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MARK BIXBY and MJB/BIXBY CONSTRUCTION, INC.

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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SACRAMENTO

10 MARK BIXBY and MJB/BIXBY
CONSTRUCTION, INC.,

11 Plaintiffs,

12 vs.

13 EDWARD R. BRENNER and LAW
14 OFFICES OF EDWARD R. BRENNER and
DOES 1 through 100, inclusive,

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16 Defendants.

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19 COME NOW Plaintiffs MARK BIXBY and MJB/BIXBY CONSTRUCTION, INC. and
20 complain of Defendants, and each of them, and alleges as follows:

21 **I.**

22 **GENERAL ALLEGATIONS**

23 1. Plaintiff MARK BIXBY at all times herein mentioned was and is an individual
24 residing in the County of Sacramento, State of California.

25 2. Plaintiff MJB/BIXBY CONSTRUCTION, INC. at all times herein mentioned was and
26 is a California corporation operating business in Sacramento County.



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CIVIL DIVISION
07/09/2004 02:37:47 PM
04AS02768 - Fee PAID: \$314.50
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CASE NO. Superior Court

04AS02768

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

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1 various legal actions, including, but not limited to, *MJB/Bixby v. Ernce*, *Doty v. Bixby*, *Hibbert v.*
2 *Bixby and First American Prop. v. Bixby* (hereinafter the “underlying lawsuits”).

3 8. As a result of the attorney/client relationship, Defendants, and each of them, at all
4 times herein mentioned, had a duty to represent Plaintiffs with reasonable care, skill and
5 diligence as ordinarily possessed and exercised by other attorneys in the community and to
6 perform representation in compliance with the fiduciary duties owed to their clients.

7 9. At all times herein mentioned, Defendants, and each of them, negligently and
8 carelessly represented Plaintiffs and negligently and carelessly rendered untimely, inappropriate,
9 inadequate legal services and advice; negligently and carelessly failed to properly represent
10 Plaintiffs and to properly protect Plaintiffs’ interests and legal rights by failing to perform
11 numerous acts, including, but not limited to, failing to protect the statute of limitations with
12 regard to various causes of action, improperly advising Plaintiffs to file an action on a lien which
13 had previously expired, in addition to several other inappropriate, inadequate, careless, untimely
14 and negligent actions or inactions.

15 10. As a result of the various acts of negligence and carelessness of Defendants, and each
16 of them, Plaintiffs were deprived of and lost various legal rights and have incurred fees and costs
17 related to the continued need to defend/pursue their legal rights relative to the underlying
18 lawsuits.

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

24 12. As a result of the aforementioned acts and omissions of negligence and carelessness,
25 Plaintiffs have incurred economic, reputation and consequential damages the full nature and

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1 extent of which have not been ascertained; that Plaintiffs reserve the right to insert the amount of
2 said damages when ascertained.

3 13. As a result of the aforementioned negligent acts, Plaintiffs seek interest according to
4 law.

5 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
6 hereinafter more fully set forth.

7 **III.**

8 **SECOND CAUSE OF ACTION**

9 (Breach of Contract)

10 14. Plaintiffs reallege and incorporate herein by reference each and every allegation
11 contained in paragraphs 1 through 13, of this Complaint as though fully set forth herein.

12 15. Plaintiffs allege that during Defendants' representation of Plaintiffs, and within two
13 years from the date of the filing of the Complaint, an oral agreement was made between Plaintiffs
14 and Defendants whereby Plaintiffs would perform construction services for Defendants in
15 exchange for legal services from Defendants and/or pay Plaintiffs money for the reasonable value
16 of those construction services.

17 16. Defendants breached the agreement by failing to properly provide the appropriate
18 legal services and/or pay Plaintiffs money to compensate the Plaintiffs for the construction
19 services provided which services exceed \$30,000 in value.

20 17. Plaintiffs have performed all obligations to Defendants except those obligations
21 Plaintiffs were prevented or excused from performing.

22 18. Plaintiffs suffered damages proximately caused by Defendants' breach of the
23 agreement by not paying Plaintiffs for the reasonable value of their services, which services
24 exceed \$30,000 in value.

25 19. Plaintiffs allege that Defendants, and each of them, became indebted to Plaintiffs
26 within the last two years for work, labor, services and materials rendered at the special instance
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1 and request of Defendants and for which Defendants promised to pay Plaintiffs the reasonable
2 value for said services.

3 20. Defendants owe Plaintiffs in excess of \$30,000 which is the reasonable value due and
4 unpaid despite Plaintiffs' demand, plus pre-judgment and post-judgment interest according to
5 proof.

6 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
7 hereinafter more fully set forth.

8 **IV.**

9 **THIRD CAUSE OF ACTION**

10 (Breach of Fiduciary Duty)

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

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

15 23. Defendants, and each of them, breached their fiduciary duty to Plaintiffs by, among
16 other things, misrepresenting the services performed on behalf of Plaintiffs, by over-charging
17 Plaintiffs for the services performed, by failing to pay Plaintiffs for construction services
18 performed for Defendants, by misleading Plaintiffs and making false representations and
19 statements to Plaintiffs; by concealing true facts from Plaintiffs, and by failing to discharge their
20 professional duties as alleged herein, in addition to several other inappropriate, inadequate,
21 careless and negligent actions or inactions.

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

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

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

3 27. That as a result of the aforementioned negligent acts, Plaintiffs seek interest
4 according to law.

5 WHEREFORE, Plaintiffs pray for relief as follows:

- 6 1. For general, special, and consequential damages according to proof;
- 7 2. For disgorgement of all fees paid by Plaintiffs to Defendants;
- 8 3. For punitive damages in an amount to appropriate to punish Defendants and deter
9 others from engaging in similar misconduct;
- 10 4. For pre-judgment interests according to proof;
- 11 5. For interest according to proof;
- 12 6. For attorneys' fees according to proof;
- 13 7. For cost of suit incurred herein; and
- 14 8. For such other and further relief as the court deems just and proper.

15 DATED: July 9, 2004

16 WALTZ LAW FIRM

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18 By: 

19 PATRICK J. WALTZ
20 Attorney for Plaintiffs
21 MARK BIXBY and MJB/BIXBY
22 CONSTRUCTION, INC.
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