

CAUSE NO. \_\_\_\_\_

WALTON HOUSTON GALLERIA OFFICE, L.P.	§	IN THE DISTRICT COURT OF
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
ANDREWS KURTH LLP	§	_____ JUDICIAL DISTRICT

### PLAINTIFF'S ORIGINAL PETITION

Now comes Walton Houston Galleria Office, L.P. ("Walton") and makes this complaint against Andrews Kurth LLP ("Andrews Kurth") and would respectfully show this Court and Jury as follows:

#### DISCOVERY LEVEL

1. Plaintiff intends that discovery be conducted under Level 2.

#### CASE SUMMARY

2. Walton was Andrews Kurth's client. Walton owned the Galleria Towers and the Galleria Financial Center ("Galleria Towers") at the Houston Galleria in Houston, Texas. Walton leased office space in one of the Galleria Towers to Stanford Group Holdings, Inc. ("Stanford") using the legal services of Andrews Kurth's lawyers. While Andrews Kurth was representing Walton in the lease negotiations, Andrews Kurth learned that Stanford was under investigation, was likely operating as a Ponzi scheme, and was engaging in illegal activity. Andrews Kurth never disclosed this material information to its client Walton.

3. Instead, Andrews Kurth pursued representing Stanford while it engaged in these illegal activities. Andrews Kurth even agreed to represent Stanford against Andrews Kurth's own client, Walton, in sale negotiations for the Galleria Towers. When those negotiations broke down, Stanford sued Walton and placed a lis pendens on the buildings. Andrews Kurth, behind

the scenes, actually aided Stanford in developing and prosecuting the lawsuit against the firm's client, Walton.

4. Walton had no idea that its own lawyers at Andrews Kurth knew about Stanford's illegal activities, or that Andrews Kurth was trying to (and later did) represent Stanford in connection with them. Walton only learned about the Stanford illegalities and Andrews Kurth's representation of Stanford in them after Stanford collapsed, it was publicly disclosed that Stanford had been operating a multi-billion dollar Ponzi scheme, and the SEC reported Andrews Kurth's longstanding involvement with Stanford.

5. As set forth below, Walton asserts claims against Andrews Kurth for professional negligence and malpractice, breaches of the duties of loyalty and candor to Walton, and breach of contract.

## **PARTIES**

6. Walton is a Delaware limited partnership that owns and invests in real estate. From November 15, 1999 through February 4, 2011, Walton was the 100% owner of the Galleria Towers. The first building, Galleria Tower I, is a 25-story building with approximately 490,000 square feet of leasable space located at 2700 Post Oak Boulevard. The second building, Galleria Tower II, is a 21-story building with approximately 320,000 square feet of leasable space located at 5051 Westheimer Road. The third building, the Galleria Financial Center, is a 7-floor building with approximately 251,000 square feet of leasable space located at 5065 and 5075 Westheimer Road.

7. Andrews Kurth is a Texas limited liability partnership. Andrews Kurth may be served with process by delivering the citation and a copy of the petition to its managing partner,

Robert V. Jewell, at Andrews Kurth's offices at 600 Travis, Suite 4200, Houston, Harris County, Texas 77002.

### **JURISDICTION AND VENUE**

8. This Court has personal jurisdiction over Andrews Kurth because it is a Texas limited liability partnership and conducts business in Texas. The Court has subject matter jurisdiction over this case because the amount in controversy is within the Court's jurisdictional limits.

9. Venue is proper in Harris County under Section 15.002 of the Texas Civil Practice & Remedies Code. A substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Harris County, and Andrews Kurth's principal place of business is in Harris County.

### **FACTS**

#### **Summary of the Facts.**

10. Andrews Kurth, a large and sophisticated law firm that should maintain rigorous controls to ensure the firm's compliance with ethical obligations, regularly and continuously represented Walton from 2004 through January 2008 in negotiating and preparing leases of office space to commercial tenants in the Galleria Towers. One such tenant was Stanford.

11. Knowing that Stanford was alleged to be a Ponzi scheme and engaged in illegal activity, Andrews Kurth chose not to reveal this information to its client, Walton. Instead, Andrews Kurth proceeded, on Walton's behalf, to negotiate and draft long-term leases to Stanford, with commitments through 2016 for substantial quantities of space in the Galleria Towers.

12. The Stanford leases that Andrews Kurth prepared included, at Stanford's insistence, a Right of First Offer that allowed Stanford to make an offer to purchase the Galleria Tower II. The Right of First Offer gave Stanford the right (under certain conditions) to request a "Bid Package" from Walton to allow Stanford to make an offer on the building, with no obligation on Walton's part to accept. When Stanford initially requested the Bid Package, Andrews Kurth advised Walton that it did not need to respond because the necessary conditions were not met. Walton notified Stanford of this.

13. Later, in August 2005, Stanford (through its general counsel, Mauricio Alvarado) expressed interest to Walton in purchasing not only the Galleria Tower II, but all three Galleria Towers. Andrews Kurth then promptly turned around and represented Stanford in the purchase negotiations.

14. To get around its painfully obvious conflict of interest, Andrews Kurth presented Walton with a written conflict waiver ("Waiver Letter"). Andrews Kurth and Walton executed the Waiver Letter on September 15, 2005.

15. Unbeknownst to Walton at the time, the Waiver Letter omitted material information regarding Andrews Kurth's dealings with Stanford and the law firm's knowledge of Stanford's financial irregularities. The nondisclosure rendered the waiver invalid as a matter of law.

16. Andrews Kurth covenanted in the Waiver Letter that it would not take sides against Walton if a dispute later arose between Stanford and Walton. Within weeks after obtaining the conflict waiver, a dispute indeed arose between Stanford and Walton. Stanford made plans to initiate a lawsuit against Walton in the event the purchase transaction fell through. Andrews Kurth continued to represent Stanford once the dispute became apparent. Andrews

Kurth helped Stanford prepare a demand letter to Walton, reviewed and commented on the petition that Stanford planned to file against Walton, and met with Stanford's litigation counsel to develop the suit against Walton, all while Walton was Andrews Kurth's client.

17. Stanford filed the petition against Walton on November 9, 2005. As part of the lawsuit, Stanford filed a notice of lis pendens against the Galleria Towers. The lis pendens precluded Walton from selling the Galleria Towers to other willing buyers while prices in Houston's commercial real estate market were at an all-time high.

18. The Stanford Ponzi scheme imploded, as Ponzi schemes do. Stanford defaulted on its Galleria Towers lease, causing Walton not only to lose rent but also to incur substantial costs to attract a new tenant to lease the Stanford space.

19. The Stanford lawsuit against Walton and the notice of lis pendens were not resolved until 2010. Andrews Kurth's assistance helped Stanford maintain and prolong the litigation. By that time, Walton had spent millions of dollars to defend and resolve the suit.

20. After the SEC's Office of Inspector General released a detailed report regarding the Stanford matter on March 31, 2010, Walton discovered for the first time that Andrews Kurth had known of the Stanford Ponzi scheme allegations since as early as 2005.

21. Walton further learned to its dismay that Andrews Kurth had actively sought to defend Stanford – and did indeed represent Stanford - against the Ponzi scheme allegations. Despite the fact that Walton was Andrews Kurth's client, Andrews Kurth knowingly and repeatedly breached its duties of loyalty by working on behalf of Stanford, and against Walton, in negotiations and then in litigation against Walton. Walton files this Petition to recover the damages caused by Andrews Kurth's malpractice, breach of contract, and multiple breaches of fiduciary duties.

**Andrews Kurth, on Walton's Behalf,  
Drafted the Terms of the Stanford's Lease.**

22. Stanford first approached Walton during the summer of 2004, seeking to lease two floors in the Galleria Tower II. Following extensive negotiations, during which Andrews Kurth advised and represented Walton, Stanford and Walton entered into a Lease Agreement for the two floors on October 25, 2004 (the "Original Lease").

23. In the Original Lease, Stanford committed to rent 23,907 square feet of space at Galleria Tower II and 72 parking spaces for a period of ten years with an expected rental obligation, over the term of the lease, of \$5,987,306. Pursuant to Section 4.07 of the Original Lease, Stanford promised to: (i) "not occupy, use or permit any portion of the Leased Premises to be occupied or used for any business or purpose that is disreputable [or] illegal"; and (ii) "comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state, municipal and local government bodies exercising jurisdiction thereover." The promise was part of Stanford's material obligations under the lease, placing Stanford in default if it did not comply.

24. Unbeknownst to Walton, Stanford's promise was false when made.

25. Relying on Stanford's commitments and representations, including Section 4.07 of the Original Lease, Walton agreed, among other things, to pay \$908,466 to Stanford to enable it to make improvements to the leased premises.

26. Following the execution of the Original Lease, Stanford began negotiating with Walton to occupy additional space in Galleria Tower II. Andrews Kurth again advised and represented Walton in this negotiation and drafted the provisions of an amendment to the lease, which Stanford and Walton executed (in respective counterparts) on January 7, 2005 and January 10, 2005 (the "First Amendment"). Before the First Amendment was executed, Walton

requested, and Stanford provided, financial information to show its viability and solvency. Walton relied upon the false and misleading financial information when entering into the First Amendment.

27. The First Amendment expressly incorporated the provisions of the Original Lease, including Stanford's warranties and representations that it was financially solvent and compliant with all applicable laws. Relying on Stanford's continuing and false representations, including its financial statements, Walton agreed under the First Amendment to provide \$3,016,378 for Stanford's use in improving or altering the leased premises. Walton also agreed to make, at its own expense, certain improvements to the ground floor and lower lobbies of Galleria Tower II.

28. At Stanford's insistence, Walton agreed to include in the First Amendment a Right of First Offer. Pursuant to the Right of First Offer, which Andrews Kurth drafted as Walton's counsel, Stanford acquired the right to make a first offer to purchase the Galleria Tower II, which Walton could consider without any obligation to accept.

29. Stanford, in turn, leased an additional 88,717 square feet (with an additional 322 parking spaces) while extending the lease term by another twenty-two months, for an additional commitment to pay \$25,625,754 above the amount already owed under the Original Lease.

**Stanford Notified Walton That it Intended to Exercise  
the Right of First Offer That Andrews Kurth Drafted on Behalf of Walton.**

30. On May 9, 2005, Stanford notified Walton of its intent to act on the Right of First Offer in the First Amendment and demanded that Walton submit a Bid Package so that Stanford could make an offer to purchase the entire Galleria Tower II. On Andrews Kurth's advice, Walton did not submit a Bid Package at that time.

31. Stanford and Walton subsequently entered into negotiations for a further amendment to the lease for the Galleria Tower II that Andrews Kurth drafted on Walton's behalf, which the parties executed (in respective counterparts) on July 12, 2005 and July 18, 2005 (the "Second Amendment").

32. Pursuant to the Second Amendment, which incorporated Section 4.07 and other provisions of the Original Lease, Stanford agreed to lease an additional 48,267 square feet of space and an additional 169 parking spaces. Stanford's rental obligation increased by \$13,686,628 over and above the rental obligations Stanford owed under the Original Lease and the First Amendment.

33. Under the Second Amendment, Walton allowed additional improvements to the leased premises and agreed to contribute \$1,450,678 (in addition to the amounts provided for in the Original Lease and First Amendment) to the cost of these lease improvements.

34. In sum, pursuant to the Original Lease, the First Amendment, and the Second Amendment (collectively, the "Stanford Lease") Stanford promised to pay Walton a total of \$45,299,688 throughout the term of the Stanford Lease, and Walton contributed \$4,899,152 toward the cost of Stanford's improvements to the leased premises.

35. In demanding the right to make a bid for the Galleria Tower II and in negotiating the Second Amendment, Stanford did not disclose to Walton that it was the subject of an SEC inquiry or operating a Ponzi scheme. Walton was at no time aware of the regulatory action then underway. In contrast, Walton's law firm, Andrews Kurth, had actual knowledge of the SEC inquiry and the explosive allegations against Stanford.

**The SEC Suspected That Stanford Was a Ponzi Scheme  
and That Stanford Was Engaged in Money Laundering.**

36. Unbeknownst to Walton, while the Stanford Lease was being negotiated, Stanford was the subject of a pending examination by the Securities and Exchange Commission's ("SEC") Fort Worth District Office ("FWDO"). In 1997 – just two years after Stanford registered with the SEC – the SEC began to suspect Stanford of engaging in fraud. The SEC conducted one investigation after another. By the end of 2004, the SEC's FWDO believed that Stanford was in reality a massive Ponzi scheme. SEC personnel (along with other law enforcement branches) suspected that Stanford also was laundering money for Latin American drug cartels. Spencer Barasch, the head of the FWDO's Enforcement Group at the time, was well aware of the Stanford fraud. But instead of acting to shut down the fraudulent enterprise, Barasch personally directed multiple decisions to halt, close, and refuse to pursue enforcement:

- 1998:** As part of the FWDO's Enforcement Group, Barasch participated in a decision to close an inquiry regarding Stanford.
- 2002:** Barasch participated in the FWDO's Enforcement Group's decision to decline action against Stanford and instead refer a complaint against Stanford to the Texas State Securities Board.
- 2003:** Barasch later participated "in a decision [by the FWDO's Enforcement Group] not to investigate Stanford after reviewing a complaint that Stanford [i]s engaged in a massive Ponzi scheme." The Ponzi scheme allegation arose from a tip from an anonymous Stanford insider.
- 2004:** A former Stanford broker contacted the SEC's FWDO to allege that Stanford certificates of deposit ("CDs") were fraudulent.<sup>1</sup> She claimed that she and other Stanford brokers had been terminated for expressing reservations about the CDs. Thereafter, personnel from the FWDO began to interview former Stanford brokers.

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<sup>1</sup> The Stanford CDs were issued by an entity called Stanford International Bank and sold through Stanford Group Company. These entities were affiliates of Stanford. All were under the control of Robert Allen Stanford, an individual who now is under federal confinement.

**2005:** Shortly before Barasch announced his decision to leave the SEC for Andrews Kurth, Barasch informed an SEC colleague that the FWDO's Enforcement Group would not proceed with an inquiry on Stanford.

As the SEC's Inspector General acknowledged to the United States Senate Banking Committee following an extensive investigation:

... [O]ur report concluded that the SEC's Fort Worth Office was aware since 1997 that Stanford was likely operating a Ponzi scheme after conducting examination after examination for a period of eight years, but merely watched the alleged fraud grow and failed to take action to stop it.

37. On or about March 9, 2005, the SEC and Walton's law firm, Andrews Kurth, each announced that Barasch planned to retire from the SEC and enter private practice as a partner at Andrews Kurth. Andrews Kurth's managing partner proclaimed in the press release: "With Spence Barasch on our team, our firm can provide unique perspective, insight and experience in the areas of governance, compliance and enforcement." Barasch joined Andrews Kurth as head of the firm's corporate compliance division in May 2005.

38. As he set up his practice at Andrews Kurth, Barasch was well aware of the compelling evidence of Stanford's fraud and the virtual certainty of eventual enforcement action. Only one month before Barasch joined Andrews Kurth, a lawyer in the FWDO Broker-Dealer Examination Group completed a draft referral memorandum concerning the CDs that Stanford was selling to the public. The memorandum, specifically addressed to Barasch as the head of the SEC's Enforcement Group, summarized the results of the Examination Group's 2004 investigation, and concluded that that CDs' stated returns were improbable.

39. The memorandum to Barasch summarized a specific allegation from a Stanford insider that Stanford was operating a Ponzi scheme. The memorandum stated that Stanford "may be engaging in a fraudulent scheme (possibly either a money laundering and/or a Ponzi

scheme) through the sales of the unregistered securities, and refuses to provide the staff with sufficient information to dispel this concern.” The memorandum recommended that Stanford be referred for a formal inquiry and potential prosecution.

40. On March 22, 2005, while he was still employed by the SEC, Barasch attended a quarterly summit meeting attended by the SEC, the National Association of Securities Dealers (“NASD”), and state regulators from Texas and Oklahoma. At the summit, the attorney who wrote the referral memorandum summarized the FWDO Examination Group’s extensive research into the allegations against Stanford and the group’s resulting recommendation to refer the matter for a formal inquiry and potential prosecution. Barasch was present for the presentation. His immediate reaction was negative and dismissive, according to eyewitness accounts. Barasch approached the SEC attorney at the conclusion of the presentation and announced that he would not accept the referral for a formal inquiry because the Enforcement Group had looked at Stanford before and decided not to take action.

41. Faced with Barasch’s opposition, the Examination Group waited until Barasch left the SEC to re-open the matter. On April 15, 2005, one day after Barasch retired from government service, the Enforcement Group that had (until then) been under Barasch’s supervision opened a formal matter under inquiry to investigate Stanford, with the specific intent to obtain a temporary restraining order against the enterprise if possible.

42. When Barasch joined Andrews Kurth, the firm immediately began to leverage his inside knowledge, resulting in a series of presentations and articles from May - August 2005 that introduced Barasch to the private sector as an Andrews Kurth partner with inside knowledge of the SEC enforcement process. On May 13, 2005, for example, Andrews Kurth published Barasch’s commentary on an SEC decision to make staff comment letters publically accessible,

while Barasch presented a seminar on May 17, 2005 regarding “The New Securities Enforcement Environment.”

43. Back at the SEC, the Enforcement Group sent questionnaires during May 2005 to investors in the United States and abroad regarding the Stanford CDs, in the attempt to identify Stanford’s misrepresentations to a legal certainty. Stanford learned of the inquiry and wanted it shut down.

**Andrews Kurth Knew That Stanford Was Alleged to be a Ponzi Scheme.**

44. Stanford, now aware of the inquiry and questionnaires, sought to hire counsel. Barasch wanted to represent Stanford in the SEC inquiry. Trading on his intimate knowledge of the SEC and its staff, Barasch discussed the engagement with Mauricio Alvarado, Stanford’s general counsel (and Stanford’s lead negotiator for the Stanford Lease). Barasch discussed the Stanford SEC inquiry and potential engagement with various Andrews Kurth colleagues during June 2005. In fact, during subsequent communications with the SEC arising from the 2005 inquiry, Barasch disclosed that Andrews Kurth’s Managing Partner agreed with and supported Barasch’s effort to represent Stanford before the SEC.

45. On June 20, 2005, Barasch wrote the Assistant Ethics Counsel for the SEC’s Office of General Counsel to ask permission to represent Stanford in connection with the inquiry. Permission was denied. According to an email from Mauricio Alvarado, Barasch told him later that “he did not receive the okay from the office of the General Counsel of the SEC, as the matter started before he left the SEC,” which prompted Allen Stanford to state in a July 2, 2005 email to Alvarado: “This is bs and I want to know why the SEC would/could conflict him out.”

46. By seeking to represent Stanford in June 2005 after becoming a partner at Andrews Kurth, Barasch made affirmative use of the knowledge he previously gained from the SEC. He shared such knowledge with other Andrews Kurth personnel. In addition to Barasch's extensive past knowledge, Andrews Kurth as a firm acquired direct present knowledge of the SEC's inquiry after Stanford asked Andrews Kurth and Barasch to represent it in connection with that matter

**Andrews Kurth Had Knowledge That Stanford  
Misrepresented its Financial Condition.**

47. To induce Walton to enter into the Stanford Lease, Stanford represented and agreed that: (i) it was financially capable of complying with the terms of the Stanford Lease; (ii) it would not use the leased premises for any illegal or disreputable purpose; and (iii) it was currently in compliance, and would continue to comply, with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state, municipal and local government bodies.

48. Stanford reaffirmed these representations for purposes of inducing Walton to enter into both the First Amendment and the Second Amendment. Walton relied on these representations in entering into the Original Lease, the First Amendment and the Second Amendment.

49. Walton's counsel, Andrews Kurth, had knowledge from no later than June 2005 that Stanford was in potential breach of these representations. Andrews Kurth knew that Stanford was the subject of a serious inquiry that could shut the company down and cause it to default on its obligations to Walton. Yet Andrews Kurth prepared the Second Amendment on behalf of Walton, containing representations of Stanford's financial condition which Andrews Kurth had reason to know were false.

**Stanford Hired Andrews Kurth  
to Represent it in Purchase Negotiations Against Walton.**

50. On August 17, 2005, Stanford's representatives met with Walton to discuss purchasing the Galleria Tower II. In the course of the discussions, Stanford's representatives asked for the exclusive right to negotiate the purchase of all three Galleria Towers, plus one of the Galleria hotels. Walton declined to negotiate a sale of the hotel but agreed to allow Stanford to make an offer for the three Galleria Towers. The parties discussed a price of \$150,000,000. At the time, Walton was still unaware of the SEC inquiry into Ponzi scheme allegations or that Andrews Kurth had sought to defend Stanford in the SEC proceeding.

51. On September 5, 2005, Walton's and Stanford's representatives signed a non-binding letter of intent. Within two days thereafter, Stanford, through its general counsel Mauricio Alvarado, hired Walton's own counsel, Andrews Kurth, to represent Stanford against Walton in the purchase negotiations. **Only after** Andrews Kurth had agreed to represent Stanford, and **only after** Andrews Kurth entered into a retainer agreement with Stanford, did Andrews Kurth approach Walton with the Waiver Letter.

**Andrews Kurth Prepared a Conflict Waiver for Walton to Sign  
but Concealed Actual and Existing Bases for the Conflict.**

52. To obtain a valid waiver, Texas Disciplinary Rule of Professional Conduct 1.06(c)(1) requires that the lawyer make full disclosure to each affected client of the existence, nature, implications and possible adverse consequences of the common representation.

53. Andrews Kurth did not, however, disclose to Walton that Stanford was the subject of a pending SEC inquiry, that Stanford was alleged to be a Ponzi scheme, that Stanford was alleged to be involved in money laundering, or that the firm had already tried to defend Stanford before the SEC in connection with these matters. Andrews Kurth did not decline the conflicting

engagement or withdraw from representing Walton or Stanford. Instead, Andrews Kurth tricked Walton into signing the September 15, 2005 Waiver Letter purporting to waive any conflict of interest and permitting Andrews Kurth to represent Stanford in connection with the purchase transaction for the Galleria Towers.

54. In the Waiver Letter, Andrews Kurth promised that it would not take sides in a dispute: “Our Firm agrees that we will not represent Stanford or Walton in any disputes or litigation among you arising out of the Transaction ....” Andrews Kurth further promised, “[I]n the event of a dispute or litigation among you arising out of Stanford’s lease in Galleria Tower II, our Firm will be permitted to continue to represent Walton and will not represent Stanford in connection with such dispute ...”

55. In procuring the Waiver Letter, Andrews Kurth did not mention that it already had knowledge of Stanford that was material to multiple lease provisions that it had negotiated as Walton’s counsel and to the negotiation of a potential purchase of the Galleria Towers. Because Andrews Kurth did not make a full disclosure to Walton, Walton did not make (and could not have made) a knowing and valid waiver of the conflict of interest.

**Andrews Kurth Took Stanford’s Side in the Dispute over Walton  
as the Purchase Negotiations Broke Down.**

56. Andrews Kurth proceeded to represent Stanford in the purchase negotiations for the Galleria Towers. Beginning with the signing of the Waiver Letter, the negotiations became progressively more contentious. Andrews Kurth took an increasingly confrontational tone toward Walton. On at least one occasion, Darren Inoff, a partner at Andrews Kurth, called a Walton executive without the presence of Walton’s designated counsel for the purchase negotiations. Inoff later cited this ex-parte conversation in claiming that Stanford and Walton had reached a firm “verbal” deal, when in reality a final written agreement is necessary to consummate a real

estate transaction under Texas law. The supposed verbal deal then served as a foundation for the lawsuit Stanford subsequently filed against Walton.

57. The negotiations broke down in October 2005 without the parties having signed a purchase and sale agreement. Stanford was not happy. As of mid-October 2005, at the latest, it was clear that Stanford intended to sue Walton. Even though Andrews Kurth's Waiver Letter promised that the firm would not take Stanford's side against Walton in a dispute, Inoff assisted Stanford in preparing a demand letter to Walton, setting the stage for the lawsuit. Inoff then reviewed and commented on the petition that Stanford intended to file to initiate its lawsuit against Walton.

58. Stanford filed suit against Walton in November 2005. As part of the lawsuit, Stanford sought specific performance for the sale of the three Galleria Towers and filed a notice of lis pendens. The notice of lis pendens prevented Walton from selling the properties, thus tying up Walton's valuable Galleria Towers when demand was at an all-time high.

59. Stanford's lawsuit alleged in part that Walton misled Stanford in negotiating the Stanford Lease. Andrews Kurth was Walton's attorney for the Stanford Lease, and Andrews Kurth drafted the Right of First Offer that was in dispute in the litigation. Notwithstanding these facts, and Andrews Kurth's promises in the Waiver Letter, Andrews Kurth actively supported Stanford in the litigation.

60. As the lawsuit progressed, it became apparent that Andrews Kurth had been working with Stanford to prosecute the suit against Walton.

61. Andrews Kurth's continual assistance to Stanford, taking Stanford's side as the dispute grew from a disagreement into multi-million dollar litigation, violated the firm's duties to Walton and its promise that it would not take sides against its client, Walton.

**Andrews Kurth Learned Facts Dispositive to Walton's Defense.**

62. Andrews Kurth continued to provide leasing services to Walton after Stanford's lawsuit was filed, billing Walton \$383,772.99 for work performed from December 2005 through January 2008.

63. During September 2006, while the lawsuit was in progress, Allen Stanford again directed Stanford's general counsel to seek Andrews Kurth's representation for a renewed SEC and NASD investigation that was substantially related to the SEC's 2005 inquiry: "The former sec [D]allas lawyer we spoke about in [S]t [C]roix. Get him on board asap."

64. After Stanford's general counsel and Barasch traded emails, Barasch confirmed that he would serve as Stanford's counsel: "Thanks for the call this morning – I look forward to the opportunity to be of service to Stanford going forward." After meeting with Alvarado and billing for his time and travel, Barasch belatedly sought permission from the SEC's Ethics Office. Permission was denied once again.

65. Allegations that Stanford was a Ponzi scheme, and the fact that Stanford was under investigation by the SEC and NASD, would have given Walton a strong and dispositive defense to Stanford's suit. Andrews Kurth never disclosed this information to Walton, nor did Andrews Kurth ever withdraw from representing Walton. Andrews Kurth instead withheld material information from Walton and tried to play both sides of the fence. In doing so, Andrews Kurth lined its pocket while continuously breaching contractual, professional and fiduciary duties to Walton. Andrews Kurth's actions tied up Walton's buildings and embroiled Walton in years of costly litigation, causing damages that Walton now seeks to recover.

**Walton Learned from Public Sources That Andrews Kurth Had Known  
since June 2005 of the Stanford Ponzi Scheme Allegations.**

66. On February 16, 2009, the SEC obtained a temporary restraining order against multiple Stanford entities and personnel. Stanford ceased to be a functioning entity after it was placed under the control of a court-appointed receiver. The Stanford lawsuit against Walton did not go away, though. Rather, Walton had to defend the allegations that were now pursued by the receiver. On April 17, 2010, the receiver informed Walton that Stanford would default on its lease obligations effective May 1, 2010.

67. On March 31, 2010, the SEC's Office of Inspector General released a report regarding the SEC's delayed response to a decade of allegations against Stanford. The report singled out Barasch in particular and publicly disclosed, for the first time, Andrews Kurth's repeated efforts to represent Stanford in the Ponzi scheme inquiry and its actual representation of Stanford in 2006.

68. From the March 31, 2010 report, Walton learned for the first time that Andrews Kurth not only possessed direct knowledge of the Ponzi scheme allegations as of June 2005, but had also sought actively to *defend* Stanford in the inquiry.

**Andrews Kurth Continued to Represent Stanford Parties.**

69. Not content to sit on the sidelines once the Stanford Ponzi scheme became public, Barasch wrote the SEC in February 2009, yet again seeking to defend Stanford. Barasch noted that Andrews Kurth's Managing Partner agreed that there was no conflict, and he expressed frustration that the SEC would not allow the representation.

70. On April 19, 2010, the Stanford receiver filed an application for a temporary restraining order, injunction, or (in the alternative) writ of attachment for accounts held by certain former Stanford employees. In the application, the receiver noted that Stanford

previously had retained Andrews Kurth partner Barasch, and that Barasch's compliance division colleague at Andrews Kurth, Bradley Foster, represented 118 former Stanford employees in opposition to the receiver's efforts:

Coincidentally, Stanford hired Spencer Barasch, former regional director of enforcement at the SEC and now a partner at the law firm Andrews Kurth, to assist with the NASD inquiry, and Mr. Barasch reviewed and approved the response before it was sent. Now, Barasch's partner at Andrews Kurth, Brad Foster, represents 118 of the former Stanford employees subject to the Receiver's Second Amended Complaint, 75 of whom are subject to this motion.

**Andrews Kurth's Acts and Omissions Damaged Walton.**

71. Walton would not have entered into the Original Lease, the Amendments, or the purchase negotiations had it known at any point that Stanford had become the subject of Ponzi scheme and money laundering investigations.

72. If Andrews Kurth had disclosed this information in June 2005, Walton would never have executed the Second Amendment that Andrews Kurth drafted. If Andrews Kurth had disclosed this information during August 2005, Walton never would have agreed to the letter of intent, the waiver of conflict, or the rounds of purchase negotiations that followed thereafter.

73. To this day, despite Andrews Kurth's fiduciary duties to Walton, the firm has declined to provide even the most basic explanation of its work for Stanford during the time that Andrews Kurth represented Walton.

74. Andrews Kurth's breaches of duty caused Walton to incur millions of dollars in attorneys' fees in the Stanford litigation. Walton seeks recovery of these fees from Andrews Kurth.

75. As an equitable remedy, Walton also seeks disgorgement and/or forfeiture of all fees that it paid Andrews Kurth as well as the fees or compensation that Andrews Kurth

wrongfully obtained from Stanford as a result of the law firm's breach of fiduciary duty to Walton.

76. Walton needlessly paid for Stanford's alterations to the leased premises, lost rent due to Stanford's lease default, incurred expenses to update the premises to attract a new tenant after Stanford defaulted, and lost money while the property was tied up by the lis pendens. Walton sues to recover these and other damages, which exceed \$10 million in total, that Walton sustained due to Andrews Kurth's misconduct.

## **CAUSES OF ACTION**

### **First Cause of Action – Legal Malpractice**

77. Walton incorporates by reference the allegations stated above.

78. As Walton's attorneys, Andrews Kurth owed Walton a duty of care.

79. Andrews Kurth failed to use ordinary care in representing Walton.

80. Andrews Kurth failed to do that which an attorney of ordinary prudence would have done under the same or similar circumstances.

81. Andrews Kurth took actions that an attorney of ordinary prudence would not have taken under the same or similar circumstances.

82. The acts and omissions of Andrews Kurth proximately caused damage to Walton.

83. As a result of Andrews Kurth's legal malpractice, Walton incurred millions of dollars in attorneys' fees in the Stanford litigation. Walton also lost rent due to Stanford's lease default, incurred expenses to attract a new tenant into the Stanford space, lost profits due to Walton's inability to sell the Galleria Towers, and sustained additional damages. Walton is entitled to recover these damages from Andrews Kurth.

## **Second Cause of Action – Breach of Fiduciary Duty**

84. Walton incorporates by reference the allegations stated above.
85. As Walton's attorneys, Andrews Kurth owed Walton fiduciary duties.
86. Andrews Kurth's acts, omissions, and transactions were not fair and equitable to Walton.
87. Andrews Kurth misused the trust and confidence that Walton placed in Andrews Kurth.
88. As a fiduciary, Andrews Kurth was required to act in the utmost good faith and to exercise the most scrupulous honesty and loyalty toward Walton.
89. Andrews Kurth placed its own interests and the interests of Stanford ahead of the interests of its client, Walton.
90. Andrews Kurth used its position to gain benefits for itself at the expense of Walton.
91. Andrews Kurth placed itself in a position where its self-interest, and the interests of other clients, conflicted with its obligations to Walton.
92. Andrews Kurth failed to fully and fairly disclose important and material information to Walton.
93. Andrews Kurth's breaches of fiduciary duty proximately caused damage to Walton.
94. As a result of Andrews Kurth's breaches of fiduciary duty, Walton incurred attorneys' fees in the Stanford litigation. Walton also lost rent due to Stanford's lease default, incurred expenses to attract a new tenant into the Stanford space, lost profits due to Walton's

inability to sell the Galleria Towers, and sustained additional damages. Walton is entitled to recover these damages from Andrews Kurth.

95. Due to Andrews Kurth's breaches of fiduciary duty, Andrews Kurth must disgorge all fees paid by Walton.

96. Due to Andrews Kurth's breaches of fiduciary duty, Andrews Kurth must disgorge all fees paid by Stanford.

### **Third Cause of Action – Breach of Contract**

97. Walton incorporates by reference the allegations stated above.

98. In the Waiver Letter, Andrews Kurth promised that it "would not represent Stanford or Walton in any disputes or litigation among [them]" arising out of the acquisition of the Galleria Tower I, Galleria Tower II, and Financial Center by Stanford.

99. In the Waiver Letter, Andrews Kurth promised that in the event of a dispute or litigation between Stanford and Walton arising from out of Stanford's lease in Galleria Tower II, Andrews Kurth would be permitted to continue to represent Walton and would not represent Stanford in connection with such dispute.

100. The terms of the Waiver Letter constitute binding obligations upon Andrews Kurth.

101. Andrews Kurth breached the terms of the Waiver Letter.

102. Andrews Kurth's breach of the Waiver Letter caused damage to Walton. Walton is entitled to recover its damages from Andrews Kurth.

**Attorneys' Fees**

103. Walton incorporates by reference the allegations stated above.

104. Section 38.001 of the Texas Civil Practice and Remedies Code entitles Walton to recover its reasonable and necessary attorneys' fees for prosecuting this action for breach of Andrews Kurth's agreement.

105. Walton sues for recovery of such attorneys' fees.

**Punitive Damages**

106. Walton incorporates by reference the allegations stated above.

107. The harm to Walton resulted from Andrews Kurth's gross negligence, willful misconduct, and breaches of trust and loyalty.

108. Andrews Kurth's acts and omissions involved an extreme degree of risk.

109. Andrews Kurth had actual, subjective awareness of the risk involved but nevertheless proceeded with conscious indifference to the rights and welfare of Walton.

110. Andrews Kurth's breaches of fiduciary duty further entitle Walton to recover exemplary damages from Andrews Kurth.

111. Walton therefore sues for recovery of exemplary damages.

**JURY DEMAND**

112. Walton requests trial by jury and tenders the appropriate fee.

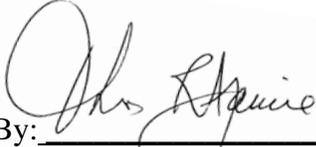
**PRAYER**

WHEREFORE, premises considered, Plaintiff, Walton Houston Galleria Office, L.P. prays that Andrews Kurth LLP be cited to appear and answer herein, and that on final hearing this Court award Plaintiff its damages, disgorgement of Defendant's fees, punitive damages,

attorneys' fees, pre- and post-judgment interest, costs of Court, and such other and further relief to which Plaintiff may show itself justly entitled.

Respectfully submitted,

AJAMIE LLP

By:  \_\_\_\_\_

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