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LEGAL PROCESS #11

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8 **MARK J. BIXBY,**  
9 **MARX PRODUCTIONS, INC.**  
10 **and MJB BIXBY CONSTRUCTION, INC.**

11 **IN THE SUPERIOR COURT OF CALIFORNIA**  
12 **IN AND FOR THE COUNTY OF SACRAMENTO**

13 **MARK J. BIXBY,**  
14 **MARX PRODUCTIONS, INC.**  
15 **and MJB BIXBY CONSTRUCTION, INC.**  
16 **Plaintiffs,**

17 **vs.**

18 **PAIGE M. HIBBERT, HACKARD, HOLT**  
19 **& HELLER AND DOES 1 THROUGH 20,**  
20 **Defendants.**

) **Case No.: 01AS03432**  
)  
) **FIRST AMENDED**  
) **COMPLAINT FOR DAMAGES;**  
) **PROFESSIONAL NEGLIGENCE,**  
) **BREACH OF CONTRACT, BREACH OF**  
) **FIDUCIARY DUTY; INTENTIONAL**  
) **INFLECTION OF EMOTIONAL**  
) **DISTRESS AND NEGLIGENT**  
) **INFLECTION OF EMOTIONAL**  
) **DISTRESS**  
)

21 **COMES NOW THE PLAINTIFFS IN DEMAND OF A JURY TRIAL:**

- 22 1. Plaintiffs are, and at all times herein mentioned were, residents of Sacramento  
23 County, California.
- 24 2. Defendants, and each of them are, and at all times herein mentioned were, residents  
25 of Sacramento County, California.
3. Defendant, **HACKARD, HOLT & HELLER**, and Does 11-20, is and at all times  
herein mentioned was, a business entity, type unknown, licensed to conduct and in  
fact conducting business in Sacramento, California.

- 1 4. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as  
2 Does 1 through 20, inclusive and, therefore sues said Defendants by such fictitious  
3 names. Plaintiffs will amend this complaint to allege their true names and capacities  
4 when ascertained. Plaintiffs are informed and believe, and thereon allege, that each  
5 of the fictitiously named Defendants is negligently responsible in some manner for  
6 the occurrences herein alleged, and that Plaintiffs' injuries as herein alleged were  
7 proximately caused by that negligence.
- 8 5. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
9 herein, each of the Defendants was the agent and employee of each of the remaining  
10 Defendants, and in doing the things hereinafter alleged, was acting within the course  
11 and scope of said agency and employment. Plaintiffs are informed and believe, and  
12 thereon allege, that at all times mentioned herein, each of the Defendants were  
13 involved in a joint venture.

14  
**FIRST CAUSE OF ACTION**  
**PROFESSIONAL NEGLIGENCE vs. DEFENDANTS**

1 9. On or about June 15, 2000 and in fact prior thereto, Defendants, and each of them,  
2 failed to exercise reasonable care and skill in undertaking to perform certain legal  
3 services for Plaintiffs and also negligently and carelessly performed other certain  
4 legal services for Plaintiffs, failing to exercise reasonable care, skill, and diligence in  
5 so representing Plaintiff, including, but not limited to:

- 6 a. Failing to properly investigate the subject underlying cases.
- 7 b. Failing to file a complaint with the properly named Plaintiff or Plaintiffs.
- 8 c. Failing to conduct adequate discovery in the matter filed upon.
- 9 d. Failing to amend the pleadings to properly protect Plaintiffs' interests.
- 10 e. Failure to designate experts capable of proving the matter then pending.
- 11 f. Failure to properly prepare the single expert witness disclosed.
- 12 g. Failure to depose experts disclosed by the target defendants.
- 13 h. Failure to adequately communicate with Plaintiffs on all matters pertinent to  
14 the case then pending.
- 15 i. Failure to properly protect Plaintiffs by abandoning them at a time which  
16 exposed Plaintiffs and compromised their interests. Further, Defendant  
17 Hibbert lied in his declaration to the court in his motion to withdraw.

18 10. Defendants motion to withdraw as attorney of record was granted on or about  
19 June 14, 2000.

20 11. As a direct legal and proximate result of the negligence of Defendants, and each of  
21 them, Plaintiffs were forced to hire hourly counsel in an amount in excess of the  
22 jurisdictional limits of this court. This required Plaintiffs to spend funds on the  
23 underlying litigation, which were budgeted for other purposes. Therefore, Plaintiffs  
24 are not only entitled to the amount of the fees expended for hourly as opposed to  
25

1 contingency representation, but are entitled to the opportunity cost of spending the  
2 subject funds on litigation rather than business.

3 12. As a further direct legal and proximate result of the negligence of Defendants, and  
4 each of them, Plaintiff has incurred and will continue to incur economic damages,  
5 including, but not limited to the compromise of the case far below its actual value; an  
6 amount which is an amount in excess of the jurisdictional limits of this court.

7 **SECOND CAUSE OF ACTION**  
8 **BREACH OF CONTRACT vs. DEFENDANTS**  
9 **AND EACH OF THEM**

10 13. Plaintiffs hereby incorporate paragraphs one through twelve as if fully set forth  
11 herein.

12 14. Defendants breached the contract on or about June 14, 2000. Defendants, and each of  
13 them, in breach of the contract for legal services, failed to perform certain legal  
14 services for Plaintiffs and negligently and carelessly performed other legal services  
15 for Plaintiffs, including, but not limited to:

- 16 a. Failing to properly investigate the subject underlying cases.
- 17 b. Failing to file a complaint with the properly named Plaintiff or Plaintiffs.
- 18 c. Failing to conduct adequate discovery in the matter filed upon.
- 19 d. Failing to amend the pleadings to properly protect Plaintiffs' interests.
- 20 e. Failure to designate experts capable of proving the matter then pending.
- 21 f. Failure to properly prepare the single expert witness disclosed.
- 22 g. Failure to depose experts disclosed by the target defendants.
- 23 h. Failure to adequately communicate with Plaintiffs on all matters pertinent to  
24 the case then pending.
- 25



1 representation of their interests in the aforementioned matter, a confidential  
2 relationship existed at all times herein mentioned between Plaintiffs and Defendants  
3 and Defendants owed Plaintiffs a fiduciary duty as a result thereof.

4 21. Despite having voluntarily accepted the trust and confidence of Plaintiffs and in  
5 violation of this special relationship of trust and confidence, Defendants abused said  
6 trust and confidence in the following manner on or about June 15, 2000 in the  
7 following manner:

- 8 a. Failing to properly investigate the subject underlying cases.
- 9 b. Failing to file a complaint with the properly named Plaintiff or Plaintiffs.
- 10 c. Failing to conduct adequate discovery in the matter filed upon.
- 11 d. Failing to amend the pleadings to properly protect Plaintiffs' interests.
- 12 e. Failure to designate experts capable of proving the matter then pending.
- 13 f. Failure to properly prepare the single expert witness disclosed.
- 14 g. Failure to depose experts disclosed by the target defendants.
- 15 h. Failure to adequately communicate with Plaintiffs on all matters pertinent to  
16 the case then pending.
- 17 i. Failure to properly protect Plaintiffs by abandoning them at a time which  
18 exposed Plaintiffs and compromised their interests. Further, Defendant  
19 Hibbert lied in his declaration to the court in his motion to withdraw.

20 22. Defendants motion to withdraw as attorney of record was granted on or about  
21 June 14, 2000.

22 23. As a direct legal and proximate result of the breach of Defendants, and each of them,  
23 Plaintiffs were forced to hire hourly counsel in an amount in excess of the  
24 jurisdictional limits of this court. This required Plaintiffs to spend funds on the  
25 underlying litigation, which were budgeted for other purposes. Therefore, Plaintiffs

1 are not only entitled to the amount of the fees expended for hourly as opposed to  
2 contingency representation, but are entitled to the opportunity cost of spending the  
3 subject funds on litigation rather than business.

4 24. As a direct legal and proximate result of the breach of Defendants, and each of them,  
5 Plaintiffs suffered the expectation damages of the value of their case; that is to say the  
6 value of the cases against the underlying defendants in an amount to be proven at  
7 trial.

8 25. In doing the acts alleged herein, Defendants acted with oppression, fraud and malice  
9 and Plaintiff is entitled to exemplary damages in an amount according to proof at the  
10 time of trial.

11  
12 **FOURTH CAUSE OF ACTION**  
13 **INTENTIONAL INFLICTION OF**  
14 **EMOTIONAL DISTRESS**  
15 **vs. DEFENDANTS**  
16 **AND EACH OF THEM**

17 26. Plaintiffs hereby incorporate paragraphs one through twenty-five as if fully set forth  
18 herein.

19 27. Defendant PAIGE M. HIBBERT, is and at all times herein mentioned was, licensed  
20 to provide, and was in fact providing, legal services to plaintiff Mark Bixby in  
21 Sacramento, California as an employee of Defendant Hackard, Holt & Heller.

22 28. By virtue of the Attorney-Client relationship that existed between Plaintiff Mark  
23 Bixby and Defendants and by virtue of Plaintiff having placed confidence in the  
24 fidelity and integrity of Defendants, and each of them, and entrusting Defendants with  
25 the representation of his interests in the aforementioned matter, a confidential  
relationship existed at all times herein mentioned between Plaintiff and Defendants  
and Defendants owed Plaintiff a fiduciary duty as a result thereof.

1 29. Despite having voluntarily accepted the trust and confidence of Plaintiff, Defendants  
2 engaged in outrageous, unprivileged conduct, which was ignited when Mr. Hibbert  
3 and Mr. Bixby had an argument over the amount of money Mr. Hibbert was to pay  
4 Mr. Bixby for performing improvements to the Hibbert family business located on  
5 Arden Way in Sacramento County.

6 30. In addition, Mr. Hibbert had requested that Mr. Bixby falsify documents and when  
7 Mr. Bixby refused, Mr. Hibbert became angry and began to systematically sabotage  
8 the cases of all Plaintiffs.

9 31. Defendants, and each of them, with the intent to cause emotional distress or with  
10 reckless disregard of the probability of causing emotional distress engaged in the  
11 following intentional acts:

- 12 a. Failing to conduct adequate discovery in the matter filed upon.
- 13 b. Failing to amend the pleadings to properly protect Plaintiff's interests.
- 14 c. Failing to designate experts capable of proving the matter then pending.
- 15 d. Failing to properly prepare the single expert witness disclosed.
- 16 e. Failing to depose experts disclosed by the target defendants.
- 17 f. Failing to adequately communicate with Plaintiff on all matters pertinent to  
18 the case then pending.
- 19 g. Failing to properly protect Plaintiff by abandoning his case at a time which  
20 compromised his interest. Further, Defendant Hibbert lied in his declaration  
21 to the court in his motion to withdraw.

22 32. Defendants' motion to withdraw as attorney of record was granted on June 14, 2000.

23 33. The aforementioned conduct of Defendants, and each of them, legally and  
24 proximately caused Mr. Bixby to suffer severe emotional distress.  
25

1 34. Mr. Bixby has suffered and sustained permanent physical and emotional injury for  
2 which he has received medical attention and incurred damage; Plaintiff believes this  
3 medical attention will be required in the future.

4 35. Mr. Bixby has suffered and sustained permanent physical and emotional injury that  
5 caused him to miss work and will hinder his earning capacity.

6 36. As a direct legal and proximate result of the breach of Defendants, and each of them,  
7 Plaintiff was forced to hire hourly counsel in an amount in excess of the jurisdictional  
8 limits of this court. This required Plaintiff to spend funds on the underlying litigation,  
9 which were budgeted for other purposes. Therefore, Plaintiff is not only entitled to  
10 the amount of the fees expended for hourly as opposed to contingency representation,  
11 but is entitled to the opportunity cost of spending the subject funds on litigation rather  
12 than business.

13 37. As a direct legal and proximate result of the breach of Defendants, and each of them,  
14 Plaintiff suffered the expectation damages of the value of his case; that is to say the  
15 value of the cases against the underlying defendants, in an amount to be proven at  
16 trial.

17 38. In doing the acts alleged herein, Defendants acted with oppression, fraud and malice  
18 and Plaintiff is entitled to exemplary damages in an amount according to proof at the  
19 time of trial.

20 **FIFTH CAUSE OF ACTION**  
21 **NEGLIGENT INFLECTION OF**  
22 **EMOTIONAL DISTRESS**  
23 **vs. DEFENDANTS**  
24 **AND EACH OF THEM**

25 39. Plaintiffs hereby incorporate paragraphs one through thirty-eight as if fully set forth  
herein.

1 40. Defendant PAIGE M. HIBBERT, is and at all times herein mentioned was, licensed  
2 to provide, and was in fact providing, legal services to plaintiff Mark Bixby in  
3 Sacramento, California as an employee of Defendant Hackard, Holt & Heller.

4 41. By virtue of the Attorney-Client relationship that existed between Plaintiff Mark  
5 Bixby and Defendants and by virtue of Plaintiff having placed confidence in the  
6 fidelity and integrity of Defendants, and each of them, and entrusting Defendants with  
7 the representation of his interests in the aforementioned matter, a confidential  
8 relationship existed at all times herein mentioned between Plaintiff and Defendants  
9 and Defendants owed Plaintiff a fiduciary duty as a result thereof.

10 42. Despite having voluntarily accepted the trust and confidence of Plaintiff, Defendants  
11 engaged in outrageous, unprivileged conduct, which was ignited when Mr. Hibbert  
12 and Mr. Bixby had an argument over the amount of money Mr. Hibbert was to pay  
13 Mr. Bixby for performing improvements to the Hibbert family business located on  
14 Arden Way in Sacramento County.

15 43. In addition, Mr. Hibbert had requested that Mr. Bixby falsify documents and when  
16 Mr. Bixby refused, Mr. Hibbert became angry and began to ignore Plaintiff's legal  
17 dealings and systematically sabotage the cases of all Plaintiffs.

18 44. Defendants, and each of them, negligently and carelessly engaged in the following  
19 acts:

- 20 a. Failing to conduct adequate discovery in the matter filed upon.
  - 21 b. Failing to amend the pleadings to properly protect Plaintiff's interests.
  - 22 c. Failing to designate experts capable of proving the matter then pending.
  - 23 d. Failing to properly prepare the single expert witness disclosed.
  - 24 e. Failing to depose experts disclosed by the target defendants.
- 25

1 f. Failing to adequately communicate with Plaintiff on all matters pertinent to  
2 the case then pending.

3 g. Failing to properly protect Plaintiff by abandoning his case at a time which  
4 compromised his interest. Further, Defendant Hibbert lied in his declaration  
5 to the court in his motion to withdraw.

6 45. Defendants' motion to withdraw as attorney of record was granted on June 14, 2000.

7 46. The aforementioned conduct of Defendants, and each of them, legally and  
8 proximately caused Mr. Bixby to suffer severe emotional distress.

9 47. Mr. Bixby has suffered and sustained permanent physical and emotional injury for he  
10 has received medical attention and incurred damage; Plaintiff believes this medical  
11 attention will be required in the future.

12 48. Mr. Bixby has suffered and sustained permanent physical and emotional injury that  
13 caused him to miss work and will hinder his earning capacity.

14 49. As a direct legal and proximate result of the conduct of Defendants, and each of them,  
15 Plaintiff was forced to hire hourly counsel in an amount in excess of the jurisdictional  
16 limits of this court. This required Plaintiff to spend funds on the underlying litigation,  
17 which were budgeted for other purposes. Therefore, Plaintiff is not only entitled to  
18 the amount of the fees expended for hourly as opposed to contingency representation,  
19 but is entitled to the opportunity cost of spending the subject funds on litigation rather  
20 than business.

21 50. As a direct legal and proximate result of the breach of Defendants, and each of them,  
22 Plaintiff suffered the expectation damages of the value of his case; that is to say the  
23 value of the cases against the underlying defendants, in an amount to be proven at  
24 trial.

