FRANKLIN T. WATSON (145039) 1 WATSON, KHACHADOURIAN & IAMS, LLP 2 1000 G Street, 2nd Floor Sacramento, California 95814 Telephone: (916) 498-6240 3 Attorneys for Defendant and Cross Complainant 4 Don Glover dba Acoustical Engineers of California 5 6 CIVIL DIVISION 7 0058 - 000058732 SUPERIOR COURT OF THE STATE OF CALIFORNIA 8 COUNTY OF SACRAMENTO - Limited Civil 9 10 DON GLOVER, DBA ACOUSTICAL ENGINEERS OF CALIFORNIA, 11 **COMPLAINT FOR:** Plaintiff, 12 1. 2. 13 v. 3. MJB/BIXBY CONSTRUCTION, INC.; 14 DPA ASSOCIATES, an entity of unknown origin; and DOES 1-50, 15 inclusive: 16 Defendants. 17 18 Plaintiff alleges as follows: 19 FIRST CAUSE OF ACTION 20 21 22 23 California, and does business as Acoustical Engineers of California ("AE"). 24 2. 25 26 27



04AM09339 - Fee PAID: \$165.30

Complaint/Petition < \$10K

- **BREACH OF CONTRACT:**
- FORECLOSURE OF
  - MECHANIC'S LIEN; AND
- **OUANTUM MERIT.**

Limited Jurisdiction - Less than \$10,000

### (Breach of Contract Against MJB/BIXBY and DOES 1-30)

- Plaintiff Don Glover is, and at all times mentioned herein was, an individual duly qualified and licensed to do business as a ceiling/insulation contractor (C-2) in the State of
- AE is informed and believes that Defendant DPA ASSOCIATES, is an entity of unknown origin ("DPA"), as well as Does 20-50, and are doing business in the State of California and the County of Sacramento, and are the owners of the real property that is the subject of the mechanic's lien foreclosure count in this action (the "Property".)

- 3. AE is informed and believes that Defendant MJB/BIXBY CONSTRUCTION, INC. ("BIXBY") is an entity of unknown origin which does business in Sacramento County as a general building contractor.
- 4. AE is ignorant of the true names and capacities of Defendants sued herein as Does 1 through 50, inclusive, and therefore sues these Defendants by such fictitious names. AE will amend this complaint to allege their true names and capacities when ascertained. AE is informed and believes and thereon alleges that each of the said Defendants are liable to AE and responsible for damages as hereinafter set forth.
- 5. AE is informed and believes, and on that basis alleges, that at all times herein mentioned, Defendants and each of them were the agents, employees, servants and representatives of the remaining Defendants and were, at all times herein mentioned, acting within the purpose and scope of such agency, employment or contract.
- 6. AE is informed and believes, and on that basis alleges, that sometime prior to March, 2004, BIXBY entered into a prime contract with DPA to perform certain construction work for improvements to the Property. Thereafter, BIXBY and AE entered into a written subcontract agreement in March, 2004, a true and correct copy of which is attached hereto as **Exhibit "A"** and incorporated herein by reference (hereafter the "Agreement"), whereby AE agreed to provide acoustical ceiling work, among other items, for BIXBY on the Property.
- 7. Pursuant to the Agreement, AE was entitled to receive for its labor, services, and materials the amount of \$6,986.
- 8. Thereafter, during the course of construction, until approximately June, 2004, AE diligently prosecuted work on the Property at the direction and supervision of said Defendants. Although agents of BIXBY have confirmed that they do not dispute AE fully performed all obligations under the Agreement, and although demand for payment was made by AE for its services, Defendants ignored those demands and refused to pay the amounts due.
- 9. AE has duly completed and performed all things to be done, in connection with the terms of the Agreement. Any terms or conditions of the Agreement not performed by AE are and have been waived and excused by Defendants.

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10. As a result of said Defendants' failure and refusal to perform its obligations under the Agreement, AE has been damaged in the sum of \$7,135.88 (which amount includes approximately \$200 in interest that accrued on progress billings between when the work was completed by AE and when it recorded its mechanic's lien,) plus interest at the maximum legal rate from a date to be determined at trial to the date of entry of judgment herein. Further, AE has been forced to incur attorneys fees to recover the amounts due it from Defendants, which fees are recoverable pursuant to the Agreement.

### **SECOND CAUSE OF ACTION**

### (To Foreclose Mechanic's Lien Against All Defendants and DOES 20 - 50)

- 11. AE incorporates herein by this reference paragraphs 1 through 10, inclusive, of the First Cause of Action, as if those paragraphs were set forth in full.
- 12. AE has furnished all of the labor, services, equipment and materials required of it under the terms of the Agreement to be used or consumed in, and which were actually used or consumed in, providing and installing the works of improvement on the Property, and AE has also performed all other conditions, covenants, and promises necessary on its part to be performed under the terms of the Agreement.
- 13. On or about September 14, 2004, AE recorded its verified claim of mechanic's lien, a true and correct copy of which is attached hereto as **Exhibit "B"** and incorporated by reference herein, in the amount of \$7,135.88, plus interest at the maximum legal rate per annum from and after May 21, 2004, in the office of the County Recorder for Sacramento County, California.
- 14. At the time of recordation of AE's claim of mechanic's lien, no applicable notices of completion had been recorded on the Property. Additionally, ninety (90) days had not elapsed or expired since the substantial completion of said work of improvement, or any cessation of labor thereon, and the filing of AE's mechanic's lien for records of the aforesaid. Therefore, AE's mechanic's lien was timely recorded. Further, AE had prior thereto properly and timely served on all necessary parties a Preliminary 20 Day Notice as required by law.

- 15. The whole of the Property is required for the convenient use and occupation of the Project.
- 16. AE is informed and believes that its mechanic's lien is senior and superior to the claim, title, lien or interest, of any other person or entity as aforesaid.

## THIRD CAUSE OF ACTION

# (Quantum Merit Against All Defendants and DOES 1 - 50)

- 17. AE incorporates herein by this reference paragraphs 1 through 16, inclusive, as if those paragraphs were set forth in full.
- 18. Within the last two (2) years, in the City of Sacramento, in the County of Sacramento, California, AE rendered work, labor, and services to Defendants and DOES 1 through 50, at the special request of said Defendants for which Defendants, then and there, promised to pay AE the reasonable value of its services.
- 19. At all times herein mentioned, the above services rendered by AE were and are the reasonable value of the amount charged
- 20. Although AE has rendered services to said Defendants, the reasonable value of which exceeds \$7,100.00, AE has been paid nothing by said Defendants for its work on the Property.
- 21. There is now due, owing and unpaid from said Defendants to AE the sum of \$7,135.88, plus interest at the maximum legal rate per annum from and after May 21, 2004.

WHEREFORE, AE prays for judgment against Cross-Defendants as follows:

#### ON THE FIRST CAUSE OF ACTION

- 1. For damages in the sum of \$7,135.88;
- 2. For interest thereon at the maximum legal rate from and after May 21, 2004;
- 3. For costs of suit incurred herein including attorneys' fees as allowed by contract and/or statute; and
  - 4. For such other and further relief as the court may deem just.

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# ON THE SECOND CAUSE OF ACTION

- For a decree that the mechanic's lien claimed and the mechanic's lien referred to 1. above as Exhibit "B" be foreclosed, and that the usual judgment be made for the sale of the interest of Defendants according to law;
- That the proceeds of the sale be applied to payment of the \$7,135.88, amount due 2. to AE, plus interest as requested, as well as attorneys' fees and costs; that each of the Defendants and all persons claiming under any of them, subsequent to the mechanic's lien of AE, whether as lien claimants, judgment creditors, purchasers, encumbrances, or otherwise, be barred and foreclosed from all rights, claims, interests or equity or redemption in the Property and every part of the Property when time for redemption is passed;
- For a decree that the rights, claims, ownership, liens, titles, and demands of the 3. Defendants, and each of them, are all subsequent to and subject to the lien of AE;
- For a decree that if there is a deficiency of proceeds to satisfy the amounts due to 4. AE, judgment for the deficiency be entered against Defendants following proceedings prescribed by law; and
  - For costs of suit incurred herein. 5.

## ON THE THIRD CAUSE OF ACTION

- For the sum of \$7,135.88; 1.
- For interest at the highest legal rate from and after May 21, 2004; 2.
- 3. For costs of suit incurred herein; and
- For such other and further relief as the Court may deem just and proper. 4.

Dated: November 10, 2004

WATSON, KHACHADOURIAN & IAMS, LLP

Attorneys for AE

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