1	Patrick J. Waltz, SBN 63130		FILED Superlor Court	Of Callfor	ıla,	
	Steven A. White, SBN 130302		Sacramento Dennis Jones, Executive Officer			
2	WALTZ LAW FIRM 2022 28TH Street					
3	Sacramento, California 95818 Telephone: (916) 454-0904		12/29/2008			
4	Telephone: (916) 454-0904 Facsimile: (916) 454-0909		amacias	_	_	
5	Attorney for Plaintiffs		By Case Number:	, De	puty	
6	MARK BIXBY and MJB/BIXBY CONSTRUCTIO	DN, INC.	34-2008-00030	542-CU-PN	-GDS	
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8	IN THE SUPERIOR COURT OF T	HE STATE OF C	CALIFORNIA	Department		
9	IN AND FOR THE COUNTY OF SACRAMENTO Case Managem Law and Motio				ent 45 n 53	
10	MARK J. BIXBY, individually and as	CASE NO.		Minors Compromi	42	
11	trustee of the MARK BIXBY REVOCABLE LIVING TRUST and MJB/BIXBY	COMPLAINT FOR PROFESSIONAL				
12	CONSTRUCTION, INC.,		E, BREACH OF AND BREACH O	F		
13	Plaintiffs,	FIDUCIARY I	DUTY			
14	vs.					
	PATRICK J. CUMMINGS, CB RICHARD					
15	ELLIS, INC. and DOES 1 through 100, inclusive,					
16						
17	Defendants.					
18						
19		* 1* * 1 11 1				
20	COME NOW Plaintiffs MARK J. BIXBY, individually and as trustee of the MARK					
21	BIXBY REVOCABLE LIVING TRUST and MJB/BIXBY CONSTRUCTION, INC. and complain of Defendants, and each of them, and alleges as follows:					
22						
23	I.	I.				
	GENERAL ALLEGATIONS					
24	1. Plaintiff MARK J. BIXBY at all times h	erein mentioned	was and is an indiv	vidual		
25	residing in the County of Sacramento, State of California and was and is the trustee for the					
26	MARK BIXBY REVOCABLE LIVING TRUST.					
27	WIARN DIADT REVOCADLE LIVIING IRUST.					
28	Complaint for Damages - 1 -					
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2. Plaintiff MJB/BIXBY CONSTRUCTION, INC. at all times herein mentioned was and
 is a California corporation operating business in Sacramento County.

3 3. Defendant PATRICK J. CUMMINGS at all times herein mentioned was and is an
4 individual residing in the County of Sacramento, State of California.

4. At all times herein mentioned, Defendants PATRICK J. CUMMINGS, CB RICHARD
ELLIS, INC. and DOES 1 through 100 were licensed real estate brokers who performed
brokerage and management services for Plaintiffs in the County of Sacramento, State of
California; that Defendants DOES 1 through 100 were various partners, agents, and employees of
Defendants who provided various brokerage services as alleged herein and were acting within the
purpose, scope and course of such agency, partnership and employment.

5. At all times herein mentioned, Defendants, and each of them, were licensed real estate
brokers, or other persons rendering brokerage services and were duly licensed and/or authorized
to practice their respective professions or businesses within the State of California.

14 6. The true names and capacities, whether individual, corporate, associate or otherwise, 15 of Defendants sued herein as DOES 1 through 100, inclusive, are unknown to Plaintiffs who at this time sues said Defendants by such fictitious names. Plaintiffs will seek leave to amend this 16 17 Complaint to show their true names and capacities when the same have been ascertained. 18 Plaintiffs are informed and believe and based thereon allege that each of the Defendants 19 designated herein as a "DOE" is responsible in some manner for the events and happenings herein referred to, and caused the injuries and damages sustained by the Plaintiffs as herein 20 21 alleged.

II.
 FIRST CAUSE OF ACTION
 (Professional Negligence)
 7. Plaintiffs reallege and incorporate herein by reference each and every allegation
 contained in paragraphs 1 through 6, of this Complaint as though fully set forth herein.

28 Complaint for Damages

8. Defendants, and each of them, undertook to provide various brokerage and management services to Plaintiffs and provided said services to Plaintiffs in connection with a 2 commercial lease located at 5852 88th Street, Sacramento, California, among other locations. 3

9. As a result of said relationship, Defendants, and each of them, at all times herein 4 mentioned, had a duty to represent Plaintiffs with reasonable care, skill and diligence as 5 6 ordinarily possessed and exercised by other commercial real estate brokers in the community and 7 to perform representation in compliance with the fiduciary duties owed to their clients.

8 10. At all times herein mentioned, Defendants, and each of them, negligently and 9 carelessly represented Plaintiffs and negligently and carelessly rendered inappropriate, 10 inadequate brokerage and management services; negligently and carelessly failed to properly 11 represent Plaintiffs and to properly protect Plaintiffs' interests by failing to perform numerous acts, including, but not limited to, failing to properly conduct the appropriate background 12 13 investigation of potential tenants, in particular Davi Anthony Rodrigues dba Black Market, Ayatollah of Gondola; improperly advising Plaintiffs to enter into an industrial real estate lease 14 15 with said tenant, in addition to several other inappropriate, inadequate, careless, and negligent actions or inactions. 16

17 11. As a result of the various acts of negligence and carelessness of Defendants, and each of them, Plaintiffs suffered damages and were deprived of and lost various rights and have 18 19 incurred fees and costs related to the prior and continued need to defend/pursue their legal rights 20 and remedies relating to the above-referenced tenant.

21 12. As a result of the various acts and omissions of negligence and carelessness, Plaintiffs have incurred economic losses, the full nature and extent of which are not presently 22 known to Plaintiffs; that said losses and damages include attorneys' fees and costs. Plaintiffs will 23 seek leave to assert herein the full nature and extent of said economic losses when the same have 24 25 been ascertained.

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28 Complaint for Damages

1	13. As a result of the aforementioned acts and omissions of negligence and carelessness,
2	Plaintiffs have incurred economic, reputation and consequential damages the full nature and
3	extent of which have not been ascertained; that Plaintiffs reserve the right to insert the amount of
4	said damages when ascertained.
5	14. As a result of the aforementioned negligent acts, Plaintiffs seek interest according to
6	law.
7	WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
8	hereinafter more fully set forth.
9	III.
10	SECOND CAUSE OF ACTION
11	(Breach of Contract)
12	15. Plaintiffs reallege and incorporate herein by reference each and every allegation
13	contained in paragraphs 1 through 14, of this Complaint as though fully set forth herein.
14	16. Plaintiffs allege that during Defendants' representation of Plaintiffs a written
15	agreement was made between Plaintiffs and Defendants whereby Defendants would perform
16	brokerage and management services for Plaintiffs in exchange for payment for said commissions.
17	17. Defendants breached the agreement by failing to properly provide the appropriate
18	brokerage and management services.
19	18. Plaintiffs have performed all obligations to Defendants except those obligations
20	Plaintiffs were prevented or excused from performing.
21	19. Plaintiffs suffered damages proximately caused by Defendants' breach of the
22	agreement, the full nature and extent of which damages is presently unknown but exceeds the
23	jurisdictional limits of this court.
24	WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
25	hereinafter more fully set forth.
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1	IV.			
2	THIRD CAUSE OF ACTION			
3	(Breach of Fiduciary Duty)			
4	20. Plaintiffs reallege and incorporate herein by reference each and every allegation			
5	contained in paragraphs 1 through 19 of this Complaint as though fully set forth herein.			
6	21. At all times relevant hereto Defendants, and each of them, owed Plaintiffs a fiduciary			
7	duty of the highest degree of good faith, openness, honesty and fair dealing.			
8	22. Defendants, and each of them, breached their fiduciary duty to Plaintiffs by, among			
9	other things, misrepresenting the services performed on behalf of Plaintiffs, by failing to properly			
10	perform said services, by misleading Plaintiffs and making false representations and statements			
11	to Plaintiffs; by concealing true facts from Plaintiffs, and by failing to discharge their			
12	professional duties as alleged herein, in addition to several other inappropriate, inadequate,			
13	careless and negligent actions or inactions.			
14	23. In doing the things herein alleged, Defendants, and each of them acted, willfully,			
15	recklessly, maliciously and with wanton disregard for the rights, health, and well being of			
16	Plaintiffs.			
17	24. As a proximate result of Defendants' breach of fiduciary duty, Plaintiffs have			
18	suffered damages in an amount to be established according to proof.			
19	25. Defendants' conduct constitutes fraud, malice and/or oppression as defined in Civil			
20	Code section 3294, warranting the imposition of punitive damages.			
21	26. That as a result of the aforementioned negligent acts, Plaintiffs seek interest			
22	according to law.			
23	WHEREFORE, Plaintiffs pray for relief as follows:			
24	1. For general, special, and consequential damages according to proof;			
25	2. For disgorgement of all fees paid by Plaintiffs to Defendants;			
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28	Complaint for Damages - 5 -			

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1	3.	For punitive damages in an amount to appropriate to punish Defendants and deter				
2	others from e	others from engaging in similar misconduct;				
3	4.	For pre-judgment interests according to proof;				
4	5.	For interest according to proof;				
5	6.	For attorneys' fees according to proof;				
6	7.	For cost of suit incurred herein; and				
7	8.	For such other and further relief as the court deems just and proper.				
8	DATED: De	cember 29, 2008 WALTZ LAW FIRM				
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10		By:				
11		PATRICK J. WALTZ Attorney for Plaintiffs				
12		MARK J. BIXBY individually and as trustee of the MARK BIXBY				
13		REVOCABLE LIVING TRUST and MJB/BIXBY CONSTRUCTION, INC.				
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