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SUMMONS ISSUED

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FILED
ENDORSED
AUG 17 2006
By _____
Deputy Clerk

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO, LIMITED CIVIL

10 REXEL NORCAL VALLEY, INC.,)
11 a Delaware corporation,)
12 Plaintiff,)
13 v.)
14 MJB/BIXBY CONSTRUCTION,)
15 INC., a California)
16 corporation; MARK BIXBY, an)
17 individual; and DOES 1)
through 25, inclusive,)
Defendants.)

CASE NO. 06AM003789
COMPLAINT FOR BREACH OF
CONTRACT; BREACH OF PERSONAL
GUARANTEE; AND ON COMMON
COUNTS

KEYD 37
KEYD 37

Amount of Prayer: \$15,181.66

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20 Rexel Norcal Valley ("Plaintiff") alleges:

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22 1. Plaintiff is, and at all times herein mentioned was, a
23 Delaware corporation qualified to and doing business in the State
24 of California. Plaintiff has complied with all filing and
25 publication requirements under the California Business &
26 Professions Code.

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1 2. The above-entitled court is the correct venue for this
2 action because the defendants reside within this judicial
3 district.

4 3. Plaintiff is informed and believes and thereon alleges
5 that defendant MJB/Bixby Construction, Inc. ("MJB") is, and at
6 all times herein mentioned was, a corporation organized and
7 existing by virtue of the laws of the State of California, with
8 its principal office located in Sacramento, California.

9 4. Plaintiff is informed and believes and thereon alleges
10 that defendant Mark Bixby ("Bixby") is, and at all times herein
11 mentioned was, an individual residing in the City of Sacramento,
12 State of California.

13 5. Does 1 through 25, inclusive, are sued herein under
14 fictitious names since their true names and capacities are
15 unknown to Plaintiff. When their true names and capacities have
16 been ascertained, Plaintiff will amend this complaint to state
17 the same.

18 6. Plaintiff is informed and believes and thereon alleges
19 that, at all times mentioned herein, the defendants, and each of
20 them, were acting as the agent and/or employee of each remaining
21 defendant, and were acting within the course and scope of said
22 agency and/or employment. Plaintiff is further informed and
23 believes that each of the fictitiously named defendants is
24 responsible in some manner for the occurrences herein alleged and
25 that Plaintiff's damages, as herein alleged, were proximately
26 caused by such defendants, and each of them.

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FIRST CAUSE OF ACTION

(For Breach of Written Contract)

(Against MJB and Does 1 through 25)

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4 7. Plaintiff hereby realleges and incorporates by
5 reference the allegations set forth at paragraphs 1 through 6 as
6 though fully set forth herein.

7 8. Within the last two years, Plaintiff entered into an
8 agreement ("Agreement") in writing with MJB and Does 1 through
9 25, whereby Plaintiff agreed to and did furnish to MJB certain
10 electrical materials, equipment and supplies and MJB and Does 1
11 through 25 agreed to pay for same.

12 9. Pursuant to the Agreement, MJB and Does 1 through 25
13 promised to pay interest on overdue balances at the rate of 1½%
14 per month, plus costs of collection, including reasonable
15 attorneys' fees.

16 10. Plaintiff has fully performed all of the terms and
17 conditions on its part to be performed pursuant to the Agreement.

18 11. Although demand has been made, MJB has failed and
19 refused to pay to Plaintiff any of the amounts due for the
20 materials furnished by Plaintiff to MJB, in breach of the
21 Agreement.

22 12. As a result of MJB's breach of the Agreement, Plaintiff
23 has been damaged in the total sum of not less than \$15,181.66,
24 together with interest thereon at the rate of 1½% per month from
25 August 25, 2004, plus reasonable attorneys' fees and costs.

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1 SECOND CAUSE OF ACTION

2 (Goods Sold and Delivered)

3 (Against MJB and Does 1 through 25)

4 13. Plaintiff hereby realleges and incorporates by
5 reference the allegations set forth at paragraphs 1 through 12 as
6 though fully set forth herein.

7 14. Within the last two years, MJB became indebted to
8 Plaintiff in the sum of not less than \$15,181.66, for goods sold
9 and delivered by Plaintiff to MJB, at the special instance and
10 request of MJB, for which MJB and Does 1 through 25 agreed to pay
11 Plaintiff the above sum.

12 15. Notwithstanding Plaintiff's demand, no part of the
13 above sum has been paid, and there is now due and unpaid from MJB
14 and Does 1 through 25 to Plaintiff the sum of not less than
15 \$15,181.66, plus interest thereon at the rate of 1½% per month
16 from August 25, 2004, plus reasonable attorneys' fees and costs.

17 THIRD CAUSE OF ACTION

18 (Account Stated)

19 (Against MJB and Does 1 through 25)

20 16. Plaintiff hereby realleges and incorporates by
21 reference the allegations set forth at paragraphs 1 through 12 as
22 though fully set forth herein.

23 17. Within the last two years, an account was stated in
24 writing by and between Plaintiff, MJB and Does 1 through 25
25 wherein it was agreed that MJB and Does 1 through 25 were
26 indebted to Plaintiff in the sum of not less than \$15,181.66,
27 plus interest thereon at the rate of 1½% per month, plus
28 attorneys' fees.

1 18. Although demanded by Plaintiff from MJB and Does 1
2 through 25, neither all nor any part of the agreed balance has
3 been paid and the same is now due and unpaid from MJB to
4 Plaintiff.

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6 FOURTH CAUSE OF ACTION

7 (Open Book Account)

8 (Against MJB and Does 1 through 25)

9 19. Plaintiff hereby realleges and incorporates by
10 reference the allegations set forth at paragraphs 1 through 12 as
11 though fully set forth herein.

12 20. Within the last two years, MJB and Does 1 through 25
13 became indebted to Plaintiff on an open book account for money
14 due in the sum of not less than \$15,181.66 for materials
15 furnished by Plaintiff to MJB at the special instance and request
16 of MJB for which MJB agreed to pay Plaintiff the above sum, plus
17 interest thereon at the rate of 1½% per month, plus reasonable
18 attorneys' fees and costs.

19 21. Although demand has been made, neither the whole, nor
20 any part of the above sum has been paid, and there is now due and
21 unpaid, from MJB and Does 1 through 25, to Plaintiff the sum of
22 not less than \$15,181.66, together with interest thereon at the
23 rate of 1½% per month, from August 25, 2004, plus reasonable
24 attorneys' fees and costs.

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FIFTH CAUSE OF ACTION

(For Personal Guarantee)

(Against Bixby and Does 1 through 25)

22. Plaintiff hereby realleges and incorporates by reference the allegations set forth at paragraphs 1 through 21 as though fully set forth herein.

23. Within the last two years, for valuable consideration, Bixby signed a personal continuing guarantee of performance ("Guarantee") to Plaintiff for the obligations incurred by MJB to Plaintiff. By this Guarantee, Bixby promised to pay to Plaintiff, on demand, any and all indebtedness by MJB to Plaintiff for all Materials supplied by Plaintiff to MJB.

24. In reliance upon the Guarantee, Plaintiff supplied certain Materials to MJB, in accordance with the Agreement herein alleged, and fully performed all of the terms and conditions on its part to be performed, except for those obligations, if any, excused by the defendants' breach.

25. Pursuant to the Guarantee made by Bixby, said defendant is liable to Plaintiff for all of the sums owing from MJB to Plaintiff.

26. In material and substantial breach of the Guarantee, Bixby has failed and refused to pay any sums to Plaintiff who has, as a direct and proximate result thereof, suffered damage in the sum of not less than \$15,181.66, no part of which has been paid.

27. The Guarantee provides for the recovery by Plaintiff of its reasonable attorneys' fees and costs incurred in prosecuting this action.

1 28. As a result of the breach of the Guarantee by Bixby,
2 Plaintiff has been damaged in the sum of not less than
3 \$15,181.66, plus interest thereon at the rate of 1½% per month
4 from August 25, 2004, plus reasonable attorneys' fees and costs.
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6 NOW, THEREFORE, Plaintiff prays for judgment as follows:
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8 AS TO THE FIRST THROUGH FOURTH CAUSES OF ACTION:

- 9 1. For the sum of not less than \$15,181.66, or according
10 to proof at the time of trial;
11 2. For reasonable attorneys' fees;
12 3. For interest thereon at the rate of 1½% per month from
13 August 25, 2004;
14

15 AS TO THE FIFTH CAUSE OF ACTION:


- 16 4. For the sum of not less than \$15,181.66, or according
17 to proof at the time of trial;
18 5. For interest thereon at the rate of 1½% per month from
19 August 25, 2004;
20

21 AS TO ALL CAUSES OF ACTION:

- 22 6. For costs of suit incurred herein; and
23 7. For such other and further relief as the court deems
24 just and proper, within the jurisdictional limits of this court.

25 DATED: August 16, 2006

WALSH & WALSH, P.C.
Michael J. Walsh
Mark A. Walsh

26
27 By 
28 Mark A. Walsh
Attorneys for Plaintiff
Rexel Norcal Valley

FILED
ENDORSED

2007 APR -2 PM 3:09

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5 Attorneys for Defendants
MJB/BIXBY CONSTRUCTION, INC. AND MARK BIXBY,

CIVIL DIVISION LEGAL PROCESS #2
0115 - 000170307
01/06/2007 08:42:17 AM
36AM06789 - Fed. Whitfield
L. WHITFIELD
\$400.00 - Limited Inf. Appearance
of Answer - \$10K

Handwritten: Gold Express / Bixby

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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO

10 REXEL NORCAL VALLEY, INC.,)
a Delaware Corporation.)
11)
Plaintiff,)
12)
vs.)
13)
MJB/BIXBY CONSTRUCTION, INC.,)
14 a California corporation; MARK BIXBY,)
an individual; and DOES 1 through 25,)
15 inclusive)
16 Defendants.)

CASE NO.: 06AM06789
(Limited Civil)

ANSWER TO COMPLAINT FOR BREACH OF
CONTRACT; BREACH OF PERSONAL
GUARANTEE; AND COMMON COUNTS

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KEYD

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18 Defendants MJB/Bixby Construction, Inc., and Mark Bixby, answer the unverified Complaint
19 of REXEL NORCAL VALLEY, INC., a Delaware Corporation, as follows:

20 **GENERAL DENIAL**

21 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendants MJB/Bixby
22 Construction, and Mark Bixby, specifically and generally deny each and every allegation contained in
23 the unverified Complaint of REXEL NORCAL VALLEY, INC., a Delaware Corporation and further
24 deny that any damages have been sustained by Plaintiff.

25 **FIRST AFFIRMATIVE DEFENSE**

26 (Failure to Allege Facts)

27 1. As a first, separate, distinct and affirmative defense, Defendants allege that said Complaint
28 fails to allege facts sufficient to constitute a cause of action against these answering Defendants.

1 **SECOND AFFIRMATIVE DEFENSE**

2 (Unclean Hands)

3 2. As a second, separate, distinct and affirmative defense, Defendants allege that Plaintiff is
4 barred by the doctrine of unclean hands from seeking recovery from these Defendants.

5 **THIRD AFFIRMATIVE DEFENSE**

6 (Waiver)

7 3. As for a third, separate, distinct and affirmative defense, Defendants allege that Defendants
8 at no time breached any contract with Plaintiff, but that if such a breach did occur, Plaintiff, by its own
9 conduct, waived any such breach and waived any alleged damages resulting from such breach.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 (Statute of Limitations)

12 4. As a fourth, separate, distinct and affirmative defense, Defendants allege that Plaintiff's
13 claims are barred by the applicable statute of limitations, Code of Civil Procedure §339

14 **WHEREFORE**, Defendants pray for judgment as follows:

- 15 1. That Plaintiff takes nothing by way of its Complaint; and,
16 2. For such other and further relief as the court may deem just and proper.

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18 DATED: April 2, 2007

PARSHALL & TWEEDY, LLP

19
20 By: 

CHARLES A. TWEEDY
Attorneys for Defendants
MJB/BIXBY CONSTRUCTION, INC.,
MARK BIXBY