

Cause No. \_\_\_\_\_

Nancy Ann Calloway	§	In the District Court of
Plaintiff,	§	
	§	
v.	§	Harris County, Texas
	§	
Ronald Eugene Reynolds and	§	
Ronald E. Reynolds & Associates, PLLC,	§	
Defendants.	§	_____ Judicial District

**Plaintiff's Original Petition.**

NOW COMES Nancy Ann Calloway ("Calloway"), Plaintiff in the above-entitled and numbered cause, and files this her Original Petition complaining of Ronald Eugene Reynolds and the Ronald E. Reynolds & Associates, PLLC, hereinafter respectively referred to as "Reynolds," and "Reynold's Firm," or jointly as "Defendants," and for cause of action would respectfully show unto the Court as follows:

**Discovery Control Plan Level 2.**

1. This case shall be governed by a discovery control plan under Tex. R. Civ. P., Rule 190.3, level 2, unless the court orders that the discovery be conducted in accordance with another discovery plan.

**Parties.**

1. Plaintiff Nancy Ann Calloway is a resident of Harris County, Texas.
2. Defendant Ronald Eugene Reynolds, is an individual residing in Harris County, Texas. At all times relevant to the facts of this lawsuit, Calloway believed that Reynolds was an attorney duly licensed to practice law in the State of Texas, with his current office at 3730 Kirby Drive, Suite 1200, Houston, Texas 77098. At all times relevant to the facts of this lawsuit, Reynolds is, and/or was, a partner in the law firm of Ronald E. Reynolds & Associates, PLLC Ronald Eugene Reynolds may be served with process by serving him at 3730 Kirby Drive, Suite 1200, Houston, Texas 77098,

telephone number 713-341-0404.

3. Defendant Ronald E. Reynolds & Associates, PLLC is a limited liability company doing business in Harris County, Texas. At all times relevant to the facts of this lawsuit, Calloway believed that Defendant Ronald E. Reynolds & Associates, PLLC was a law firm of attorneys duly licensed to practice law in the state of Texas, with their offices at 3730 Kirby Drive, Suite 1200, Houston, Texas 77098. Defendant Ronald E. Reynolds & Associates, PLLC may be served with process by serving Ronald Eugene Reynolds, as partner of Defendant Ronald E. Reynolds & Associates, PLLC, at 3730 Kirby Drive, Suite 1200, Houston, Texas 77098, telephone number 713-341-0404.

**Defendants are Jointly and Severally Liable.**

4. At all times relevant to the facts of this lawsuit, Reynolds was a partner of Ronald E. Reynolds & Associates, PLLC, a limited liability company doing business under the name Ronald E. Reynolds & Associates, PLLC. Reynolds and the Ronald E. Reynolds & Associates, PLLC are jointly and severally liable for the wrongful, unlawful, and damaging conduct of Reynolds and Ronald E. Reynolds & Associates, PLLC against Calloway.

**Jurisdiction and Venue.**

5. Jurisdiction and venue of all causes of action contained in this lawsuit are proper and appropriate in this Court and in Harris County, Texas because Defendants have their residences, principal offices and places of business in Harris County; and conduct business in Harris County. Further, jurisdiction and venue of all causes of action contained in this lawsuit are proper and appropriate in this court and in Harris County, Texas because the facts which are the basis of such causes of action occurred in Harris County, Texas. Pursuant to the provisions of Tex.Civ.Prac. & Rem. Code Ann. Section 15.001 et. seq., this suit may be brought in Harris County, Texas.

### **Facts.**

6. Calloway's daughter, April Cherisse Calloway, was killed in an automobile collision on July 14, 2010. As a result of the collision in which her daughter was killed, Calloway hired Defendants to represent her in her claims against the truck driver and the trucking company involved in the collision to recover for personal injury damages, hereinafter referred to as "Calloway's Claims."

7. During the mediation in the underlying case, Calloway agreed to settle Calloway's Claims for payment of \$250,000.00. Defendants received and deposited checks totaling \$250,000.00 as settlement payment of Calloway's Claims. The settlement payment was deposited into the trust account of the Reynold's Firm. Reynolds did not provide Calloway with \$166,666.67, which is the amount of funds from the settlement of the Calloway's Claims that were due to Calloway in accordance with the attorney engagement contract between her and the Defendants. Instead, Defendants wrote checks to Calloway's husband, Richard Calloway, totaling approximately \$62,000.00, and to Calloway's former sister-in-law and executrix of the estate of April Cherisse Calloway, Veronica Jolivette, in the amount of \$25,000.00. No checks were ever written by Defendants to Calloway for her share of the settlement proceeds in the Calloway's Claims.

8. The misrepresentations and negligence of Defendants caused Calloway to suffer damages in excess of the minimum jurisdictional limits of this court, for which Calloway sues Defendants jointly and severally.

### **Negligence of Defendants.**

9. Defendants violated the duty owed to Calloway to exercise the ordinary care and diligence exercised by other attorneys practicing law in the same or similar circumstances, and were negligent in the following particulars:

- a. Defendants were negligent for failing to follow Calloway's instructions with regard to settlement in her claims against the truck driver and the trucking company involved in the collision which killed Calloway's daughter;

- b. Defendants were negligent for failing to properly make demand on the truck driver and the trucking company involved in the collision which killed Calloway's daughter in order to preserve Calloway's rights under the Stowers' doctrine;
- c. Defendants were negligent in failing to send to the truck driver and the trucking company involved in the collision which killed Calloway's daughter a proper Stowers' doctrine letter; and
- d. Defendants were negligent in failing to inform Calloway of the numerous things which Defendants had failed to do in the preparation of her against the truck driver and the trucking company involved in the collision which killed Calloway's daughter, and the effect of such failures on the settlement value of such claims.

**Defendants Had Fiduciary Relationship with Calloway.**

10. As the attorney on behalf of Calloway, Defendants were fiduciaries as to Calloway and owed a fiduciary duty to Calloway.

**Defendants Had a Special and Confidential Relationship with Calloway.**

11. The dealings and relationship between Calloway, on one side, and Defendants, on the other side, as described above continued for such a time that Calloway were justified in confiding in Defendants and relying upon Defendants to act in the best interest of Calloway. The relationship between the parties was a confidential relationship. Defendants knew that Calloway relied on them and trusted their guidance, direction and advice with regard to the legal services necessary for the handling of the legal matter entrusted to them by Calloway.

**Cause of Action for Common Law Fraud.**

12. In the alternative, and without waiving the foregoing, Defendants are guilty of fraud against Calloway for the following misrepresentations and/or failures to disclose which amount to fraud by their silence, when Defendant had a duty to disclose:

- a. Defendants failed to disclose to Calloway that Defendants received and deposited into the Reynold's Firm trust account the settlement funds in the amount of \$250,000.00 which were paid by the defendants in settlement of the underlying Calloway's Claims;

- b. Defendants represented to Calloway that Defendants would send to the defendants in the underlying Calloway's Claims and their insurance carriers a letter demanding settlement within insurance policy coverage under the Stowers Doctrine, then, contrary to Defendants' prior representations, never sent a Stowers Doctrine letter; and
- c. Defendants failed to disclose to Calloway of the numerous things which Defendants had failed to do in the preparation of Calloway's Claims against the defendants in the underlying Calloway's Claims, and the effect of such failures on the settlement value of such claims.

13. Such misrepresentations and failures to disclose by Defendants amount to fraud against Calloway, for which Calloway sues Defendants in excess of the minimum jurisdictional limits of this court.

**Cause of Action for Breach of Fiduciary Duty.**

14. In the alternative, and without waiving the foregoing, Calloway sues Defendants based upon breach of fiduciary duty to recover from Defendants all damages arising out of such breach, including, but not limited to, a forfeiture and repayment of all legal fees for such services. Calloway sue Defendants based upon breach of fiduciary duty for damages in excess of the minimum jurisdictional limits of this court. Calloway's damages for breach of fiduciary duty include, but are not limited to, all actual, consequential, and incidental damages, including the refund and payment of all monies paid by Calloway to Defendants.

**Cause of Action for Breach of Contract.**

15. In the alternative without waiving the foregoing, the above described failures of Defendants to properly represent Calloway constitute a common law action for breach of contract. By reason of such breach of contract by Defendants as described above, Calloway has been damaged in an amount or in excess of the minimum jurisdictional limits of this court, for which she sues Defendants.

**Cause of Action for Negligent Misrepresentation.**

16. In the alternative without waiving the foregoing, the above described conduct and failures of Defendants to properly represent and/or provide advice and information to Calloway constitutes a common law action for negligent misrepresentation. By reason of such negligent misrepresentation by Defendants as described above, Calloway has been damaged in an amount or in excess of the minimum jurisdictional limits of this court, for which Calloway sues Defendants.

**Cause of Action Based Upon Deceptive Trade Practices Act.**

17. In the alternative, without waiving the foregoing, suit is filed by Calloway pursuant to the provisions of TEX. BUS. & COMM. CODE § 17.41 et. seq., hereinafter referred to as the Consumer Protection Act, upon the grounds that the acts and practices of Defendants as described above are prohibited by said statute.

18. Calloway is a consumer as the term is defined in § 17.45 of the Consumer Protection Act.

19. At all times relevant to this suit Defendants were engaged in trade and commerce as defined in § 17.45 of the Consumer Protection Act.

20. The representations by Defendants to Calloway with respect to the erroneous and incorrect representations made to Calloway constitute a cause of action under § 17.50 of the Consumer Protection Act in that such action by Defendants constitutes the following:

- a. The use or employment by Defendants of a false, misleading or deceptive act or practice specifically enumerated in Subsection b of § 17.46 of the Consumer Protection Act.
- b. Breach of implied warranty.
- c. An unconscionable action or course of action.

21. The unlawful acts or practices described above adversely affected Calloway and were the producing cause of the hereinabove stated damages to Calloway, and Calloway seeks to recover the amount of money, which if paid in cash, would full and completely reasonably compensate Calloway

for such damages. Pursuant to § 17.50 of the Consumer Protection Act, Calloway is entitled as a matter of law to two times that portion of actual damages which does not exceed \$1,000.00.

22. The unlawful acts and practices of Defendants as described above were committed knowingly by Defendants, and therefore Calloway sues for additional damages as provided under said Consumer Protection Act.

23. Calloway has given Defendants advanced notice of complaint described in this Petition in the manner and form required by § 17.50A of the Consumer Protection Act.

24. Calloway has retained the undersigned attorney to pursue the causes of action alleged herein. Pursuant to § 17.50 of the Consumer Protection Act, Calloway is entitled to obtain from Defendants all of their attorneys' fees that are reasonable and necessary in this cause.

#### **Actual Damages.**

25. Calloway pleads her cause of action based upon negligence, common law fraud, breach of fiduciary duty, breach of contract, and negligent misrepresentation. Calloway pleads for all actual, consequential, incidental and compensatory damages, statutory damages and penalties, and costs to which she is entitled under the common law and statutes which are the basis of such claims, in excess of the minimum jurisdictional limits of the this court.

#### **Exemplary Damages.**

26. Calloway, further, alleges that by reason of the fact that Defendants knew that their conduct was unlawful and illegal at the time that they engaged in such unlawful and illegal conduct, and that Defendants acted willfully, and knowing that their unlawful and illegal conduct toward Calloway would cause serious harm and injury to Calloway, that such actions constitute conduct for which the law allows the imposition of exemplary damages. Calloway would show that she has incurred significant expenses, including attorneys' fees, in the investigation and prosecution of this action. Accordingly, Calloway request that exemplary damages be awarded against Defendants to the fullest

extent allowed by law.

**Attorneys' Fees.**

27. As a result of the wrongful conduct of Defendants, Calloway has been required to hire the undersigned attorneys to prosecute this claim and cause of action on behalf of Calloway. Calloway requests this Court to award to Calloway her reasonable and necessary attorneys' fees for the services rendered in this case, for the presentation and preparation of this case in a trial on the merits, before the Court of Appeals, and before the Supreme Court, if such should be necessary.

**Interest.**

28. In addition to the foregoing sums, Calloway prays for prejudgment interest on all sums recovered in the maximum amount provided by law until the date of judgment, and for post judgment interest in the maximum amount provided by law after the date of judgment.

**Jury Demand.**

29. Calloway demands that this case be tried before a jury.



WHEREFORE PREMISES CONSIDERED, Calloway requests the following:

- a. Defendants be served with process and cited to appear.
- b. On final hearing hereof, that Calloway have judgment against Defendants for all actual damages, exemplary damages, reasonable and necessary attorneys' fees, and costs of court, as provided by law.
- c. All prejudgement and postjudgment interest as provided by law.
- d. That Calloway have all other relief, at law and in equity, to which she may show herself justly entitled.

Respectfully submitted,

JIM L. CULPEPPER & ASSOCIATES, P.C.

By: 

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Attorneys for Calloway



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this April 30, 2016

Certified Document Number: 65989497 Total Pages: 9

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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