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5 BETTY LOU RUTHERFORD REVOCABLE TRUST BY  
ROY RUTHERFORD, TRUSTEE AND ACTING AGENT

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**05/20/2010**  
**martates**  
**By \_\_\_\_\_, Deputy**  
**Case Number:**  
**34-2010-00078349**

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

9  
10 BETTY LOU RUTHERFORD REVOCABLE  
TRUST BY ROY RUTHERFORD, TRUSTEE  
11 AND ACTING AGENT,

12 Plaintiff,

13 vs.

14 MJB/BIXBY CONSTRUCTION, INC.,  
AND DOES 1-20

15 Defendants.

CASE NO.

COMPLAINT FOR

- 1) BREACH OF CONTRACT,
- 2) NEGLIGENCE
- 3) CONSTRUCTIVE FRAUD  
(INSURANCE CODE SECTION  
1573)
- 4) UNRUH CIVIL RIGHTS ACT  
VIOLATIONS (CIVIL CODE  
SECTION 51)
- 5) DECEPTIVE PRACTICES  
(CIVIL CODE SECTIONS 1770  
AND 1780)

Department  
Assignments  
Case Management 45  
Law and Motion 53  
Minors Compromise 24

18 DEMAND FOR JURY TRIAL

19  
20 COME NOW Plaintiff, BETTY LOU RUTHERFORD REVOCABLE TRUST BY  
21 ROY RUTHERFORD, TRUSTEE AND ACTING AGENT, who for causes of  
22 action against defendants and each of them, alleges as follows:

23 THE ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

24 1. Plaintiff, BETTY LOU RUTHERFORD REVOCABLE TRUST BY ROY  
25 RUTHERFORD TRUSTEE AND ACTING AGENT, herein after known as  
26 "RUTHERFORD", is a Trust created and existing under the laws of  
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1 State of California. BETTY LOU RUTHERFORD, whose date of birth  
2 is March 13, 1924, is the sole beneficiary of said Trust during  
3 her lifetime. She is legally blind, non-ambulatory and lives with  
4 her son and daughter-in-law at their home located at 8600 Gunner  
5 Way, Fair Oaks, CA 95628. Defendant, MJB/BIXBY CONSTRUCTION INC,  
6 herein after "BIXBY", is a Corporation legally created under the  
7 laws of State of California with its principle place of business  
8 located in Sacramento, California. Bixby is licenced by the  
9 State of California to operate as a building contractor.

10 2. The true names and capacities, whether individual,  
11 corporate, associate or otherwise, of the defendant designated  
12 herein by fictitious names are unknown to plaintiff who therefore  
13 sues said defendants by such fictitious names, and prays for  
14 leave of court to amend this complaint to set forth their true  
15 names and capacities when the same have been ascertained.  
16 Plaintiff is further informed and believes, and based on such  
17 information and belief, allege that each of the defendants  
18 designated herein by a fictitious name, is legally responsible in  
19 some manner for the events and happenings referred to herein, and  
20 partially caused the damage to plaintiff as alleged in this  
21 complaint.

22 3. Plaintiff is informed and believes, and based on such  
23 information and belief, allege that at the time referred to  
24 herein, defendants, and each of them, with agents and/or  
25 employees of each of the remaining defendants, and at relevant  
26 times were acting within the course and scope of such agency and  
27 or employment.

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1           4.     Plaintiff and the defendant are both residents of  
2 Sacramento County. The Contract giving rise to this litigation  
3 was formed and signed in Sacramento County and for all times  
4 relevant herein, defendant has been a resident of Sacramento  
5 County.

6           5.     Roy Rutherford and his wife, Tangie Rutherford, own a  
7 home located at 8600 Gunner Way, Fair Oaks, California. BETTY LOU  
8 RUTHERFORD resides with her son, Roy, and daughter in-law,  
9 Tangie, at that address where they provide for and take care of  
10 her. On February 19, 2009, Roy and Tangie RUTHERFORD entered  
11 into a home improvement construction Contract with BIXBY. A major  
12 portion of that Contract was to remodel the house in such a way  
13 as to provide separate living quarters for Betty Lou within the  
14 same premises. That Contract is currently in litigation in  
15 Sacramento Superior Court, Case No. 34-2009-00066239.

16           6.     An asset of the RUTHERFORD TRUST includes an older,  
17 small commercial property located at 106 Mill Street, Grass  
18 Valley, California. Roy Rutherford had located a potential new  
19 tenant for the property, but before they could take possession  
20 and open the planned yogurt shop, certain improvements and  
21 necessary code upgrades had to be made to the subject property.  
22 Roy Rutherford had agreed with a contractor in the Grass Valley  
23 area on a cost to complete the remodeling as necessary.

24           7.     BIXBY learned of Rutherford's plans for remodeling the  
25 Grass Valley property and requested that RUTHERFORD give BIXBY a  
26 chance to bid on the remodel. BIXBY even volunteered the use of  
27 his attorney to help Rutherford defeat the Agreement made with  
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1 the prior contractor. BIXBY convinced RUTHERFORD that since he  
2 was already doing work for RUTHERFORD on Gunner Way in Fair Oaks,  
3 it would be easier and cheaper if he used the same contractor for  
4 the Grass Valley project. BIXBY further convinced RUTHERFORD  
5 that he could do a better and more thorough job for the same  
6 cost. In order to secure the Contract on the Mill Street job,  
7 BIXBY further promised that he would not charge RUTHERFORD extra  
8 fees for mileage or travel time.

9 8. BIXBY finally convinced RUTHERFORD to enter into a  
10 Contract for the limited remodel of the commercial property in  
11 Grass Valley. A copy of that Contract as presented to and signed  
12 by RUTHERFORD on May 29, 2009, is attached hereto as Exhibit "1".  
13 For a total contract amount of \$34,364, BIXBY agreed to complete  
14 all of the repair/remodel as requested by RUTHERFORD. As part of  
15 that promise, BIXBY agreed to do the necessary demolition,  
16 install a 3 Ton HVAC system, replace and re-enforce the floor as  
17 necessary to carry additional refrigeration units, install self  
18 coving sheet vinyl, install a drywall ceiling along with crown  
19 molding, paint and seal the interior and upgrade the electrical  
20 service as mandated by PG&E. RUTHERFORD and BIXBY both signed  
21 the eleven page typed Contract prepared by BIXBY to which was  
22 attached Exhibit "A", a single page breakdown of the scope of  
23 repair to be completed.

24 9. Sometime after the initial Contract was signed, BIXBY  
25 faxed RUTHERFORD four additional pages entitled Preliminary  
26 Estimate/Contract wherein some of the costs are broken out and a  
27 number of items listed on the scope of repair are listed as open  
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1 items. Three of the four additional pages require date and the  
2 initials of both parties and/or signatures. RUTHERFORD never  
3 signed or agreed to the content listed in these four additional  
4 pages.

5 **FIRST CAUSE OF ACTION**

6 **BREACH OF CONTRACT**

7 10. Plaintiff incorporates by reference Paragraphs 1-9  
8 above as though fully set forth herein.

9 11. Exhibit "1" attached hereto identifies the documents of  
10 the Contract as the eleven page written agreement and the six  
11 pages attached as Exhibit "A" identified as the plans and  
12 specifications. Plaintiff was never provided a complete copy of  
13 the plans and specifications identified as Exhibit "A". The  
14 contract also references Exhibit "B" which is identified as the  
15 "Schedule of Values", however, before obtaining plaintiff's  
16 signature on the Contract and up to the present time, BIXBY has  
17 yet to provide plaintiff with a Schedule of Values.

18 12. The Contract specifically provides that in exchange for  
19 \$34,364.00, subject only to costs incurred for changes made  
20 necessary by city or county governmental agencies, BIXBY would  
21 complete the remodel and repairs requested by plaintiff. The  
22 Contract further specifies that the contractor, in this case  
23 BIXBY, shall not perform any changes in the work requested until  
24 the owner has approved, in writing, a Change Order prepared by  
25 BIXBY that sets forth the exact amount of additional charges to  
26 be made. The Contract further provides that should an event occur  
27 which the contractor believes justifies an equitable adjustment  
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1 in the contract price, the contractor shall give written notice  
2 within a reasonable amount of time to RUTHERFORD.

3 13. Not at any time did BIXBY provide RUTHERFORD with  
4 written notice of any event which might justify an increase in  
5 the contract cost. Nor did BIXBY at any time provide RUTHERFORD  
6 with written Change Orders. However, without permission or  
7 authorization, BIXBY materially deviated from the agreed scope of  
8 proposed repairs, the Nevada County approved plans and PG & E's  
9 designated and authorized repair procedure. Notwithstanding  
10 BIXBY'S failure to provide written Change Orders, and in direct  
11 violation of the Contract as well as Business and Professions  
12 Code Sections 7159(c) (3) (a) and (d), BIXBY invoiced RUTHERFORD  
13 \$50,889.81 for what he claimed were oral Change Orders. When  
14 RUTHERFORD questioned the need for the changes and the billing  
15 without a written Change Order, plaintiff was informed that if  
16 they did not pay the invoices as submitted, BIXBY would stop  
17 work, lien the job and the property would never get ready for  
18 plaintiff's new tenant. Said conduct breaches the terms and  
19 conditions of the construction Contract.

20 14. BIXBY informed the Health Department for Nevada County  
21 that he would install self coving sheet vinyl, but instead he  
22 installed VCT flooring. Said conduct further breached the  
23 construction Contract by installing flooring which was not  
24 approved by the Nevada County Building Department and the  
25 applicable building codes. Not only was VCT flooring not  
26 approved for a food establishment, it failed and has had to be  
27 replaced with the cost being shared by RUTHERFORD and the tenant.

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1           15. When BIXBY talked RUTHERFORD into using BIXBY  
2 CONSTRUCTION to complete the repairs at Mill Street, he promised  
3 he would be utilizing the same equipment as proposed by the  
4 contractor first contacted by RUTHERFORD. That initial contract  
5 which was given to Bixby provided for the installation of a 3 Ton  
6 HVAC system. BIXBY has acknowledged that the competing estimate  
7 provided for a 3 Ton HVAC unit, but intentionally instructed his  
8 workers to install a 2 ½ Ton unit. The 2 ½ Ton unit is inadequate  
9 to cool the building in the summer and has already broken down on  
10 at least three occasions, wherein RUTHERFORD has incurred repair  
11 costs because BIXBY did not respond to the warranty call.

12           16. BIXBY has further breached the terms of the Contract by  
13 deviating from the approved plans and requests of RUTHERFORD.  
14 There were no requests for changes to the mezzanine area, either  
15 downstairs or upstairs, yet BIXBY has invoiced RUTHERFORD for  
16 over \$11,000 in Change Orders when there was no authorization to  
17 initiate and/or complete such work. Said conduct further  
18 breaches the construction Contract.

19           17. BIXBY has represented to RUTHERFORD that PG & E  
20 requested changes to the initial electrical repairs contemplated  
21 and approved. BIXBY, without authorization, deviated from the  
22 electrical changes approved by PG & E, and without authorization  
23 and/or proper permit, installed an electrical panel upstairs.  
24 The maximum cost to complete all the electrical repair necessary  
25 for the remodel should have been about \$5,267.90. BIXBY created  
26 false invoices and labor charges totaling \$35,597.61 for  
27 electrical related work. BIXBY has overbilled the electrical by  
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1 a minimum of \$30,329.

2 18. In further breach of the promises and/or terms of the  
3 Contract, BIXBY has charged RUTHERFORD travel time and mileage  
4 costs from Sacramento to Grass Valley. This was an item of cost  
5 that BIXBY specifically stated that he would not add to the  
6 Contract price.

7 19. Plaintiff has performed all obligations required by the  
8 terms of the construction contract except those obligations  
9 plaintiff was prevented or excused from performing.

10 20. Upon completion of repairs at 106 Mill Street, BIXBY  
11 insisted that he be paid in full for the Contract price plus  
12 \$50,889.81 in oral Change Orders that were invoiced. Fearing  
13 that the work would not be completed unless they paid the bill,  
14 and because BIXBY promised to lien the property and prevent the  
15 tenant from taking possession, RUTHERFORD had no choice but to  
16 pay BIXBY's inflated Contract price.

17 21. Plaintiff is not absolutely certain that they have  
18 accounted for all over charges made by BIXBY, nor is plaintiff  
19 absolutely certain that they have been able to ascertain all the  
20 damages caused by BIXBY's less than professional work. To date,  
21 plaintiff can account for over \$35769.00 in damages caused by the  
22 breaches of contract alleged herein, but it is likely that amount  
23 will increase as discovery commences. Plaintiff has also been  
24 forced to incur attorney fees and costs to recover the amounts  
25 due under the Contract, and said fees and costs are a recoverable  
26 item per the terms of the contract.

27 WHEREFORE, plaintiff prays for judgment against defendants  
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1 and each of them as set forth below.

2 SECOND CAUSE OF ACTION

3 (Negligence)

4 22. Plaintiff incorporates paragraph 1 through 21 above as  
5 though fully set forth herein.

6 23. BIXBY's conduct and work product as herein alleged  
7 above falls below the standard of care required of licensed  
8 general contractors and, as such, was negligent. BIXBY  
9 negligently caused damage to the plaintiff by failing to  
10 reasonably perform the duties owed RUTHERFORD under the Contract.  
11 Before filing this lawsuit, plaintiff retained the services of a  
12 licenced inspector, who is also a licenced contractor, to  
13 complete and inspect the work performed by BIXBY. In addition to  
14 the wrongful conduct alleged hereinabove, the inspection revealed  
15 improper use of wood piers used to support the structural  
16 foundation and the weakening of the structural system caused by  
17 excessive cutting and notching of wooden beams. The report  
18 further pointed out below standard patching of the PVC plumbing  
19 system and leaking water pipes that had been recently installed.  
20 In general, the independent inspection report reveals poor  
21 workmanship that falls below the standard of care required, for,  
22 but not limited to painting, tile work, molding and drywall.

23 24. As a legal result of BIXBY's negligence herein alleged,  
24 RUTHERFORD has been further damaged to the extent that she has  
25 spent money well in excess of the inflated Contract price to  
26 repair and/or complete work started by BIXBY. RUTHERFORD'S tenant  
27 has been inconvenienced because of the repairs that had to be  
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1 completed to BIXBY's work.

2 WHEREFORE, plaintiff prays for judgment against defendants  
3 and each of them as set forth below.

4 THIRD CAUSE OF ACTION

5 (Constructive Fraud)  
6 (Insurance Code Section 1573)

7 25. Plaintiff refers to and incorporates paragraph 1  
8 through 24 above as though fully set forth herein.

9 26. Before agreeing to contract with BIXBY, RUTHERFORD  
10 provided BIXBY with a copy of the Contract as written by a  
11 competing contractor. BIXBY specifically represented to plaintiff  
12 that he could do the same scope of repair for the contract amount  
13 of \$34,364. BIXBY represented that he had the expertise to do the  
14 subject remodel and had done similar jobs before.

15 27. At the time the Contract was signed, there was no  
16 indication that BIXBY was going to request Change Orders and/or  
17 that there had been items of cost that had yet to be determined.  
18 Plaintiff has since learned that Bixby has a pattern and practice  
19 of under bidding jobs to get the contract signed, and then uses  
20 change orders to increase the total contract price. When BIXBY  
21 represented to RUTHERFORD that he could do the job for \$34,364,  
22 BIXBY knew that there were going to be significant additional  
23 costs to complete the repairs, but he intentionally and/or  
24 negligently failed to share that information with RUTHERFORD.  
25 Said conduct by BIXBY caused considerable prejudice to RUTHERFORD  
26 when BIXBY later insisted on additional unauthorized change order  
27 payments of over \$50,000 in order to avoid a lien on the property  
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1 and before he final the job. Said conduct by BIXBY caused  
2 plaintiff to incur significant economic damages well in excess of  
3 the contracted amount.

4 WHEREFORE, plaintiff prays for judgment against defendants  
5 and each of them as set forth below.

6 **FORTH CAUSE OF ACTION**

7 **VIOLATIONS of UNRUH CIVIL RIGHTS ACT**

8 **(CIVIL CODE SECTION 51)**

9 28. Plaintiff refers to and incorporates paragraph 1  
10 through 27 above as though fully set forth herein.

11 29. BETTY LOU RUTHERFORD is the sole beneficiary of the  
12 BETTY LOU RUTHERFORD TRUST. On the date her son entered into  
13 this Contract on her behalf, she was 85 years old and disabled in  
14 that she is legally blind and non-ambulatory. Plaintiff is  
15 informed and believes and on that basis alleges, that defendant,  
16 by and through the conduct herein alleged above, wrongfully  
17 discriminated against plaintiff on the basis of her disabilities.  
18 BIXBY's acts and/or omissions have denied plaintiff her rights  
19 under Civil Code Section 51, to be free of discrimination based  
20 on race, color, religion, ancestry, national origin and/or  
21 disability.

22 30. As a legal result of defendant's conduct as alleged  
23 herein, plaintiff has suffered economic damages in amounts to be  
24 shown at the time of trial. As provided in Civil Code Section  
25 52, in addition to the actual damages established by plaintiff,  
26 defendant may be held liable for up to three times the actual  
27 damages as determined by a court or jury, but in no case less  
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1 than \$4000.00. Plaintiff is also be entitled to recovery of  
2 attorney fees and costs as determined by the court.

3 WHEREFORE, plaintiff prays for judgment against defendants  
4 and each of them as set forth below.

5 FIFTH CAUSE OF ACTION

6 DECEPTIVE PRACTICES

7 (CIVIL CODE SECTION 1770-1780)

8 31. Plaintiff refers to and incorporates paragraphs 1  
9 through 30 above as though fully set forth herein.

10 32. Based on information and belief, plaintiff alleges that  
11 defendants conduct as herein stated above violates Civil Code  
12 Section 1770 in that said conduct was an unlawful method of  
13 competition, was unfair and/or a deceptive act. Specifically,  
14 plaintiff alleges that defendant violated Civil Code Section 1770  
15 (a) (15) by representing that a part, replacement or repair  
16 service was needed when it was not. In this case, defendant's  
17 oral change orders and invoices demand for payment for  
18 remodeling, changes in scope, alleged code upgrades and or work  
19 that was not necessary and or not done.

20 33. As a direct result of defendant's conduct as herein  
21 alleged, the plaintiff has suffered economic damages to be  
22 established at the time of trial. In addition to the economic  
23 damages alleged herein above, plaintiff is entitled to punitive  
24 damages, any other relief the court may deem proper, and since  
25 plaintiff's designated beneficiary is a senior citizen who is  
26 also disabled, plaintiff seeks an additional award of damages up  
27 to \$5000.00 as provided in Civil Code Section 1780(a) (b).

1 Plaintiff is also entitled to the recovery of attorney fees and  
2 costs if she proves deceptive practices.

3 30. WHEREFORE, plaintiff prays for judgment against  
4 defendants and each of them as set forth below.

5 **FIRST CAUSE OF ACTION - Breach of Contract**

6 1. For reimbursement of Contract damages in the amount of  
7 \$35,769 plus loss of interest at the legal rate of ten percent  
8 per annum from 7/20/09 to the present;

9 2. For attorney fees and costs incurred by plaintiff;

10 3. For such other relief as the court may deem proper;

11 **SECOND CAUSE OF ACTION - Negligence**

12 1. For any and all economic losses incurred in excess of  
13 the contract damages, to be established at the time of trial;

14 2. For attorney fees and costs;

15 3. For such other relief as the court may deem proper;

16 **THIRD CAUSE OF ACTION - Fraud**

17 1. For any and all economic losses incurred in excess of  
18 the contract damages, to be established at the time of trial;

19 2. For attorney fees and costs;

20 3. Punitive damages as the court may deem just and proper;

21 4. For such other relief as the court may deem proper;

22 **FOURTH CAUSE OF ACTION - UNRUH CIVIL RIGHTS ACT**

23 1. For actual economic damages incurred as a result of  
24 defendant's discriminatory conduct.

25 2. For damages three times the amount of actual damages  
26 but no less than \$4,000.0.

27 3. For attorney fees as determined by the court;

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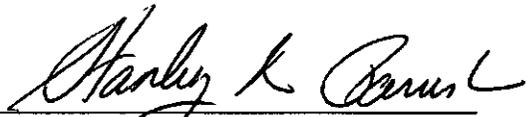
4. For such other relief as the court may deem proper;

**FIFTH CAUSE OF ACTION - DECEPTIVE PRACTICES**

- 1. For actual out-of-pocket losses incurred;
- 2. For punitive damages;
- 3. For attorney fees and costs;
- 4. An additional award of \$5,000 pursuant to Civil Code ,  
Section 1751(f)(g);
- 5. For such other relief as the court may deem proper;

Dated: May 20, 2010

LAW OFFICES OF STANLEY R. PARRISH

By:   
 STANLEY R. PARRISH  
 Attorneys for Plaintiff  
 BETTY LOU RUTHERFORD  
 REVOCABLE TRUST BY  
 JOE RUTHERFORD, TRUSTEE  
 AND ACTING AGENT

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DEMAND FOR TRIAL BY JURY

Plaintiff demands trial by jury of all issues so triable.

Dated: May 29 2010

LAW OFFICES OF STANLEY R. PARRISH

By:   
STANLEY R. PARRISH  
Attorneys for Plaintiff  
BETTY LOU RUTHERFORD  
REVOCABLE TRUST BY  
JOE RUTHERFORD, TRUSTEE  
AND ACTING AGENT