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LEGAL PROCESS #3

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Attorney for Defendant and Cross-Complainant,
BOB G. ROSSON dba BOB G. ROSSON CONSTRUCTION.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

MARK J. BIXBY and
MJB BIXBY CONSTRUCTION, INC.

Plaintiff,

vs.

ROBERT G. ROSSON, et al.,
Defendants.

CASE NO. 99 AS 06562

**CROSS-COMPLAINT FOR BREACH
OF CONTRACT AND TO COLLECT
ON CONTRACTOR'S LICENSE
BOND**

BOB G. ROSSON dba
BOB G. ROSSON CONSTRUCTION,

Cross-Complainant,

vs.

MARK J. BIXBY, individually and dba
MJB/BIXBY CONSTRUCTION, INC.;
MJB/BIXBY CONSTRUCTION, INC.;
FRONTIER PACIFIC INSURANCE
COMPANY; and, DOES I through L,
Inclusive,

Cross-Defendants.

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PRELIMINARY ALLEGATIONS

I

Cross-Complainant, BOB G. ROSSON, is, and at all times mentioned herein was, a sole proprietor doing business under the name and style of BOB G. ROSSON CONSTRUCTION.

II

Cross-Complainant is, and at all times mentioned herein was, a contractor and was duly licensed to do business as such in the State of California.

III

Cross-Complainant is informed and believes, and based on such information and belief, alleges that Cross-Defendant, MARK J. BIXBY, is, and at all times herein mentioned was, an adult resident of Sacramento County, State of California.

IV

Cross-Complainant is informed and believes, and based on such information and belief, alleges that Cross-Defendant, MJB/BIXBY CONSTRUCTION, INC., is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of California.

V

Plaintiff is informed and believes that MARK J. BIXBY is, and at all times mentioned herein was, the sole shareholder in Defendant MJB/BIXBY CONSTRUCTION, INC.

VI

Plaintiff is informed and believes and thereon alleges that there exists, and at all times herein mentioned there existed, a unity of interest and ownership between Defendants MARK J. BIXBY and MJB/BIXBY CONSTRUCTION, INC. such that any individuality and separateness between said Defendants has ceased and Defendant

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1 MJB/BIXBY CONSTRUCTION, INC. is the alter ego of Defendant MARK J. BIXBY in
2 that:

3 a. Defendant MJB/BIXBY CONSTRUCTION, INC. is, and at all times
4 herein mentioned was, inadequately capitalized compared with the business to be done by
5 Defendant and the risks attendant therein;

6 b. Defendant MARK J. BIXBY used assets of the corporation for his
7 personal uses, caused assets of the corporation to be transferred to himself or to other alter
8 ego corporations without adequate consideration, and withdrew funds from the corporation's
9 accounts for his own personal use;

10 c. Defendant MJB BIXBY CONSTRUCTION, INC. is, and at all times
11 mentioned herein was, a shell, instrumentality, and conduit through which Defendant
12 MARK J. BIXBY carried on his business in the corporate name exactly as he conducted
13 his business previous to incorporation, exercising control and dominance of that business
14 to such an extent that any individuality or separateness of Defendant MJB BIXBY
15 CONSTRUCTION, INC. and Defendant MARK J. BIXBY does not, and at all times
16 mentioned herein did not, exist.

17 d. Defendant MJB BIXBY CONSTRUCTION, INC. is, and at all times
18 mentioned herein was, controlled, dominated, and operated by Defendant MARK J. BIXBY
19 as his individual business and alter ego and the activities and business of Defendant
20 MJB/BIXBY CONSTRUCTION, INC. were carried out without the holding of directors
21 or shareholders meetings, no records or minutes of any corporate proceedings were
22 maintained and Defendant MARK J. BIXBY entered into personal transactions without the
23 approval of other directors or shareholders.

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VII

Plaintiff has suffered damages as a result of the Defendant corporation being used as the agent and alter ego of Defendant MARK J. BIXBY in that Defendant MJB/BIXBY CONSTRUCTION, INC. is unable to meet its financial liability to Plaintiff, because the assets of have been transferred without adequate consideration to Defendant MARK J. BIXBY or other alter ego entities of said Defendant.

VIII

The true names and capacities of Cross-Defendants DOES 1 through 50 are unknown to Cross-Complainant which, therefore, sues such Cross-Defendants, and each of them, by such fictitious names. Cross-Complainant will amend this complaint to show their true names and capacities when the same have been ascertained.

IX

Cross-Complainant is informed and believes and, based on such information and belief, alleges that Cross-Defendants, and each of them, including Cross-Defendants sued by fictitious name, are, and at all times mentioned herein were, the alter egos, agents, partners, associates, joint venturers, servants, employees and/or other authorized representatives of each of the remaining Cross-Defendants, and in doing the things herein alleged were acting within the course and scope of their authority, agency, and employment, and with the knowledge, consent, and approval of their fellow Cross-Defendants, and each of them.

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1 FIRST CAUSE OF ACTION

2 BREACH OF CONTRACT

3 (AGAINST MARK J. BIXBY, individually
4 and dba MJB/BIXBY CONSTRUCTION, INC.
5 and MJB/BIXBY CONSTRUCTION, INC.)

6 I

7 Cross-Complainant refers to and incorporates, as though fully set forth herein,
8 Paragraphs I through IX, inclusive, of the Preliminary Allegations.

9 II

10 On or about August 18, 1999, BOB G. ROSSON entered into a written
11 contract, hereinafter referred to as the "CONTRACT", with Cross-Defendants, MARK J.
12 BIXBY, individually and dba MJB/BIXBY CONSTRUCTION, INC. and MJB/BIXBY
13 CONSTRUCTION, INC.

14 III

15 Pursuant to the CONTRACT, Cross-Complainant, between the date of the
16 CONTRACT and its completion performed all conditions, covenants, and promises under
17 the contract, on his part to be performed except those prevented or excused by the acts and
18 breaches of Cross-Defendants.

19 IV

20 MARK J. BIXBY, individually and dba MJB/BIXBY CONSTRUCTION,
21 INC. and MJB/BIXBY CONSTRUCTION, INC. failed and refused to complete its
22 performance as required by the CONTRACT. Such work as was performed by MARK J.
23 BIXBY, individually and dba MJB/BIXBY CONSTRUCTION, INC. and MJB/BIXBY
24 CONSTRUCTION, INC. pursuant to the CONTRACT was not performed in a
25 workmanlike manner and in accordance with the standards of the industry.

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As a consequence of the failure and refusal to complete the CONTRACT in a workmanlike manner and in accordance with the standards of the industry, Cross-Complainant has been damaged in an amount in excess of the minimum jurisdiction of this Court and to be shown according to proof at time of trial.

SECOND CAUSE OF ACTION

QUANTUM MERUIT

**(AGAINST MARK J. BIXBY, individually
and dba MJB/BIXBY CONSTRUCTION, INC.
and MJB/BIXBY CONSTRUCTION, INC.)**

I

Cross-Complainant refers to and incorporates, as though fully set forth herein, Paragraphs I through IX, inclusive, of the Preliminary Allegations; and Paragraphs I through IV, inclusive, of the First Cause of Action.

II

Within the last two years at Sacramento County, California, the Cross-Defendants, and each of them, became indebted to Cross-Complainant for work, labor and materials furnished to said Cross-Defendants at the special instance and request of said Cross-Defendants, for which work, labor and materials said Cross-Defendants agreed to pay Cross-Complainant.

III

Neither the whole nor any part of the above sum has been paid, although demand therefore has been made, and there is now due, owing, and unpaid a sum to be shown according to proof at time of trial.

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1 **THIRD CAUSE OF ACTION**

2 **COLLECT ON CONTRACTOR'S LICENSE BOND**

3 **(AGAINST FRONTIER PACIFIC INSURANCE COMPANY)**

4 **I**

5 Cross-Complainant refers to, realleges, and incorporates, as though fully set
6 forth herein, Paragraphs I through IX, inclusive, of the Preliminary Allegations; and,
7 Paragraphs I through V, inclusive, of the First Cause of Action.

8 **II**

9 Cross-Complainant is informed and believes, and based upon such information
10 and belief alleges, that upon application of MARK J. BIXBY, individually and dba
11 MJB/BIXBY CONSTRUCTION, INC. and MJB/BIXBY CONSTRUCTION, INC. to the
12 Registrar of Contractors of the Contractor's State License Board of the Department of
13 Professional and Vocational Standards, for a Contractor's license or renewal thereof, in
14 accordance with the provisions of the Business and Professions Code, MARK J. BIXBY,
15 individually and dba MJB/BIXBY CONSTRUCTION, INC. and MJB/BIXBY
16 CONSTRUCTION, INC. filed with said Registrar a bond issued by FRONTIER PACIFIC
17 INSURANCE COMPANY in the amount of \$7,500.00. Said bond was conditioned upon
18 full compliance by MARK J. BIXBY, individually and dba MJB/BIXBY CONSTRUCTION,
19 INC. and MJB/BIXBY CONSTRUCTION, INC. with all the provisions of Division III,
20 Chapter 9 of the Business and Professions Code of the State of California and inuring to
21 the benefit of any person damaged as a result of a violation of said Chapter by licensee.

22 **III**

23 Cross-Complainant is informed and believes, and thereon alleges, that has
24 failed to comply with the provisions of Division III, Chapter 9 of the Business and
25 Professions Code of the State of California in that MARK J. BIXBY, individually and dba
26 MJB/BIXBY CONSTRUCTION, INC. and MJB/BIXBY CONSTRUCTION, INC. has
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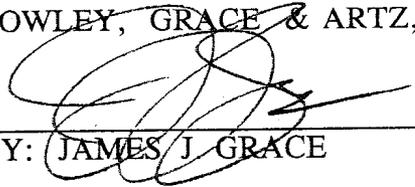
1 willfully and deliberately disregarded and violated Section 7120, *inter alia*, of the Business
2 and Professions Code and Plaintiff has been damaged as a result thereof in an amount
3 exceeding the penal sum of said bond.

4 **WHEREFORE, CROSS-COMPLAINANT PRAYS JUDGMENT AS FOLLOWS:**

- 5 1. For a sum according to proof at time of trial on all causes of action,
6 together with interest thereon.
7 2. For attorney's fees on all causes of action;
8 3. For costs of suit herein incurred;
9 4. For such other and further relief as the court may deem just and proper.

10 Dated: January 7, 2000

ROWLEY, GRACE & ARTZ, LLP



BY: JAMES J. GRACE