

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

HUNTS POINT VENTURES, INC., a
Washington Corporation,

Plaintiff,

v.

JOHN DAVID DU WORS, an individual;
JOHN WHITAKER, an individual; and
NEWMAN & DU WORS, LLP, a Washington
LLP,

Defendants.

NO. _____

COMPLAINT

1. Professional Negligence
2. Breach of Fiduciary Duty
3. Unjust Enrichment
4. Conversion
5. Breach of Contract

JURY DEMAND

Plaintiff Hunts Point Ventures, Inc. ("HPV"), a Washington Corporation, by and through its Receiver, Cascade Capital Group, LLC, alleges as follows:

I. JURISDICTION AND VENUE

1. This court has jurisdiction over the claims in this complaint because defendants are residents of the State of Washington, the allegedly tortious conduct of defendants occurred within

1 the jurisdictional limits of this court, and the contracts identified herein were executed within the
2 jurisdictional limits of this court.

3 2. Venue is proper in this court because the majority of the witnesses and the relevant
4 evidence are found within the jurisdictional limits of this court.

5 **II. PARTIES**

6 3. Plaintiff HPV is a corporation organized under the laws of the State of Washington
7 with its principal place of business located in King County.

8 4. Pursuant to the Order Appointing General Receiver (the “Receivership Order”),
9 entered in this court on November 25, 2013, Cascade Capital Group, LLC, was appointed General
10 Receiver (the “Receiver”) over HPV.

11 5. Defendant John Du Wors is an attorney duly licensed by the State of Washington,
12 with his principal place of business located in King County, State of Washington.

13 6. Defendant John Whitaker is an attorney duly licensed by the State of Washington,
14 with his principal place of business located in King County, State of Washington.

15 7. Defendant Newman & Du Wors, LLP (formerly Newman & Newman) is a law
16 firm with its principal place of business located in King County, State of Washington.

17 **III. FACTUAL BACKGROUND**

18 **A. HPV Formation and Background**

19 8. HPV” was incorporated in May 2010. Its purpose was to monetize intellectual
20 property (“IP”) developed by Mark Phillips (“Phillips”), by filing patent infringement lawsuits and
21 collecting damages therefrom.

22 9. HPV solicited investments and loans in order to monetize the IP by pursuing patent
23 litigation. On or about May 7, 2010, Joyce Schweickert invested \$200,000 in HPV. On October
24

1 15, 2010, Sandy Hoover loaned \$100,000 to HPV. On April 29, 2011, Jennifer Schweickert
2 contributed \$200,000 to HPV. On November 19, 2012, Sandy Hoover loaned \$20,000 to HPV.
3

4 **B. MOD Litigation**

5 10. In or about 2010, Phillips was engaged in litigation with his former business
6 enterprise MOD Systems Inc. and his former business associates there regarding ownership of
7 various patents developed by Phillips: *Mod Systems, Inc. v. Phillips*, King County Superior Court
8 Cause No. 09-2-07963-3 SEA; *Arnold v. Phillips*, King County Superior Court Cause No. 10-2-
9 10227-2 SEA; *Phillips v. Mod Systems, Inc.*, King County Superior Court Cause No. 09-2-42891-
10 3 SEA; *A Dot Corp. v. Bay*, Western District of Washington Case No. 2:10-cv-00549-RSM
11 (collectively the “MOD litigation”).

13 11. On or about May 25, 2010, Phillips engaged attorney John Du Wors (“Du Wors”)
14 of Newman & Du Wors (then “Newman & Newman” and hereinafter “Newman”) to represent
15 him in the MOD litigation. As part of the engagement terms, Du Wors took a security interest in
16 Phillips’ condominium. Du Wors learned shortly thereafter this security interest was without
17 value.

19 12. On or about June 9, 2010, HPV engaged Du Wors to represent HPV in the MOD
20 litigation. HPV was not a named party in the MOD litigation.

21 13. On or about June 9, 2010, HPV and Phillips executed a “Waiver of Conflicts of
22 Interest” agreement “in connection with patent litigation,” with the purpose of waiving any
23 potential conflict of Du Wors’ representation of both HPV and Phillips in the MOD litigation. On
24 information and belief, this conflict waiver was the only one ever signed by HPV for Du Wors’
25 services.

1 14. On or about August 18, 2010, Phillips transferred to HPV various patents that he
2 had developed. In exchange for the patents, HPV paid Phillips \$100,000 and agreed to pay up to
3 “\$1,000,000 of Phillips’ attorneys’ fees, court costs and related expenses in the matter of Phillips
4 v. MOD, Inc. (King County Case No. 09-2-42891-3)...to the extent those amounts are owed by
5 [Phillips] to Newman & Du Wors.” Du Wors drafted the purchase and sale agreement. Du Wors
6 represented both the purchaser, HPV, and the seller, Phillips, with regard to this transaction, to the
7 benefit of himself and his firm. This payment from HPV did not promote HPV’s stated purpose of
8 monetizing IP through patent litigation.

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10 15. In or about January 2011, Du Wors represented HPV and Phillips in the MOD
11 litigation, and he negotiated a settlement agreement whereby the ownership interests of various IP
12 was settled. This resulted in the loss of certain IP that had purportedly belonged to HPV.

13
14 16. On information and belief, Du Wors billed HPV over \$100,000 in legal fees
15 allegedly related to the MOD litigation, which provided no apparent benefit to HPV.

16
17 **C. Du Wors’ Expanding Role with HPV**

18 17. In addition to the MOD litigation, in or about September 2010, Du Wors’
19 representation of HPV expanded to include managing the corporate affairs of HPV. Steve
20 Schweickert (“Schweickert”), CEO of HPV, delegated all strategic and tactical decisions related to
21 HPV to Du Wors.

22 18. In or about September 2010, Olympic Patent Works, which had formerly managed
23 the IP developed by Phillips, revoked its representation and transferred its IP files to HPV for
24 maintenance. Olympic Patent Works instructed new counsel to file substitute powers of attorney
25 with the U.S. Patent and Trademark Office (“USPTO”) as soon as possible.

26
27 19. In or about October 2010, Du Wors, John Whitaker (“Whitaker”), and Newman

1 assumed responsibility for maintaining and prosecuting HPV's IP. Du Wors, Whitaker and
2 Newman did not file powers of attorney with the USPTO. Du Wors, Whitaker, and Newman did
3 not respond to various deadlines set by the USPTO, thereby causing multiple patents and/or patent
4 applications to be abandoned.

5 20. In or about April 2011, Du Wors and/or Whitaker represented to HPV that the firm
6 would undertake efforts to reinstate certain patents into good standing with the USPTO. On
7 information and belief, Du Wors, Whitaker, and Newman did not do so and certain patents
8 remained abandoned, despite HPV's reliance on this promise.

9 21. In or about March 2012, Du Wors and/or Whitaker indicated that they would return
10 the patents to good standing, but on information and belief, they did not do so.

11 22. In or about August 2013, Whitaker notified Du Wors and HPV representatives that
12 a patent reexamination was abandoned because Whitaker and Newman did not file a power of
13 attorney with the USPTO or timely respond to deadlines. On information and belief, Whitaker
14 and Newman did not return the patent to good standing.

15 23. Defendants' failure to maintain the patents and patent applications in good standing
16 has caused loss to HPV.

17 24. This failure to maintain the patents continued throughout the defendants'
18 representation of HPV, up to and including June 2013 when Du Wors, Whitaker, and Newman
19 terminated their representation of HPV.

20 **D. Criminal Prosecution of Mark Phillips**

21 25. On or about September 1, 2010, Phillips was indicted on various counts related to
22 his business activities with MOD. *See United States v. Phillips*, Case No. 2:10-cr-00269 (W.D.
23 Wash.).

1 26. On or about January 24, 2011, Du Wors appeared in that case on behalf of Phillips,
2 which, on information and belief, constituted Du Wors' first appearance in any criminal matter.

3 27. Du Wors charged substantial fees for defending Phillips in his criminal
4 prosecution.

5 28. Those fees were paid by HPV, which was also represented by Du Wors. Du Wors
6 never discussed or explained this conflict with HPV and Phillips. Du Wors never obtained a
7 conflict waiver from either Phillips or HPV for this representation.

8 29. HPV paid Du Wors substantial fees for defending Phillips, to no apparent benefit of
9 HPV.

10 30. Upon information and belief, HPV did not learn of the inherent conflict of interest
11 regarding this transaction until after Du Wors' terminated his representation of HPV in June 2013.

12 **E. Steve Schweickert Representation**

13 31. Schweickert, CEO of HPV, was charged with a DUI in or about March 2012. Du
14 Wors transferred funds from the HPV IOLTA account at his firm to a third party to pay for
15 Schweickert's fees and costs related to the DUI. This payment was not for any apparent benefit of
16 HPV.

17 32. Du Wors further represented Schweickert in Schweickert's personal litigation with
18 Joyce Schweickert in or about February 2013, which was charged to HPV. This representation
19 was not for any apparent benefit of HPV.

20 33. Upon information and belief, HPV did not learn of the inherent conflict of interest
21 regarding these transactions until after Du Wors' terminated his representation in June 2013.

1 **F. Patent Prosecution**

2 34. On behalf of HPV, Du Wors sued DigEcore for patent violations on or about May
3 1, 2011. On or about May 23, 2011, HPV signed an engagement letter for this representation,
4 agreeing that Du Wors would be paid a contingency fee of 40% of the net recovery.
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6 35. In or about October 2011, DigEcore agreed to pay HPV \$120,000 to settle the
7 matter. On or about October 27, 2011, Newman and Newman provided an accounting to HPV
8 that indicated HPV would be paid approximately \$72,000 of the settlement proceeds, which
9 equaled 60%. In fact, HPV only received \$23,000 from the DigEcore settlement.

10 36. On or about June 7, 2013, Du Wors, Whitaker, and Newman terminated their
11 representation of HPV.

12 37. A receiver for HPV was appointed on or about November 20, 2013 due to HPV's
13 insolvency.

14 **G. Damages**

15 38. Du Wors and his firm consumed approximately \$465,000, of HPV funds, which
16 constituted approximately 75% of HPV's financial resources. Most of those fees provided no
17 apparent benefit to HPV and caused HPV's insolvency.

18 39. Du Wors and Whitaker, acting on their own behalf and on behalf of Newman,
19 caused HPV patents and/or patent applications to be abandoned by the USPTO, thereby causing a
20 significant decline in their value. At the time the patents were transferred to HPV, their value was
21 over \$1 million. The Receiver for HPV has had to incur expenses to attempt to restore certain
22 patents to good standing.

23 40. Du Wors and his firm wrongfully retained funds rightfully belonging to HPV from
24 the DigEcore settlement.

1 **IV. FIRST CAUSE OF ACTION: PROFESSIONAL NEGLIGENCE (LEGAL**
2 **MALPRACTICE)**

3 41. Plaintiff re-alleges paragraphs 1-41 above.

4 42. Du Wors and Whitaker, acting on their own behalf and on behalf of their firm,
5 failed to exercise reasonable care in maintaining patents and patent applications belonging to HPV
6 in good standing with the USPTO.

7 43. Du Wors, acting on his own behalf and on behalf of his firm, failed to exercise
8 reasonable care by failing to ascertain that he had a conflict of interest that should have prevented
9 him from agreeing to represent both Phillips and HPV, when HPV funds were used to pay
10 Phillips' legal bills for matters that did not benefit HPV.

12 44. Du Wors, acting on his own behalf and on behalf of his firm, failed to exercise
13 reasonable care by failing to ascertain that he had a conflict of interest that should have prevented
14 him from agreeing to represent both HPV and Schweickert, when HPV funds were used to pay
15 Schweickert's legal bills on matters that did not benefit HPV.

17 45. As a direct and proximate cause of the negligence of Du Wors and Whitaker on
18 behalf of Newman, Plaintiff has been damaged in an amount to be proven at trial.

19 **V. SECOND CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTY**

20 46. Plaintiff re-alleges paragraph 1-46 above.

22 47. Du Wors and HPV had an attorney-client relationship. As such, Du Wors owed
23 fiduciary duties to HPV. These fiduciary duties include restrictions against self-dealing, fidelity,
24 and loyalty. Du Wors, acting on his own behalf and on behalf of his firm, breached these duties
25 by entering into transactions with HPV for his self-gain, without disclosing the potential conflicts
26 and without consideration of his fiduciary duties towards HPV.

1 48. Du Wors breached his fiduciary duties to HPV by representing both Phillips and
2 HPV, when HPV funds were used to pay Phillips' legal bills for matters that did not benefit HPV.
3

4 49. Du Wors breached his fiduciary duties to HPV by representing both HPV and
5 Schweickert, when HPV funds were used to pay Schweickert's legal bills on matters that did not
6 benefit HPV.
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8 50. Du Wors' breaches of his fiduciary duties proximately caused substantial damage
9 to HPV in an amount to be proven at trial.
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11 **VI. THIRD CLAIM FOR RELIEF: UNJUST ENRICHMENT**

12 51. Plaintiff re-alleges paragraphs 1-51 above.
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14 52. Du Wors, acting on his own behalf and on behalf of his firm, disbursed to the
15 firm's general accounts from HPV's trust account amounts that were in excess of any fee
16 agreement agreed to by HPV, including the DigEcore settlement, and legal fees incurred for
17 Schweickert and Phillips.
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19 53. Du Wors, acting on his own behalf and on behalf of his firm, charged HPV over
20 \$465,000 for legal services, which fees were excessive in comparison to any benefit provided to
21 HPV by Du Wors.
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23 54. Pursuant to the doctrine of unjust enrichment, Plaintiff is entitled to recover the
24 amount of all fees that were excessive, unreasonable, or unearned by defendants.
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26 **VII. FOURTH CAUSE OF ACTION: CONVERSION**

27 55. Plaintiff re-alleges paragraphs 1-55 above.
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29 56. Plaintiff has a right to possess the settlement proceeds from the DigEcore
30 settlement.
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57. Defendants Du Wors and Newman in exercising dominion and control over Plaintiff's settlement proceeds intentionally interfered with Plaintiff's personal property.

58. Defendants Du Wors' and Newman's intentional interference deprived Plaintiff of its personal property.

59. Defendants Du Wors' and Newman's intentional interference with Plaintiff's personal property caused Plaintiff damages in an amount to be proven at trial.

VIII. FIFTH CAUSE OF ACTION: BREACH OF CONTRACT

60. Plaintiff re-alleges paragraphs 1-60 above.

61. Du Wors and Whitaker, acting on their own behalf and on behalf of Newman, had a contractual obligation to maintain HPV's patents and/or patent applications in good standing with the USPTO.

62. Du Wors and Whitaker, by failing to keep the patents and/or patent applications in good standing, breached their contract to HPV.

63. Du Wors' and Whitakers' breach of contract proximately caused substantial damage to HPV in an amount to be proven at trial.

REQUEST FOR RELIEF

The Plaintiff requests that the Court award it the following relief:

1. An award of damages in an amount to be proven at trial.
2. Disgorgement of all fees paid by HPV to Du Wors and Newman.
3. An award of attorney's fees and court costs.
4. An award of prejudgment interest.
5. Such other relief as the Court may deem just and appropriate.

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2 DATED this 23rd day of March 2015.
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