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SANDERS PLUMBING, HEATING & AIR, INC.
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7 MUNICIPAL COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
8 SOUTH BAY JUDICIAL DISTRICT
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10 SANDERS PLUMBING, HEATING & AIR, INC., a
California Corporation,
11 Plaintiff,
12 vs.
13 STEVEN HARRIS, an individual; ALLA
HARRIS, an individual; GRIGORY HARRIS,
14 an individual; RIMMA HARRIS, an
individual; Z4 CAPITAL CORP., a
15 corporation; and DOES 1 THROUGH 50,
inclusive,
16 Defendants.
17

Case No.

COMPLAINT FOR DAMAGES

1. OPEN BOOK ACCOUNT
2. ACCOUNT STATED
3. REASONABLE VALUE
4. BREACH OF CONTRACT
5. FAILURE TO PAY DISHONORED
CHECK
6. FORECLOSURE OF MECHANIC'S
LIEN

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19 Plaintiff complains and alleges as follows:
20 **FOR A FIRST CAUSE OF ACTION AGAINST**
ALL DEFENDANTS
21 **(Open Book Account)**

22 1. The cause of action hereinafter stated is a money demand for less
than \$25,000.00, and is one of which the above-entitled Court has jurisdiction.
23 The venue and jurisdiction requirements of C.C.P. §§ 395 and 396 are attached
24 hereto as **Exhibit "1"** and incorporated herein as though fully set forth.

25 2. At all times mentioned herein, Plaintiff was, and is, a California
26 corporation authorized to do business in the County of San Diego, State of

1 California and whose transaction of business with furnishing of goods to
2 Defendants gives rise to this lawsuit.

3 3. At all times mentioned herein, the work of improvement is in this
4 judicial district, the individual defendants reside in this judicial district,
5 and defendant corporation has its principal place of business in San Diego
6 County. Plaintiff and Defendants were and are doing business within this
7 judicial district. Defendants are liable to Plaintiff in the capacity sued and
8 named herein.

9 4. Said obligation is not based upon a retail installment sales contract
10 or a conditional sales contract, and not subject to the provisions of Civil Code
11 §§ 1812.10 and/or 2984.4. Said obligation is based on an open book account
12 pursuant to Civil Code §1717.5 which entitles Plaintiff herein to reasonable
13 attorneys' fees in addition to other costs.

14 5. The true names and/or capacities, whether individual, corporate,
15 associate or otherwise, of Defendants named in this action as DOES 1 through 50,
16 inclusive, are unknown to Plaintiff at this time; therefore, Plaintiff will amend
17 this Complaint to show their true names and capacities upon discovery of same.

18 6. At all times herein mentioned, each of the Defendants was the agent
19 of each of their Co-Defendants, and, in committing the acts hereinafter alleged,
20 said Defendants were acting within the scope of their authority as such agents,
21 or employees, or authorized representatives, and with the permission and consent
22 of said Co-Defendants named herein.

23 7. Plaintiff alleges that within the past four (4) years, namely on
24 August 20, 1997, Defendants became indebted to Plaintiff on an open book account
25 for a balance due in the sum of \$4,614.66 for goods, wares, merchandise and/or
26 services, which were provided and delivered to Defendants at their request. No
27 part of the above sum has been paid and the sum of \$4,614.66 is now due and owing

1 from Defendants to Plaintiff, together with interest thereon at the legal rate
2 from and after August 20, 1997, plus reasonable attorneys' fees as allowed by
3 law.

4 **FOR A SECOND CAUSE OF**
ACTION AGAINST ALL DEFENDANTS
5 **(Account Stated)**

6 8. Plaintiff realleges and incorporates herein by reference each and
7 every allegation contained in ¶¶ 1 through 7 of the First Cause of Action, as
8 though fully set forth.

9 9. Plaintiff alleges that on or about August 20, 1997, there was an
10 account stated between Plaintiff and Defendants, in which the sum of \$4,614.66
11 was agreed upon as the balance due to Plaintiff. No part of said sum has been
12 paid, and the sum of \$4,614.66 is now due and owing from said Defendants to
13 Plaintiff, together with interest thereon at the legal rate from and after August
14 20, 1997, plus reasonable attorneys' fees as allowed by law.

15 **FOR A THIRD CAUSE OF**
ACTION AGAINST ALL DEFENDANTS
16 **(Reasonable Value)**

17 10. Plaintiff realleges and incorporates herein by reference each and
18 every allegation contained within ¶¶ 1 through 9 above, as though fully set
19 forth.

20 11. Plaintiff alleges that on or about August 20, 1997, Defendants became
21 indebted to Plaintiff in the sum of \$4,614.66 for goods, wares, merchandise
22 and/or services, which were provided and furnished to Defendants at their
23 request. Despite demands, no part of that sum has been paid and the sum of
24 \$4,614.66 is now due and owing from the Defendants to Plaintiff, together with
25 interest thereon at the legal rate from and after August 20, 1997, plus
26 reasonable attorneys' fees as allowed by law. The above sum represents the
27 reasonable value of said goods, wares, merchandise and/or services.

28 **FOR A FOURTH CAUSE OF**
ACTION AGAINST ALL DEFENDANTS
(Breach of Contract)

1 12. Plaintiff realleges and incorporates herein by reference each and
2 every allegation contained within ¶¶ 1 through 11 above, as though fully set
3 forth.

4 13. On or about August 20, 1997 Plaintiff and Defendants entered into a
5 written contract and/or agreement wherein Plaintiff agreed to provide and furnish
6 goods, wares, merchandise and/or services according to the terms and conditions
7 of said written contract and/or agreement. A copy of said contract is attached
8 as **Exhibit "2"** to the Complaint and incorporated herein.

9 14. Pursuant to said contract and/or agreement, Plaintiff has performed
10 all of the terms and conditions on its part to be performed. Any and all non-
11 performance on Plaintiff's part was and is excused by the Defendants' acts,
12 omissions and/or other conduct.

13 15. Defendants breached said contract and/or agreement by failing and
14 refusing to pay the Plaintiff in accordance therewith. As a result, there is now
15 due owing and unpaid from Defendants to Plaintiff the sum of \$4,614.66 together
16 with interest thereon at the rate of ten percent (10%) per annum from and after
17 August 20, 1997, pursuant to said contract and/or agreement.

18 16. Said contract and/or agreement provides for attorneys' fees and
19 Plaintiff demands an award of reasonable attorneys' fees based upon the
20 institution of litigation herein.

21 **FOR A FIFTH CAUSE OF ACTION
22 AGAINST ALL DEFENDANTS**

23 **(Failure to Pay Dishonored Check)**

24 17. Plaintiff realleges and incorporates by reference each and every
25 allegation contained in paragraphs 1 through 16 above as though fully set forth.

26 18. On or about August 21, 1997, Defendant Z3 CAPITAL CORP. ("Z3") became
27 indebted to Plaintiff when Defendant Z3 delivered a check to Plaintiff in the sum
28 of \$4,614.66 for payment of the aforementioned services and supplies, drawn on

1 Wells Fargo Bank, check no. 2285, account no. 0690024088, which was returned
2 unpaid for non-sufficient funds. This check was resubmitted to Wells Fargo at
3 the instructions of defendants and returned unpaid again because the defendants
4 had put a stop payment on the check. A copy of the non-sufficient funds and stop
5 payment check is attached as **Exhibit "3"** and incorporated herein as though fully
6 set forth. No payments have been made by defendants on this check.

7 19. On September 10, 1997, Plaintiff notified Defendants in writing via
8 certified mail in compliance with California Civil Code section 1719 of Plaintiff
9 seeking an award of treble damages for the dishonored check. A copy of the
10 September 10, 1997 letter is attached as **Exhibit "4"** and incorporated herein as
11 though fully set forth. Plaintiff seeks in this lawsuit the award of treble
12 damages in the sum of \$1,500.00.

13 20. There is due, owing and unpaid the sum of \$4,614.66 with interest at
14 the rate of 10% per annum from August 20, 1997. Demand has been made upon
15 Defendants to pay this sum but no part has been paid.

16 21. Defendants have acknowledged, do not dispute the obligation and have
17 promised to pay the balance of the dishonored check but have failed to make these
18 payments.

19 **FOR A SIXTH CAUSE OF ACTION**
20 **AGAINST ALL DEFENDANTS**
21 **(Foreclosure on Mechanic's Lien)**

22 22. Plaintiff realleges and incorporates herein by reference each and
23 every allegation in each and every preceding Paragraph as though fully set forth.

24 23. Plaintiff was at all times mentioned a proper supplier of labor,
25 goods, services and/or materials directly to the property involved herein and is
26 a qualified lienor under Civil Code §§ 3110 through 3112, and was duly licensed
27 to perform as described in this Complaint.

28 24. The Defendants, including DOES 1 through 50, inclusive, claim some
right, title, lien and/or interest in or to the real property described in this

1 cause of action located at 6730 San Jose Road, Bonita, California 91920. Said
2 right, title, or interest claimed is junior, inferior and subject to Plaintiff's
3 claim of lien.

4 24. Defendants were, and now are, the owners and/or reputed owners of the
5 real property to which reference is made in this Complaint which is located in
6 the City of Bonita, County of San Diego, State of California, and is legally
7 described to the best of Plaintiff's information and belief as follows:

8 "Parcel 1 of Parcel Map No. 8849, in the County of San Diego, State
9 of California, filed in the Office of the County Recorder of San
10 Diego County, June 21, 1979 as File No. 79-2589969 of Official
11 Records."

12 Commonly known as "6730 San Jose Road, Bonita, California 91920."

13 25. As previously alleged, Plaintiff and Defendants entered into an open
14 book account pursuant to signed invoice/contract in which Plaintiff agreed to
15 furnish labor, goods, services and/or materials for a work of improvement on the
16 above-described property for an agreed price on account, which the Defendants
17 agreed to pay. The whole of the property and the entire estate of Defendants is
18 necessary and required for the convenient use and occupation of the work of
19 improvement. Plaintiff has performed all things necessary on Plaintiff's part to
20 be performed under the aforementioned contract. Said contract contains an
21 attorneys' fee provision and Plaintiff seeks said fees. The plumbing services
22 and materials that was furnished by Plaintiff were actually used in the
23 construction of the work of improvement on the aforementioned real property.

24 26. Plaintiff has performed all promises, work and any other obligations
25 or things necessary on Plaintiff's part to be performed herein.

26 27. The labor, goods, services and/or materials were of the reasonable
27 value of \$4,614.66, for which there was an agreement to pay to Plaintiff. The
28 lien claim herein is filed against the parcel(s) of the above property. allocable
to the whole or, however, it can be equally distributed herein.

1 26. Defendants have breached the agreement(s) in that Defendants have not
2 paid Plaintiff and owe the sum of \$4,614.66 together with interest thereon at the
3 legal rate, from and after August 20, 1997, after deducting all just credits and
4 offsets.

5 27. On or about September 10, 1997, Plaintiff served Defendants in
6 accordance with §3097 of the Civil Code of the State of California with a
7 preliminary twenty (20) day notice, a copy of the notice served by certified mail
8 is attached hereto as **Exhibit "5"** and incorporated herein by reference. The
9 notice contained substantially the following information: Labor, goods, services
10 and/or materials provided, property, dates, amount and names of parties herein.

11 28. Plaintiff recorded a verified notice and claim of lien on July
12 October 17, 1990, a conformed copy of the notice served by mail and certified
13 mail is attached as **Exhibit "6"** and is incorporated herein by reference. The
14 notice and claim of lien was recorded in the Office of the County Recorder of the
15 County where the property is located after Plaintiff ceased furnishing the labor,
16 good, services and/or materials alleged above and before the expiration of:

17 (a) Ninety (90) days after completion of the work of improvement if no
18 valid notice of completion or cessation has been recorded, or;

19 (b) Thirty (30) days after recordation of a valid notice of completion or
20 a valid notice of cessation, if any. At the time of recording the notice and
21 claim of lien, the amount of \$4,614.66 was due, owing and unpaid. The cost of
22 verifying and recording the lien claim is sought to be recovered herein, along
23 with costs of suit, as are reasonable attorneys' fees, and interest. Said
24 notice/claim contains a statement of Plaintiff's demand after deducting all just
25 credits and offsets, the names of the owners or reputed owners of said property,
26 and the names of the person to and for whom Plaintiff contracted to furnish said
27 services, labor and materials, together with a general statement of the kind of
28 labor done and materials furnished by him, the names of the persons by whom he

1 was employed and to and for whom he furnished said labor and materials, and a
2 description of the property sought to be charged with said lien sufficient for
3 identification, which said notice and claim of lien was filed for record under
4 and by virtue of the provisions of Division 3, Title 15 of the Civil Code of the
5 State of California.

6 29. Based on the above, Plaintiff requests that the sum of \$4,614.66 plus
7 all allowable interest, costs and attorneys' fees be decreed a lien for purpose
8 of Judicial Foreclosure against the real property referred to in this Complaint
9 superior to the claim, title, lien, or interest of any other Defendant and that
10 said real property to be so decreed will be sold by the Sheriff/Marshal at, and
11 within, San Diego County, State of California, according to law, with all
12 proceeds of such sale to be applied to Plaintiff's claim and to the costs of
13 these proceedings and the sale of said property for full satisfaction thereof in
14 favor of Plaintiff.

15 30. No notice of non-responsibility has been posted or recorded. No
16 notice of completion or notice of cessation with respect to work or materials, or
17 both, forming the basis of Plaintiff's claim was filed.

18 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of
19 them, as follows:

20 **AS TO ALL DEFENDANTS ON THE**
21 **FIRST, SECOND AND THIRD CAUSES OF ACTION**

- 22 1. For the principal sum of \$4,614.66;
- 23 2. For interest at the proper legal rate on said principal sum from and
24 after August 20, 1997, and
- 25 3. For reasonable attorneys' fees pursuant to Civil Code
26 § 1717.5;

27 **AS TO ALL DEFENDANTS ON THE**
28 **FOURTH CAUSE OF ACTION**

1. For the principal sum of \$4,614.66;

1 2. For interest at the rate of 1.75% per month on said principal sum
2 from and after August 20, 1997, and

3 3. For reasonable attorneys' fees.

4 **AS TO ALL DEFENDANTS**
5 **ON THE FIFTH CAUSE OF ACTION**

6 1. For the principal sum of \$4,614.66;

7 2. For interest at 10% annum on this sum from August 20, 1997;

8 3. For \$1,500.00 in treble damages per California Civil Code section
9 1719;

10 **AS TO ALL DEFENDANTS JOINTLY AND SEVERALLY**
11 **ON THE SIXTH CAUSE OF ACTION**

12 1. That the sum of \$4,614.66, including allowable interest as aforesaid,
13 representing the claim of Plaintiff herein be declared and adjudged a lien for
14 purpose of Judicial Foreclosure against the real property referred to in this
15 Complaint superior to the claim, title, lien or interest of any other Defendant,
16 and that said real property to be decreed will be sold by the Sheriff/Marshal of
17 San Diego County, California, according to law, with all proceeds of such sale to
18 be applied to Plaintiff's claim and to the costs of these proceedings and the
19 sale of said property;

20 2. For interest at the proper legal rate on said principal sum from and
21 after April 25, 1990;

22 3. For reasonable attorneys' fees; and

23 4. For all costs of bringing the action based on liens, including costs
24 and recordation and related expenses thereto;

25 **AS TO ALL CAUSES OF ACTION**

26 1. For costs of suit incurred herein; and

27 2. For such other and further relief as is just and proper in this case.

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DATED: _____

Mark P. Krones, Esq.
Attorneys for Plaintiff
SANDERS PLUMBING, HEATING &
AIR, INC.

DECLARATION IN SUPPORT OF VENUE AND JURISDICTION

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I, MARK P. KRONES, declare,

1. I am an attorney duly licensed to practice law, and am attorney of record for Plaintiff SANDERS PLUMBING, HEATING & AIR, INC., a California corporation. If called as a witness, I could and would competently testify to the facts stated below.

2. The Municipal Court of the South Bay Judicial District is the proper Court to commence and try the above-entitled action because:

2.1 The work of improvement described in the complaint is situated in this judicial district.

2.2 Defendants reside in, their principal place of business is in and Defendants were and are doing business in this Judicial District.

2.3 The obligation sued upon was and is payable and merchandise made/services performed in San Diego County.

2.4 The subject agreements were and are payable in San Diego County.

2.5 The goods were manufactured and the agreements were made in San Diego County.

3. The causes of action sued upon are not subject to the provisions of Civil Code § 1812.10; and

4. The causes of action sued upon are not subject to the provisions of Civil Code § 2984.4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ___ day of _____, 1997 in San Diego, California.

Mark P. Krones