

**ORIGINAL**

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Attorneys for Cross-complainant  
JENNIFER LYNCH

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

**DEC 16 2011**

John A. Clarke, Executive Officer/Clerk  
BY *Rugena Juliano* Deputy  
Rugena Juliano

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

11 LEE CAPLIN, GITA CAPLIN and DANIEL  
12 CAPLIN,

13 Plaintiffs,

14 vs.

15 JENNIFER LYNCH; and DOES 1 through 50,  
16 inclusive,

17 Defendants.

18 JENNIFER LYNCH an individual,

19 Cross-complainant,

20 vs.

21 LEE CAPLIN, an individual; and GITA  
22 CAPLIN, an individual, and ROES 1 through 50,

23 Cross-defendants.

Case No. BC470686

Assigned to Honorable Daniel Buckley,  
Department 35

**CROSS-COMPLAINT FOR DAMAGES  
BASED UPON:**

- (1) BREACH OF CONTRACT;
- (2) OPEN BOOK ACCOUNT FOR REASONABLE VALUE;
- (3) OPEN BOOK ACCOUNT FOR AGREED VALUE;
- (4) ACCOUNT STATED; AND
- (5) UNJUST ENRICHMENT

Complaint filed: 09/30/2011

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1 Defendant and Cross-Complainant JENNIFER LYNCH (“Cross-Complainant”) hereby cross-  
2 complains and alleges against Plaintiffs LEE CAPLIN and, GITA CAPLIN (“Cross-Defendants”) as  
3 follows:

4 **GENERAL ALLEGATIONS**

5 1. Cross-Complainant is and at all times herein mentioned was a licensed California  
6 attorney doing business in the State of California, with her principal place of business located in the  
7 City of La Jolla, County of San Diego, California.

8 2. Cross-Complainant is informed and believes and thereon alleges that Cross-  
9 Defendants are and at all relevant times were individuals who reside in the County of Los Angeles,  
10 State of California.

11 3. The true names and capacities of Cross-Defendants ROES 1 through 50, inclusive,  
12 whether individual, corporate, associate, or otherwise, are unknown to Cross-Complainant at this  
13 time, who therefore sues said cross-defendants by such fictitious names, and when the true names and  
14 capacities of such cross-defendants are ascertained, Cross-Complainant will seek leave of Court to  
15 amend this Cross-Complaint to insert same. Cross-Complainant is informed and believes and thereon  
16 alleges that each Cross-Defendant named as a ROE is responsible for each and every act and  
17 obligation hereinafter set forth.

18 4. Cross-Complainant is informed and believes and thereon alleges that each Cross-  
19 Defendant named in this Cross-Complaint was at all times herein mentioned and now is the agent,  
20 servant and employee of the other Cross-Defendant herein, and was at all such times acting within the  
21 course and scope of said agency and employment and with the consent and permission of each of the  
22 other Cross-Defendant, and each of the Cross-Defendants herein ratified each of the acts of each of  
23 the other Cross-Defendants, and each of them.

24 5. The obligation sued upon herein was incurred in and is payable in the City of La Jolla,  
25 State of California. Cross-Defendants have filed the above-referenced action in the County of Los  
26 Angeles, State of California and, therefore, Cross-Complainant brings this Cross-Complaint as a  
27 compulsory Cross-Complaint in said County.

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1           6. Said obligation is commercial in nature, not based upon a retail installment sales  
2 contract or a conditional sales contract, and not subject to the provisions of *Civil Code* §§1812.10 and  
3 2984.4.

4    **FIRST CAUSE OF ACTION**  
5    **(Breach Of Written Contract)**

6           7. Cross-Complainant repeats, realleges and incorporates herein by reference the  
7 allegations of paragraphs 1 through 6 above, inclusive, as though set forth herein.

8           8. On or about June 8, 2005, Cross-Complainant and Cross-Defendants entered into a  
9 written contract (“Retainer Agreement”) pursuant to which Cross-Complainant agreed to perform  
10 legal services and Cross-Defendants agreed to pay Cross-Complainant her attorney’s fees and  
11 expenses incurred for legal services performed on Cross-Defendants’ behalf. A true and correct copy  
12 of the Retainer Agreement entered into by and between Cross-Complainant and Cross-Defendants is  
13 attached hereto as Exhibit “A”.

14           9. Cross-Complainant has sent written statements of account to Cross-Defendants listing  
15 the amount of the indebtedness to Cross-Complainant and requesting payment therefore from Cross-  
16 Defendants.

17           10. Cross-Defendants have breached said Retainer Agreement by failing to pay Cross-  
18 Complainant for the legal services rendered on their behalf.

19           11. Cross-Complainant has performed all conditions, covenants and promises required on  
20 her part to be performed in accordance with the terms and conditions of the Retainer Agreement  
21 except as excused by the breach of Cross-Defendants.

22           12. Pursuant to the terms of the Retainer Agreement, and as a result of Cross-Defendants’  
23 breach of said Retainer Agreement, Cross-Complainant has been damaged in the aggregate sum of  
24 \$120,660.06, together with interest thereon at the legal rate on said amount, which sum is now due  
25 and owing.

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1 SECOND CAUSE OF ACTION

2 (Open Book Account For Reasonable Value Of  
3 Legal Services Rendered)

4 13. Cross-Complainant repeats, realleges and incorporates herein by reference the  
5 allegations of paragraphs 1 through 6 above inclusive, as though fully set forth herein.

6 14. Within the last four years, Cross-Defendants became indebted to Cross-Complainant  
7 for legal services provided by Cross-Complainant to Cross-Defendants at the specific request of  
8 Cross-Defendants on an open book account in the aggregate reasonable value of \$120,660.06, plus  
9 interest thereon at the legal rate.

10 15. No part of said sum has been paid, although demand therefore has been made, and  
11 there remains due, owing and unpaid from Cross-Defendants to Cross-Complainant the sum of  
12 \$120,660.06, together with interest thereon at the legal rate.

13 THIRD CAUSE OF ACTION

14 (Open Book Account For Agreed Value Of  
15 Legal Services Rendered)

16 16. Cross-Complainant repeats, realleges and incorporates herein by reference the  
17 allegations of paragraphs 1 through 6 above, inclusive, as though fully set forth herein.

18 17. Within the last four years, Cross-Defendants became indebted to Cross-Complainant  
19 for legal services provided by Cross-Complainant to Cross-Defendants at the specific request of  
20 Cross-Defendants on an open book account in the aggregate agreed value of \$120,660.06.

21 18. No part of said sum has been paid, although demand therefore has been made, and  
22 there remains due, owing and unpaid from Cross-Defendants to Cross-Complainant the sum of  
23 \$120,660.06, together with interest thereon at the legal rate.

24 FOURTH CAUSE OF ACTION

25 (Account Stated)

26 19. Cross-Complainant repeats, realleges and incorporates herein by reference the  
27 allegations of paragraphs 1 through 6 above, inclusive, as though fully set forth herein.

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1           20.     Within the last four years, an account was stated by and between Cross-Complainant  
2 and Cross-Defendants, wherein and whereby it was agreed that Cross-Defendants were indebted to  
3 Cross-Complainant in the sum of \$120,660.06.

4           21.     No part of said sum has been paid, although demand therefore has been made, and  
5 there remains due, owing and unpaid from Cross-Defendants to Cross-Complainant the sum of  
6 \$120,660.06, together with interest thereon at the legal rate.

7   **FIFTH CAUSE OF ACTION**

8   **(Unjust Enrichment)**

9           22.     Cross-Complainant repeats, realleges and incorporates herein by reference the  
10 allegations of paragraphs 1 through 6 above, inclusive, as though fully set forth herein.

11          23.     Cross-Defendants have received the benefits of legal services furnished by Cross-  
12 Complainant to Cross-Defendants.

13          24.     In furnishing the aforesaid legal services, Cross-Complainant was not acting as a  
14 volunteer and Cross-Defendants accepted the benefits of that which Cross-Complainant has furnished  
15 without paying therefor.

16          25.     Cross-Defendants have been unjustly enriched and, therefore, it would be inequitable  
17 for Cross-Defendants to be allowed to retain the benefits of Cross-Complainant's legal services  
18 without being ordered to pay the reasonable value therefor, to wit: \$120,660.06, together with interest  
19 thereon at the legal rate.

20          WHEREFORE, Cross-Complainant prays for Judgment against Cross-Defendants, as follows:

- 21          1.       For damages in the aggregate sum of \$120,660.06, together with interest thereon at the  
22 legal rate;  
23          2.       For costs of suit incurred herein; and  
24          3.       For such other relief as the Court deems just and proper.

25 Dated: December 16, 2011

Respectfully Submitted,

26 By Jennifer Lynch  
27 JENNIFER LYNCH  
28 Attorney for Cross-Complainant  
JENNIFER LYNCH

12/19/11

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EXHIBIT A

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## ATTORNEY-CLIENT AGREEMENT

This Attorney-Client Agreement ("Agreement") is entered by and between Lee Caplin and Gita Caplin, individuals, and Lee Caplin as Guardian ad Litem for Minor Child, ("Client") and Jennifer L. Lynch, Attorney at Law ("Attorney").

1. **DESCRIPTION OF MATTER.** Attorney has been retained by clients as regional counsel to work with and assist Mr. Mark Lane, Esq. in the lawsuit, *Caplin vs. Harvard-Westlake School*.

2. **SCOPE AND DUTIES.** Attorney shall provide those legal services reasonably required to represent client, and shall take reasonable steps to keep client informed of progress and respond to client's inquiries. Client shall be truthful with attorney, cooperate with attorney, keep attorney informed of developments, abide by this contract, and pay attorney's bills as agreed upon.

3. **LEGAL FEES.** Client agrees to pay for legal services at the following rates: Attorneys - \$150 per hour, paralegal fees - \$85, paralegal with MBA - \$105 per hour. Attorney is further to be paid a 10% contingency of overall case in exchange for reduced hourly fees. The contingency is based on percentage of any and all awards paid to client or on their behalf inclusive of costs for medical treatment. The contingency is figured from the gross total award and not after reductions for costs or expenses. Should client wish to appeal, a separate and additional fee agreement would need to be agreed. Attorney reserves the right to change hourly rates at any time upon thirty days prior written notice to client. You will be billed for all time spent on your matter, including but not limited to court appearances, research, preparation time, telephone calls, correspondence, drafting of pleadings or documents, travel time, depositions, conferences, appointments and other necessary services.

4. **COSTS AND EXPENSES.** In addition to paying legal fees, client shall reimburse attorney for all costs and expenses incurred by attorney, including but not limited to, process of service fees, fees fixed by law or assessed by courts or other agencies, court reporters' fees, costs of bonds required, messenger and other delivery fees, postage, copying, parking, mileage, investigation expenses, consultants' fees, expert witness fees, and other similar items. Attorney shall obtain client's consent before incurring an external cost in excess of \$1,500 or before retaining outside investigators or consultants. Client will be asked to pay \$5,000 for a retainer, which will be deposited into a client trust account for this case and billed against. Attorney may take fees and costs from retainer as needed. Client must replenish retainer upon billing statement or other notice. Attorney has the right to withdraw if full retainers and/or fees are not paid. If any problem arises and client has a disagreement as to the accounts payable, client must raise the issue with attorney. Client recognizes that Attorney might be extending credit to *Client and authorizes that Attorney may check their personal and/or business credit records. Client hereby grants Attorney a lien on any and all claims or causes of action that are the subject of Attorney's representation under this Contract.* Attorney's lien will be for all sums due and owing to Attorney at the conclusion of Attorney's services or on a contingency, for quantum merit, or services rendered.

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EXHIBIT A

5. **STATEMENTS.** Attorneys shall send client periodic statements for fees and costs incurred. The statements shall be sent approximately every thirty (30) days. If the retainer has been exhausted and client has not been requested to deposit another retainer, client shall pay attorneys' fees within fifteen (15) days after each statement's date or be subject to interest fees of 10% APR.

6. **DISCHARGE AND WITHDRAWAL.** Client may discharge attorney at any time. Attorney may withdraw with client's consent or for good cause. Good cause includes client's breach of this contract, client's refusal to cooperate with attorney or to follow attorney's advice on a material matter or any other fact or circumstance that would render attorney's continuing representation unlawful or unethical.

A. Attorney shall also have the right to withdraw from the case and will ask Client to sign the Substitution of Attorney form, if any of the following occurs:

1. Client wants to do or suggests a criminal act;
2. Attorney discovers Client has used her services to perform an illegal act;
3. Client insists that Attorney do something that is unethical or unwise;
4. Client and Attorney do not get along to the point that they mistrust each other;
5. Client does not talk to Attorney;
6. Client refuses to pay Attorney's fees or expenses;
7. Client refuses to accept or offer a settlement which Attorney believes is reasonable;
8. Client does not follow Attorney's advice.

B. Attorney will file a Substitution of Attorney form, or file a Motion to Withdraw upon the following conditions:

- a. Attorney will give Client sufficient notice to retain a new attorney; and
- b. Upon receiving a conformed Substitution of Attorney or Order granting Attorney's Motion to Withdraw, Attorney will deliver to Client all papers and property belonging to Client.

C. If Client refuses to sign the Substitution of Attorney form when asked, the Client may have to pay additional attorney's fees and court costs. It is the right of Attorney to substitute out of Client's case upon the term and conditions set forth above. Client realizes that any substitution shall have no effect on the fees and costs set forth in this agreement.

7. **DISCLAIMER OF GUARANTEE.** Nothing in this contract and nothing in attorney's statements to client will be construed as a promise or guarantee about the outcome of client's matter. Attorney makes no such promises or guarantees. Attorney's comments about the client's matter are expressions of opinion only.

8. **ARBITRATION AND APPLICABLE LAW.** Client agrees that this Fee Agreement has been entered into in the State of California. If a dispute shall arise, whether a party has failed to honor this Agreement or as to the amount of fees or costs owed, the matter may be submitted by either party to the Arbitration Committee of the San Diego County Bar Association for arbitration or other mutually agreeable arbitration or mediation service and we agree to be bound by the results of any such arbitration.



9. **ERRORS AND OMISSIONS INSURANCE COVERAGE.** Effective January 1, 1993, California law requires that as part of the Fee Agreement between attorney and client that attorney inform the client that attorney maintains Errors and Omissions Insurance coverage applicable to the services to be rendered to the client in this matter. Attorney has such insurance.

10. **CONFLICTS.** If attorney is representing multiple plaintiffs, client acknowledges and understands that potential conflicts could arise between the plaintiffs. Each plaintiff has the right to withdraw from the case, or accept a settlement, without the others consent. As such any potential conflicts this could raise are hereby waived. If an actual conflict exists relating to the prosecution of the case, this will be brought to the attention of the clients and attorney may have to withdraw from the case.

11. **MODIFICATIONS.** There is to be no change or waiver of any of the provisions of this Agreement unless (1) the change is in writing and signed by both of us; or (2) upon thirty (30) days notice by Attorney, as set forth above.

Understood, agreed, and approved by:

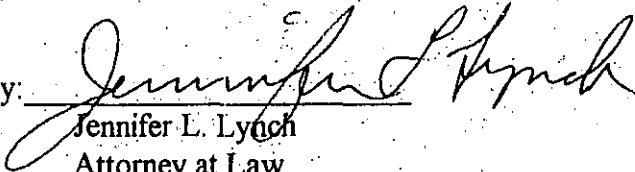
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Lee Caplin, individually  
and as Guardian ad Litem for Minor Child

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Gita Caplin

Dated: 6/8/05

By:   
Jennifer L. Lynch  
Attorney at Law  
380 South Melrose Drive, Suite 414  
Vista, California 92081  
Phone: (760) 643-4113  
Fax: (760) 643-4112


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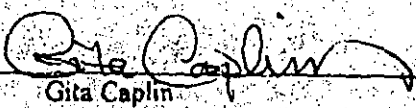
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Understood, agreed, and approved by:

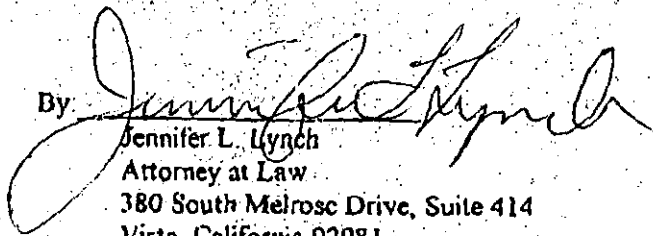
Dated: \_\_\_\_\_

By:   
Lee Caplin, individually  
and as Guardian ad Litem for Minor Child

Dated: \_\_\_\_\_

By:   
Gita Caplin

Dated: 6/8/05

By:   
Jennifer L. Lynch  
Attorney at Law  
380 South Melrose Drive, Suite 414  
Vista, California 92081  
Phone: (760) 643-4113  
Fax: (760) 643-4112

12/19/11

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18 and  
4 not a party to the within action; my business address is 405 Via Del Norte, Suite B, La Jolla, .

5 On December 16, 2011, I served the foregoing document described as: CROSS-COMPLAINT  
6 FOR DAMAGES on interested parties in this action as follows:

6 Jerry Kaplan, Esq.  
Joan Kenegos, Esq.  
7 Kaplan, Kenegos & Kadin  
9150 Wilshire Blvd., Suite 175  
8 Beverly Hills, California 90212  
310.859.7700 Tel  
9 310.859.7773 Fax

10 I served the foregoing document on interested parties in this action by placing a true copy  
11 thereof enclosed in a sealed envelope addressed as listed above. I am readily familiar with the firm's  
12 practice of collection and processing correspondence for mailing. Under that practice it would be  
13 deposited with U.S. postal service on that same date with postage thereon fully prepaid at Sherman  
Oaks, California in the ordinary course of business. I am aware that on motion of the party served,  
service is presumed invalid if the postal cancellation date or postage meter date is more than one day  
after the date of deposit for mailing in this affidavit.

14 Executed on December 16, 2011, at Sherman Oaks, California.

15 I declare under penalty of perjury under the laws of the State of California that the above is  
16 true and correct.

17  
18   
19 \_\_\_\_\_  
JENNIFER LYNCH