

The Professional Liability Law Blog

BRINGING PROFESSIONAL LIABILITY INFORMATION TO CALIFORNIA ATTORNEYS,
INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



[For There To Be An Agency Relationship, Principal Must Have Authorized Agent to Represent or Bind It](#)

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Agency relationships among defendants tend to be liberally alleged in professional liability cases. However, conclusory allegations of agency may not survive close scrutiny by the court. For example, in *Hawkins v. First Horizon Home Loans*, an Eastern District of California action (2010 U.S. Dist. LEXIS 124529), the plaintiff borrowers alleged various claims against a mortgage lender and broker relating to the making of a construction loan that was to be used to finance construction of a home. These claims included a claim for breach of fiduciary duty against the lender. The borrowers' theory was that the broker had a fiduciary relationship with the borrowers, and the broker was the agent of the lender. This purportedly made the lender vicariously liable for the broker's alleged breach of fiduciary duty.

In ruling on a motion to dismiss, the District Court ruled that the borrowers' pleading was insufficient to allege a claim for breach of fiduciary duty against the lender. Specifically, the court ruled that regardless of whether a fiduciary relationship existed between the borrowers and the broker, the complaint alleged no facts to show how the lender "authorized [the broker] to represent and/or bind it, which is necessary to set forth an agency relationship. Cal Civ Code sec. 2295; *Children's Institute, Inc.* 177 Cal.App.4th at 403-04." Accordingly, the court dismissed the claim with leave to amend.