tex. 2006); *See also Akin v. Dahl*, 661 S.W.2d 917, 921 (Tex. 1983) (punitive damages available for conspiracy when underlying tort qualifies for punitive damages); *Green Int'l. v. Solis*, 951 S.W.2d 384 391 (Tex. 1997) (punitive damages available on conversion claims when defendant acts with malice). Specifically, malice in this context is defined as follows:

“Malice” means: (a) a specific intent by a defendant to cause substantial injury to a plaintiff; or (b) an act or omission by a defendant, (i) which, when viewed objectively from the standpoint of a defendant at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (ii) of which a defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. (PJC 110.33).

“Exemplary damages” means any damages awarded as a penalty or by way of punishment. Exemplary damages includes punitive damages. In determining the amount of exemplary damages, you should consider evidence, if any, relating to: (a) the nature of the wrong; (b) the character of the conduct involved; (c) the degree of culpability of the wrongdoer; (d) the situation and sensibilities of the parties concerned; (e) the extent to which such conduct offends a public sense of justice and propriety; and (f) the net worth of defendant. (PJC 80.6)

Such punitive damages must serve as an instruction to the Defendants that they cannot escape responsibility for the consequences of their egregious and malicious conduct. Such damages should also serve as an instruction to others that the same or similar conduct in this community will not be tolerated.

Additionally, as an alternative to Plaintiffs' claim for additional or treble damages under the Texas Deceptive Trade Practices Act, Plaintiffs are entitled to an election of either punitive damages or treble damages, whichever is greater.

Therefore, punitive or exemplary damages of at least four times the amount of actual damages are sought as an alternative to treble damages under the Deceptive Trade Practices Act.

Plaintiffs sue to recover punitive damages from Defendants taking into consideration the nature of the wrong, the character of the conduct involved, the degree of culpability of Defendants, the situation and sensibilities of the parties concerned, the extent to which such conduct offends a public sense of justice and propriety, and the net worth of Defendants. Additionally, Plaintiffs will also show by clear and convincing evidence that Defendants acted with malice because their acts and omissions were either with a specific intent to substantially cause damage to Plaintiffs, or, when viewed objectively from the standpoint of Defendants at the time of the occurrences in question, involved an extreme degree of risk, considering the probability and magnitude of harm to Plaintiffs, and of which Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs. Thus, Plaintiffs request that the jury determine the appropriate punitive damages award.

7C. Forfeiture of Fees

The mistakes of Defendants legally deprive them of any right to a fee from Plaintiffs. Nonetheless, Defendants extracted fees from Plaintiffs. Because of their conduct, Defendants forfeited any right to obtain fees from Plaintiffs. Therefore, as additional damages, Plaintiffs are entitled to a return of all fees actually collected by Defendants in their representation of Plaintiffs.

7D. Treble Damages

Plaintiffs seek a money judgment as allowed by the DTPA, including treble damages.

7E. Constructive Trust

Alternatively, Plaintiffs seek, as equitable relief and/or damages, the profits derived from or value obtained by any Defendant through or as a result of Defendants' breaches of their fiduciary duty owed to Plaintiffs, unconscionable conduct, and other acts of fraud or conversion as described above. Accordingly, Plaintiffs seek imposition of a constructive trust on any and all proceeds, funds, or property obtained by Defendants and other, yet to be named, attorneys, partners, and/or employees of Defendants as a result of such acts.

7F. Attorney's Fees

Because of Defendants' violation of the DTPA, Plaintiffs are entitled to reasonable attorney's fees necessary to prosecute this action. Texas law recognizes that contingency fees can be reasonable and necessary under the circumstances. Under these circumstances, a reasonable attorney's fee of 40% of the entire recovery should be assessed against the Defendants.

WHEREFORE, premises considered, Plaintiffs pray that after trial or hearing herein, that judgment be entered for Plaintiff against these Defendants, jointly and severally, that costs of court be taxed against the Defendants, that Plaintiffs have prejudgment as well as post-

judgment interest, and for such other and further relief, at law and in equity, to which Plaintiffs may show themselves to be justly entitled, to which the Court believes them deserving, and for which they will ever pray.

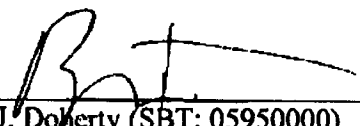
REQUEST FOR JURY TRIAL

Pursuant to the Texas Rules of Civil Procedure, Plaintiffs demand a trial by jury and a jury fee was paid simultaneously with the filing of Plaintiffs' Original Petition.

PLAINTIFFS' REQUESTS FOR DISCLOSURES TO DEFENDANTS

Pursuant to Rule 194, T.R.C.P., the Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a) - (l).

Respectfully submitted,



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