

CAUSE NO. CC-12-01362-D

FILED

2012 FEB 29 PM 4:00

COREA TRIAL GROUP, LLC

*Plaintiff,*

v.

CBS CORPORATION d/b/a DELAWARE  
CBS CORPORATION a/k/a CBS  
TELEVISION;  
CBS STATIONS GROUP OF TEXAS L.P.  
d/b/a KTVT BROADCASTING  
COMPANY, L.P. a/k/a CBS 11;  
VIACOM INTERNATIONAL INC, d/b/a  
TELEVISION STATIONS GROUP  
PARTNER I INC. a/k/a KTXA-TV INC  
and TXA21; and,  
CALLSOURCE, INC.

*Defendants.*

IN THE COUNTY COURT AT LAW  
COUNTY CLERK  
DALLAS COUNTY

COURT NO. 4

DALLAS COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

Plaintiff COREA TRIAL GROUP, LLC (hereinafter, "Plaintiff"), by and through undersigned counsel, hereby files this Plaintiff's Original Petition against Defendants CBS CORPORATION d/b/a DELAWARE CBS CORPORATION a/k/a CBS TELEVISION; CBS STATIONS GROUP OF TEXAS L.P. d/b/a KTVT BROADCASTING COMPANY, L.P. a/k/a CBS 11; VIACOM INTERNATIONAL INC, d/b/a TELEVISION STATIONS GROUP PARTNER I INC. a/k/a KTXA-TV INC and TXA21 (hereinafter, collectively, the "Defendants"); and, Defendant CALLSOURCE, INC. and states and alleges as follows.

I.

**INTRODUCTION OF PLAINTIFFS' CLAIMS**

This case flows from Defendants continuous and systematic fraud upon the Plaintiff through patently false representations that it was fulfilling its contractual and other legal obligations to the Plaintiff and, furthermore, its cover-up of the fact that it was not meeting such obligations but, rather, concealing the facts from the Plaintiff and making every effort possible to prevent Plaintiff from uncovering the truth. As a result, as alleged infra, Plaintiff has suffered actual and consequential damages well in excess of several million dollars of revenues, for which Plaintiff hereby sues.

II.

**PARTIES**

1. COREA TRIAL GROUP, LLC is a Texas-registered Limited Liability Company doing business throughout the State of Texas, with its principal place of business located in Dallas, Dallas County, State of Texas.

2. Defendant CBS CORPORATION d/b/a DELAWARE CBS CORPORATION a/k/a CBS TELEVISION (“CBS”) is a Foreign Corporation authorized to conduct business in the State of Texas, actively and currently doing business in Dallas, Dallas County, State of Texas, and may be served with Citation through its Texas Registered Agent for Service of Process addressed as follows:

**CBS CORPORATION**  
**d/b/a DELAWARE CBS CORPORATION**  
c/o Corporation Service Company  
dba CSC - Lawyers Incorporating Service Company  
211 E. 7th Street, Suite 620  
Austin, TX 78701-3218

3. Defendant CBS STATIONS GROUP OF TEXAS L.P. d/b/a KTVT BROADCASTING COMPANY, L.P. a/k/a CBS 11 (“KTVT”) is a Domestic Limited Partnership authorized to conduct business in the State of Texas, , actively and currently doing business in

Dallas, Dallas County, State of Texas, and may be served with Citation through its Texas Registered Agent for Service of Process addressed as follows:

**CBS STATIONS GROUP OF TEXAS L.P.**  
**d/b/a KTVT BROADCASTING COMPANY, L.P.**  
c/o Corporation Service Company  
dba CSC - Lawyers Incorporating Service Company  
211 E. 7th Street, Suite 620  
Austin, TX 78701-3218

4. Defendant VIACOM INTERNATIONAL INC, d/b/a TELEVISION STATIONS GROUP PARTNER I INC. a/k/a KTXA-TV INC and TXA21 (KTXA”) is a Foreign Corporation, with its principle place of business being 1515 BROADWAY 32ND FLOOR NEW YORK, NEW YORK, 10036, and is authorized to conduct business in the State of Texas, actively and currently doing business in Dallas, Dallas County, State of Texas, and may be served with Citation through its Texas Registered Agent for Service of Process addressed as follows:

**VIACOM INTERNATIONAL INC.**  
**d/b/a TELEVISION STATIONS GROUP PARTNER I INC.**  
The Prentice-Hall Corporation System, Inc.  
211 E. 7th Street, Suite 620  
Austin, TX 78701-3218

5. Defendant CALLSOURCE, INC. (“CALLSOURCE”) is a California Corporation with its principle place of business being 31280 OAK CREST DRIVE, SUITE 320 WESTLAKE VILLAGE, CALIFORNIA 91361, however, actively and currently doing business in Dallas, Dallas County, State of Texas, and may be served with Citation through its Texas Registered Agent for Service of Process addressed as follows:

**CALLSOURCE, INC.**  
C/o Roger A. Browning  
320 N. Bedford Drive, Suite 204  
Beverly Hills, California 90210

**III.**  
**FACTS RELEVANT TO ALL COUNTS**

6. COREA TRIAL GROUP, LLC is a law firm based in Dallas, Texas whose primary legal representations include the prosecution of legal matters involving serious personal injuries, mass tort product, medical device and defective pharmaceutical claims and consumer class action cases pending throughout the United States.

7. In or about June of 2011, television media sales representatives of the Defendants approached Plaintiff, through its Owner and Senior Trial Lawyer, Thomas M. Corea, about a certain media opportunity to appear, “live” and in person, on Defendant KTXA’s “Channel 21” noontime programming for a “live call-in” television program entitled “Ask The Lawyer with Tom Corea” (the “Show”).

8. Defendants essentially “pitched” the Show to the Plaintiff as “something new” and believed that its Owner and Senior Trial Lawyer, Thomas M. Corea, was what the Defendants’ required as a “co-host” or “feature” of the Show whereby live television viewers could place a toll-free telephone call (or email) to a dedicated telephone number that went directly to the Defendants’ KTXA studios in Fort Worth, Texas, which a select group of approximately 7 to 10 calls would be answered and screened to be aired live on the Show and all other calls would be automatically transferred to Plaintiff’s law office directly and/or its answering service to ensure that a live representative of the Plaintiff answered each call or “potential business lead” and the call could then either be routed directly to one of the Plaintiff’s available attorneys or pertinent information would be recorded in written form so that the call or “potential business lead” could be promptly followed up upon by the Plaintiff.

9. Indeed, the Show pitched by the Defendants to the Plaintiff was, essentially, a “pilot” marketing opportunity that had been attempted by the Defendants on a few occasions but with marginal success—that is each broadcast featuring other attorneys garnering a total call-in volume of approximately 75 to 250 telephone calls.

10. Eventually, through various stages of negotiation and considerable mutual discussion and agreements formed and reached between the parties concerning the content of the Show and, also, the fact that each “caller” that calls in to the show would be answered by a “live person” through the Defendants’ KXTA television station telephone system “transferring” EVERY telephone call to Plaintiff’s law office and/or answering service.

11. Plaintiff and Defendant placed an order for a certain number of 30 minute Shows, based on the parties’ exchanged terms, representations and agreements as to the benefits the Plaintiff would receive in exchange for Defendants’ fee of \$2,750 per show, based on Plaintiff agreeing to purchase two (2) shows per week (aired live at noon each Tuesday and Thursday), promoted with pre-recorded 15 second spots placed randomly throughout the TXA Channel 21’s programming and co-hosted by veteran news and television personality Brenda Teele.

12. The key attraction and incentive to the Plaintiff in entering into the parties agreement and paying the rates commanded by the Defendants was the Defendants’ absolute and unequivocal promise and assurance that 100% of the telephone calls generated by the Show would be answered by a live person associated with the Plaintiff, as such was repeatedly discussed as a “deal breaker” term for the Plaintiff due to the absolute requirement to adhere to its professional responsibilities and ethical duties and not engage in any arrangement that could be regarded as any form of solicitation of legal representation (or barratry).

13. Indeed, it was mutually understood and agreed upon between the parties that simply having “a list” of the names and telephone numbers of callers to the show was entirely insufficient and, for purposes of Plaintiff’s ability to communicate with such callers to the Show, would run directly contrary to the Plaintiff’s professional responsibilities and ethical duties to not place itself in a position whereby it could be engaging in solicitation of legal representation (or barratry) because, with just a “name and telephone number,” Plaintiff had no indicia of if such callers were contacting the Plaintiff with an inquiry about possible legal representation.

14. The first Show aired on July 28, 2011 and, much to the shock and awe of the Defendants, was a success beyond comprehension—having received over 1,200 phone calls (approximately 4 to 5 times greater than the previous pilot episodes with other featured attorneys).

15. As a result of the large call volume from the first show, Plaintiff immediately employed a local “call center” capable of simultaneously answering up to 1,000 telephone calls and, thereafter, all calls made to the show, Plaintiff was repeatedly assured by Defendants, were “automatically rolled-over to the lines at the call center.”

16. The Show was a “success” instantly, for both parties, as the Plaintiff received several hundred calls per Show and the immediately developed a following among television viewers, as the television ratings for the Show indicated that it had higher ratings than programs with traditionally a much greater viewerships—such as the mid-day news and, at least on one occasion, that daytime television Gold Standard: “The Young and the Restless.”

17. The Defendants clearly benefited, as well, from the synergies that the Show produced, as they were able to use the Show to market and sell its concept to other advertisers in other CBS Television-affiliate markets.

18. However, as the Show continued the number of incoming calls to the show began to dramatically decline.

19. When Plaintiff brought the “declining numbers” to the attention of the Defendants, through its sales Manager Mr. Brent Franks, Plaintiff was given assurances that Defendants would run additional promotional spots and “shoot a new promo spot” to “boost the numbers up” and, otherwise, gave assurances that the success of the Show would climb back up.

20. Despite Defendants’ assurances, it did not run additional promotional spots or “shoot a new promo spot” to “boost the numbers up” and the number of calls the Plaintiff was experiencing continued to decline.

21. The Show continued to run until Plaintiff refused further payment to the Defendants for the same until lingering questions were answered as to why the “success” of the Show had dramatically fallen off.

22. Throughout the months of September and early October of 2012, Plaintiff learned through its call center (not the Defendants itself) that there were several instances where Defendants failed to be transferring any calls for extended periods of time during the show and, upon Plaintiff’s inquiry of Defendants, the Defendants red-faced denied any significant “problems” in this regard and assured the Plaintiff that any such issues had been “fixed” and, furthermore, claimed ignorance of any technical or other problems with it failing to transfer calls to the Plaintiff’s call center.

23. Throughout these periods of time and in each of these discussions between the Plaintiff and the Defendant, it was reiterated to and plainly understood by the Defendants that without the “volume of calls” as persons potentially seeking legal representation by the Plaintiff, there was no reason to do the Show and, in fact, all parties continued to agree that such was the

entire purpose of the Show and the basis upon which the Defendants priced the show to the Plaintiff for advertising.

24. Unbeknownst to the Defendants, Plaintiff instructed the Defendants' salesman for the Plaintiff's account, Mr. Jay Stokes, to generate a weekly list of all the calls that the television station's "call tracking" system, provided by Defendant CallSource, and provide the same to the Plaintiff.

25. The "call tracking" system by Defendant CallSource captured the name, telephone number and (sometimes) the address of each caller as well as the exact time each call was received, its duration and even recorded the entire audio of each call from the time the call was answered to the time it was ended.

26. Initially, Defendants provided Plaintiff with the ability to "log in" online to the CallSource program so that Plaintiff could obtain and track this information itself, however Plaintiff's online access to CallSource was discontinued by the Defendants within weeks after the Show started and Plaintiff's inquiries into the same were met with Defendant's assurances that it was just a "network" problem" or "perhaps a system upgrade issue" that the Defendants would look into and remedy.

27. Also unbeknownst to the Defendants was that Plaintiff's call center, likewise, maintained its own "call tracking" system with likewise captured the name, telephone number and (sometimes) the address of each caller that was automatically transferred over to the call center from the Defendants.

28. When the number of calls Plaintiff experienced dropped to an unexplainable level, Plaintiff devoted substantial time and expense in building a comparison of the data related to the



number of calls transferred by the Defendants to the Plaintiff's call center with the call volume data that had been provided by Defendants' salesman for the Plaintiff's account, Mr. Jay Stokes.

29. The results of Plaintiff's analysis of the "differences" in the number of calls generated from the Show (*i.e.* those calls placed to the telephone number provided throughout the Show, as reflected by each weekly list delivered to the Plaintiff by Defendants' salesman for the Plaintiff's account, Mr. Jay Stokes) versus the full list of calls actually received and/or answered (as reported by Plaintiff's call center) that were transferred from the television station to the Plaintiffs call center indicated that approximately **only 44% of the calls placed to the Show were actually reaching the Plaintiff!**

30. With suddenly the "truth" having been uncovered by the Plaintiff, Defendants placed significant pressure on Plaintiff to pay 100% of all outstanding billed and unbilled invoices for the Show and, in response, the Plaintiff refused to pay anything until the issue of the Plaintiff having been cheated out of 56% of its lost business opportunities was addressed, in some fashion, by the Defendants, as it was clear that what the Plaintiff had been paying for and, furthermore, what the Defendants were insisting on receiving payment for had not even been remotely provided by the Defendants.

31. That is, the agreement between the parties for the production of the Show was: to generate live "potential legal business" leads that the Plaintiff could answer personally and, further, personally follow up upon and in accordance with the Plaintiff's ethical duties as well as its in adherence to its professional obligations as lawyers licensed in the State of Texas.

32. Feeling egg on its face when finally confronted with the "evidence" that Plaintiff unearthed on its own that Defendants had been cheating the Plaintiff out of approximately 56% of its lost business opportunities, the Defendant's called in its Director of Sales, Mr. Matt Flewelling

(whom had developed a casual business relationship with Plaintiff's owner during a "CBS Television" sponsored trip to Florence, Italy in September of 2011) in an obvious attempt to "smooth things over" concerning this eruption between the relationship between the parties.

33. At a meeting at the Plaintiff's offices in January of 2012, attended by Msrs. Flewelling, Franks and Stokes as the Defendants representatives, Plaintiff assured that Plaintiff had no intentions on avoiding payment of any of the Defendants' outstanding invoices and payments due but, in recognition of the fact that Defendants clear errors that cost the Plaintiff approximately 56% of its lost business opportunities (which Plaintiff conservatively estimated to total at least 1.4 million dollars in lost revenues), Plaintiff insisted that an agreement be reach in compromise to make Plaintiff whole in some fashion.

34. In terms of making Plaintiff whole for Defendants' actions (which Plaintiff conservatively estimated to total at least 1.4 million dollars in lost revenues), Plaintiff informed the Defendants that Plaintiff was entirely "flexible" about how to remedy the situation, was "open for a variety of suggestions" and desired to "work out a resolution, monetarily or otherwise, to get all the parties beyond this issue" so that the relationship could continue but with the assurances that such errors would not occur in the future.

35. It appeared, to the Plaintiff, that the "assurances that such errors would not occur in the future" was the most significant "issue" the Defendants found most unsettling about Plaintiff's flexible willingness to remedy its loss of at least 1.4 million dollars in lost revenues, as Defendants adamantly denied that there had been any technical failures on its part and, rather, blamed the entire issue ("if any") on the Plaintiff's call center and, furthermore, expressed that "above all" that they (Msrs. Flewelling, Franks and Stokes) were "feeling the pressure from New York" (referring to

Defendants CBS and ViaCom) to collect “all out standing amounts” because “they do not care about these issues.”

36. With Defendants’ dug-in position of “denial” (clearly driven orders for action dictated by Defendants CBS and ViaCom), Plaintiff proposed that Defendants provide all the available “call tracking” system data its had available to it through its software provided by Defendant CallSource and, in return, that Plaintiff provide all the available “call tracking” system data its had available to it through its software provided by its call center (which is the basis of Plaintiff’s discovery of its loss of 56% of its lost business opportunities, or at least 1.4 million dollars in lost revenues).

37. The parties ended their meeting with the agreement that each would talk to their respective “IT” and call center sources to provide an exchange of information and, within the coming days, hold a conference call to discuss the comparisons of the same.

38. Plaintiff immediately provided all the available “call tracking” system data it had available to it through its software provided by its call center dating from the date of the first Show in July and op through the last Show in January of 2012.

39. However, the Defendants provided only an isolated and highly audited “report” prepared by a representative of Defendant Call Source indicating a certain number of calls during an isolated time in the month of August of 2011 where, according to the Defendants, the Plaintiff’s call center had not received only about 23% of the calls to the Show.

40. The parties held a telephone conference in January of 2012, as agreed upon, to discuss each other’s exchange of information (the “Telephone Conference”).

41. The Telephone Conference was attended (or participated in) by Plaintiff's owner, Thomas M. Corea, by Messrs. Flewelling, Franks and Stokes, an "IT" representative of Plaintiff's call center, an "IT" representative of the Defendants and, also, a representative of Defendant CallSource (whom was neither expected nor invited by the Plaintiff to Telephone Conference).

42. The Telephone Conference was, predictably (by Defendant's "hide the ball" production of its information), non-productive towards any form of a resolution of this dispute, as Defendant first refused to produce any of its CallSource "call tracking" data other than that produced for the a time during the month of August and, then, maintained that it is "impossible" to provide any of the CallSource call tracking system data was destroyed and no longer available after 30 days from the date of its creation.

43. During the Telephone Conference, both the Defendants and the Plaintiff pointedly requested that the uninvited representative from Defendant CallSource attending (or participating in) the Telephone Conference, in fact, confirm unequivocally, the assertion that: "it is impossible to provide any of the CallSource call tracking system data was destroyed and no longer available after 30 days from the date of its creation"—to which the uninvited representative from Defendant CallSource attending (or participating in) the Telephone Conference, unequivocally confirmed.

44. The Statement that "it is impossible to provide any of the CallSource call tracking system data was destroyed and no longer available after 30 days from the date of its creation" was a bald-faced lie, as evidenced by at least the instant facts that:

- Defendants had just produced a "portion" of the CallSource call system tracking data for the month of August of 2011 in January of 2012; and,

- In advance of the parties January 2012 meeting at Plaintiff's offices, Mr. Franks had created a report dated "January 18, 2012" (directly from the URL: <http://www.calltrackdata.com/webreports/reports/TrafficAnalysisReport.jsp?rvco=1&d=1...>) pulling data from calls to the Show from "07/25/2011 – 12/31/2011, All Hours, All Days" for "All Call Result."

45. According to the website registry "WebSiteRecord.com," the "server for Calltrackdata.com is currently situated in Westlake Village, United States"—the corporate headquarters for Defendant CallSource.

46. Thus, with the deliberate and complicit assistance of Defendant CallSource, Defendants fraudulently represented to Plaintiff that "it is impossible to provide any of the CallSource call tracking system data was destroyed and no longer available after 30 days from the date of its creation" as an obvious effort to cover-up what Defendants had known for an extended period of time (if not throughout the entire period of their relationship with the Plaintiff): that is was cheating the Plaintiff out of approximately 56% of the benefit of its bargain.

47. Each of the Defendants named herein are jointly and severally liable to the Plaintiff for the damages suffered by the Plaintiff, as each of the defendants acted in active concert with each other in connection with the acts complained of herein, thereby imposing joint and several liability among them for each others' acts and actions towards the Plaintiff.

**IV.**  
**CLAIMS FOR RELIEF**

***Count One:***  
***BREACH OF CONTRACT***

48. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs

49. Plaintiff and Defendants have (and has had) valid and enforceable contracts that each of the Defendants named herein have individually and jointly and severally committed acts constituting a breach by Defendants of said contracts, from which Plaintiff has been damaged in an amount to be proven at trial.

50. Plaintiff is the proper party to sue for breach of said contract and all conditions precedent necessary to the filing of this action (as well as and each of the causes of action stated herein) have been satisfied by Plaintiff.

51. The Plaintiff was excused from performance of the contract at issue herein due to Defendants' breaches, as enumerated more fully herein, and said actions constitute breach that has caused Plaintiff injury. *See West v. Triple B. Servs.*, \_\_\_ S.W.3d \_\_\_ (Tex.App.—Houston [14<sup>th</sup> Dist.] 2008, n.p.h.) (No. 14-07-00082-CV; 8-26-08); *Hovorka v. Community Health Sys.*, 262 S.W.3d 503-508-09 (Tex. App.—El Paso 2008, n.p.h.); *Academy of Skills & Knowledge, Inc. v. Charter Schools, USA, Inc.*, 260 S.W.3d 529, 536 (Tex.App.—Tyler 2008, pet. filed 10-15-08).

***Count Two:***  
***MONEY HAD AND MONEY RECEIVED AND UNJUST ENRICHMENT***

52. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

53. As a result Defendants conduct complained of herein, Plaintiff paid money and conferred a benefit upon Defendants that was originally in the Plaintiff's possessions, as a result of fraud, payment under compulsion or mistake.

54. Defendants received and retained this benefit under such circumstances that would be inequitable and unconscionable to permit it to retain and, therefore, should be required to return its reasonable value to Plaintiff.

55. In fairness, all such monies, including all interest Defendants have earned on such monies while in wrongful possession thereof should be paid to Plaintiff.

56. As a direct and proximate result of Defendants' unjust enrichment, Plaintiff has been damaged and hereby seeks recovery of the same in an amount to be determined at the trial in this cause.

***Count Three:***  
***TEXAS COMMON LAW FRAUD***

57. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

58. Defendants failed to disclose certain facts to the Plaintiff as to its "ability" to do as it promised and contracted for: deliver 100% of the calls into the Show to the Plaintiff to be answered by a live person whom would assist said callers and further provide potential legal assistance if requested by said callers.

59. Defendants failed to disclose to Plaintiff that it was, in fact, not (and had not) been doing as it promised and contracted for: deliver 100% of the calls into the Show to the Plaintiff to be

answered by a live person whom would assist said callers and further provide potential legal assistance if requested by said callers.

60. Defendants deliberately misrepresented the facts at issue as their individual, concerted and collectively authorized actions falsely and fraudulently led Plaintiff the reasonably rely upon the Defendants' statements and actions that they, in fact, were fulfilling the entire benefit of Plaintiff's bargain of their agreement in producing the show: **Defendants' absolute and unequivocal promise and assurance that 100% of the telephone calls generated by the Show would be answered by a live person associated with the Plaintiff.**

61. Defendants deliberately, fraudulently and maliciously withheld from Plaintiff numerous material facts.

62. Those material facts deliberately, fraudulently and maliciously withheld from the Plaintiff were important, such that a reasonable person would able to determine the clear and unambiguous falsity of the same.

63. Defendants knew that the Plaintiff was ignorant of the truth and material, omitted facts and that Plaintiff did not have an equal opportunity to discover the truth as compared the statements provided by Defendants to the Plaintiff upon which Plaintiff justifiably relied.

64. Defendants were deliberately silent as to material and omitted facts when Defendants continuing fraudulent statements and omissions towards the Plaintiff were made and, likewise continued throughout the period of their relationship, while Defendants had duties to clarify the same.

65. Defendants intended their fraudulent statements and omissions be relied upon by the Plaintiff, as well as each of their fraudulent actions directed towards Plaintiff.



66. Plaintiff justifiably and actually relied upon Defendants' fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations.

67. Each of the Defendants named in this cause share joint and several liability for the damages Plaintiff has suffered and were caused by Defendants' fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations and conduct, pursuant to the laws of the State of Texas, as each defendant acted independently and/or in active concert with Defendants when making and committing said fraudulent statements and conduct, *i.e.*, weather as a:

- "Direct Participant" (as recognized under the laws of the State of Texas), including all those whom acted in active concert with Defendants' fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations and conduct; and/or,
- "Contributory Participant" (as recognized under the laws of the State of Texas) including all those whom knowingly provided inducement or material contribution to Defendants' fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations and conduct, as well as all those whom (with or without knowledge) provide the "means" with which Defendants' fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations and conduct.

68. As a direct and consequential result of Defendants' fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations and conduct, Plaintiff has suffered injury as a result of said actions, which are actionable under the laws of the State of Texas, where such where directed to occur and, also, from where Plaintiff herein seeks relief and recovery of his damages in amounts to be proven at the trial of this cause.

*Count Four:*

**TEXAS COMMON LAW DECEIT**

69. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

70. As alleged herein, Defendants made to the Plaintiff fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations that were at the time (and remain to this date) false and, therefore, deceitful statements.

71. Defendants' fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations where, therefore, deceitful statements and actions directed towards the Plaintiff with the intent to cause Plaintiff's reliance thereon.

72. Defendants intended Plaintiff, to whom they published and committed upon their fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations and, therefore, deceitful statements and actions actually rely on the same.

73. Plaintiff, to whom Defendants' Defendants where, therefore, deceitful statements and actions directed, justifiably relied on said statements.

74. Each of the defendants named in this cause share joint and several liability for the damages Burris has suffered and were caused by Defendants' fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations and, therefore, deceitful statements and actions concerning Plaintiff, pursuant to the laws of the State of Texas, as each defendant acted independently and/or in active concert with Defendants when made and committed those fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations and, therefore, deceitful statements and actions concerning Plaintiff, *i.e.*, weather as a:

- “Direct Participant” (as recognized under the laws of the State of Texas), including all those whom acted in active concert with Defendants’ fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations and, therefore, deceitful statements and actions concerning Plaintiff; and/or,
- “Contributory Participant” (as recognized under the laws of the State of Texas) including all those whom knowingly provided inducement or material contribution to Defendants’ fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations and, therefore, deceitful statements and actions concerning Plaintiff, as well as all those whom (with or without knowledge) provide the “means” with which Defendants’ fraudulent statements and omissions, mischaracterizations and fraudulent misrepresentations and, therefore, deceitful statements and actions concerning Plaintiff.

75. As a direct and consequential result of Defendants’ false and, therefore, deceitful statements and actions, Plaintiff has suffered damages which are actionable under the laws of the State of Texas where such conduct occurred and, also, from which Plaintiff hereby seeks relief and recovery of his damages in amounts to be proven at the trial of this cause.

***Count Five:  
LIABILITY FOR AIDING AND ABETTING,  
RESTATEMENT OF TORTS (SECOND) § 876(b)***

76. Plaintiffs incorporate by reference each of the allegations set forth in the preceding paragraphs.

77. As set forth by the allegations contained herein, Defendants, in a collective and concerted series of actions as alleged herein, aided and abetted one another in the act and

commission of each other's tortious conduct directed towards the Plaintiff and/or each pursuant to each of their goals to cause damage to Plaintiff.

78. Defendants, in a collective and concerted series of actions as alleged herein, aiding and abetting of each other in such a manner that the same imposes liability upon each of them, at law, for the actions of the each other, which caused damage to the Plaintiffs, as recognized by the Restatement of Torts (Second) § 876(b) and adopted under the common law of the State of Texas.

79. Defendants are liable for the damages the Plaintiff has suffered and were caused by Defendants' aiding and abetting in the act and commission of tortious conduct directed towards the Plaintiff and/or each of its goals to cause damage to the Plaintiffs and the Putative Class, adopted under the common law of the State of Texas (as recognized by the Restatement of Torts (Second) § 876(b)), as Defendants each acted independently and/or in active concert with the others when aiding and abetting in the act and commission of tortious conduct directed towards Plaintiff and/or each of their goals to cause damage to Plaintiff, *i.e.*, whether as:

- A "Direct Participant" (as adopted under the common law of the State of Texas, as recognized by the Restatement of Torts (Second) § 876(b)), including all those whom acted in active concert with the Defendants' aiding and abetting in the act and commission of each other's tortious conduct directed towards Plaintiff and/or each of their goals to cause damage to Plaintiff; and/or,
- "Contributory Participant," including all those whom knowingly provided inducement or material contribution to the Defendants in their aiding and abetting in the act and commission of each other's tortious conduct directed towards Plaintiff and/or each of their goals to cause damage to the Plaintiff, as well as all those whom (with or without knowledge) provided

the “means” with which the Defendants aided and abetted the commission of each other's tortious conduct directed towards Plaintiff and/or each of their goals to cause damage to Plaintiff.

80. The Defendants' collective and concerted series of actions, as alleged herein, aided and abetted in the acts and commissions of each other's tortious conduct directed towards Plaintiff and/or each of their goals to cause damage to Plaintiff has caused injury to Plaintiff which is actionable and remedial pursuant to the common law of the State of Texas (as recognized by the Restatement of Torts (Second) § 876(b)), which is where such conduct occurred and, also, upon whose laws which Plaintiff is entitled to relief from this Court in the form of the recovery of its common and typical damages, in amounts to be proven at the trial of this cause.

*Count Six:*

***TEXAS COMMON LAW TORTIOUS INTERFERENCE WITH CONTRACT***

81. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

82. As a result of the Defendants' conduct complained of herein, Plaintiff's valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved, has been violated by the Defendants' interference therewith to the point that any such valid and binding contractual obligations and/or duties arising by operation of law are (and have been) forever lost, including the economic benefits to the Plaintiff flowing naturally there from.

83. Defendants knew or should have known of the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved.

84. Defendants intentionally acted to interfere with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved.

85. Defendants acted improperly in interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved.

86. Each of the defendants named in this cause share joint and several liability for the damages Burris has suffered and were caused by Defendants' improperly in interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved, pursuant to the laws of the State of Texas, as each defendant acted independently and/or in active concert with Defendants when improperly in interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved, *i.e.*, weather as a:

- "Direct Participant" (as recognized under the laws of the State of Texas), including all those whom acted in active concert with Defendants when improperly in interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved; and/or,
- "Contributory Participant" (as recognized under the laws of the State of Texas) including all those whom knowingly provided inducement or material contribution to

Defendants when improperly in interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved, as well as all those whom (with or without knowledge) provide the “means” with which Defendants when improperly in interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved.

87. As a direct and proximate result of Defendants improperly in interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved, Plaintiff has suffered damages which is actionable and remedial under the laws of the State of Texas where such conduct occurred and, also, from which Plaintiff hereby seeks relief and recovery of its damages caused by the same all in amounts to be proven at the trial of this cause.

*Count Seven:*  
***TEXAS COMMON LAW NEGLIGENT INTERFERENCE  
WITH PROSPECTIVE ECONOMIC ADVANTAGE***

88. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

89. As a result of the Defendants’ conduct complained of herein, Plaintiff’s valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved, has been violated by the Defendants’ interference therewith to the point that any such valid and binding contractual obligations and/or duties arising by operation of law are (and have been) forever lost, including the economic benefits to the Plaintiff flowing naturally there from.

90. Defendants had a duty to know (or should have known in the exercise of its duty to the plaintiff in utilizing ordinary care and prudent conduct) of the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved.

91. Defendants acted recklessly, gross negligently and/or negligently to interfere with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved.

92. Defendants acted recklessly, gross negligently and/or negligently and otherwise improperly in interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved, thereby breaching the Defendants' duties to the Plaintiff and from said breach Plaintiff has suffered damages.

93. Each of the Defendants share joint and several liability for the damages Plaintiff has suffered and were caused by Defendants' interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved, pursuant to the laws of the State of Texas, as each Defendant acted independently and/or in active concert other Defendants when improperly in so interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved, *i.e.*, weather as a:

- "Direct Participant" (as recognized under the laws of the State of Texas), including all those whom acted in active concert with Defendants when so interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved; and/or,



- “Contributory Participant” (as recognized under the laws of the State of Texas) including all those whom knowingly provided inducement or material contribution to Defendants when improperly interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved, as well as all those whom (with or without knowledge) provide the “means” with which Defendants when so interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved.

94. As a direct and proximate result of Defendants’ so interfering with the existence of the valid and binding contractual obligations and/or duties arising by operation of law, based on the particular facts and circumstances involved, Plaintiff has suffered damages which is actionable and remedial under the laws of the State of Texas where such conduct occurred and, also, from which Plaintiff hereby seeks relief and recovery of its damages caused by the same all in amounts to be proven at the trial of this cause.

***Count Eight:***  
***TEXAS COMMON LAW CIVIL CONSPIRACY***

95. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

96. As set forth herein, Defendants acted together in connection with the acts alleged herein.

97. Defendants acted together to accomplish each of the unlawful purposes set forth herein as underlying torts and causes of action, pursuant to a common agreement and/or enterprise

existing by, with and between them and with the actual and/or apparent authority of each of the other defendants named herein.

98. Defendants had a meeting of the minds on the object or course of action undertaken to accomplish each of the unlawful purposes set forth herein as underlying torts and causes of action.

99. Defendants, in fact, have committed the each of the unlawful purposes set forth herein as underlying torts and causes of action.

100. Defendants' undertakings alleged herein were set forth by each of them on behalf of themselves, individually, and, also, each other as well as acting on behalf and with the actual and/or apparent authority of each of the other defendants named in this Plaintiff's Original Petition, thus, giving rise to a meeting of the minds by, with and between all of the Defendants to engage in the tortuous conduct alleged herein.

101. Defendants' collective undertakings (primarily carried out pursuant to and through the actions, agreements and meeting of the minds of Defendants, with the actual and/or apparent authority of all of Defendants, to accomplish each of the unlawful purposes alleged herein as underlying torts, illegal conduct and causes of action arising under the common law of the State of Texas), have caused Plaintiff damages, for which the Defendants, and each of them, share joint and several liability as a result and direct consequence of the foregoing.

102. Each of the Defendants share joint and several liability for the damages Plaintiff has suffered by Defendants' unlawful purposes and conduct (alleged herein as underlying torts, illegal conduct and causes of action), as such was directed to cause the harm to Plaintiff that was the resulting and overall object of the common agreement and meeting of the minds by, with and between all of the Defendants, pursuant to the laws of the State of Texas.

103. The actions primarily carried out by the Defendants, pursuant to each of their and the other Defendants' respective and collective actions, agreements and meeting of the minds to accomplish the unlawful purposes alleged herein as underlying torts, illegal conduct and causes of action, are actionable under the laws of the State of Texas, where such where directed to occur and, also, from where Plaintiff herein seeks relief and recovery of his damages in amounts to be proven at the trial of this cause.

***Count Nine:***  
***DAMAGES RESULTING FROM CIVIL CONSPIRACY***

104. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

105. As set forth herein, Defendants acted together in connection with the acts alleged herein.

106. Defendants acted together to accomplish each of the unlawful purposes set forth herein as underlying torts and causes of action.

107. Defendants had a meeting of the minds on the object or course of action undertaken to accomplish each of the unlawful purposes set forth herein as underlying torts and causes of action.

108. Defendants, in fact, have committed the each of the unlawful purposes set forth herein as underlying torts and causes of action.

109. As a result of the Defendants' undertakings to accomplish each of the unlawful purposes set forth herein as underlying torts and causes of action, Plaintiffs have been damaged in an amount to be proven at trial.

**Count Ten:**  
***VIOLATIONS OF TEXAS' DECEPTIVE TRADE PRACTICES ACT,***  
***TITLE 2, CHAPTER 17, BUSINESS AND COMMERCE CODE—***  
***SECTION 17.50(a): UNCONSCIONABLE COURSE OF ACTIONS***

110. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

111. Defendants' actions complained of herein constitute violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code, Section 17.50(a), in that the allegations contained herein set forth Defendants' fraudulent representations and otherwise establish "unconscionable action" or "course of actions" which were each knowingly, intentionally and maliciously directed towards bringing about the specific result of causing injury and harm to Plaintiff.

112. Defendants' actions complained of herein constitute violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code, Section 17.50(a), in that the allegations contained herein set forth Defendants' fraudulent representations and otherwise establish "unconscionable action" or "course of actions" as such constitute an "act or practice" specifically designed to "take advantage of the lack of knowledge, ability, experience, or capacity of" the parties to whom Defendants' false and deceitful statements were directed, each in a manner which, on its face, is "grossly unfair" and, as well, is mean, glaringly noticeable, flagrant, complete, and unmitigated.

113. Plaintiff is entitled to relief as a qualified and protected consumer and party under the meanings of those terms as used in and have been applied to Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code.

114. Each of the Defendants share joint and several liability for the damages Plaintiff has suffered and were caused by Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition, pursuant to the laws of the State of Texas, as each Defendant acted independently and/or in active concert with Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition, *i.e.*, weather as a:

- "Direct Participant" (as recognized under the laws of the State of Texas), including all those whom acted in active concert with Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition; and/or,
- "Contributory Participant" (as recognized under the laws of the State of Texas) including all those whom knowingly provided inducement or material contribution to Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition, as well as all those whom (with or without knowledge) provide the "means" with which the Defendants' violated Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition.

115. As a direct and proximate result of Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition, Plaintiff has suffered injury which is actionable and remedial under the

laws of the State of Texas where such conduct occurred and, also, from which Plaintiff hereby seeks relief and recovery of his damages in amounts to be proven at the trial of this cause.

**Count Eleven:**  
**VIOLATIONS OF TEXAS' DECEPTIVE TRADE PRACTICES ACT,**  
**TITLE 2, CHAPTER 17, BUSINESS AND COMMERCE CODE—**  
**SECTION 17.46(b): FALSE REPRESENTATION(S) OF AGREEMENT(S) AS TO**  
**CONFERRING OR INVOLVING RIGHTS, REMEDIES OR OBLIGATIONS WHICH IT/THEY**  
**DO NOT**

116. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

117. Defendants' actions complained of herein constitute violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code, Section 17.46(b), in that the allegations contained herein set forth Defendants' fraudulent representations, and thereby constituting "false representation(s) or agreement(s) as to conferring or involving rights, remedies or obligations" which said agreement(s) do not, which has caused injury and harm to Plaintiff.

118. Plaintiff has relied to its detriment upon Defendants' repeated and specific assurances that they would not, did not and have not engaged in any one of the very acts and course of actions complained of herein.

119. Plaintiff is entitled to relief as a qualified and protected consumer and party under the meanings of those terms as used in and have been applied to Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code.

120. Each of the Defendants share joint and several liability for the damages Plaintiff has suffered and were caused by Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition, pursuant to the laws of the State of Texas, as each Defendant acted independently and/or in active

concert with each of the respective Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition, *i.e.*, whether as a:

- "Direct Participant" (as recognized under the laws of the State of Texas), including all those whom acted in active concert with Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition; and/or,
- "Contributory Participant" (as recognized under the laws of the State of Texas) including all those whom knowingly provided inducement or material contribution to Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition, as well as all those whom (with or without knowledge) provide the "means" with which the Defendants violated Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition.

121. As a direct and proximate result of Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition, Plaintiff has suffered injury which is actionable and remedial under the laws of the State of Texas where such conduct occurred and, also, from which Plaintiff hereby seeks relief and recovery of his damages in amounts to be proven at the trial of this cause.

**Count Twelve:**  
**VIOLATIONS OF TEXAS' DECEPTIVE TRADE PRACTICES ACT,**  
**TITLE 2, CHAPTER 17, BUSINESS AND COMMERCE CODE—**  
**SECTION 17.46(b): FAILURE TO DISCLOSE INFORMATION CONCERNING SERVICES**  
**IN ORDER TO INDUCE ACTION THAT WOULD NOT HAVE BEEN TAKEN HAD SAID**  
**INFORMATION BEEN DISCLOSED**

122. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

123. Defendants' actions complained of herein constitute violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code, Section 17.46(b), in that the allegations contained herein set forth Defendants' fraudulent representations, and thereby constituting the "failure to disclose information concerning services" in "order to induce" action "that would not have been taken" had said "information been disclosed," (*i.e.* the truth and full recitation of relevant facts), which has caused injury and harm to Plaintiff.

124. Plaintiff has relied to its detriment upon Defendants' repeated and specific assurances that they would not, did not and have not engaged in any one of the very acts and course of actions complained of herein.

125. Plaintiff is entitled to relief as a qualified and protected consumer and party under the meanings of those terms as used in and have been applied to Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code.

126. Each of the Defendants share joint and several liability for the damages Plaintiff has suffered and were caused by Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition, pursuant to the laws of the State of Texas, as each defendant acted independently and/or in active concert with Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17,



Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition, *i.e.*, whether as a:

- "Direct Participant" (as recognized under the laws of the State of Texas), including all those whom acted in active concert with Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition; and/or,
- "Contributory Participant" (as recognized under the laws of the State of Texas) including all those whom knowingly provided inducement or material contribution to Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition, as well as all those whom (with or without knowledge) provide the "means" with which Defendants violated Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition.

127. As a direct and proximate result of Defendants' violations of Texas' Deceptive Trade Practices Act, Title 2, Chapter 17, Business and Commerce Code as alleged in this Count of Plaintiff's Original Petition, Burriss has suffered injury which is actionable and remedial under the laws of the State of Texas where such conduct occurred and, also, from which Plaintiff hereby seeks relief and recovery of his damages in amounts to be proven at the trial of this cause.

***Count Thirteen:***  
***BREACH OF SPECIAL RELATIONSHIP***

128. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

129. Plaintiff and Defendants held a position with one another by the nature and structure of their transactions described herein whereby Defendants held a "special relationship" with Plaintiff

which, by the acts described herein, Defendants violated and otherwise acted in breach. *Federal Deposit Ins. Corp. v. Coleman*, 795 S.W.2d 706 (Tex. 1990) see also, *FDIC v. Perry Brothers, Inc.*, 854 F. Supp. 1248(E.D. Tex. 1994), affirmed in part, 68 F.3d 466 (5th Cir. 1995), and in *O'Shea v. Coronado Transmission Co.*, 656 S.W.2d 557 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.). See also *Burleson State Bank v. Plunkett*, 27 S.W.3d 605, 611 (Tex. App. – Waco 2000, pet. denied).

130. As a result of Defendants' breach of the Special Relationship that existed between them and Plaintiff, Plaintiff has been damaged in an amount to be proven at the time of the trial in this cause.

***Count Fourteen:***  
***BREACH OF CONFIDENCE***

131. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

132. Prior to Defendants, and each of them, had been made privy to confidential and proprietary business plans and expansion projections which set forth various contingencies and events in order for the plans, calculated assumptions and financial projections to materialize, which was confidential information the Defendants were made privy, either first hand or by virtue of a fiduciary, protected and/or privileged relationships.

133. Defendants breached the terms of Plaintiff's confidence.

134. Based on the foregoing, Plaintiff has been damaged in an amount to be proven at trial.

***Count Fifteen:***  
***UNFAIR COMPETITION***

135. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

136. Based on the allegations contained herein, Defendants have engaged on actions, conduct and practices, which are unfair, fraudulent, deceptive, untrue, and misleading.

137. Based on the allegations contained herein, Defendants' actions complained of herein are offensive to established public policy and, also, are immoral, unethical, oppressive, unscrupulous and substantially injurious.

***Count Sixteen:***

***NEGLIGENCE***

138. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

139. Plaintiffs re-assert and re-allege each of the foregoing allegations set forth herein.

140. Defendants failed to conduct any investigation or, at least, conduct a reasonable investigation into the truth and accurate facts prior to making the complained of statements and other representations and, also, prior to acting in manner that was contrary to their various obligations to the Plaintiff but, also, causing the damage to the Plaintiff that the Defendants have, as alleged herein.

141. Defendants each have a duty and responsibility of engaging in actions that would cause damage to the Plaintiffs by the complained of herein.

142. Defendants breached their duties to Plaintiff and said breach had caused Plaintiff actual and consequential damages as a direct and proximate result there from, in an amount to be proven at trial.

***Count Seventeen:***  
***PRIMA FACIE TORT***

143. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

144. As set forth by the allegations contained herein, the Defendants have committed intentional acts with the intent to cause harm and injury to Plaintiff.

145. As set forth by the allegations contained herein, Defendants' intentions to cause harm to the Plaintiffs have, in fact, caused financial and physical harm and injury to Plaintiff.

146. As set forth by the allegations contained herein, the Defendants are without any justification for their actions complained of herein.

147. Based on the foregoing, the Plaintiff has been injured in an amount to be proven at trial.

***Count Eighteen:***  
***EXEMPLARY AND PUNITIVE DAMAGES***

148. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

149. As set forth in the allegations contained herein, the Defendants acted with malice, oppression and/or fraud in harming and injuring Plaintiff and, therefore, only an award of exemplary and punitive damages will reasonably deter such similar future conduct by the Defendants in the future and, also, for which Plaintiff has no available remedial damage claim and, so therefore, Plaintiff specifically requests that the court charge the jury impaneled at the trial of this cause with

the authority to impose exemplary and punitive damages to the full extent as the law may allow based on the evidence presented at trial.

**VI.**

**ATTORNEYS FEES**

150. Pursuant to Chapter 38 of the *Texas Civil Practice and Remedies Code*, request is made for all costs and reasonable and necessary attorney's fees incurred by Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just.

**VII.**

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury at the trial to be held in the cause, as guaranteed him by Article V, Section 10 of the TEXAS CONSTITUTION.

**VIII.**

**RELIEF REQUESTED**

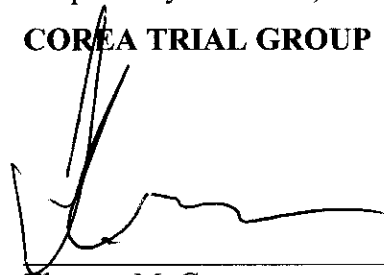
WHEREFORE, as for relief requested as to each of the above-referenced counts, Plaintiff prays that Judgment be entered on its behalf and against Defendants, and each of them jointly and severally, for as follows:

- a. Recovery of actual damages in an amount to be proven at trial;
- b. Recovery of consequential damages in an amount to be proven at trial;
- c. Recovery of presumed damages in an amount to be proven at trial;
- d. Recovery of statutory damages and penalties in an amount to be proven at trial;

- e. Recovery of treble damages in an amount to be proven at trial;
- f. Recovery of exemplary and/or punitive damages in an amount to be proven at trial;
- g. Recovery of Plaintiffs' reasonable attorneys fees and taxable court cost;
- h. Recovery of pre-judgment interest at the highest rate allowable at law;
- i. Recovery of pre-judgment interest at the highest rate allowable at law; and,
- j. Such other relief as the Court deems appropriate.

Dated: February 28, 2012

Respectfully submitted,  
**COREA TRIAL GROUP**



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Thomas M. Corea  
Texas Bar No. 24037906  
tcorea@corealaw.com  
Twenty28 Farrington Street  
Dallas, Texas 75207  
**ATTORNEYS FOR PLAINTIFF**