

NO. 18-08-83138-B

<b>HENRIETTA SALAZAR,</b>	§	
<b>JESSIE SALAZAR, LOYOLA</b>	§	
<b>GALVAN, DEOLA GUIJON</b>	§	
<b>AND ANNA VALENZUELA</b>	§	
<b>PLAINTIFFS</b>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
	§	
<b>VS.</b>	§	
	§	<b>VICTORIA COUNTY, TEXAS</b>
	§	
<b>GRACE FUNERAL HOME, INC.</b>	§	<b>_____ JUDICIAL DISTRICT</b>
	§	
<b>DEFENDANT</b>	§	<b>(JURY TRIAL DEMANDED)</b>

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**ORIGINAL PETITION**

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**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW Plaintiffs, HENRIETTA SALAZAR, JESSIE SALAZAR, LOYOLA GALVAN, DEOLA GUIJON and ANNA VALENZUELA (hereinafter called “Plaintiffs”) through counsel, and alleges the following against Defendant, GRACE FUNERAL HOME, (hereinafter referred to as “Defendant”). In support of these causes of action, Plaintiffs’ would show this Honorable Court and Jury the following:

**I.**

**DISCOVERY LEVEL**

1. Plaintiffs intend to conduct discovery under level 3 of Rule 190 of the Texas Rules of Civil Procedure.

**II.**

**RELIEF**

2. Plaintiffs seek monetary relief of \$50,000,000.00, which is within the jurisdictional amount.

**III.**

**PARTIES**

3. Plaintiff Henrietta Salazar resides in Katy, Texas. Henrietta Salazar is the natural daughter of Roberta Salazar, deceased.

4. Plaintiff Jessie Salazar resides in Victoria, Texas. Jessie Salazar is the natural son of Roberta Salazar, deceased.

5. Plaintiff Loyola Galvan resides in Victoria, Texas. Loyola Galvan is the natural daughter of Roberta Salazar, deceased.

6. Plaintiff Deola Guijon resides in Portland, Texas. Deola Guijon is the natural daughter of Roberta Salazar, deceased.

7. Plaintiff Anna Valenzuela resides in Victoria, Texas. Anna Valenzuela is the niece of Roberta Salazar, deceased and she signed the contract for funeral services with Grace Funeral Home.

8. Defendant, Grace Funeral Home, Inc., is a Texas corporation that may be served with process by delivering a copy of this Original Petition to its registered agent Charles Hauboldt at 2401 Houston Highway Victoria, TX 77901.

**IV.**

**JURISDICTION AND SERVICE**

10. This Court has Jurisdiction over this case in that the amount in controversy exceeds the minimum jurisdictional limits of this Court. Jurisdiction is further proper because Defendant has purposely availed themselves of the privilege of conducting activities in the State of Texas and established minimum contacts sufficient to confer jurisdiction over said Defendant.

11. Venue is mandatory and proper in Victoria County, Texas, because all or a substantial part of the events giving rise to the lawsuit occurred in this county (*see* Tex. Civ. Prac. & Rem. Code § 15.002).

## VI.

### **FACTUAL BACKGROUND**

12. On May 3, 2017, Roberta Salazar passed away at a hospital located in Cuero, Texas. At the time of her death, she was widowed with four children. After Mrs. Salazar's death, children and relatives of the decedent, including her niece Anna Valenzuela, contacted the Defendant Funeral Home to make arrangements for her funeral service. Anna Valenzuela entered into a contract with Grace Funeral Home to prepare Roberta Salazar's body for burial in a casket so her family could view their Mother, Grandmother and Great Grandmother's body for the last time before she was finally laid to rest beside her deceased Husband per her wishes. Roberta Salazar had personal conversation with her Pastor John Carmona giving him the exact details of her funeral arrangements. Roberta indicated to her family that she wanted to be buried in the dress her Husband gave her for their 40<sup>th</sup> wedding anniversary. Their grief over the loss of their beloved Roberta was immeasurable, and they called upon Defendant, Grace Funeral Home, to assist them in burying their loved one with dignity and respect.

13. Grace Funeral Home, located in Victoria, Texas, has been in business for nearly forty (40) years, and holds itself out to be known statewide as a "leading professional" that maintains

the “highest level of professional standards” in providing a “unmistakable quality of care.” Grace believes their work to be a mission of service and privilege to help families during the grieving process. Further, Grace claims that their professionally licensed and trained staff stand ready to provide sensitive, caring service in honoring those who have passed.

14. On May 4, 2017, the Plaintiffs contacted Grace to discuss the funeral arrangements for Roberta Salazar. The Plaintiffs wanted an open casket, as they prepared to say a final goodbye to their beloved Roberta. Additionally, under their Pentecostal faith, a body should not be cremated. Based on the conversation, both the Plaintiff, and the Defendant had an understanding that the body would be viewed and eventually buried. A purchase agreement was drafted reflecting the embalming charge and an agreement was entered into to provide two church services for Roberta, to be held on May 12, 2017 and May 13, 2017.

15. On May 10, 2017 the Defendant expressly informed the Plaintiffs that they had illegally cremated Mrs. Salazar’s remains. The Defendant then reduced to writing a letter detailing the incident that occurred with Mrs. Salazar’s body. The letter was a direct misrepresentation of what occurred as is stated that on May 9<sup>th</sup> they went to check on Mrs. Salazar’s body in the refrigeration unit to see what condition she was in so that they may inform the family that it may not be possible for them to hold a viewing of Mrs. Salazar for the funeral. However, the contract was signed on May 4, 2017 and the Defendant entered into the agreement that there would be an open casket so that the family and friends can view Roberta’s body at the funeral. The Defendant attempted to intentionally deceive the Plaintiffs into not having an open casket after they had cremated the Plaintiffs’ beloved Roberta by mistake. The letter that was provided to the Salazar family was not dated and therefore we do not know the exact date Mrs. Salazar’s body was illegally cremated and the letter was an attempt by Grace Funeral Home to intentionally deceive

the Salazar Family.

16. The Salazar family later learned of more disturbing news after Roberta's body was illegally cremated. The cremated remains of Roberta Salazar were delivered to another family. The Salazar family was subsequently made aware that Roberts's remains were buried by the unidentified family who thought they were in possession of their loved one's remains. Grace Funeral Home allegedly recovered Roberta's remains from the unidentified family and returned them to the Salazar family after the remains were unearthed. At the time of the filing of this lawsuit in August of 2018, the Salazar family is rightfully unsure if they ever received their beloved Robert's cremated remains from Grace Funeral Home.

#### **VII.**

#### **CAUSE OF ACTION AGAINST DEFENDANTS FOR BREACH OF CONTRACT**

17. Plaintiffs incorporate by reference all previous and subsequent paragraphs herein.

According to the services that Plaintiffs' purchased, Defendant had the duty to prep the body. Defendant's failure, as described above, constitutes a breach of Defendant's contract with Plaintiffs. Plaintiffs' have suffered the damages that are described in this petition.

#### **VIII.**

#### **CAUSE OF ACTION FOR WRONGFUL CREMATION IN VIOLATION OF TEXAS**

#### **HEALTH AND SAFETY CODE**

18. Plaintiffs incorporate by reference all previous and subsequent paragraphs herein.

Defendant's acts, omissions, failures and conduct that are described in this petition violate Section 716.051 of the Texas Health and Safety Code. Per the code, a crematory may not cremate a deceased human remains until it receives a cremation authorization form signed by an authorizing agent; and a death certificate or death record that indicates the deceased human remains may be cremated. The Defendant did not have the authorizations to cremate Mrs.

Salazar's body. Moreover, Defendant's acts, omissions, failures and conduct that are described in this petition violate Section (716.052 cremation authorization), (716.053 delegation of cremation authority), (716.102 receipt and acknowledging acceptance of remains), (716.103 identification responsibility of crematory), (716.104 identification responsibility of funeral director or establishment), (716.152 cremation process), (716.155 temporary container or urn), (716.156 release of remains), (716.202 liability of authorizing agent), (716.251 crematory establishment records), (716.302 disposition of cremated remains) and (716.351 criminal penalty) of the Texas Health and Safety Code.

## **IX.**

### **CAUSE OF ACTION FOR VIOLATION OF DTPA**

19. Plaintiffs incorporate by reference all previous and subsequent paragraphs herein.

Plaintiffs incorporate all the allegations in this petition for this cause of action against Defendant under the provisions of the TEXAS DECEPTIVE TRADE PRACTICES ACT ("DTPA"). Plaintiffs are consumers of goods and services provided by Defendant pursuant to the DTPA as defined in Section 17.45, Tex. Bus. & Com. Code. Plaintiffs have met all the conditions precedent to bringing this cause of action against Defendant. Defendant committed multiple false, misleading, and or/ or deceptive acts and practices prohibited by Section 17.46 and 17.50 of the TEXAS BUSINESS & COMMERCE CODE. Specifically, Defendant's violations of the DTPA include, without limitation, the following matters:

20. By its acts, omissions, failures, and conduct that are described in this petition, Defendant violated Sections 17.46 (b) of the DTPA. In this respect Defendant's violations include, without limitation, (1) Defendant's misrepresentation of its reliable service. (2) Disparaging the goods,

services or business of another by false or misleading misrepresentation of facts in violation of the DTPA.

21. Funeral directors are considered professionals. Tex. Occ. Code § 651 et seq. A professional may be sued under the DTPA for express misrepresentations of material facts that are not characterized as advice, judgment, or opinion; failure to disclose known information in violation of Tex. Bus. & Com. Code 17.46(b) (24); unconscionable actions or courses of action that cannot be characterized as advice, judgment or opinion; or breaches of express warranty. Tex. Bus. & Com. Code 17.49(c). *Latham v. Castillo*, 972 S.W. 2d 66, 68 n. 2 (Tex. 1998); *Head v. U.S. Inspect DFW, Inc.*, 159 S.W. 3d 731, 741 (Tex. App.-Fort Worth 2005, no pet.). Defendant breached the duty owed to Plaintiffs by negligently violating the express instructions and wishes of the Plaintiffs regarding the funeral arrangements and services, in the DTPA claim, Plaintiffs complain of failure to disclose that information, breach of warranty, and misrepresentations, among other things.

- Defendant has breached an express warranty. This breach entitles Plaintiffs to recover under Sections 17.46 (b)(12) and (19) and 17.50 (a)(2) of the DTPA;
- The acts and omissions made by the Defendant constitutes an “unconscionable action or course of action” as such term is defined in Section 17.45 (5), of the DTPA.

22. Defendant's actions, as described in this petition, are unconscionable in that it took advantage of Plaintiffs lack of knowledge, ability, and experience to a grossly unfair degree. Defendant's unconscionable conduct gives Plaintiffs the right to relief under Section 17.50(a) (3) of the DTPA.

23. The foregoing violations were committed knowingly and intentionally, and the Plaintiffs relied on the Defendant’s representations, acts, and omissions to their damage and detriment.

All of the aforementioned acts, omissions, and failures of Defendant are a producing cause of Plaintiffs' damages that are described in this petition.

**X.**

**CAUSE OF ACTION FOR NEGLIGENCE**

24. Plaintiffs incorporate by reference all previous and subsequent paragraphs herein.

Defendant owed the Plaintiffs' a duty of care. The Defendant owed a duty to Plaintiffs to exercise reasonable care in the performance of their funeral services and to follow the Plaintiffs' express wishes regarding the funeral arrangements and services in providing the funeral services for Roberta Salazar.

25. At all relevant times, Defendant's acts or omissions constituted negligence, and/or negligence *per se* in the following acts of negligence, to wit:

- A. In failing to follow the family's express wishes to preserve the body for open casket viewing for burial;
- B. In failing to keep Plaintiff informed as to the whereabouts of their mothers' remains;
- C. In failing to properly handle Plaintiffs' mothers' remains by cremating her body without the consent of the Salazar family;
- D. In failing to take any steps to ensure a safe environment for storing Plaintiffs' mothers' remains;
- E. In failing to act as a reasonably prudent funeral home would have under the same or similar circumstances;
- F. In failing to provide any and all employees, agents, and workers with proper training and supervision;



- G. In acting with reckless disregard for the safety and welfare of Plaintiffs' mothers' remains;
- H. In delivering the illegally cremated remains of Plaintiffs' mother to an unidentified family'; and
- I. In misplacing Plaintiffs' mothers' remains.
- J. In allowing the illegally cremated remains of Plaintiffs' mother to be buried by unidentified family and having Roberta's remains allegedly unearthed and returned to the family in an Urn.

26. The Defendant failed to conform to Plaintiffs' desires about the preservation of Mrs. Salazar body for viewing/burial and this breach of duty was a proximate cause of the Plaintiffs damages.

## **XI.**

### **CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

27. Plaintiffs incorporate by reference all previous and subsequent paragraphs herein.

At all relevant times, Defendants' conduct was intentional or reckless. Defendant knew or had reason to know that illegally cremating the body of Plaintiffs mother created a high risk of emotional distress to Plaintiffs'. Defendant knew or had reason to know that delivering the illegally cremated remains of Plaintiffs mother to an unidentified family created a high risk of emotional distress to Plaintiffs'. Defendant knew or had reason to know that after delivering the illegally cremated remains of Plaintiffs mother to an unidentified family and finding out that their mother's remains were buried by the unidentified family created a high risk of emotional distress to Plaintiffs. Defendant knew or had reason to know that after the Plaintiffs mother's

remains were mistakenly buried by an unidentified family and later to be unearthed and allegedly returned to the Salazar family created a high risk of emotional distress to Plaintiffs.

28. Yet, Defendant deliberately acted with conscious disregard and indifference, by failing to preserve the body of Plaintiffs' mother for viewing/burial. Defendant's conduct was extreme and outrageous, atrocious, beyond all decency, completely and utterly intolerable in society.

29. As a result of Defendants' conduct, Plaintiffs have suffered severe emotional distress. Alternative causes of action would not provide a remedy for the severe emotional distress and mental anguish caused by Defendants' conduct.

## **XII.**

### **DAMAGES**

30. Plaintiffs incorporate by reference all previous and subsequent paragraphs herein.

As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiffs sustained damages. These include injuries that are, in all reasonable probability, permanent in nature.

These damages are as follows.

1. The above described acts, omissions, failures and conduct of Defendant have caused Plaintiffs' damages which include, without limitation, the cost to properly bury Mrs. Salazar.
2. Plaintiffs are also entitled to recover consequential and actual damages from Defendant's breach of contract.
3. Plaintiffs are also entitled to recover the amount of their claim plus prejudgment interest and attorney's fees.
4. Defendant has also "knowingly" and "intentionally" committed deceptive trade practices as those terms are defined in the applicable statutes. Because of Defendant's knowing and intentional misconduct, Plaintiffs are entitled to additional damages as authorized by Section 17.50(b) (1) of the DTPA.
5. As a result of Defendant's conduct as described in this petition, Plaintiffs have been forced to retain the undersigned attorneys to prosecute this action and have agreed to pay

reasonable attorneys' fees. Plaintiffs are entitled to recover these attorneys' fees under Chapter 38 of the Texas Civil Practices and Remedies Code, and Section 17.50 of the DTPA.

6. Plaintiffs have experienced mental anguish in the past and, in a reasonable probability, will suffer mental anguish in the future.

**XI.**

**JURY TRIAL DEMAND**

31. Plaintiffs demand a jury trial in this case.

**XIII.**

**REQUESTS FOR DISCLOSURE**

32. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose the information and material described in Rule 194.2 within **fifty (50) days** of the service of this request at the office of the undersigned.

**XIV.**

**EXEMPLARY DAMAGES**

33. Plaintiffs further allege that Defendants conduct constituted gross negligence, thus entitling Plaintiffs to exemplary damages under chapter 41 of the Texas Civil Practice and Remedies Code.

**XV.**

**PRAYER**

**WHEREFORE PREMISES CONSIDERED**, Plaintiffs respectfully pray that Defendant be cited to appear and answer herein, and that on a final trial, Plaintiffs obtain judgment against Defendant for:

- a. Judgment against the Defendant for a sum within the jurisdictional limit of this Court;
- b. Compensatory damages for pain and mental suffering in the past and future;

- c. Expenses for psychological care and counseling in the past, and expenses that will in all reasonable probability be incurred in the future;
- d. Punitive damages in an amount above the minimum jurisdictional limit of the Court;
- e. Actual damages
- f. Consequential damages
- g. Treble damages under the DTPA any other damages allowed by law under the DTPA
- h. Exemplary damages
- i. Reasonable attorney's fees, with conditional awards in the event of appeal;
- j. Pre-judgment interest at the highest rate permitted by law;
- k. Post-judgment interest from the judgment until paid at the highest rate permitted by law;
- l. Costs of court and expert witness fees incurred by Plaintiffs in the preparation and prosecution of this action;
- m. Reasonable and necessary medical care in the past and expenses that will in all reasonable probability be incurred in the future; and
- n. Such other and further relief, at law or in equity, to which Plaintiffs may be entitled, whether by this Original Complaint or by any amendment hereto.

Respectfully submitted,

**THE COX PRADIA LAW FIRM, P.L.L.C.**

/s/ Troy J. Pradia

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