

1 MOYER, PARSHALL & TWEEDY, LLP
Charles A. Tweedy [SBN 096234]
2 11341 Gold Express Drive, Suite 110
Gold River, California 95670
3 Telephone: (916) 631-8388
Facsimile: (916) 631-8188
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Attorneys for Plaintiff
5 MARK BIXBY, individually and as TRUSTEE OF THE MARK BIXBY
REVOCABLE LIVING TRUST DATED OCTOBER 2, 1996
6

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO

CIVIL DIVISION
0099 - 000134999
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10 MARK BIXBY, INDIVIDUALLY AND AS)
TRUSTEE OF THE MARK BIXBY)
11 REVOCABLE LIVING TRUST DATED)
OCTOBER 2, 1996,)

12 Plaintiffs,

13 vs.

14 BRUCE TOELLE, dba PERFORMANCE)
15 TRANSMISSIONS and DOES 1 TO 20,)
inclusive,)

16 Defendants.
17

CASE NO.: 04CS00051
18 COMPLAINT FOR BREACH OF INDUSTRIAL
19 GROSS LEASE
(UNLIMITED CIVIL CASE)

18 Plaintiff, MARK BIXBY, INDIVIDUALLY, AND AS TRUSTEE OF THE MARK BIXBY
19 REVOCABLE LIVING TRUST DATED OCTOBER 2, 1996, alleges as follows:

20 **FIRST CAUSE OF ACTION**

21 **(Rent and Other Damages)**

22 1. Plaintiff is, and at all times mentioned herein was, the owner of the Premises
23 commonly known as 5852 88th Street, Suite 700, Sacramento, California 95828 (hereinafter "the
24 Premises").

25 2. Plaintiff is informed and believes and based thereon alleges that Defendant BRUCE
26 TOELLE is a resident of the County of Sacramento, State of California.

27 3. On or about November 15, 2002, Plaintiff and Defendant TOELLE entered into a
28 written Lease in Sacramento County, California by the terms of which Plaintiff leased the Premises

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1 to Defendant for a term of five years, commencing on January 1, 2003, and terminating on December
2 31, 2007. A true and correct copy of said Lease is attached hereto as Exhibit A and incorporated
3 herein by this reference.

4 4. Pursuant to the Lease agreement, Defendant entered into possession of the Premises
5 and paid to Plaintiff rent as provided in the Lease.

6 5. On April 1, 2006, and thereafter, Defendant breached the Lease agreement (Exhibit
7 A) by failing to pay rent when due. Plaintiff is informed and believes and based thereon alleges that
8 Defendant abandoned the Premises and vacated the Premises effective March 31, 2006. Said
9 abandonment was confirmed by a letter from Defendant's counsel dated March 31, 2006.

10 6. Defendant has duly performed all of the conditions of the lease to be performed on its
11 part.

12 7. As a further proximate result of Defendant's breach of the Lease and abandonment of
13 the Premises, Plaintiff has been damaged in the sum of in excess of \$100,000.00, representing loss
14 rents through the termination date of the Lease, according to proof.

15 8. As a further proximate result of Defendant's breach of the Lease and abandonment of
16 the Premises alleged herein, Plaintiff has been damaged the proportional amount of broker's fees
17 paid for commission on the entire five (5) year lease term for the period of time rent will not be paid
18 until the termination of the Lease.

19 9. As a further proximate result of Defendant's breach of the Lease, Plaintiff has been
20 damaged in the sum of in excess of \$25,000.00, representing waste and damages committed by
21 Defendant, according to proof.

22 10. Plaintiff's Lease with Defendant provides for the recovery of all reasonable attorney's
23 fees incurred in any legal action to enforce the terms of the Lease; and therefore, Plaintiff is entitled
24 to recover, in addition to all sums set forth herein above, Plaintiff's reasonable attorney's fees
25 incurred herein.

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1 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

- 2 1. For compensatory damages in excess of \$100,000.00, according to proof;
- 3 2. For costs of suit incurred herein;
- 4 3. For reasonable attorney fees incurred herein as provided by Section 16 of the Lease;
- 5 and
- 6 4. For such other and further relief as the Court may deem just and proper.
- 7

8 DATED: April 12, 2006

9 ~~MOYER, PARSHALL & TWEEDY, LLP~~

10
11 By: _____

CHARLES A. TWEEDY
Attorneys for Defendants MARK BIXBY,
INDIVIDUALLY AND AS TRUSTEE OF
THE MARK BIXBY REVOCABLE LIVING
TRUST DATED OCTOBER 2, 1996

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