

1 CONTRACTORS' DEFENSE GUILD
2 Clayton B. Huntington, State Bar No. 176489
3 27126B Paseo Espada, Ste. 701
4 San Juan Capistrano, California 92675
5 Telephone: (949) 218-4063
6 Email: chuntington@thecdguild.com

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8 Attorneys for Defendants Sawyer & Company, Inc
9 & Greenfield T. Sawyer

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
05/13/2019 at 04:28:00 PM
Clerk of the Superior Court
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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ORANGE**

13 LAW OFFICES OF MARK B. PLUMMER, PC) Case No. 30-2019-01065252-CL-CO-CJC

14 Plaintiff,

15 v.

16 SAWYER & COMPANY, INC and
17 GREENFIELD T. SAWYER, and individual,
18 AND DOES 1 THROUGH 10, inclusive,

19 Defendants.

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21 _____)
22 SAWYER & COMPANY, INC.

23 Cross-Complainant,

24 v.

25 LAW OFFICES OF MARK B. PLUMMER, PC)
26 and MARK B. PLUMMER, an individual, and)
27 ROES 1-50, inclusive.)
28 _____)

Cross-Complainant alleges:

1. Cross-Complainant, Sawyer & Company Inc., ("Sawyer & Co.") is now, and at all

1 timesmentioned in this complaint was, a corporation organized and existing under the laws of the
2 State of California, with its principal place of business in Orange County, California.

3 2. Cross-Defendant, Mark B. Plummer is an individual and is now, and at all times
4 mentioned in this complaint was, a resident of Orange County, California.

5 3. Defendant, Law Offices of Mark B. Plummer, PC is now, and at all times mentioned in
6 this complaint was, a law corporation organized and existing under the laws of the State of
7 California, with its principal place of business in Orange County, California.

8 4. Sawyer & Co.does not know the true names of cross-defendants ROES 1 through 50,
9 inclusive, and therefore sues them by those fictitious names. Sawyer & Co.is informed and
10 believes, and on the basis of that information and belief alleges, that each of those cross-
11 defendants were in some manner negligently and proximately responsible for the events and
12 happenings alleged in this cross-complaint and for Sawyer & Co.'s injuries and damages.

13 5. Sawyer & Co.is informed and believes, and on the basis of that information and belief
14 alleges, that at all times mentioned in this cross-complaint, cross-defendants were the agents and
15 employees of their co-cross defendants, and in doing the things alleged in this cross-complaint
16 were acting within the course and scope of that agency and employment.

17 6. At all times mentioned in this cross-complaint, cross-defendants Law Offices of Mark
18 B. Plummer, PC, Mark B. Plummer and ROES 1–20 were licensed to practice law in the State of
19 California.

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23 **FIRST CAUSE OF ACTION**

24 **(Malpractice against all Cross-defendants)**

25 7. Sawyer & Co. restates the allegations contained in paragraphs 1-6 as though fully set
26 forth and incorporates them herein by reference. In or around 2011 Sawyer & Co.employed Cross-
27 defendants to representthem in a complex accounting case involving claims for unpaid
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1 commissions on the part of Elements Food Group (Elements). That case, Superior Court Case No.
 2 30-2013-00632860, went to trial and plaintiff Sawyer & Co. lost. Cross-Defendants represented to
 3 Sawyer & Co. that they could win the appeal. At no time did Cross-Defendants inform Sawyer &
 4 Co. that should they lose the appeal that Sawyer & Co. would be required to pay Elements'
 5 attorney fees and costs for opposing the appeal. Sawyer & Co. then agreed to allow Cross-
 6 Defendantsto appeal the matter on the sole condition that Cross-Defendants bear all costs and
 7 expenses associated in any manner whatsoever with the Appeal. The parties further agreed that if
 8 Cross-Defendants were successful they would be awarded 50% of whatever Cross-Defendants
 9 could collect from the Elements.
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11 8. By virtue of accepting representation of Sawyer & Co. in its dispute with Elements,
 12 Cross-Defendants owed Sawyer & Co. a duty touse reasonable skill and care in that representation,
 13 including but not limited to hiring qualified experts to present accounting information at trial and
 14 the duty to inform Sawyer & Co. that should Cross-Defendants loose the appeal, Sawyer & Co.
 15 would be liable for Elements attorney fees and costs. Cross-defendants breached that duty when
 16 they failed to use reasonable skill and care in the representation of Sawyer & Co. by failing to use
 17 qualified experts to present complicated accounting evidence to the trial court and in completely
 18 failing to inform Sawyer & Co. that should Cross-defendants loose the appeal, Sawyer & Co.
 19 would be required to pay Elements attorney fees and costs associated with their responding to the
 20 appeal.
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23 9. Sawyer & Co. is informed and believes, and on the basis of that information and belief
 24 alleges, that had Cross-defendants used proper skill and care in the prosecution of Sawyer & Co.'s
 25 complaint against Elements, Sawyer & Co. would not have had an adverse judgment rendered
 26 against it because Sawyer & Co. had a valid claim asserted against Elements and with the
 27 competent counsel and the appropriate expert witnesses, would have prevailed at the time of trial.
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1 Moreover, in the event that an appeal was required, had Cross-defendants informed Sawyer & Co.
2 that they would be required to pay Elements attorney fees and costs should they lose on appeal,
3 Sawyer & Co. would never have agreed to move forward with the appeal.

4 10. As a direct and proximate result of the negligence and carelessness of Cross-defendants
5 as set forth above, Elements won at trial and on appeal and was awarded attorney fees and costs
6 associated with its opposition to the appeal, resulting in damage to Sawyer & Co. in an amount
7 according to proof at trial.

9 **SECOND CAUSE OF ACTION**

10 **(Breach of oral Contract against all defendants)**

11 11. Sawyer & Co. restates the allegations contained in paragraphs 1-10 as though fully set
12 forth and incorporates them herein by reference.

13 12. On or about March of 2016, Sawyer & Co. and Cross-defendant entered into an oral
14 agreement whereby Sawyer & Co. agreed to allow Cross-defendants to file an appeal of the
15 judgment of Superior Court Case No. 30-2013-00632860 on the condition that Cross-defendant
16 bear any and all expenses and fees associated with the appeal other than the filing fee for the
17 appeal, which Sawyer & Co. agreed to pay in the amount of \$750.00.

18 13. Sawyer & Co. has performed all conditions, covenants, and promises required on its
19 part to be performed in accordance with the terms and conditions of the contract.

20 14. On or about May 15, 2018, Cross-defendants breached the oral agreement by refusing
21 to pay Elements attorney fees and costs awarded to it from the appeal and continues to require fees
22 for preparation of portions of the appeal, all contrary to the terms of the contract.

23 15. As a result of Cross-defendants' breach of the contract, Sawyer & Co. has suffered
24 damages in an amount according to proof at trial.

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WHEREFORE, Sawyer & Co. demands judgment against Cross-defendants, and each of them, for the following:

1. General damages in an amount according to proof at trial;
2. Special damages in an amount according to proof at trial;
3. Compensatory damages in an amount according to proof at trial;
4. Interest according to law;
5. Costs of this action; and
6. Any other and further relief that the court considers proper.

Date: May 13, 2019

PLUMTREE& ASSOCIATES



Clayton B. Huntington
Attorneys for Cross-Complainants,
Sawyer & Co.

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 27126B Paseo Espada, Ste. 701 San Juan Capistrano, CA 92675. On January 8, 2018, I served the within document(s) described as:
CROSS-COMPLAINT FOR MALPRACTICE on the interested parties in this action as stated on the mailing list below.

Mark B. Plummer, Esq. 18552 Oriente Drive Yorba Linda, CA 92886	Telephone: (714) 970-3131 Facsimile: (714) 970-3130 Email: lombp.law@hotmail.com Attorneys for Plaintiff
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- (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at San Juan Capistrano, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY FACSIMILE MACHINE) I transmitted a true and correct copy of said document(s) by facsimile machine, and no error reported.
- (BY OVERNIGHT MAIL) By depositing copies of the said documents(s) in a box or other facility regularly maintained by FEDERAL EXPRESS in an envelope or package designed by FEDERAL EXPRESS with delivery fees paid or provided for and sent to the person(s) named on the attached service list.
- (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand to the above addressee(s)

Executed on May 13, 2019, at San Juan Capistrano, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Clayton B. Huntington

(Name)

(Signature)