

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

\_\_\_\_\_  
CUH2A, ARCHITECTS ENGINEERS  
PLANNERS, P.C.

Plaintiff,

-against-

PEPSICO, INC.

\_\_\_\_\_  
Defendant.

Index No. 115530/09

ANSWER TO COMPLAINT

FILED  
JAN 25 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

Defendant PepsiCo, Inc. ("PepsiCo"), by way of answer to the Complaint filed by  
CUH2A, Architects Engineers Planners, P.C., says as follows:

THE PARTIES

1. It admits the allegations contained in paragraph one.
2. It admits the allegations contained in paragraph two.
3. It denies the allegations contained in Paragraph 3 except to admit that it entered into the following written agreements with plaintiff by which plaintiff was to provide certain professional services: Architectural Services Consulting Agreement, dated as of January 18, 2008; Letter of Intent, signed on or about April 7, 2008; Additional Services for the Completion of PepsiCo Strategic Master Plan Design, dated May 5, 2008; and Proposal and Contract Modification to Masterplanning, dated June 1, 2009 (hereinafter collectively as the "Written Agreements"), and it refers to the original or an authenticated copies of same for their contents thereof.

4. It denies the allegations contained in Paragraph 4, except to admit that it entered into the aforesaid Written Agreements, and it refers to the original or an authenticated copies of same for their contents thereof.

5. It denies the allegations contained in Paragraph 5, and by way of further defense, it says that it never entered into a final contract with plaintiff for a negotiated lump sum fee, as was contemplated by the aforesaid Letter of Intent.

6. It denies the allegations contained in Paragraph 6.

7. It denies the allegations contained in Paragraph 7.

8. It denies the allegations contained in Paragraph 8 insofar as it refers to what plaintiff terms as "the Project" except to admits that in March 2008 it deferred certain professional services that were to be performed by plaintiff.

9. It admits the allegations contained in Paragraph 9.

10. It denies the allegations contained in Paragraph 10.

11. It denies the allegations contained in Paragraph 11.

12. It denies the allegations contained in Paragraph 12.

13. It denies the allegations contained in Paragraph 13.

14. It denies the allegations contained in Paragraph 14.

15. It denies the allegations contained in Paragraph 15, except to admit that plaintiff withheld certain materials in connection with the provision of professional services.

16. It denies the allegations contained in Paragraph 16, except to admit that plaintiff withheld certain materials in connection with the provision of professional services.

17. It denies the allegations contained in Paragraph 17.

### **FIRST CAUSE OF ACTION**

18. It repeats and makes a part hereof, as though fully set forth herein, its answers to the allegations contained in Paragraphs 1 through 17 of the Complaint.

19. It denies the allegations contained in Paragraph 19 except to admit that plaintiff provided certain professional services for which it was compensated.

20. It denies the allegations contained in Paragraph 20 except to admit that it compensated plaintiff for certain professional services as set forth in the aforesaid Written Agreements.

21. It denies the allegations contained in Paragraph 21.

22. It denies the allegations contained in Paragraph 22.

23. It denies the allegations contained in Paragraph 23.

### **SECOND CAUSE OF ACTION**

24. It repeats and makes a part hereof, as though fully set forth herein, its answers to the allegations contained in Paragraphs 1 through 23 of the Complaint.

25. It denies the allegations contained in Paragraph 25 except to admit that plaintiff provided professional services pursuant to the terms of the aforesaid Written Agreements.

26. It denies the allegations contained in Paragraph 26, and by way of further defense, states that it has made payment to plaintiff for all properly presented invoices for payment of professional services.

27. It denies the allegations contained in Paragraph 27.

### **THIRD CAUSE OF ACTION**

28. It repeats and makes a part hereof, as though fully set forth herein, its answers to the allegations contained in Paragraphs 1 through 27 of the Complaint.

29. It denies the allegations contained in Paragraph 29 except to admit that plaintiff provided professional services pursuant to the terms of the aforesaid Written Agreements.

30. It denies the allegations contained in Paragraph 30, and by way of further defense, states that it has made payment to plaintiff for all properly presented invoices for payment of professional services.

31. It denies the allegations contained in Paragraph 31.

### **FOURTH CAUSE OF ACTION**

32. It repeats and makes a part hereof, as though fully set forth herein, its answers to the allegations contained in Paragraphs 1 through 31 of the Complaint.

33. It denies the allegations contained in Paragraph 33.

34. It denies the allegations contained in Paragraph 34.

35. It denies the allegations contained in Paragraph 35.

### **FIFTH CAUSE OF ACTION**

36. It repeats and makes a part hereof, as though fully set forth herein, its answers to the allegations contained in Paragraphs 1 through 35 of the Complaint.

37. It denies the allegations contained in Paragraph 37 except to admit that it agreed to pay plaintiff for professional services in accordance with the terms of the aforesaid Written Agreements.

38. It denies the allegations contained in Paragraph 38.

39. It denies the allegations contained in Paragraph 39.

40. It denies the allegations contained in Paragraph 40.

#### **SIXTH CAUSE OF ACTION**

41. It repeats and makes a part hereof, as though fully set forth herein, its answers to the allegations contained in Paragraphs 1 through 40 of the Complaint.

42. It denies the allegations contained in Paragraph 42.

43. It denies the allegations contained in Paragraph 43.

44. It denies the allegations contained in Paragraph 44.

#### **SEVENTH CAUSE OF ACTION**

45. It repeats and makes a part hereof, as though fully set forth herein, its answers to the allegations contained in Paragraphs 1 through 44 of the Complaint.

46. It denies the allegations contained in Paragraph 46.

47. It denies the allegations contained in Paragraph 47.

48. It denies the allegations contained in Paragraph 48.

#### **SEPARATE DEFENSES**

##### **FIRST SEPARATE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

##### **SECOND SEPARATE DEFENSE**

PepsiCo has complied with and fulfilled its contractual obligations owed to plaintiff as set forth in the aforesaid Written Agreements.

##### **THIRD SEPARATE DEFENSE**

The allegations in the Complaint are barred by the application of the statute of frauds.

**FOURTH SEPARATE DEFENSE**

PepsiCo has made payment on all invoices for professional services that were properly presented by plaintiff.

**FIFTH SEPARATE DEFENSE**

Plaintiff has no legal right or entitlement to any additional payment for the professional services it provided for the benefit of PepsiCo.

**SIXTH SEPARATE DEFENSE**

PepsiCo has breached no contractual obligation owed to plaintiff.

**SEVENTH SEPARATE DEFENSE**

At all times as relevant herein, PepsiCo acted in a commercially reasonable manner with respect to its undertakings with plaintiff.

**EIGHTH SEPARATE DEFENSE**

The allegations in the Complaint are barred by application of the doctrines of waiver and estoppel.

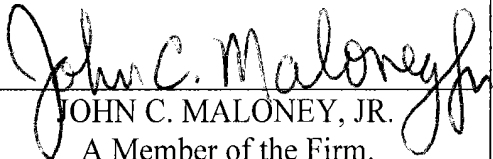
**NINTH SEPARATE DEFENSE**

This Court lacks subject matter jurisdiction over the allegations contained in the Sixth Cause of Action in the Complaint which purports to state a cause of action under the Federal Copyright Act, 17 U.S.C.A. §101 *et seq.*, such jurisdiction being vested exclusively in the federal courts.

**WHEREFORE,** PepsiCo, Inc. demands judgment dismissing the Complaint together with costs of suit.

DATED: New York, New York  
December 17, 2009

DAY PITNEY LLP  
Attorneys for Defendant PepsiCo, Inc.

By:   
JOHN C. MALONEY, JR.  
A Member of the Firm.

DAY PITNEY LLP  
7 Times Square  
New York, New York 10036-7311  
Tel.: (212) 297-5800  
Fax: (212) 916-2940

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

CUH2A, ARCHITECTS ENGINEERS  
PLANNERS, P.C.

Plaintiff,

-against-

PEPSICO, INC.

Defendant.

Index No. 115530/09

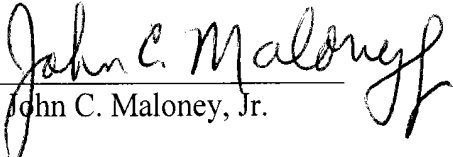
**AFFIRMATION OF SERVICE**

JOHN C. MALONEY, JR., an attorney duly admitted to practice before the Courts of the State of New York, affirms the following under penalty of perjury:

I am over eighteen years of age, am not a party to this action, and reside in the County of Morris, State of New Jersey. On the 17<sup>th</sup> day of December, 2009, I caused the within Answer to Plaintiff's Complaint and the supporting Affirmation of Jay C. Maloney, Jr. to be served on counsel for the plaintiff, addressed as follows:

Steven Cohen, Esq.  
Tessor & Cohen  
591 Broadway, 6<sup>th</sup> Floor  
New York, New York 10012

by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New Jersey at the address designated by said party for that purpose.

  
\_\_\_\_\_  
John C. Maloney, Jr.

Affirmed by me this 17<sup>th</sup>  
Day of December, 2009



7 TIMES SQUARE  
NEW YORK, NEW YORK 10036-7311  
(212) 297-5800

DAY PITNEY LLP  
*Attorney(s) for* DEFENDANT PEPISCO, INC.

**DEFENDANT'S ANSWER TO COMPLAINT FILED BY CUH2A**

-----X  
PEPISCO, INC.,  
Defendant.

-against-

INDEX NO.: 115530/09

Plaintiff,  
CUH2A, ARCHITECTS ENGINEERS PLANNERS, P.C.

-----X  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK