

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

SHOLODGE, INC.

vs

SUMMONS IN A CIVIL ACTION

Case No.

06 CV 2457

JAH LSP

APEX ATTORNEY SERVICES
INCORPORATED, and XL PROFESSIONAL
SERVICES INC.

TO: (Name and Address of Defendant)

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and
serve upon PLAINTIFF'S ATTORNEY

Allison D. Cato (Bar No. 155339)
Procopio Cory Hargreaves & Savitch LLP
530 B Street, Suite 2100
San Diego, California 92101

Eugene N. Bulso, Jr. (No. 12005)
Boulton Cummings Connors & Berry PLC
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203

An answer to the complaint which is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment
by default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.

NOV 07 2006

CLERK

DATE

By **L OBIERNO**, Deputy Clerk

28

1 Allison D. Cato (Bar No. 155339)
2 PROCOPIO, CORY, HARGREAVES &
3 SAVITCH LLP
4 530 B Street, Suite 2100
5 San Diego, California 92101
6 Telephone: (619) 238-1900
7 Facsimile: (619) 235-0398

8 Eugene N. Bulso, Jr. (No. 12005)
9 Jonathan D. Rose (No. 20967)
10 BOULT, CUMMINGS, CONNERS & BERRY, PLC
11 1600 Division Street, Suite 700
12 P.O. Box 340025
13 Nashville, Tennessee 37203

14 Attorneys for Plaintiff
15 SHOLODGE, INC.

16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA

18 SHOLODGE, INC.,

19 Plaintiffs,

20 v.

21 APEX ATTORNEY SERVICES
22 INCORPORATED, and XL PROFESSIONAL
23 SERVICES INC.,

24 Defendants.

25 Case No. 00 CV 2437

26 JAH LSP

27 COMPLAINT

28
1 SP

COMPLAINT

1 The Plaintiff, ShoLodge Inc., for its cause of action against the Defendants, Apex
2 Attorney Services Incorporated and XL Professional Services Inc., states as follows:

3 **PARTIES AND JURISDICTION**

4 1. The Plaintiff, ShoLodge Inc. ("ShoLodge"), is a corporation organized and
5 existing pursuant to the laws of the State of Tennessee, with its principal place of business
6 located at 120 Maple Drive, Hendersonville, Sumner County, Tennessee.

7 2. Defendant Apex Attorney Services Incorporated ("Apex") is a corporation
8 organized and existing pursuant to the laws of the State of California, with its principal place of
9 business in Los Angeles, California.

10 3. Defendant XL Professional Services Inc. ("XL") is a corporation organized and
11 existing pursuant to the laws of the State of California, with its principal place of business in San
12 Diego, California.

13 4. Venue of this action is proper in this district pursuant to 28 U.S.C. § 1391, in that
14 certain of the events giving rise to this action occurred in San Diego, California.

15 5. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C.
16 § 1332. The citizenship of the plaintiff is diverse from that of each of the defendants. The matter
17 in controversy in this action exceeds \$75,000, exclusive of interest and costs.

18 **BACKGROUND**

19 6. On or about March 10, 2005, ShoLodge filed an action against Trigild Services
20 Inc. ("Trigild") in the U.S. District Court for the Central District of California, styled *ShoLodge*
21 *Inc. v. Wells Fargo Foothill, et al.*, Case No. CV-04-4725-GPS.

22 7. ShoLodge, through counsel, retained Apex to serve the summons and complaint
23 upon Trigild. Apex, in turn, retained XL to assist in effecting service of process upon Trigild.
24 XL contracted with a licensed process server, Gloria San Miguel, to serve the summons and the
25 complaint.

26 8. On April 6, 2005, Ms. San Miguel served the summons and complaint on Carol
27 Chen, Trigild's Controller.
28

1 9. Trigild did not answer or otherwise respond to the complaint within twenty (20)
2 days of service as required by the Federal Rules of Civil Procedure.

3 10. Accordingly, on June 22, 2005, ShoLodge requested that a default be entered
4 against Trigild. In connection with the Request for Entry of Default, Apex provided to
5 ShoLodge's counsel a Proof of Service signed by Ms. San Miguel attesting to service of the
6 summons and complaint upon Trigild. A true and accurate copy of the Proof of Service provided
7 to ShoLodge is attached hereto as Exhibit 1. The Proof of Service was signed under penalty of
8 perjury and upon personal knowledge.

9 11. In reliance upon the Proof of Service, a Default was entered against Trigild on
10 July 29, 2005. On January 31, 2006, the Court awarded ShoLodge Judgment against Trigild in
11 the amount of \$7,674,854.39. A true and accurate copy of the Judgment is attached hereto as
12 Exhibit 2.

13 12. After entry of the Judgment, ShoLodge, pursuant to Fed. R. Civ. P. 69, conducted
14 post-judgment depositions of Trigild and its controller, Carol Chen. Through its post-judgment
15 discovery efforts, ShoLodge learned that, prior to Judgment, Trigild had transferred all, or
16 substantially all, of its assets to its sole shareholder, William and Judy Hoffman Investments L.P.
17 ("Hoffman Investments").

18 13. On April 25, 2006, ShoLodge filed a fraudulent transfer action against Hoffman
19 Investments and its general partners, William and Judy Hoffman, in U.S. District Court for the
20 Southern District of California.

21 14. On June 30, 2006, ShoLodge filed a motion for summary judgment against
22 William Hoffman, Judy Hoffman and Hoffman Investments on the basis that Trigild's transfer of
23 all or substantially all of its assets to Hoffman Investments constituted a fraudulent transfer under
24 Cal. Civ. Code § 3439.01 et seq.

25 15. On July 3, 2006 after ShoLodge had filed its action for fraudulent transfer against
26 the Hoffmans and after it had filed a motion for summary judgment, Trigild filed a motion in the
27 U.S. Central District of California seeking to have the Judgment issued in favor of ShoLodge set
28 aside. The basis for Trigild's motion was improper service of process.

1 knowledge of the facts contained therein, Apex and XL provided to ShoLodge a Proof of Service
2 which did not contain an authentic signature and which falsely claimed that the person signing
3 the Proof of Service had personal knowledge of the matters set forth therein.

4 24. As a direct and proximate result of Apex and XL's breach of the duty of care,
5 ShoLodge has suffered damage. Because the Proof of Service provided by Apex and XL was
6 neither true nor authentic, the Court in Case No. CV-04-4725 set aside the Judgment issued to
7 ShoLodge in reliance upon the Proof of Service. ShoLodge was damaged by Apex and XL's
8 breach of duty in the amount of \$7,674,854.39.

9 **COUNT II**

10 **(Breach of Contract)**

11 25. The allegations set forth in paragraphs 1-24 are hereby incorporated by reference
12 as fully as if set out verbatim.

13 26. ShoLodge, through counsel, retained Apex to serve the Summons and Complaint
14 filed in Case No. CV-04-4725-GPS upon Trigild Services Inc. ShoLodge compensated Apex for
15 its services in accordance with the agreement of the parties.

16 27. Apex, however, failed to comply with its obligations under the agreement.
17 Specifically, although Apex successfully effected service of process upon an agent of Trigild,
18 Apex provided to ShoLodge a forged Proof of Service for filing with the Court.

19 28. By providing to ShoLodge a forged Proof of Service signed by someone who
20 lacked personal knowledge of the information set forth in the Proof of Service (which was signed
21 under penalty of perjury), Apex breached its contract with ShoLodge.

22 29. As a direct and proximate result of Apex's breach of contract, ShoLodge was
23 damaged. Specifically, as a result of Apex's conduct, the Court in Case No. CV-04-4725 set
24 aside a Judgment issued in favor of ShoLodge against Trigild in the amount of \$7,674,854.39.

25 **COUNT III**

26 **(Negligent and Intentional Misrepresentation)**

27 30. The allegations set forth in paragraphs 1-29 are hereby incorporated by reference
28 as fully as if set out verbatim.



ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)		TELEPHONE NO.	FOR COURT USE ONLY	
ATTORNEY FOR (NAME)				
Insert name of court, judicial district or branch court (if any), and post office and street address				
UNITED STATES DISTRICT COURT, CENTRAL DISTRICT, OF CALIFORNIA				
SHORT NAME OF CASE				
SHOLIDGE, INC. vs. WELLS FARGO FOOTHILL ET AL				
PROOF OF SERVICE		DATE:	TIME:	DEPT/DIV:
				CASE NUMBER:
				CV-04-4725 GPS (MAX)

I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action;

I served the
SUMMONS; SECOND AMENDED COMPLAINT

Name: **TRIGILD SERVICES, INC.**

Person Served: **CAROL CHEN, CONTROLLER
 AUTHORIZED TO ACCEPT**

Date of Delivery: **04/06/05**
 Time of Delivery: **02:44 pm**

Place of Service: **3323 CARMEL MOUNTAIN RD 2ND FLOOR
 SAN DIEGO, CA 92121**

(Business)

Physical Description:

AGE: 40YS HAIR: BLACK HEIGHT: 5'1" RACE: ASIAN
 SEX: FEMALE EYES: BROWN WEIGHT: 110.LBS

Manner of Service: **Personal Service - By Personally Delivering Copies.**

Witness fees were not demanded or tendered.

Fee for service:

JUDICIAL COUNSEL FORM, RULE #982 (A) (15)

Registered Number: **SAN DIEGO 950** County:

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on: **June 10, 2005** at: **San Diego** California.

Signature: *Gloria San Miguel*
 Name: **GLORIA SAN MIGUEL**
 Title: **REGISTERED CALIFORNIA PROCESS SERVER**

PROOF OF SERVICE BY MAIL

1 I, Lisa Hon, certify and declare as follows:
2

3 I am over the age of eighteen years, and not a party to this action. My
4 business address is 1901 Avenue of the Stars, Suite 1900, Los Angeles, California 90067,
5 which is located in the county where the mailing described below took place.

6 I am familiar with the business practice at my place of business for collection
7 and processing of correspondence for mailing with the United States Postal Service.
8 Correspondence so collected and processed is deposited with the United States Postal Service
9 that same day in the ordinary course of business.

10 On June 17, 2005, at my place of business at 1901 Avenue of the Stars, Suite
11 1900, Los Angeles, California 90067, the following or attached document(s):

12 ORIGINAL SUMMONS ON SECOND AMENDED COMPLAINT AND
13 PROOF OF SERVICE ON TRIGILD SERVICES, INC.

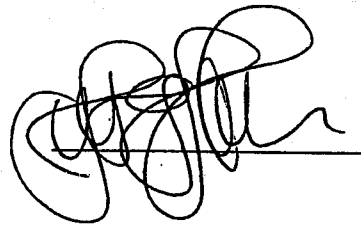
14 was placed for deposit in the United States Postal Service in a sealed envelope(s), with
15 postage fully prepaid, addressed to:

16 See attached SERVICE LIST

17 and that envelope(s) was placed for collection and mailing on that date, following ordinary
18 business practices.

19 I certify and declare under penalty of perjury under the laws of the State of
20 California and of the United States of America that the foregoing is true and correct.

21 Executed on June 17, 2005.

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SERVICE LIST

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Cynthia M. Cohen, Esq.
Paul, Hastings, Janofsky & Walker LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071-2228

Robert W. Peyton, Esq.
Derek S. Whitman, Esq.
CB Richard Ellis Real Estate Services, Inc.
355 S. Grand Avenue, 12th Floor
Los Angeles, CA 90071

Eugene N. Bulso, Jr., Esq.
Boult, Cummings, Conners & Berry, PLC
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, TN 37203-0025

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 CENTRAL DISTRICT OF CALIFORNIA
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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

SHOLOGDE, INC.,

Plaintiffs,

vs.

WELLS FARGO FOOTHILL, INC.
 f/k/a FOOTHILL CAPITAL
 CORPORATION, TRIGILD
 SERVICES, INC., and
 INSIGNIA/ESG HOTEL
 PARTNERS, INC.,

Defendants.

Case No. CV-04-4725 GPS (MANx)

**[PROPOSED] DEFAULT JUDGMENT
 AGAINST DEFENDANT TRIGILD
 SERVICES, INC.**

THIS CONSTITUTES NOTICE OF ENTRY
 AS REQUIRED BY FRCP, RULE 77(d).

THIS COURT, having considered the Plaintiff's Motion for Default Judgment Against Defendant Trigild Services, Inc. [Docket No. 103], the Declaration of Bob Marlowe [Docket No. 105], and the entire record in this action, rules as follows:

IT IS HEREBY ORDERED:

DOCKETED ON CM
 FEB - 2 2006
 BY _____ 001

**[PROPOSED] DEFAULT JUDGMENT AGAINST
 TRIGILD SERVICES, INC.**

123

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained hereon neither replace nor supplement the filing and service of pleadings, nor other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS SHOLODGE, INC.	DEFENDANTS APEX ATTORNEY SERVICES INCORPORATED and XL PROFESSIONAL SERVICES INC.
(b) County of Residence of First Listed Plaintiff <u>Sumner County, TN</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed <u>Los Angeles, CA</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
(c) Attorney's (Firm Name, Address, and Telephone Number) Allison D. Cato (Bar No. 155339) Procopio Cory Hargreaves & Savitch LLP 530 B Street, Suite 2100 San Diego, California 92101 Tel: (619) 238-1900	<div style="font-size: 2em; font-weight: bold; margin: 10px 0;">06 CV 2457</div> <div style="font-size: 2em; font-weight: bold; margin: 10px 0;">JAH LSP</div>

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)												
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> </tr> </table>		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3											

IV. NATURE OF SUIT (Place an "X" in One Box Only)						
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury </td> <td style="width:50%; vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> </tr> </table>	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability					
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

V. ORIGIN	(Place an "X" in One Box Only)	Transferred from
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court
	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 another district (specify)
		<input type="checkbox"/> 6 Multidistrict Litigation
		<input type="checkbox"/> 7 Judge from District Judgment

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. Section 1332</u>
	Brief description of cause: <u>Negligence, Breach of Contract, Negligent and Intentional Misrepresentation</u>

II. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ <u>7,674,854.39</u>	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
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III. RELATED CASE(S) IF ANY	(See instructions):
------------------------------------	---------------------

DATE November <u>7</u> , 2006	JUDGE	DOCKET NUMBER
OR OFFICE USE ONLY	SIGNATURE OF ATTORNEY OF RECORD 	
RECEIPT # <u>131439</u>	AMOUNT <u>\$350</u>	APPLYING IFP
	JUDGE	MAG. JUDGE

See 11/7/06

FILED

06 NOV 28 AM 7:47

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: [Signature] DEPUTY

Sholodge, Inc. Plaintiff

vs

Apex Attorney Services
Incorporated, and XL Professional
Services, Inc. Defendant

Case Number:06cv2457-JAH(LSP)

**NOTICE OF NONCOMPLIANCE WITH
LOCAL RULE 5.4(a) MANDATORY
ELECTRONIC FILING**

Document Submitted: Answer to Complaint

Filed by Attorney: Stephen L. Backus

The document(s) listed above were not submitted electronically and therefore do not comply with Local Rule 5.4(a).

L.R. 5.4(a) - Except as proscribed by local rule, order or other procedure, the court has designated all cases to be assigned to the Electronic Filing System. Unless otherwise expressly provided in the Court's Electronic Case Filing Administrative Policies and Procedures Manual, the Court's Local Rules, or in the exceptional circumstances preventing a registered user from filing electronically, as of November 1, 2006 all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the court by a registered user in connection with a case assigned to the Electronic Filing System shall be electronically filed.

A copy of this notice, along with the CM/ECF registration form has been provided to counsel of record for this party.

****A completed registration form shall be submitted to the Clerk's Office within 5 business days of receipt of this notice.**

Please take notice, further documents submitted that do not comply with this rule will be submitted to the Court on a discrepancy order.

Date: 11/27/06

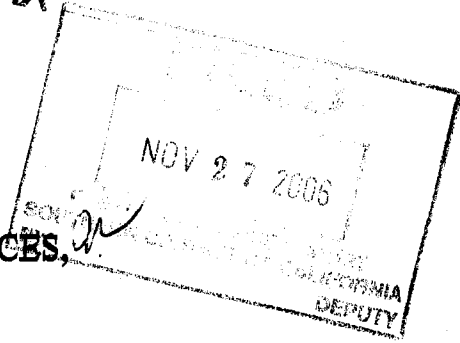
W. Samuel Hamrick, Clerk of Court

By: s/D. Kaufman Deputy Clerk

82

VIA-FAX

1 STEPHEN L. BACKUS, SBN: 98496
2 BACKUS, BLAND, NAVARRO & WEBER LLP
3 444 South Flower Street, Suite 2160
4 Los Angeles, California 90071
5 Telephone: (213) 833-7990
6 Facsimile: (213) 833-7997



7 Attorneys for Defendant, APEX ATTORNEY SERVICES,
8 INCORPORATED

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SHOLODGE, INC.,

12 Plaintiff(s),

13 v.

14 APEX ATTORNEY SERVICES
15 INCORPORATED, and XL
16 PROFESSIONAL SERVICES, INC.,

17 Defendant(s).

CASE NO. 06 CV 2457 JAH LSP

ANSWER TO COMPLAINT

Complaint Filed: November 7, 2006

18
19 As an answer by Defendant, APEX ATTORNEY SERVICES,
20 INCORPORATED (hereinafter "APEX") to the Complaint, admissions, denials and
21 allegations are made as follows:

22 1. As to Paragraph 1, there is not information or belief possessed at this time
23 sufficient to enable an answer to be made, and upon that ground denial is made to each
24 and every allegation contained therein.

25 2. As to Paragraph 2, an admission is made that APEX is a corporation
26 existing under the laws of the State of California with its principal place of business in
27 Los Angeles, California.

28 3. As to Paragraph 3, there is not sufficient information or belief possessed at

788

1 this time sufficient to enable an answer to be made, and upon that ground a denial is
2 made to each and every allegation contained therein.

3 4. As to paragraph 4, a denial is made to each and every allegation contained
4 therein.

5 5. As to paragraph 5, there is not information or belief possessed at this time
6 sufficient to enable an answer to be made, and upon that ground a denial is made to
7 each and every allegation contained therein.

8 6. As to paragraph 6, an admission is made that Sholodge filed an action in
9 the U.S. District Court for the Central District of California styled *Sholodge v. Wells*
10 *Fargo Foothill, et al.*, Case No. CV-04-4725-GPS. Except for that admission, there is
11 not information or belief possessed at this time sufficient to enable an answer to be
12 made, and upon that ground denial is made to each and every other allegation contained
13 therein.

14 7. As to paragraph 7, an admission to the facts and allegations contained in
15 paragraph 7.

16 8. As to paragraph 8, an admission is made that on or about April 6, 2005,
17 Gloria San Miguel served the Summons and Complaint provided to APEX by
18 Sholodge's counsel on Carol Chen. Based on information and belief it is denied that
19 Carol Chen was Trigild's controller at the time of service.

20 9. As to paragraph 9, there is not information or belief possessed at this time
21 sufficient to enable an answer to be made, and upon that ground denial is made to each
22 and every other allegation contained therein.

23 10. As to paragraph 10, an admission is made that APEX provided to
24 Sholodge's counsel a proof of service evidencing the fact that Carol Chen was served
25 with the Summons and Complaint and that a copy of the proof of service that APEX
26 provided to Sholodge is attached to their complaint as Exhibit 1. Except for that
27 admission, a denial is made to each and every remaining allegation contained therein.

28 11. As to paragraph 11, there is not information or belief possessed at this time

1 sufficient to enable an answer to be made, and upon that ground denial is made to each
2 and every other allegation contained therein.

3 12. As to paragraph 12, there is not information or belief possessed at this time
4 sufficient to enable an answer to be made, and upon that ground denial is made to each
5 and every other allegation contained therein.

6 13. As to paragraph 13, there is not information or belief possessed at this time
7 sufficient to enable an answer to be made, and upon that ground denial is made to each
8 and every other allegation contained therein.

9 14. As to paragraph 14, there is not information or belief possessed at this time
10 sufficient to enable an answer to be made, and upon that ground denial is made to each
11 and every other allegation contained therein.

12 15. As to paragraph 15, there is not information or belief possessed at this time
13 sufficient to enable an answer to be made, and upon that ground denial is made to each
14 and every other allegation contained therein.

15 16. As to paragraph 16, there is not information or belief possessed at this time
16 sufficient to enable an answer to be made, and upon that ground denial is made to each
17 and every other allegation contained therein.

18 17. As to paragraph 17, there is not information or belief possessed at this time
19 sufficient to enable an answer to be made, and upon that ground denial is made to each
20 and every other allegation contained therein.

21 18. As to paragraph 18, APEX admits that it signed the proof of service for
22 Gloria San Miguel after she confirmed that she served Carol Chen with the summons on
23 April 6, 2005 by personal delivery at 3:44 p.m. at 3323 Carmel Mountain Road, 2nd
24 Floor, San Diego, California 92121. It is further admitted based on information and
25 belief that XL Professional Services knew of and consented to APEX signing of the
26 proof of service on behalf of its process server. Except for those admissions, denial is
27 made to each and every remaining allegation contained therein.

28 19. As to paragraph 19, there is not information or belief possessed at this time

1 sufficient to enable an answer to be made, and upon that ground denial is made to each
2 and every other allegation contained therein.

3 20. As to paragraph 20, there is not information or belief possessed at this time
4 sufficient to enable an answer to be made, and upon that ground denial is made to each
5 and every other allegation contained therein.

6 21. As to paragraph 21, APEX repeats and incorporates by reference its
7 answers to paragraphs 1 through 20 above.

8 22. As to paragraph 22, APEX admits that it owed a duty to effect the service
9 of process upon Carol Chen. Except for that admission there is not information or
10 belief possessed at this time sufficient to enable an answer to be made, and upon that
11 ground denial is made to each and every allegation contained therein.

12 23. As to paragraph 23, a denial is made to each and every allegation contained
13 therein.

14 24. As to paragraph 24, there is not information or belief possessed at this time
15 sufficient to enable an answer to be made, and upon that ground denial is made to each
16 and every allegation contained therein.

17 25. As to paragraph 25, APEX repeats and incorporates its responses to
18 paragraphs 1 through 24 above.

19 26. As to paragraph 26, APEX admits the facts and allegations set forth
20 therein.

21 27. As to paragraph 27, APEX admits that APEX successfully effected service
22 of process upon Carol Chen. Except for that admission based on information and belief
23 possessed at this time, the allegations are untrue and therefore, a denial is made to each
24 and every allegation contained therein.

25 28. As to paragraph 28, based upon information and belief possessed at this
26 time, the allegations are untrue and therefore, a denial is made to each and every
27 allegation contained therein.

28 29. As to paragraph 29, based on information and belief possessed at this time,

1 the allegations are untrue and therefore, a denial is made to each and every allegation
2 contained therein.

3 30. As to paragraph 30, APEX repeats and incorporates herein its responses to
4 paragraph 1 through 29.

5 31. As to paragraph 31, based on the information and belief possessed at this
6 time, the allegations are untrue and therefore, a denial is made to each and every
7 allegation contained therein.

8 32. As to paragraph 32, there is not information or belief possessed at this time
9 sufficient to enable an answer to be made, and upon that ground a denial is made to
10 each and every allegation contained therein.

11 33. As to paragraph 33, based on the information and belief possessed at this
12 time the allegations are untrue and therefore, a denial is made to each and every
13 allegation contained therein.

14 **AFFIRMATIVE DEFENSES**

15 **FIRST AFFIRMATIVE DEFENSE**

16 **(Failure to State Cause of Action)**

17 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT, it is
18 alleged that the Complaint does not state facts sufficient to constitute a cause of action
19 against this answering Defendant.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **(Comparative Negligence - Plaintiff)**

22 AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
23 COMPLAINT, it is alleged that Plaintiff was careless and negligent with respect to the
24 matters alleged in the Complaint and that such carelessness and negligence proximately
25 contributed to the happening of the accident and to the injuries, loss and damages
26 complained of, if any there were, and Plaintiff's contributory or comparative negligence
27 either bars or proportionately reduces any potential recovery.

28 ///

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Comparative Negligence—Other Persons)**

3 AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
4 COMPLAINT, it is alleged that other persons or entities still not identified, were careless,
5 negligent and at fault, and that this carelessness, negligence, and fault proximately caused
6 or contributed to the happening of the incidents referred to in the Complaint.

7 **FOURTH AFFIRMATIVE DEFENSE**

8 **(Failure to Mitigate Damages)**

9 AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
10 COMPLAINT, it is alleged that Plaintiff failed and neglected to use reasonable care to
11 protect himself and to minimize the losses and damages complained of, if any there were.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 **(Apportionment of Damages)**

14 AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
15 COMPLAINT, Defendant alleges that without conceding that Plaintiff has sustained any
16 damages as alleged in the Complaint, if any such damages were sustained by Plaintiff,
17 those damages should be properly apportioned among all persons or entities who
18 contributed to those damages in proportion of their fault, pursuant to California Civil
19 Code §1431.2, and any other relevant provisions of California, common and statutory
20 law.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 **(Superceding Negligence)**


23 AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
24 COMPLAINT, Defendant alleges that its negligence, if any, was not a substantial factor
25 in causing Plaintiff's injuries and, therefore, was not a contributing cause. This
26 Defendant's alleged acts, if any, were superceded by the negligence of others who
27 created the conditions and caused the alleged damages, if any, to occur. This
28 independent, intervening and superceding conduct of parties other than this Defendant,

1 was the proximate cause of any alleged damages sustained by Plaintiff.
2

3 Dated: November 20, 2006

BACKUS, BLAND, NAVARRO & WEBER LLP

4
5 By:


6 **STEPHEN L. BACKUS**
7 Attorneys for Defendant, APEX ATTORNEY
8 SERVICES, INCORPORATED
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VIA-FA

PROOF OF SERVICE BY MAIL

1
2 I, Charlyn D. Greer, declare as follows:

3
4 I am over the age of 18 years, and not a party to or interested in the within
5 entitled action. I am an employee of BACKUS, BLAND, NAVARRO & WEBER
6 LLP, and my business address is 444 South Flower Street, Suite 2160, Los Angeles,
California 90071.

7 On November 27, 2006, I served by mail the following documents: **ANSWER**
8 **TO COMPLAINT**

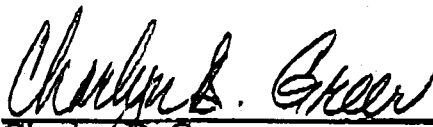
9 I enclosed a true and correct copy of said document(s), in an envelope via United
10 States Mail, addressed as follows:

11 **SEE ATTACHED SERVICE LIST**

12 I am readily familiar with my firm's practice for collection and processing of
13 correspondence for mailing with the United States Postal Service, to-wit, that
14 correspondence will be deposited with the United States Postal Service in Los Angeles,
15 California, on the same day in the ordinary course of business. I sealed said envelope
16 and placed it for collection and mailing on November 27, 2006, following the ordinary
business practice.

17 I declare under penalty of perjury under the laws of the State of California, that
18 the foregoing is true and correct.

19 Executed on November 27, 2006, at Los Angeles, California.

20
21 
22 Charlyn D. Greer
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SERVICE LIST

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Allison D. Cato, Esq.
PROCOPIO, CORY, HARGREAVES
& SAVITCH LLP
530 B Street, Suite 2100
San Diego, CA 92101
Phone: (619) 238-1900
Fax: (619) 235-0398
*Attorney for Plaintiff, SHOLODGE,
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WALKER
515 South Flower Street, 25th Floor
Los Angeles, CA 90071-2228

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sholodge, Inc.)
)
 Plaintiff)
)
 vs.)
)
 Apex Attorney Services Inc., and XL)
 Professional Services, Inc.)
 Defendant)

Case No. 06 CV 2457

PRO HAC VICE APPLICATION

Sholodge, Inc.
Party Represented

I, Eugene N. Bulso, Jr. hereby petition the above entitled court to permit me
(Applicant)
to appear and participate in this case and in support of petition state:


My residence address 9025 Old Smyrna Road, Brentwood, TN 37027
and phone number are: (615) 221-4102

My firm name is: Boult Cummings Conners & Berry PLC

My office address and 1600 Division Street, Suite 700
phone number are: Nashville, TN 37203; (615) 252-2360

FILED

NOV 14 2006

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY  DEPUTY

That on November 1, 1986 I was admitted to practice before USDC, Middle District of
Tennessee;
(Name of Court)

and am currently in good standing and eligible to practice in said court:

That I am not currently suspended or disbarred in any other court:

That I (have) (have not) concurrently or within the year preceding this application made any pro hac vice application to this court.

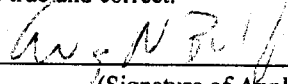
(If previous application made, complete the following)

Title of case Sholodge, Inc. v. William and Judy Hoffman Investments, L.P., et al.

Case number 06 CV 0946 H BLM Date of application April 26, 2006

Application X granted denied

I declare under penalty of perjury that the foregoing is true and correct.

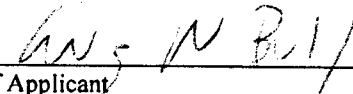

(Signature of Applicant)

Eugene N. Bulso, Jr.

DESIGNATION OF LOCAL COUNSEL

I hereby designate the below named as associate local counsel.

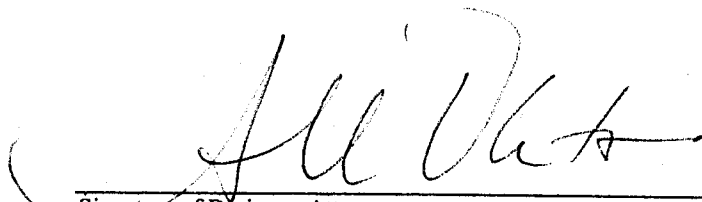
Allison D. Cato (Name) (619) 238-1900 (Telephone)
530 B Street, Suite 2100 (Street) San Diego, CA (City) 92101 (Zip code)


Signature of Applicant
Eugene N. Bulso, Jr.

American LegalNet, Inc.
www.USCourtForms.com

4 20

I hereby consent to the above designation.

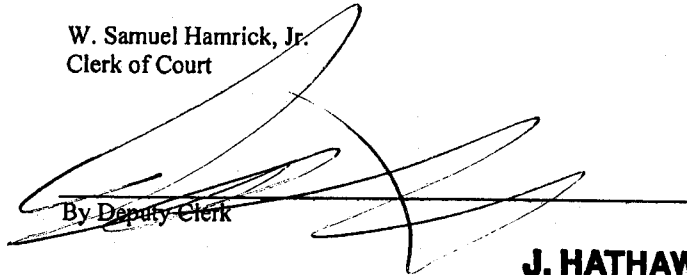


Signature of Designee Attorney
Allison D. Cato

The pro hac vice application is hereby approved for filing.

W. Samuel Hamrick, Jr.
Clerk of Court

131440 ser #180



By Deputy Clerk
J. HATHAWAY

Received \$180.00 for Court Library fee

Deputy Clerk

Pro Hac Vice (For this one particular occasion)

An attorney who is not a member of the California State Bar, but who is a member in good standing of, and eligible to practice before, the bar of any United States Court or of the highest court of any State or of any Territory or Insular possession of the United States, who is of good moral character, and who has been retained to appear in this Court, be permitted to appear and participate in a particular case. An attorney is not eligible to practice pursuant to this paragraph in any one or more of the following apply to him/her: (1) he/she resides in California, (2) he/she is regularly employed in California, or (3) he/she is regularly engaged in business, professional, or other activities in California.

The pro hac vice application shall be presented to the Clerk and shall state under penalty of perjury (1) the attorney's residence and office address, (2) by what court he/she has been admitted to practice and the date of admission, (3) that he/she is in good standing and eligible to practice in said court, (4) the he/she is not currently suspended or disbarred in any other court, and (5) if he/she has concurrently or within the year preceding his/her current application made any pro hac vice application to this court, the title and the case number of each matter wherein he made application, the date of application, and whether or not his/her application was granted. He/She shall also designate in his application a member of the bar of this Court with whom the Court and opposing counsel may readily communicate regarding the conduct of the case and upon whom papers shall be served. He/She shall file with such application the address, telephone number, and written consent of such designee.

Fee: \$180.00, payable to Clerk, U.S. District Court

Application and fee should be mailed directly to:

W. Samuel Hamrick, Jr., Clerk
United States District Court
Southern District of California
880 Front Street Suite 4290
San Diego, California 92101-8900

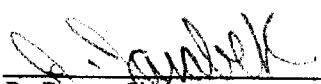
I hereby consent to the above designation.

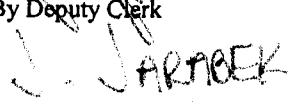


Signature of Designee Attorney
Allison D. Cato

The pro hac vice application is hereby approved for filing.

W. Samuel Hamrick, Jr.
Clerk of Court



By Deputy Clerk


See 12441 \$180

Received \$180.00 for Court Library fee

Deputy Clerk

Pro Hac Vice (For this one particular occasion)

An attorney who is not a member of the California State Bar, but who is a member in good standing of, and eligible to practice before, the bar of any United States Court or of the highest court of any State or of any Territory or Insular possession of the United States, who is of good moral character, and who has been retained to appear in this Court, be permitted to appear and participate in a particular case. An attorney is not eligible to practice pursuant to this paragraph in any one or more of the following apply to him/her: (1) he/she resides in California, (2) he/she is regularly employed in California, or (3) he/she is regularly engaged in business, professional, or other activities in California.

The pro hac vice application shall be presented to the Clerk and shall state under penalty of perjury (1) the attorney's residence and office address, (2) by what court he/she has been admitted to practice and the date of admission, (3) that he/she is in good standing and eligible to practice in said court, (4) the he/she is not currently suspended or disbarred in any other court, and (5) if he/she has concurrently or within the year preceding his/her current application made any pro hac vice application to this court, the title and the case number of each matter wherein he made application, the date of application, and whether or not his/her application was granted. He/She shall also designate in his application a member of the bar of this Court with whom the Court and opposing counsel may readily communicate regarding the conduct of the case and upon whom papers shall be served. He/She shall file with such application the address, telephone number, and written consent of such designee.

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Southern District of California
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San Diego, California 92101-8900