MOYER, PARSHALL & TWEEDY, LLP EL DORADO CO. SUPERIOR CT. Charles A. Tweedy [SBN 096234] 11341 Gold Express Drive, Suite 110 Gold River, California 95670 MAY 1 4 2003 3 Telephone: (916) 631-8388 Facsimile: 4 (916) 631-8188 Attorneys for Plaintiff MJB Bixby Construction, Inc. 5 6 7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA 8 IN AND FOR THE COUNTY OF EL DORADO 9 MJB BIXBY CONSTRUCTION, INC. CASE NO. 10 Plaintiff. COMPLAINT FOR FORECLOSURE OF 11 MECHANIC'S LIEN AND STOP NOTICE VS. 12 MARTY DePAOLI; ALLISON DePAOLI; 13 PLACER SIERRA BANK; and DOES 1 through 100, inclusive, 14 Defendants. 15 16 COMES NOW Plaintiff, MJB BIXBY CONSTRUCTION, INC. (hereinafter referred to as 17 "BIXBY") and alleges as follows: 18 FIRST CAUSE OF ACTION 19 Plaintiff at all times herein mentioned is and was a contractor doing business in the State 20 of California and duly licensed to act as a contractor under the laws of the State of California to perform 21 all works of improvement described hereinafter which were performed by Plaintiff. 22 Defendants MARTY DePAOLI and ALLISON DePAOLI (hereinafter referred to as "the 2. 23 DePAOLIS") at all times herein mentioned was the owner or reputed owner of that certain property 24 located in the County of El Dorado, State of California, and more particularly described in Exhibit "A" 25 hereto. Said property is hereinafter referred to as the Real Property. 26 3. Plaintiff is unaware of the true names and identities of Defendants DOES 1 through 100, 27 inclusive, and has sued said DOE defendants by such fictitious names. Plaintiff is informed and believes 28

and thereon alleges that each of said Defendants claims an interest in the Real Property which is the subject of this action. Plaintiff will seek leave to amend this Complaint to assert the true names and identities of said DOE defendants at such time as those identities have been discovered.

- 4. Plaintiff is informed and believes and thereon alleges that each of said DOE defendants is and at all times herein was the agent, servant, master, or principal of each and every other Defendant named herein and is liable to Plaintiff for the damages sustained by Plaintiff either directly or indirectly, vicariously or otherwise.
- 5. On or about April 24, 2002, BIXBY and the DePAOLIS, and DOES 1 through 10, entered into a written contract for the construction of certain works of improvement to be located on the Real Property described herein and to furnish and provide all necessary labor and materials therefor in connection therewith, and to do all things in accordance with the terms and conditions of said contract. Each of said Defendants agreed to pay to Plaintiff the sum of the contract price together with such additional sums as may be subsequently agreed, either orally or in writing, in accordance with the terms of the contract.
- 6. Plaintiff is informed and believes and thereon alleges that Defendant PLACER SIERRA BANK claims an interest in the Real Property and at all times herein mentioned acted as construction lender providing funds for the payment of costs and expenses incurred in connection with the construction of the work of improvement on the Real Property.
- 7. From and after the execution of the contract as described hereinabove, Plaintiff furnished and supplied to the Real Property labor and materials used in the work of improvement constructed thereon in accordance with the terms and conditions of the contract pursuant to the request of the DePAOLIS. There is presently due, owing and unpaid pursuant to the contract, the sum of Two Hundred Thirteen Thousand Five Hundred dollars (\$213,500) which sum represents the fair and reasonable value of the work and materials performed and supplied by Plaintiff to the Real Property after all due credits for payments made, credits, offsets, and adjustments.
- 8. On March 26, 2003, Plaintiff recorded with the County Recorder of the county in which the Real Property is situated Plaintiff's verified Claim of Mechanic's Lien, a copy of which is attached hereto as Exhibit "A". Prior to the recording of said lien, thirty (30) days had not elapsed or expired

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since the recordation of a valid Notice of Completion nor had ninety (90) days elapsed since the completion of the work of improvement on the Real Property.

- There is now due, owing and unpaid from Defendants, and each of them, the sum of Two 9. Hundred Thirteen Thousand Five Hundred dollars (\$213,500) after all due and just credits for claims of offset, credit and payments made subsequent to the recording of the mechanic's lien together with interest thereon at the legal rate of ten percent (10%) per annum from and after March 11, 2003.
- 10. Plaintiff's contract with the DePAOLIS provides for the recovery of all reasonable attorney's fees incurred in the enforcement of Plaintiff's contract; and therefore, Plaintiff is entitled to recover, in addition to all sums set forth hereinabove, Plaintiff's reasonable attorney's fees incurred herein.

SECOND CAUSE OF ACTION (Enforcement of Stop Notice)

- Plaintiff realleges and incorporates by reference as though fully set forth in this cause of 11. action Paragraphs 1 through 7 of the First Cause of Action.
- On April 11, 2003, and April 16, 2003, Plaintiff caused to be served on Defendants PLACER SIERRA BANK and the DePAOLIS by certified mail, return receipt requested, a verified Stop Notice together with a good and sufficient bond, copies of which are attached hereto as Exhibits "B" and "C, respectively. Said Stop Notice was in the amount of Two Hundred Thirteen Thousand Five Hundred dollars (\$213,500).
- Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, 13. Defendant PLACER SIERRA BANK was the construction lender and holder of certain loan funds or proceeds allocated for the work of improvement on the Real Property.
- Said Stop Notice and stop notice bond were served prior to the expiration of the period 14. within which mechanic's liens must be recorded pursuant to Civil Code, §§ 3115, 3116 or 3117. Ninety (90) days have not elapsed since the expiration of the period within which claims of liens must be recorded as prescribed by Civil Code, §3109, et seq.
- Plaintiff is informed and believes and thereon alleges that at the time of the service of said 15. Stop Notice, there was a sufficient amount of money due from Defendant PLACER SIERRA BANK out

of the construction loan fund to answer and pay said claim of Plaintiff and the reasonable cost of litigation thereunder.

- 16. Defendant PLACER SIERRA BANK has failed and refused and continues to fail and refuse to pay to Plaintiff the sum of Two Hundred Thirteen Thousand Five Hundred dollars (\$213,500) out of said construction loan funds, or any portion thereof, and the entire amount of Two Hundred Thirteen Thousand Five Hundred dollars (\$213,500) plus interest to the date of filing and serving said Stop Notice at the rate of ten percent (10%) per annum is now due, owing and unpaid.
- 17. Defendants, and each of them, have or claim to have some estate, lien, right, title, or interest in or to said construction loan funds or some portion thereof, which claims or liens are subject to, subsequent to, and subordinate to the lien of Plaintiff.

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- 1. Against the DePAOLIS in the amount of Two Hundred Thirteen Thousand Five Hundred dollars (\$213,500) together with interest thereon at the rate of ten percent (10%) per annum from and after March 11, 2003;
 - 2. For costs of suit incurred herein;
- 3. For judgment as against all Defendants that all of said amounts be adjudged to be a lien on the Real Property described in Exhibit "A" hereto and that said land be adjudged and decreed to be sold by the Sheriff of the County of El Dorado, State of California, in accordance with the laws and practices of this Court, and that the proceeds of sale be applied to satisfy the costs of sale, the costs of these proceedings, and Plaintiff's claim and judgment.
- 4. That the interests and claims and the estates of all Defendants named herein, and each of them, be determined to be of inferior priority to that of Plaintiff and subject to Plaintiff's lien. That the Court further order that the Plaintiff, or any party to this action may become a purchaser at sale.
- 5. As against the DePAOLIS, for reasonable attorney's fees to be awarded pursuant to Code of Civil Procedure, §1717;
- 6. Let it be ordered and decreed that the monies held by Defendant PLACER SIERRA BANK under and pursuant to said Stop Notice be paid to Plaintiff and applied on account of his judgment.

- In the event that said construction funds have been disbursed by PLACER SIERRA 7. BANK after the filing by Plaintiff of the Plaintiff's Stop Notice, that judgment be entered against PLACER SIERRA BANK in favor of Plaintiff for the sum of Two Hundred Thirteen Thousand Five Hundred dollars (\$213,500), together with interest and attorney's fees and costs.
- That the interest of all Defendants in said construction loan funds be adjudged subsequent 8. to, subject to and inferior to the claim and lien of Plaintiff herein.
 - For such further relief as the Court may deem just and proper. 9.

DATED: April 3 6, 2003

MOYER, PARSHALL & TWEEDY, LLP

By:

Attorneys for Plaintiff, MJB Bixby Construction

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RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

NAME MJB/Bixby Construction, Inc.

STREET ADDRESS 5852 - 88th St. #800

CITY STATE & Sacramento, CA 95828

- SPACE ABOVE THIS LINE FOR RECORDER'S USE -

STATE OF CALIFORNIA MECHANIC'S LIEN

(Claim of Lien)

(Signification)
The undersigned, MJB/Bixby Construction, Inc. (FULL NAME OF PERSON OF FIRM CLAIMING MECHANIC'S LIEN) Claims a mechanic's lies footby 1.1.
diaming a mechanic's iten for the labor, services, equipment and/or materials deposited between
improvement upon that certain real property located in the County of ET Donado State of California,
and described as follows: 31 Guadalupe Drive, El Dorado Hills, California
Parcel 067-120-70-100 Map Book 67, page 12
ALTHOUGH THE STHEET ADDRESS ALONE IS SUFFICIENT, IT IS RECOMMENDED TO GIVE BOTH THE STREET ADDRESS AND LEGAL DESCRIPTION.)
After deducting all just credits and offsets, the sum of \$ 213,500.00
(AMCUNT OF CLARY OF
together with interest thereon at the rate of 10% per cent per annum from 11 March 2003
(DATE WHEN AMOUNT OF CLAIM SECAME DUE), is due claimant for the following labor, services, equipment and/or materials furnished by
Claimant: All labor and materials including plumbing, electrical, framing, foundation,
concrete, siding, roofing and other materials used in connection with
TOTAL GEO CITE GOOVE GUGETES GESCRIPTION OF THE WORK AND/OR MATERIAL CHONGLIST
The name of the person or company by whom Claimant was employed, or to whom Claimant furnished the labor.
services, equipment and/or materials is Marty DePaoli and Allison DePaoli
(USUALLY NAME OF PERSON OR FIRM WHO ORDERED COOK OF
(USUALLY NAME OF PERSON OR FIRM WHO ORDERED FROM, OR CONTRACTED WITH, CLAIMANT FOR THE WORK AND/OR MATERIALS) The name(s) and address(es) of the Owner(s) of the owner(s) as the state of the owner(s) and address(es).
The name(s) and address(es) of the owner(s) or reputed owner(s) of the real property is/are: Marty DePaoli 8049 Marigola Way, El Dorado Hills, CA 95762
(THIS INFORMATION CAN BE OBTAINED FROM THE COUNTY ASSESSOR'S OFFICE WHERE THE REAL PROPERTY IS LOCATED)
Name of Claimant M 10/05 why Comptument
By Mark Bixby, President
VERIFICATION I the undersigned declaration at President MIR/Pivby Construction T
I, the undersigned, declare: I am the President of MJB/Bixby Construction, Inc.
the Claimant named in the foregoing claim of mechanic's lien; I am authorized to make this verification for the
Claimant; I have read the foregoing claim of mechanic's lien and know the contents thereof, and the same is true to
, sandandage,
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
(DATE ALL DATE OF THE ALL DATE
(DATE OF SIGNATURE) (SIGNATURE OF THE INDIVIDUAL WHO VERIFIES THAT THE CONTENTS OF THE CLAIM OF MEDIAN CONTENTS OF THE CLAIM CONTENTS OF THE C