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John A. Clarke, Executive Officer/Clerk  
By SHAUNYA WESLEY, Deputy

Lonnie L. McDowell, Esq. (SBN 261214)  
McDowell Forster Attorneys  
445 South Figueroa Street  
Suite 2700  
Los Angeles, California 90071-2221  
Tel: (213) 489-6802  
Fax: (213) 489-6803  
E-Mail: Lonnie@MFAlegal.com

Attorney for Plaintiff Timothy Sturm

**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

Timothy Sturm	)	CASE No.: <i>BC493608</i>
	)	
PLAINTIFF	)	First Amended COMPLAINT FOR
	)	Legal Malpractice; Breach of
vs.	)	Fiduciary Duties
	)	<i>D-57</i>
John DuWors, Newman & DuWors	)	
Attorneys; Newman & Newman,	)	
Attorneys at Law, LLP,	)	
and DOES 1 - 100, inclusive	)	
	)	
DEFENDANTS	)	

Plaintiff, Timothy Sturm alleges:

1. This is a Complaint for Legal Malpractice and Breach of Fiduciary Duties.
2. Plaintiff, Timothy Sturm, (hereinafter "STURM") is a citizen of the state of California, and resides in Ventura.
3. Plaintiff, "STURM" is, and at all times herein, an individual.

1 4. Venue within this County and division is appropriate as all  
2 times relevant hereto, Defendants were conducting business as a  
3 law firm in Los Angeles County by representing, advising,  
4 communicating, collecting revenue from, making representations  
5 to, and causing harm to Plaintiff within Los Angeles County.

6  
7 5. On information and belief Defendant, Newman & Newman,  
8 Attorneys at Law, LLP, (hereinafter "Newman & Newman"), is and  
9 at all times herein mentioned was, a limited liability company  
10 duly organized and existing under the laws of the State of  
11 Washington, with its principal place of business in the City of  
12 Seattle, Washington.

13  
14 6. On information and belief Defendant, Newman & DuWors  
15 Attorneys, is and at all times herein mentioned was organized as  
16 a law firm, practicing within the State of California, with its  
17 principal place of business at 100 Wilshire Blvd., Suite 950,  
18 Santa Monica, California.

19  
20 7. Defendant, John DuWors (hereinafter "DuWors"), is an  
21 attorney licensed to practice law in California and Washington,  
22 having offices at 100 Wilshire, Suite 950, Santa Monica,  
23 California 90401, and in Seattle, Washington.

24  
25 8. At all times herein mentioned Defendant DuWors was a  
26 partner and/or agent of the Defendant Newman & Newman, and  
27  
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1 Newman/DuWors and in doing the things herein alleged was acting  
2 within the scope of such employment and agency.

3 9. At all times herein mentioned, Defendants DuWors, Newman &  
4 Newman, Newman/DuWors and Does 1 - 100, and each of them, were,  
5 and now are doing business in Los Angeles, California.

6 10. Plaintiff is ignorant of the true names and capacities of  
7 the Defendants sued herein as Does 1 - 100, inclusive, and  
8 therefore sue these Defendants by such fictitious names.

9 Plaintiff will amend this Complaint to allege the true names and  
10 capacities of Does 1 - 100, inclusive, when Plaintiff ascertains  
11 the identity of such Defendants. Plaintiff is informed and  
12 believes, and thereon alleges, that each of these Defendants is  
13 responsible in some manner for the acts and omissions which  
14 damaged Plaintiff, and that Plaintiff's damages as alleged  
15 herein were proximately caused by their actions or omissions.

16 11. Plaintiff is informed and believes and thereon alleges,  
17 that at all times herein mentioned, each of the Defendants, and  
18 Does 1 - 100, and each of them, were principals or the agents  
19 and/or employees of each of the remaining Defendants, and in  
20 doing the things herein alleged, were acting within the course  
21 and scope of said agency and/or employment, in that the actions  
22 of each of the Defendants as herein alleged were authorized,  
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1 approved, and/or ratified by each of the other Defendants as  
2 principals and/or employers.

3  
4 **FIRST CAUSE OF ACTION: LEGAL MALPRACTICE**

5 **(Against All Defendants and Does 1 - 100)**

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7 12. Plaintiff refers to and incorporates herein paragraphs 1-11  
8 above, and makes them a part hereof as though set forth at  
9 length.

10 13. Defendants breached the relevant duty of care by failing to  
11 adequately represent Plaintiff in providing competent legal  
12 advice, full and accurate communications, and legal advice in  
13 accordance with relevant legal standards within the practice of  
14 law, as detailed more fully below.

15  
16 14. Defendants, and each of them, had a duty to use such skill,  
17 prudence and diligence as members of the legal profession  
18 commonly possess and exercise, in providing legal services to  
19 Plaintiff herein.

20  
21 15. During the course of Defendants' representation of STURM,  
22 there were several instances wherein the conduct of the  
23 Defendants fell below the applicable standard of care, as set  
24 forth therein.

25  
26 16. On or about May 2010, STURM, contacted Derek Newman of  
27 Newman & Newman and Newman/DuWors regarding representing him in  
28

1 an administrative hearing before the Civil Service Commission  
2 regarding STURM's discharge from the Los Angeles County  
3 Probation Department, and Defendants agreed and undertook such  
4 representation.

5 17. The hearing was originally scheduled to be held in January  
6 2011.

7  
8 18. Counsel for the County of Los Angeles had a family  
9 emergency and the hearing was re-scheduled to be heard on or  
10 about April 18-19, 2011.

11 19. Defendant DuWors did not prepare for this hearing prior to  
12 its continuance.

13  
14 20. On or about April 13, 2011, Defendant DuWors emailed STURM  
15 telling him the Civil Service Commission had contacted him and  
16 continued the hearing until on or about July 11, 2011.

17 21. On or about April 13, 2011, STURM telephoned the Civil  
18 Service Commission and was informed that Defendant DuWors had  
19 continued the hearing, asking for additional time to prepare.

20  
21 22. On or about April 13, 2011, STURM emailed Defendants  
22 DuWors, Newman/DuWors and Newman & Newman, stating that he did  
23 not agree to a continuance citing his concerns about the  
24 County's upcoming fiscal budget crisis, and pending cut backs  
25 all of which could potentially affect STURM's case.  
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1 23. Defendants continued the hearing against STURM's strenuous  
2 objections.

3 24. Defendant DuWors inadequately prepared for the April  
4 hearing as evidenced by the hours billed STURM for preparation.

5 25. Defendants' initiated continuance cost STURM at least three  
6 (3) months of additional income and on-going retirement  
7 benefits.  
8

9 26. During the interim between the continued April 2011 hearing  
10 and the July 2011 hearing, Defendants alleged and acknowledged  
11 in a separate action that STURM changed the scope of his  
12 representation from reinstatement to exposing corruption in the  
13 Los Angeles County Probation Department.  
14

15 27. Defendants accepted said change in scope and nature of the  
16 legal representation they were to provide, and mislead STURM  
17 into believing exposing corruption was the focus of the  
18 representation.  
19

20 28. STURM prepared lengthy timelines, document lists, witness  
21 lists and narratives and provided them to Defendants in  
22 preparation for the new scope of their legal representation.

23 29. Defendants alleged and acknowledged in a separate action  
24 that it was because of all the additional preparation involved  
25 in the new scope of litigation that they were required to spend  
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1 extensive additional hours in preparation, increasing their  
2 original legal fee estimate by 300%.

3 30. Defendants assured STURM they would subpoena the requested  
4 documents and witnesses. Yet, Defendants failed to subpoena the  
5 documents that would have been essential to proving STURM's  
6 allegations of corruption in the Los Angeles Probation  
7 Department.  
8

9 31. STURM relied upon Defendants representation that all  
10 documents and witnesses on the lists he prepared would be  
11 subpoenaed.  
12

13 32. STURM relied upon Defendants representations that the  
14 hearing would not only be focused on his reinstatement to the  
15 Probation Department, but also about exposing corruption within  
16 the Probation Department.  
17

18 33. On or about July 11, 2011 the administrative hearing before  
19 the Civil Service Commission was held.  
20

21 34. At no time did Defendants attempt to present evidence in  
22 relation to the corruption issue.  
23

24 35. Defendants failed to subpoena any of the documents that  
25 would have been essential to proving corruption within the  
26 Probation Department and did nothing in furtherance of that  
27 goal.  
28

36. Defendant DuWors was unprepared for the hearing.

1 37. Defendant DuWors was unfamiliar with California Government  
2 Code 3304(d) specifically the sections regarding reversing the  
3 unlawful termination of a Peace Officer, forfeiting the  
4 opportunity to utilize this statute on STURM's behalf.

5 38. Because of Defendant DuWors inadequate preparation for this  
6 hearing, STURM did not receive reinstatement with full back pay  
7 and benefits.  
8

9 39. On or about July 11, 2011, Defendant DuWors negotiated a  
10 settlement agreement with the County of Los Angeles on STURM's  
11 behalf.  
12

13 40. Terms of the settlement agreement were that STURM was to  
14 receive only four (4) months and ten (10) days back pay, nine  
15 (9) months less than if DuWors had been familiar with all of the  
16 terms of Government Code 3304(d).  
17

18 41. Defendant DuWors was also unfamiliar with the procedures  
19 that Los Angeles County follows in its administrative processes  
20 when negotiating the STURM settlement agreement.

21 42. Defendant DuWors failed to use due diligence and negotiated  
22 the STURM settlement agreement with parties who had no authority  
23 to bind the County of Los Angeles, nor LACERA, the agency that  
24 administers STURM's retirement benefits.  
25

26 43. Defendant DuWors had previously been warned by STURM that  
27 he had been told by people who had prior similar dealing with  
28



1 the County of Los Angeles that the County will use minor  
2 technicalities to invalidate agreements.

3 44. DuWors ignored STURM's warning.

4 45. On or about October 19, 2011, representatives of the  
5 Residential Treatment Services Bureau, the Performance  
6 Management Unit and the Attorney for the Probation Department  
7 signed the contract. No representative from LACERA was present  
8 or made party to the agreement by DuWors.  
9

10 46. On or about November 3, 2011, STURM signed the agreement.

11 47. On or about November 4, 2011, Defendant DuWors sent an  
12 email to County Counsel indicating the STURM had signed the  
13 agreement, which was attached, and that he would send his  
14 signature page shortly.  
15

16 48. In that same email, Defendant DuWors indicated that on or  
17 about November 4, 2011, he would file a notice of "Withdrawal of  
18 Appeal" on STURM's behalf with the Civil Service Commission,  
19 relinquishing STURM's ability to appeal.  
20

21 49. Approximately 2 months later, on or about December 22,  
22 2011, DuWors finally signed the agreement.

23 50. On or about January 2012, STURM honored his portion of the  
24 agreement by noticing his retirement with the Los Angeles  
25 Probation Department.  
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1 51. In approximately May of 2012, the County of Los Angeles,  
2 and LACERA informed STURM that they were not bound by the  
3 agreement and would not honor its terms.

4 52. As of March 13, 2013, the County and LACERA have continued  
5 to deny they were bound by the agreement, and STURM has not  
6 received any of the benefits of the settlement agreement  
7 negotiated by Defendant DuWors.  
8

9 53. STURM has lost, as a direct result of Defendants lack of  
10 due diligence, any benefit of the agreement.

11 54. SUTRM contends that the Defendants conduct in 1.) not  
12 sufficiently preparing for the first hearing with the Civil  
13 Service Commission, 2.) asking for a continuance and then  
14 attempting to mislead STURM regarding the cause of the  
15 continuance, 3.) deliberately misleading STURM in regard to the  
16 scope and nature of the legal representation they were to  
17 provide, 4.) unnecessarily delaying the signing of the  
18 settlement agreement, 5.) and the failure to perform due  
19 diligence in ascertaining who had authority to bind the County  
20 of Los Angeles, The Los Angeles Probation Department, and LACERA  
21 to the settlement agreement before negotiating and recommending  
22 STURM enter into it, fell below the relevant standard of duty  
23 and care exercised within the legal community.  
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1 55. The conduct of the Defendants, and each of them, in doing  
2 the acts and omissions herein allegedly directly resulted in  
3 damages and harm to STURM.

4 56. In doing the things herein alleged, Defendants  
5 intentionally put their own financial interests and the gain  
6 realized ahead of the interests of their client in postponing  
7 the April 2011 hearing, attempting to mislead STURM regarding  
8 the reason for the delay, failing to adequately preparing for  
9 the hearing, failing to perform due diligence, and willingly  
10 participating in a preventable delay in signing the settlement  
11 agreement. As a direct and proximate result of Defendants  
12 actions, as alleged herein, STURM incurred substantial,  
13 unnecessary fees and costs, in an amount subject to proof.  
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15 57. Defendants, each of them, failed to exercise reasonable  
16 care and skill in their representation of STURM by negligently  
17 and carelessly doing all of the acts and omissions as herein  
18 alleged. Defendants failed to exercise reasonable care and skill  
19 and were negligent in failing to properly prepare for, present,  
20 and preserve STURM's rights at the hearing, and in failing to  
21 sign the settlement agreement in an appropriate amount of time.  
22

23 58. As a direct and proximate result of the aforesaid  
24 negligence and/or intentional failures of the Defendants, STURM  
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1 was required to retain new counsel to assume representation at  
2 significant cost.

3 59. As a further direct and proximate result of the negligence  
4 of Defendants, and each of them, STURM sustained damages,  
5 including, but not limited to, legal fees paid to, and payment  
6 of legal fees to new counsel who substituted in to assume  
7 representation of STURM. STURM has sustained, and will continue  
8 to sustain, further and additional damages as a direct result of  
9 the Defendants' negligence, all in an amount according to proof.  
10

11 WHEREFORE, Plaintiff prays for judgment as hereinafter set  
12 forth.  
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15 **SECOND CAUSE OF ACTION**

16 **(Breach of Fiduciary Duty against Defendants John DuWors, Newman**  
17 **& DeWors; Newman & Newman, Attorneys at Law; and Does 1 - 100)**

18 60. Plaintiff refers to and incorporates herein the General  
19 Allegations and the allegations of the First Cause of Action in  
20 paragraphs 1 - 59 alleged herein above, and makes them a part  
21 hereof as though set forth at length.  
22

23 61. Defendants, each of them, owed STURM a fiduciary duty to  
24 act at all times in good faith and in STURM's best interests,  
25 and had a duty, among other things, to perform the services for  
26 which they were retained with reasonable care and skill, to act  
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1 in STURM's highest and best interests at all times, and to not  
2 expose STURM to any unnecessary risk or peril. This fiduciary  
3 and confidential relationship was never repudiated by Defendants  
4 at any time herein mentioned.

5 62. Defendants, each of them, breached their fiduciary duties  
6 and obligations to Plaintiff by doing all of the acts and  
7 omissions as herein alleged. Among other things, Defendants  
8 breached their duty by failing to properly prepare for the  
9 hearing, delaying the signing of the settlement agreement, and  
10 by generally mishandling, mismanaging, and overbilling in this  
11 case to such an extent that STURM was forced to incur excessive  
12 and unconscionable legal fees and expenses and ultimately forced  
13 STURM's position to become compromised by the failure of the  
14 Defendants, each of them, to manage the case in a prudent  
15 manner.  
16

17 63. Furthermore, in doing all of the above described acts and  
18 omissions constituting Defendants' breach of their fiduciary  
19 duties owed to STURM, STURM sustained damages, including but not  
20 limited to, legal fees incurred to Defendants.  
21

22 64. STURM sustained further and additional economic and out of  
23 pocket losses and damages to be presented at trial, all  
24 according to proof.  
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1 65. The acts and omissions constituting breach of Defendants'  
2 fiduciary duties were committed with oppression, fraud and/or  
3 malice within the meaning of California Civil Code §3294. As a  
4 result, Plaintiff, in addition to actual damages, may recover  
5 exemplary damages for the sake of example and by way of  
6 punishing Defendants.  
7

8 WHEREFORE, Plaintiff STURM prays for judgment against  
9 Defendants, each of them, as set forth below:

10 **As to the First Cause of Action**

- 11 1. For actual damages in a sum in excess of the jurisdiction  
12 of this Court according to proof;  
13  
14 2. For interest as allowed by law;  
15  
16 3. For costs of suit incurred herein;  
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18 4. For such other and further relief as the Court deems just  
19 and proper.

20 **As to the Second Cause of Action**

- 21 1. For actual damages in a sum in excess of the jurisdiction  
22 of this Court according to proof;  
23  
24 2. For exemplary damages according to proof;  
25  
26 3. For interest as allowed by law;  
27  
28 4. For costs of suit incurred herein;

1 5. For such other and further relief as the Court deems just  
2 and proper.  
3

4 Dated: March 13, 2013

MCDOWELL FORSTER ATTORNEYS

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8 Lonnie McDowell  
9 Attorney for Plaintiff,  
10 Timothy Sturm  
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