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BRUCE A. TOELLE

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LEGAL PROCESS UNIT



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

MARK BIXBY, Individually and  
as Trustee of THE MARK BIXBY  
REVOCABLE LIVING TRUST DATED  
OCTOBER 2, 1996,

Plaintiffs,

v.

BRUCE A. TOELLE, dba  
PERFORMANCE TRANSMISSIONS and  
DOES 1 to 20

Defendants.

BRUCE A. TOELLE

Cross-Complainant,

v.

MARK BIXBY, Individually and  
as Trustee of THE MARK BIXBY  
REVOCABLE LIVING TRUST DATED  
OCTOBER 2, 1996, and ROES 1  
through 100, inclusive,

Cross-Defendants.

Case No. 06AS01554

CROSS-COMPLAINT FOR BREACH OF  
LEASE, INTENTIONAL INTERFERENCE  
WITH PROSPECTIVE ECONOMIC  
ADVANTAGE, NEGLIGENT  
INTERFERENCE WITH PROSPECTIVE  
ECONOMIC ADVANTAGE, INTENTIONAL  
INFLECTION OF EMOTIONAL  
DISTRESS

Cross-Complainant BRUCE A. TOELLE cross-complains against Cross-  
Defendants herein, and each of them, and alleges as follows:

/ / /

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Sacramento, California

SUMMONS ISSUED

GENERAL ALLEGATIONS

1  
2           1. Cross-complainant BRUCE A. TOELLE ("Cross-Complainant") is,  
3 and at all times herein mentioned was, a resident of Sacramento,  
4 California.

5           2. Cross-Complainant is informed and believes and thereon  
6 alleges that Cross-Defendant MARK BIXBY ("Cross-Defendant"), is, and  
7 at all times mentioned herein was, an individual residing in  
8 Sacramento County, California, and the trustee of the Mark Bixby  
9 Revocable Living Trust dated October 2, 1996.

10           3. Cross-Complainant is not aware of the true names and  
11 capacities of the Cross-Defendants sued herein as ROES 1 through 100,  
12 inclusive, and therefore sues these Cross-Defendants by such  
13 fictitious names. Cross-Complainant will amend this Complaint to  
14 allege the true names and capacities of the fictitiously named Cross-  
15 Defendants when Cross-Complainant ascertains the same. Any reference  
16 herein to the specifically named Cross-Defendant shall be deemed a  
17 reference to the fictitiously named Cross-Defendants also.

18           4. Cross-Complainant is informed and believes and thereon  
19 alleges that each of the Cross-Defendants, whether named fictitiously  
20 or otherwise, are, and at all times herein were, the agents,  
21 employees, or legal representatives of each of the other Cross-  
22 Defendants and, with respect to the events, acts, occurrences, and  
23 conduct alleged herein, were acting within the course and scope of  
24 said agency and/or employment and with the knowledge, consent, and  
25 subsequent ratification of each of the other Cross-Defendants, whether  
26 named fictitiously or otherwise.

27           5. Cross-Complainant owns and operates a business known as "PTS  
28 Xtreme Transmissions", which business primarily engages in the

1 development and repair of high-performance vehicles.

2 6. On or about November 12, 2002, Cross-Complainant entered  
3 into a written lease with Cross-Defendant for Cross-Complainant to  
4 occupy commercial premises in Cross-Defendant's building located at  
5 5822 88<sup>th</sup> Street, Suite 700, Sacramento, California (the "Premises"),  
6 a true and correct copy of which is attached hereto as Exhibit "A" and  
7 made a part hereof (the "Lease.") Pursuant to the Lease, Cross-  
8 Defendant, as Landlord, was required to, among other things, perform  
9 all tenant improvements listed in Exhibit "B" to the Lease attached  
10 herein at his sole cost and expense.

11 7. Cross-Complainant occupied the Premises continuously until  
12 March 31, 2006, when Cross-Complainant surrendered possession of the  
13 Premises to Cross-Defendant.

14 8. Prior to March 31, 2006, Cross-Defendant breached the Lease  
15 and engaged in a campaign of harassment and intimidation against  
16 Cross-Complainant, including but not limited to the following: (a)  
17 visits to the Premises without advance notice, which visits frequently  
18 included Cross-Defendant screaming and cursing at Cross-Complainant  
19 and his employees, at times in the presence of Cross-Complainant's  
20 customers; (b) unjustified demands for money from Cross-Complainant;  
21 (c) failure to pay utilities costs for the Premises; and, (d) threats  
22 of physical violence against Cross-Complainant.

23 **FIRST CAUSE OF ACTION**

24 **(Breach of Lease against Cross-Defendant)**

25 9. Cross-Complainant realleges paragraphs 1 through 8 of this  
26 Cross-Complaint as though fully set forth herein.

27 10. Cross-Complainant has performed all conditions precedent  
28 that Cross-Complainant agreed to perform in the Lease, except those

1 matters the performance of which have been excused.

2 11. From about December 2004, until approximately March 31,  
3 2006, Cross-Defendant breached the Lease as alleged above by,  
4 including but not limited to, engaging in a campaign of harassment and  
5 intimidation against Cross-Complainant and his employees, which  
6 conduct breached the covenants of quiet enjoyment and good faith and  
7 fair dealing to which Cross-Complainant was entitled under the Lease.

8 12. As a direct and proximate result of such breach of the Lease  
9 by Cross-Defendant, Cross-Complainant has suffered damages in an  
10 amount according to proof at the time of trial. Such damages include,  
11 but are not limited to, lost profits and costs to locate new business  
12 premises. Cross-Defendant has also failed and refused to return to  
13 Cross-Complainant a security deposit in the sum of \$4,500.00.

14 WHEREFORE, Cross-Complainant prays for judgment as set forth  
15 below.

16 **SECOND CAUSE OF ACTION**

17 **(Conspiracy to Intentionally Interfere With Prospective Economic  
18 Advantage against Cross-Defendant and ROES 1 through 20)**

19 13. Cross-Complainant realleges paragraphs 1 through 11 of this  
20 Cross-Complaint as though fully set forth herein.

21 14. On or about November 12, 2002, and thereafter, Cross-  
22 Complainant had prospective economic relationships with high-  
23 performance automotive transmissions customers. Cross-Complainant is  
24 informed and believes, and on that basis alleges, that Cross-Defendant  
25 and ROES 1 through 20, inclusive, knew of Cross-Complainant's business  
26 and prospective economic relationships with high-performance  
27 automotive transmissions customers, based upon the existence of the  
28 Lease and Cross-Defendants' awareness of Cross-Complainant's business.

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1 15. Cross-Complainant is informed and believes, and on that  
2 basis alleges, that between approximately November 12, 2002, and March  
3 31, 2006, Cross-Defendant and ROES 1 through 20, inclusive,  
4 intentionally acted to disrupt Cross-Complainant's business and his  
5 prospective business relations with customers for his business. The  
6 foregoing acts of Cross-Defendants, and each of them, were done with  
7 the intent to interfere with and disrupt Cross-Complainant's  
8 prospective economic relations with potential customers and to thereby  
9 harm Cross-Complainant financially.

10 16. As a proximate result of Cross-Defendants' conduct as  
11 alleged hereinabove, Cross-Complainant's prospective business  
12 relationships with prospective customers were disrupted.

13 17. As a proximate result of Cross-Defendants' conduct as  
14 alleged hereinabove, Cross-Complainant has suffered damages in an  
15 amount according to proof at the time of trial.

16 18. The aforementioned acts of Cross-Defendants, and each of  
17 them, were intentional, willful, oppressive, and malicious, thereby  
18 entitling Cross-Complainant to punitive damages in an amount according  
19 to proof at the time of trial.

20 WHEREFORE, Cross-Complainant prays for judgment as set forth  
21 below.

22 **THIRD CAUSE OF ACTION**

23 **(Negligent Interference With Prospective Economic Advantage against**  
24 **Cross-Defendant and ROES 1 through 20)**

25 19. Cross-Complainant realleges paragraphs 1 through 18 of this  
26 Cross-Complaint as though fully set forth herein.

27 20. As alleged above, on or about November 12, 2002, and  
28 thereafter, Cross-Complainant had prospective economic relationships

1 with potential customers for high-performance automotive  
2 transmissions. Cross-Complainant is informed and believes, and on that  
3 basis alleges, that Cross-Defendant and ROES 1 through 20, inclusive,  
4 knew of said prospective economic relationships at all times pertinent  
5 hereto.

6 21. Cross-Complainant is informed and believes, and on that  
7 basis alleges, that between approximately November 12, 2002, and March  
8 31, 2006, Cross-Defendant and ROES 1 through 20, inclusive,  
9 negligently interfered with Cross-Complainant's prospective economic  
10 contractual relationships by the conduct alleged above. Cross-  
11 Defendants, and each of them, knew or should have known that the  
12 foregoing acts would disrupt Cross-Complainant's prospective economic  
13 relationships.

14 22. As a proximate result of Cross-Defendants' conduct as  
15 alleged hereinabove, Cross-Complainant's prospective economic  
16 relationships were actually disrupted. As a result of Cross-  
17 Defendants' conduct, Cross-Complainant was prevented from conducting  
18 its business at the Premises in accordance with the Lease.

19 23. As a proximate result of Cross-Defendants' conduct as  
20 alleged hereinabove, Cross-Complainant has suffered damages in an  
21 amount according to proof at the time of trial.

22 WHEREFORE, Cross-Complainant prays for judgment as set forth  
23 below.

24 **FOURTH CAUSE OF ACTION**

25 **(Intentional Infliction of Emotional Distress against Cross-**  
26 **Defendant and ROES 1-20)**

27 24. Cross-Complainant realleges paragraphs 1 through 23 of this  
28 Cross-Complaint as though fully set forth herein.

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1 25. Cross-Defendants' conduct described above, including but not  
2 limited to visits to the Premises without advance notice, Cross-  
3 Defendant screaming and cursing at Cross-Complainant and his employees  
4 in the presence of Cross-Complainant's customers, unjustified demands  
5 for money from Cross-Complainant, the failure to pay utilities costs  
6 for the Premises, threats of physical violence against Cross-  
7 Complainant, and the failure to perform all tenant improvements as  
8 agreed to in the Lease, were knowing, intentional and willful and done  
9 with a reckless disregard of the probability of causing Cross-  
10 Complainant emotional distress.

11 26. As an approximate result of Cross-Defendants' conduct, as  
12 alleged in this Cross-Complaint, Cross-Complainant suffered extreme  
13 mental anguish and emotional distress, all to his general damage in  
14 an amount according to proof at the time of the trial.

15 27. The aforementioned acts of Cross-Defendants were  
16 intentional, willful, oppressive, and malicious, and thereby entitling  
17 Cross-Complainant to punitive damages in an amount according to proof  
18 at the time of trial.

19 WHEREFORE, Cross-Complainant prays for judgment as set forth  
20 below.

21 **FIFTH CAUSE OF ACTION**

22 **(Constructive Eviction against Cross-Defendant)**

23 28. Cross-Complainant realleges paragraphs 1 through 27 of this  
24 Cross-Complaint as though fully set forth herein.

25 29. As set forth above, Cross-Complainant has duly performed all  
26 conditions, covenants, and promises required to be performed under the  
27 Lease in accordance with its terms and conditions, except for those  
28 acts that have been prevented, delayed, or excused by acts or

1 omissions of Cross-Defendant.

2 30. Cross-Defendant, through his harassment and intimidation of  
3 Cross-Complainant, interfered with Cross-Complainant's right to quiet  
4 enjoyment of the Premises as set forth above.

5 31. As a result of Cross-Defendant's interference with Cross-  
6 Complainant's right to quiet enjoyment of the Premises, Cross-  
7 Complainant vacated the Premises on or about March 31, 2006.

8 32. As an approximate result of Cross-Defendant's constructive  
9 eviction of Cross-Complainant from the Premises, Cross-Complainant  
10 sustained general damages in an amount to be proven at trial.

11 33. Cross-Defendant's harassment and intimidation of Cross-  
12 Complainant was oppressive and malicious within the meaning of Civil  
13 Code § 3294 in that it subjected Cross-Complainant to cruel and unjust  
14 hardship in willful and conscious disregard of Cross-Complainant's  
15 rights and safety, thereby entitling Cross-Complainant to an award of  
16 punitive damages.

17 WHEREFORE, Cross-Complainant prays for judgment as set forth  
18 below.

19 **PRAYER**

20 Cross-Complainant prays for judgment against Cross-Defendants,  
21 and each of them, as follows:

22 **On the First Cause of Action:**

23 1. For damages in an amount to be established at trial according  
24 to proof;

25 2. For an award of the reasonable attorneys' fees incurred by  
26 Cross-Complainant herein;

27 3. For an award of the actual costs incurred by Cross-  
28 Complainant herein; and



1 4. For such other and further relief as the court may deem  
2 just and proper.

3 On the Second, Third, Fourth and Fifth Causes of Action:

4 1. For damages in an amount to be established at trial according  
5 to proof;

6 2. For an award of exemplary and punitive damages according to  
7 proof;

8 3. For an award of the reasonable attorneys' fees incurred by  
9 Cross-Complainant herein;

10 4. For an award of the actual costs incurred by Cross-  
11 Complainant herein; and

12 5. For such other and further relief as the Court may deem  
13 just and proper.

14 Dated: June 2, 2006

HEFNER, STARK & MAROIS, LLP

15  
16 By



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Kirk E. Giberson  
Attorneys for Cross-Complainant  
BRUCE A. TOELLE