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MARK BIXBY and MJB/BIXBY CONSTRUCTION, INC.

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**Dennis Jones, Executive**  
**Officer**  
**12/29/2008**  
**amacias**  
**By \_\_\_\_\_, Deputy**  
**Case Number:**  
**34-2008-00030542-CU-PN-GDS**

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

Department  
Assignments  
Case Management 45  
Law and Motion 53  
Minors Compromise 21  
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MARK J. BIXBY, individually and as  
trustee of the MARK BIXBY REVOCABLE  
LIVING TRUST and MJB/BIXBY  
CONSTRUCTION, INC.,

CASE NO.

**COMPLAINT FOR PROFESSIONAL  
NEGLIGENCE, BREACH OF  
CONTRACT AND BREACH OF  
FIDUCIARY DUTY**

Plaintiffs,

vs.

PATRICK J. CUMMINGS, CB RICHARD  
ELLIS, INC. and DOES 1 through 100,  
inclusive,

Defendants.

COME NOW Plaintiffs MARK J. BIXBY, individually and as trustee of the MARK  
BIXBY REVOCABLE LIVING TRUST and MJB/BIXBY CONSTRUCTION, INC. and  
complain of Defendants, and each of them, and alleges as follows:

**I.**

**GENERAL ALLEGATIONS**

1. Plaintiff MARK J. BIXBY at all times herein mentioned was and is an individual  
residing in the County of Sacramento, State of California and was and is the trustee for the  
MARK BIXBY REVOCABLE LIVING TRUST.



1 8. Defendants, and each of them, undertook to provide various brokerage and  
2 management services to Plaintiffs and provided said services to Plaintiffs in connection with a  
3 commercial lease located at 5852 88<sup>th</sup> Street, Sacramento, California, among other locations.

4 9. As a result of said relationship, Defendants, and each of them, at all times herein  
5 mentioned, had a duty to represent Plaintiffs with reasonable care, skill and diligence as  
6 ordinarily possessed and exercised by other commercial real estate brokers in the community and  
7 to perform representation in compliance with the fiduciary duties owed to their clients.

8 10. At all times herein mentioned, Defendants, and each of them, negligently and  
9 carelessly represented Plaintiffs and negligently and carelessly rendered inappropriate,  
10 inadequate brokerage and management services; negligently and carelessly failed to properly  
11 represent Plaintiffs and to properly protect Plaintiffs' interests by failing to perform numerous  
12 acts, including, but not limited to, failing to properly conduct the appropriate background  
13 investigation of potential tenants, in particular Davi Anthony Rodrigues dba Black Market,  
14 Ayatollah of Gondola; improperly advising Plaintiffs to enter into an industrial real estate lease  
15 with said tenant, in addition to several other inappropriate, inadequate, careless, and negligent  
16 actions or inactions.

17 11. As a result of the various acts of negligence and carelessness of Defendants, and each  
18 of them, Plaintiffs suffered damages and were deprived of and lost various rights and have  
19 incurred fees and costs related to the prior and continued need to defend/pursue their legal rights  
20 and remedies relating to the above-referenced tenant.

21 12. As a result of the various acts and omissions of negligence and carelessness,  
22 Plaintiffs have incurred economic losses, the full nature and extent of which are not presently  
23 known to Plaintiffs; that said losses and damages include attorneys' fees and costs. Plaintiffs will  
24 seek leave to assert herein the full nature and extent of said economic losses when the same have  
25 been ascertained.

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1 IV.

2 **THIRD CAUSE OF ACTION**

3 (Breach of Fiduciary Duty)

4 20. Plaintiffs reallege and incorporate herein by reference each and every allegation  
5 contained in paragraphs 1 through 19 of this Complaint as though fully set forth herein.

6 21. At all times relevant hereto Defendants, and each of them, owed Plaintiffs a fiduciary  
7 duty of the highest degree of good faith, openness, honesty and fair dealing.

8 22. Defendants, and each of them, breached their fiduciary duty to Plaintiffs by, among  
9 other things, misrepresenting the services performed on behalf of Plaintiffs, by failing to properly  
10 perform said services, by misleading Plaintiffs and making false representations and statements  
11 to Plaintiffs; by concealing true facts from Plaintiffs, and by failing to discharge their  
12 professional duties as alleged herein, in addition to several other inappropriate, inadequate,  
13 careless and negligent actions or inactions.

14 23. In doing the things herein alleged, Defendants, and each of them acted, willfully,  
15 recklessly, maliciously and with wanton disregard for the rights, health, and well being of  
16 Plaintiffs.

17 24. As a proximate result of Defendants' breach of fiduciary duty, Plaintiffs have  
18 suffered damages in an amount to be established according to proof.

19 25. Defendants' conduct constitutes fraud, malice and/or oppression as defined in Civil  
20 Code section 3294, warranting the imposition of punitive damages.

21 26. That as a result of the aforementioned negligent acts, Plaintiffs seek interest  
22 according to law.

23 WHEREFORE, Plaintiffs pray for relief as follows:

- 24 1. For general, special, and consequential damages according to proof;  
25 2. For disgorgement of all fees paid by Plaintiffs to Defendants;

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- 3. For punitive damages in an amount to appropriate to punish Defendants and deter others from engaging in similar misconduct;
- 4. For pre-judgment interests according to proof;
- 5. For interest according to proof;
- 6. For attorneys' fees according to proof;
- 7. For cost of suit incurred herein; and
- 8. For such other and further relief as the court deems just and proper.

DATED: December 29, 2008

WALTZ LAW FIRM

By:   
PATRICK J. WALTZ  
Attorney for Plaintiffs  
MARK J. BIXBY individually and  
as trustee of the MARK BIXBY  
REVOCABLE LIVING TRUST and  
MJB/BIXBY CONSTRUCTION, INC.