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LEGAL PROCESS #7

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9 Mark J. Bixby individually and  
10 as trustee of the Mark J. Bixby 1996 Revocable Living Trust

11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF SACRAMENTO

13 Case No. 34-2015-00175119

14 WESTAMERICA BANK,  
15  
16 Plaintiff,

17 **DEFENDANT'S POINTS AND  
18 AUTHORITIES IN OPPOSITION TO  
19 PLAINTIFF'S ORDER TO SHOW  
20 CAUSE RE APPOINTMENT OF  
21 RECEIVER AND FOR PRELIMINARY  
22 INJUNCTION**

23 vs.

24 MARK J. BIXBY, individually and as  
25 trustee of the MARK J. BIXBY 1996  
26 REVOCABLE LIVING TRUST, and  
27 DOES 1 through 50, inclusive.

28 **Date:** April 10, 2015  
**Time:** 2:00 p.m.  
**Dept.:** 53  
**Judge:** Hon. David I. Brown

Defendants.

**Complaint Filed:** February 11, 2015  
**Trial Date:** Not yet set.



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**TABLE OF AUTHORITIES**

**Cases**

*Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.* (1953) 116 Cal.App.2d 869..... 3  
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*Barclays Bank of California v. Superior Court* (1977) 69 Cal.App.3d 593 ..... 3  
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**Statutes**

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**I. INTRODUCTION**

This action arises out of a commercial loan on a "Class B" industrial warehouse located in Sacramento, California ("Property" or "warehouse") Borrower was late in making several payments on the loan to Westamerica Bank ("Westamerica"). Westamerica asserts several causes of action in law and equity against defendant/borrower Mark J. Bixby ("Mr. Bixby"). Westamerica instituted a non-judicial foreclosure through the recordation of a Notice of Default on February 6, 2015. Despite a provision in the deed of trust regarding its election of judicial versus non-judicial foreclosure, Westamerica then sued for appointment of a receiver, injunctive relief, judicial foreclosure, breach of contract/guaranty, breach of contract/promissory note, foreclosure of interest in personal property and specific performance.

Since the filing of the complaint herein and the hearing on Westamerica's ex parte application for an order to show cause<sup>1</sup>, borrower has brought the loan current, paid the property taxes on the parcel and has purchased property and liability insurance. Mr. Bixby has cooperated with the bank's multiple demands, and still stands in danger of losing the Property in foreclosure.

Westamerica has not demonstrated facts in law or in equity that would justify the appointment of a receiver in this action; nor has the lender demonstrated that another provisional remedy would not adequately protect its interests. The time and expense of administering a receivership is not justified because Mr. Bixby's contractor's license has been revoked. Further, Westamerica has not established its entitlement to a preliminary injunction. There is no imminent threat of irreparable harm to the Property or the interests of the bank. As such, this Court should decline to appoint a receiver. The Court should also decline to grant a preliminary injunction that will substantially impair defendant's property rights should the foreclosure actions be terminated.

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<sup>1</sup> Heard on March 20, 2015, in Department 53.

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## II. STATEMENT OF FACTS

In April, 2014, Mr. Bixby and his wife of many years separated.<sup>2</sup> (Bixby Decl. ¶ 4.) Ms. Bixby ran the office of his former construction business and she took care of the warehouse. (*Ibid.*) Because he has a learning disability, Mr. Bixby relied on his ex-wife completely to manage their substantial business affairs. (*Ibid.*) Mr. Bixby ultimately hired Nika Herbert to act as his office manager in the fall of 2014. (Bixby Decl. ¶ 5.) He also let his significant other at the time, Shannon Mason, take care of his financial affairs. (*Ibid.*) Mr. Bixby met Ms. Herbert through Ms. Mason. (Bixby Decl. ¶ 5.) It was Ms. Herbert who conducted most e-mail communications with Westamerica, ostensibly on Mr. Bixby's behalf, resulting in the bank's understandable frustration over the fire restoration work. (Bixby Decl. ¶ 5.) Ms. Herbert also failed to alert Mr. Bixby that the warehouse was behind on its payments. Ms. Mason was specifically charged with the responsibility for depositing the rent checks and making the warehouse payments. (Bixby Decl. ¶ 5.) It was only after Mr. Bixby's relationship with Ms. Mason collapsed, that Mr. Bixby learned that the warehouse was in foreclosure, the property taxes had not been paid, and that the Property was not insured. (Bixby Decl. ¶ 5.) Since becoming aware of the present lawsuit in late February, Mr. Bixby has made a substantial payment to bring the loan current as of the middle of March, paid the property taxes for the parcel, and purchased fire and liability insurance. (Bixby Decl. ¶¶ 6-8.) Mr. Bixby is now taking personal responsibility for the protection of his and the bank's interest the warehouse, instead of relying on other people. (Bixby Decl. ¶¶ 5, 11.) He is ready, willing and able to manage and restore the Property, and worked with the bank in 2013 and early 2014 to complete the exterior painting. (Bixby Decl. ¶ 13.)

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<sup>2</sup> In the interest of efficiency, defendant Bixby does not dispute Paragraphs 1-8 of the Jones Declaration as they accurately recite most of the terms of the loan documents. Only additional facts are recited in this Statement of Facts.



1 “(a) A receiver may be appointed...by the court in which an action or proceeding  
2 is pending in any case in which the court is empowered by law to appoint a  
3 receiver.

4 (b) A receiver may be appointed by the court in which an action or proceeding is  
5 pending, or by a judge thereof, in the following cases:

6 (1) In an action by a vendor to vacate a fraudulent purchase of property, or  
7 by a creditor to subject any property or fund to the creditor’s claim, or  
8 between partners or others jointly owning or interested in any property  
9 or fund, on the application of the plaintiff, or of any party whose right  
10 to or interest in the property or fund, or the proceeds therefore, is  
11 probable, and where it is shown that the property or fund is in danger  
12 of being lost, removed, or materially injured.

13 (2) In an action by a secured lender for the foreclosure of a deed of trust or  
14 mortgage and sale of property upon which there is a lien under a deed  
15 of trust or mortgage, *where it appears that the property is in danger of*  
16 *being lost, removed, or materially injured, or that the condition of the*  
17 *deed of trust or mortgage has not been performed, and that the*  
18 *property is probably insufficient to discharge the deed of trust or*  
19 *mortgage debt.” (Code Civil Proc. § 564(a)(2) [emphasis added].)*

20 \*\*\*

21 (9) In all other cases where necessary to preserve the property or rights of  
22 any party.

23 Plaintiff asserts all three grounds for the appointment of a receiver, apparently claiming  
24 that any one of the three subsections of section 564 provides this Court with jurisdiction to  
25 appoint a receiver. However, plaintiff has not demonstrated adequate facts that would justify the  
26 drastic remedy of a receivership, especially where, as here, the bank has effectively appointed  
27 itself receiver for the insurance proceeds under the terms of the note and deed of trust with  
28 defendant. Plaintiff sets out the text of CCP 564(b)(1) with the assertion that it is entitled to the  
appointment of a receiver under that subsection. However, for that provision to apply to permit  
the appointment of a receiver, “either fraud must be shown in the purchase or the plaintiff must  
be shown to have some right in, lien upon or claim to the fund sought to be impounded.”

1 (California Delta Farms, Inc. v. Chinese American Farms, Inc. (1928) 204 Cal. 524, 526. No  
2 fraud is alleged in this action. Therefore, subsection (b)(1) does not apply to these facts.

3 At a minimum, Westamerica is required to demonstrate under CCP 564(b)(9) that a  
4 receivership is "necessary to preserve the property or rights of any party." Although subdivision  
5 (b)(9) (formerly (b)(8)) permits appointment of a receiver in equity, "this provision has been  
6 given a sharply restricted interpretation and it may not be used to avoid a limitation imposed  
7 under another applicable subdivision of section 564." (Marsch v. Williams (1994) 23  
8 Cal.App.4th 238, 249, n. 8.) Thus, the applicable subsection is (b)(2). Westamerica cannot  
9 demonstrate in law or in equity that the property is in danger of being lost or destroyed, nor can  
10 the lender demonstrate that the property is insufficient to discharge the deed of trust. In fact, the  
11 building is likely worth in excess of the approximate \$2 million mortgage debt and should be  
12 appraised to determine whether it is truly in jeopardy. Moreover, plaintiff is holding over  
13 \$742,000 in fire insurance proceeds earmarked to repair and restore the property from the August  
14 2013 fire. (See Declaration of Jane Ivy-Jones ("Jones Decl."), ¶¶ 9, 18.) Plaintiff's complaint  
15 that the Property is in danger of being lost or destroyed is disingenuous.

16 Moreover, the loan is current as of March 17, 2015, the property taxes have been paid,  
17 the building has been insured, and defendant is doing everything in his power to comply with the  
18 bank's demands. This litigation is the result of a breakdown in communication and the failure of  
19 Mr. Bixby's employees and agents to properly administer his financial affairs as they had been  
20 entrusted to do. The "Class B" warehouse has substantial value, and the bank has more than  
21 \$742,000.00 in fire insurance proceeds entrusted to it for the repairs. The collateral is not at risk,  
22 despite the dramatic facts alleged by plaintiff. Westamerica's effort to paint defendant as a  
23 wrongdoer ignores the fact that he has made sincere efforts, despite his personal limitations, to  
24 move the restoration work forward. (Bixby Decl. ¶¶ 4, 10.) Because Mr. Bixby remodeled the  
25 entire property when he still had his contractor's license, he is intimately familiar with the  
26 design, structure and systems of the Property. Mr. Bixby wants to ensure the integrity of the  
27 repair work so that the overall value of the property is not compromised, *regardless of whether*  
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1 his contractor's license is intact. As the owner of the Property, he should be permitted to  
2 participate in the restoration of the building.<sup>3</sup>

3  
4 **B. THE IDENTICAL PROVISION IN THE DEED OF TRUST AND ASSIGNMENT  
5 OF RENTS REGARDING THE LENDER'S RIGHT TO APPOINT A RECEIVER  
6 IS CONTRARY TO SECTION 564**

7 The Deed of Trust and Assignment of Rents have identical provisions which state:

8 "Lender's right to the appointment of a receiver shall exist whether or not the apparent value of  
9 the Property exceeds the indebtedness by a substantial amount." (Pl.'s Ex. B, p. 6.) On the  
10 contrary, Section 564(b)(2) requires two conditions: either the property is in danger of being  
11 lost, removed or materially injured *or* a condition of the deed of trust or mortgage has not been  
12 performed, *and* that the property is probably insufficient to discharge the deed of trust or  
13 mortgage debt.

14 An owner's property rights are severely impaired by a receivership. Lender-drafted  
15 language in the deed of trust and assignment of rents—like the language in the loan documents at  
16 issue here—that circumvents the plain language of the statute should not establish the lender's  
17 right to the appointment of a receiver as a matter of law.

18 **C. PLAINTIFF HAS NOT DEMONSTRATED THAT IT IS ENTITLED TO A  
19 PRELIMINARY INJUNCTION**

20 For the same reasons plaintiff is not entitled to the appointment of a receiver, plaintiff has  
21 not demonstrated its entitlement to a preliminary injunction. Plaintiff's asserted likelihood of  
22 prevailing on the merits is not at all certain, especially now that the loan has been brought  
23 current, the Property is insured and the property taxes are paid. Defendant is ready, willing and  
24 able to complete the fire restoration work *with a licensed contractor* and to fulfill its obligations  
25 under the deed of trust. A preliminary injunction, like a receivership, would unfairly deprive Mr.

26 <sup>3</sup> Notably, the deed of trust provides that "Lender shall have the right *in lieu of*  
27 *foreclosure by power of sale* [non-judicial foreclosure] to foreclose by judicial foreclosure in  
28 accordance with and to the full extent provided by California law." Westamerica is currently  
pursuing both non-judicial and judicial foreclosure, but appears to have elected its remedy when  
it filed the Notice of Default. (Pl.'s Ex. B, pp. 5-6 [emphasis added].)

1 Bixby of the incidents of ownership. Because there is a provision in the deed of trust that  
2 plaintiff may proceed by judicial foreclosure in lieu of foreclosure by the power of sale, it is not  
3 at all certain that plaintiff will prevail on the merits.

4 "Absent extraordinary circumstances not here shown, injunctive relief will not be granted  
5 where events have rendered such relief unnecessary or ineffectual. [Citations.]" (*Paul v. Milk*  
6 *Depots, Inc.* (1964) 62 Cal.2d 129, 133.) The only exigency currently existing is that the  
7 building needs to be restored and plaintiffs have the money to do so. Plaintiff has called the note  
8 all due and payable, but in the event of a foreclosure sale, plaintiff is highly likely to receive a  
9 price in excess of the loan amount. As such, there is no emergency and the preliminary  
10 injunction should be denied. "A preliminary injunction is proper only if there is a substantial  
11 basis to suppose that the defendant, if not restrained will *actually* engage in the conduct to be  
12 enjoined. Such an injunction 'cannot issue in a vacuum based on the proponents' fears about  
13 something that may happen in the future. It must be supported by actual evidence that there is a  
14 realistic prospect that the party enjoined intends to engage in that prohibited activity.'" (*Epstein*  
15 *v. Superior Court* (2011) 193 Cal.App.4th 1405, 1410.) Since the filing of plaintiff's Order to  
16 Show Cause, circumstances have changed considerably in that defendant has done and will  
17 continue to do everything he can to right the situation. There is no evidence that the defendant  
18 will engage in unlawful conduct or do anything to prevent the bank from exercising its rights  
19 under the loan documents. Therefore, the preliminary injunction should be denied.

#### 20 IV. CONCLUSION

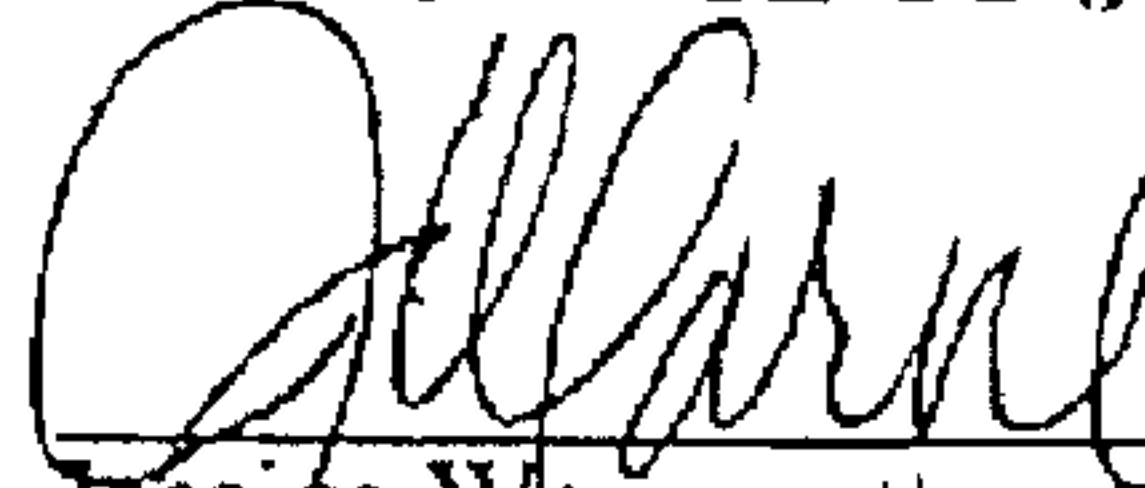
21 Westamerica has not established that the Property is in danger of being lost removed, or  
22 materially injured. Plaintiff has further not demonstrated adequate grounds in equity for the  
23 appointment of a receiver or the issuance of a preliminary injunction to preserve its property or  
24 rights or the status quo. Defendant has further done all that has been asked of him to reinstate  
25 the loan and comply with the terms of the deed of trust. Because plaintiff is in possession of a  
26 substantial fund for the restoration of the Property, and because it is not required to release such  
27 proceeds except upon its satisfaction of work performed, the security is not impaired. For all the  
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reasons stated herein, defendant respectfully requests that the Court

**LAW OFFICE OF JESSICA WARNE**

DATED: March 30, 2015



Jessica Warne, attorney for MARK J. BIXBY,  
individually and as trustee of the MARK J.  
BIXBY 1996 REVOCABLE LIVING TRUST

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8 Attorney for Defendant  
9 Mark J. Bixby individually and  
10 as trustee of the Mark J. Bixby 1996 Revocable Living Trust

11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF SACRAMENTO

13 WESTAMERICA BANK,

14 Plaintiff,

15 vs.

16 MARK J. BIXBY, individually and as  
17 trustee of the MARK J. BIXBY 1996  
18 REVOCABLE LIVING TRUST, and  
19 DOES 1 through 50, inclusive.

20 Defendants.

Case No. 34-2015-00175119

**DEFENDANT'S OBJECTIONS TO  
EVIDENCE IN OPPOSITION TO  
ORDER TO SHOW CAUSE RE  
APPOINTMENT OF RECEIVER AND  
FOR PRELIMINARY INJUNCTION**

**Date:** April 10, 2015  
**Time:** 2:00 p.m.  
**Dept.:** 53  
**Judge:** Hon. David I. Brown

**Complaint Filed:** February 11, 2015  
**Trial Date:** Not yet set.

21 Defendant MARK J. BIXBY, individually and as trustee of the MARK J. BIXBY 1996  
22 REVOCABLE LIVING TRUST, hereby submits his objections to evidence submitted by  
23 plaintiff WESTAMERICA BANK in support of their Order to Show Cause Re Appointment of  
24 Receiver and for Preliminary Injunction, as follows:

25 ///

26 ///

27 ///

1 **A. REQUEST FOR JUDICIAL NOTICE**

<b>Material Objected To:</b>	<b>Grounds for Objection:</b>
<p>2 1. Accusation of the Attorney General 3 of the State of California against 4 MJB/Bixby Construction, Inc. in 5 Case No. N2010-143 before the 6 Registrar of Contractors, Contractors' 7 State License Board, Department of 8 Consumer Affairs, State of California 9 (Plaintiffs' Ex. F.)</p>	<p>Hearsay (Evid. Code § 1200.) Irrelevant (Evid. Code § 350.) Likely to create substantial danger of undue prejudice. (Evid. Code §352.) Impermissible Character Evidence (Evid. Code § 1101(a).)</p>
<p>10 2. Order to Adopt Stipulated Settlement 11 and Stipulated Revocation of License 12 and Disciplinary Order of the 13 Attorney General of the State of 14 California against MJB/Bixby 15 Construction, Inc. in Case No. 16 N2010-143 before the Registrar of Contractors, Contractors' State License Board, Department of Consumer Affairs, State of California (Plaintiffs' Ex. G.)</p>	<p>Hearsay (Evid. Code § 1200.) Irrelevant (Evid. Code § 350.) Likely to create substantial danger of undue prejudice. (Evid. Code §352.) Impermissible Character Evidence (Evid. Code § 1101(a).)</p>

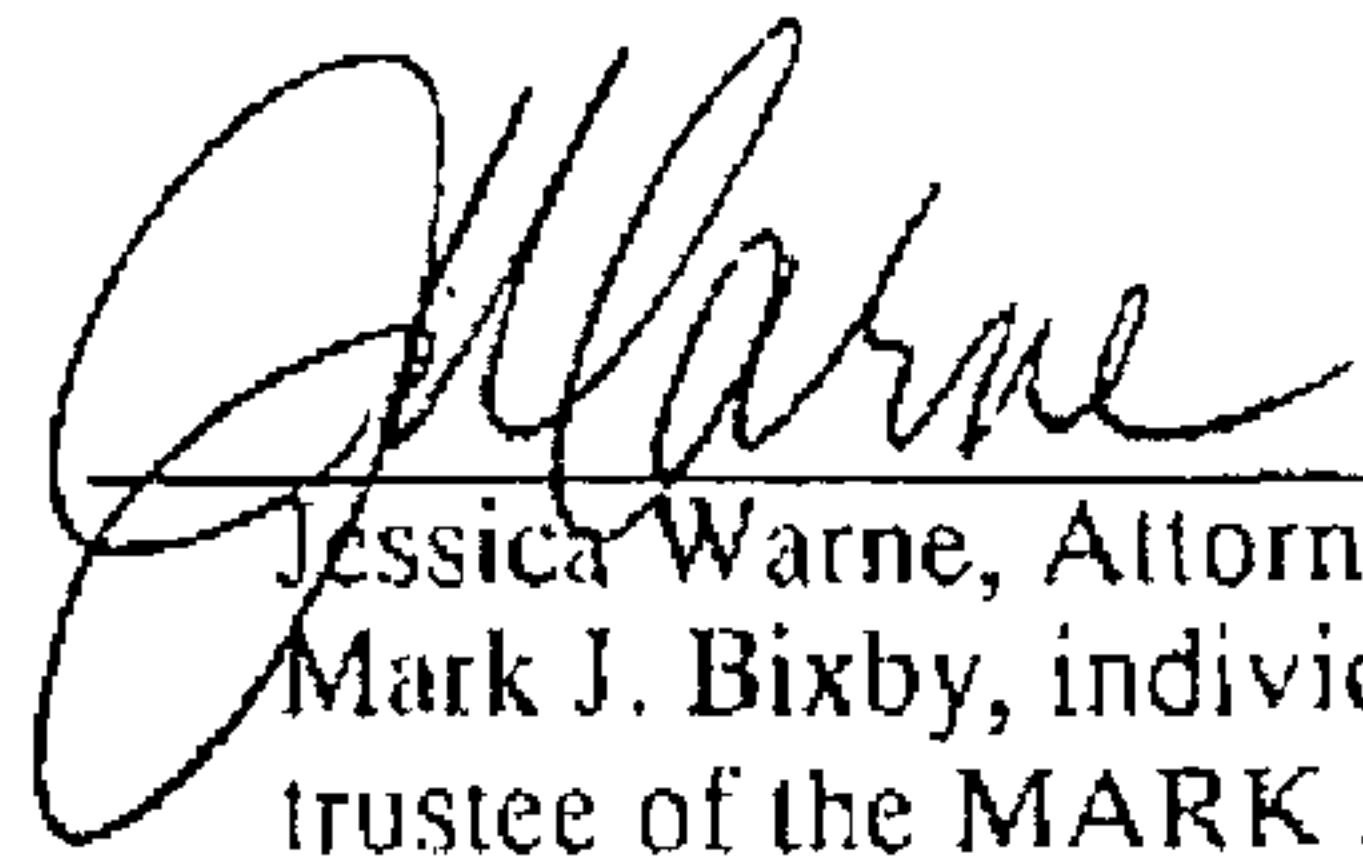
17 **B. DECLARATION OF JANE IVY-JONES IN SUPPORT OF ORDER TO**  
18 **SHOW CAUSE RE PRELIMINARY INJUNCTION AND APPOINTMENT OF**  
19 **RECEIVER**

<p>20 3. <b>Paragraph 9.</b> "On August 25, 2013, 21 I am informed and believe that the 22 Property was substantially damaged 23 by fire (the "Casualty Damage") to 24 such extent that the Property has 25 become wholly or partially 26 untenable and in need of 27 substantial repair and restoration 28 work..."</p>	<p>Lack of Personal Knowledge (Evid. Code § 702(a).) Ivy-Jones is not competent to testify about the extent to which the property was "wholly or partially untenable" because she lacks personal knowledge about the extent of the fire damage.  Ivy-Jones does not make any distinction between matters stated on information and belief versus facts of which she has personal knowledge in the preamble to her declaration.  Impermissible Speculation (Evid. Code § 800.)</p>
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	Vague and ambiguous as to the word substantial "in need of substantial repair and restoration work."
4. <b>Paragraph 10.</b> "To date, despite the availability of Insurance Proceeds, no material portion of the Casualty Damage to the Property has been repaired or restored by Bixby Trust or any person or entity on behalf of Bixby Trust."	Lack of Personal Knowledge (Evid. Code § 702(a).) Ivy-Jones is not competent to testify about what work has or has not been done on the Property by defendant, or anyone else.
5. <b>Paragraph 14.</b> "Westamerica asked Bixby for the name of the contractor who would be doing restoration work as well as a number of <i>standard due diligence items</i> with regard to the contractor and the restoration, including among other things from the proposed contractor: a financial statement, copy of the license resume including job history, copy of workers compensation insurance." (Emphasis added.)	Vague and ambiguous as to the term "standard due diligence items."  Calls for expert opinion as to what is standard and to whom those "due diligence items" are standard. (Evid. Code § 800.)
6. <b>Paragraph 19.</b> "Bixby Trust has failed to repair and restore the casualty Damage to the Property as required under the Deed of Trust, allowed all or a substantial portion of the Property to remain in an untenable, abandoned and/or unattended condition.	Lack of personal knowledge. Ivy-Jones fails to aver where she got any information about the condition of the Property; as such she is not competent to testify as to its condition. (Evid. Code § 702(a).)

DATED: March 30, 2015

  
\_\_\_\_\_  
Jessica Warne, Attorney for Defendant  
Mark J. Bixby, individually and as  
trustee of the MARK J. BIXBY 1996  
REVOCABLE LIVING TRUST

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8 Attorney for Defendant  
9 Mark J. Bixby individually and  
10 as trustee of the Mark J. Bixby 1996 Revocable Living Trust

11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF SACRAMENTO

13 WESTAMERICA BANK,

14 Plaintiff,

15 vs.

16 MARK J. BIXBY, individually and as  
17 trustee of the MARK J. BIXBY 1996  
18 REVOCABLE LIVING TRUST, and  
19 DOES 1 through 50, inclusive.

20 Defendants.

Case No. 34-2015-00175119

**DECLARATION OF MARK J. BIXBY IN  
OPPOSITION TO ORDER TO SHOW  
CAUSE RE APPOINTMENT OF  
RECEIVER AND FOR PRELIMINARY  
INJUNCTION**

**Date:** April 10, 2015  
**Time:** 2:00 p.m.  
**Dept.:** 53  
**Judge:** Hon. David I. Brown

**Complaint Filed:** February 11, 2015  
**Trial Date:** Not yet set.

21 I, MARK J. BIXBY, declare:

22 The following facts are within my own personal knowledge, except as to those matters  
23 stated on information and belief, and as to those matters I believe them to be true. If called upon  
24 to testify regarding the matters contained in this declaration, I could and would do so  
25 competently.

26  
27 1. I am the owner of record of a "Class B" industrial warehouse located at 5852 88th Street,  
28 Sacramento, California, 95828, Sacramento County Assessor's Parcel No. 062-0080-037

1 ("Property" or "warehouse").

2 2. In connection with this lawsuit, my attorney requested comparable sales for the Property  
3 from a local commercial real estate firm. Based on those comparable sales, I am informed and  
4 believe that the 96,000 square foot warehouse, even with fire damage to about 12% of the  
5 building, could obtain a sales price anywhere from \$22.00-\$35.00 per square foot. Even at the  
6 low end, the building is substantially likely to have equity over and above the outstanding  
7 principal debt on the Property.

8 3. Westamerica also holds the proceeds of the fire insurance policy in excess of \$742,000.

9 4. In April, 2014, I separated from my wife of twenty years, Heidi Bixby. Prior to our  
10 separation, Ms. Bixby handled all our business affairs in connection with both my construction  
11 business, multiple business entities and the warehouse. I have never been sophisticated in such  
12 matters and suffer from a learning disability. I therefore relied completely on my ex-wife until  
13 our separation.

14 5. I hired Veronica Dean to take my ex-wife's duties in May or June of 2014. After I  
15 discovered that Ms. Dean was incompetent and probably stealing money from me, I hired Nika  
16 Herbert to act as my office manager in the Fall of 2014. I turned over control of my financial  
17 affairs, including the warehouse, to my significant other at the time, Shannon Mason, who was  
18 also my attorney for all purposes. I met Nika Herbert through Ms. Mason. It has since become  
19 apparent that both Ms. Shannon and Ms. Herbert failed to alert me that I was behind on my  
20 payments and that Westamerica was repeatedly requesting documentation for any contractor who  
21 might begin the fire damage repair. Among other duties, Ms. Mason and Ms. Herbert were  
22 tasked with collecting and depositing rental income from the Property and paying the loan on the  
23 Property. My relationship with Ms. Mason ended at the end of February, 2015, and I soon  
24 discovered that the warehouse was behind on its payments, the insurance had not been kept up to  
25 date, and that the property taxes had not been paid. The fact that the loan was in default only  
26 came to my attention when Ms. Mason informed me of the present lawsuit on or about February  
27 25. I was devastated by the news that my ownership of the warehouse was in jeopardy and that  
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1 the people I had entrusted to handle my affairs had let this happen. I am now taking full  
2 responsibility for the warehouse and my other financial affairs so an incident like this does not  
3 happen again.

4 6. I hired my current attorney on or about March 3, 2015, to assist me with this lawsuit.  
5 Since that time, I have paid Westamerica Bank \$54,478.07. That payment was made on March  
6 18, 2015, and included: principal of \$16,804.10, interest of \$32,807.68, late fees of \$1,322.96,  
7 and foreclosure fees of \$5,543.33. A true and correct copy of the cashier's check stub is attached  
8 hereto as **Exhibit A**.

9 7. On March 18, 2015, I brought the property taxes current with a payment of \$15,247.58.  
10 A true and correct copy of the receipt for property taxes from the Sacramento Department of  
11 Finance is attached hereto as **Exhibit B**.

12 8. On March 12, 2015, my attorney e-mailed a copy of the insurance certificate for the  
13 Property to Westamerica's attorney after I brought the insurance current. True and correct  
14 copies of the property and liability insurance certificates are attached to this declaration as  
15 **Exhibit C**.

16 9. The fire at the building occurred on or about August 25, 2013. I began working on the  
17 fire restoration with the insurance adjuster as early as December, 2013. I wanted the work to be  
18 done to my standards because the building is of good quality and I want to keep it that way.  
19 Plaintiff is correct that my office failed to provide "due diligence" information regarding another  
20 contractor I would employ to complete the work.

21 10. I submitted a bid for the painting of the exterior building in the fall of 2013. The bid was  
22 for about \$100,000. Ron Dunyan, a representative of Westamerica Bank, came to the Property  
23 and took numerous pictures. He told me that I was more than qualified to do the painting work. I  
24 completed the work and submitted my bill. Westamerica at first refused to pay for the job, but I  
25 am informed and believe that Mr. Dunyan took care of the matter and got my bill paid.  
26 Therefore, Westamerica has been fully apprised of the condition of the building since Fall of  
27 2013. I do not understand why they are asserting that I have made no effort to begin or complete  
28

1 the fire restoration. The bank has made the reimbursement process difficult, if not impossible.

2 11. I had first hired Ronald Clayton to complete the restoration in spring of 2014 to help with  
3 the transition of jobs after I lost my license. I did not know that his licensing, financials, and  
4 insurance/bonding information had not been provided to Westamerica. My assistant at the time,  
5 Veronica Dean, told me that Ron Clayton was fully qualified by the bank to complete the  
6 restoration. It soon became clear that Ronald Clayton was diverting payments from jobs I had  
7 completed prior to my license revocation and that he was unlawfully making charges on my  
8 vendor accounts. Ron Clayton ultimately abandoned jobs and diverted payments for jobs I had  
9 contracted out earlier prior to the loss of my license. I then proposed another contractor, yet  
10 Shannon Mason failed to properly submit documentation to Westamerica. She told me that the  
11 new contractor, Schubert had submitted all necessary documentation to qualify to perform the  
12 restoration work. At the same time, Westamerica clearly regarded me with suspicion based on  
13 the revocation of my contractor's license and the repeated failure to communicate by my staff  
14 and Ms. Mason.

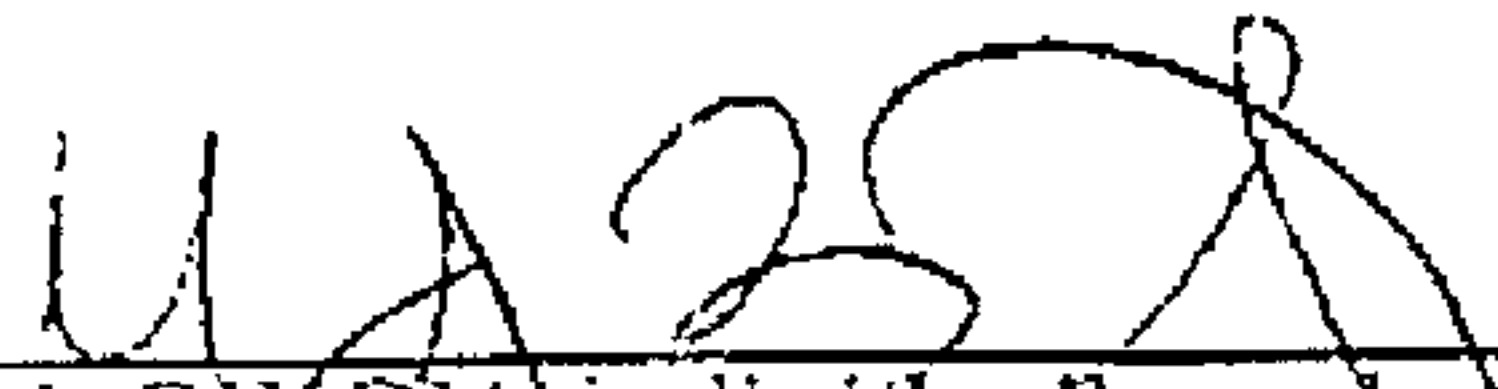
15 12. In the past year, I have discovered that every person I trusted in my business affairs had  
16 failed to competently carry out their duties.

17 13. I do not believe a receivership is necessary. As soon as I learned about the lawsuit and  
18 what my people had been doing, I took immediate steps to bring the loan current and comply  
19 with the other terms of the loan documents.

20 14. I am committed to keeping the warehouse and restoring it to its former condition. I just  
21 need the cooperation of plaintiff.

22 I declare under penalty of perjury under the laws of the State of California that the  
23 foregoing is true and correct and that this declaration was executed on March 30, 2015 at  
24 Sacramento, California.

25 DATED: March 30, 2015

26   
27 MARK J. BIXBY, individually and as  
28 trustee of the MARK J. BIXBY 1996  
REVOCABLE LIVING TRUST

# EXHIBIT A



P.O. BOX 15968  
SACRAMENTO, CA 95852  
1-877-GOLDEN 1 (1-877-465-3381)

CHECK NO. 3068042617

DATE	TELLER	TRANSACTION DESCRIPTION	ACCOUNT NO.	PREVIOUS BALANCE	TRANSACTION AMOUNT	NEW BALANCE
18MAR15	6804-204	Cashier's Ck Sale	****742-2		56483.07	
MIN. PERIODIC AMOUNT	PAYMENT DUE DATE	FREQUENCY OF PAYMENT	DAILY PERIODIC RATE	ANNUAL PERCENTAGE RATE		
						%

WESTAMERICA\*\*\*

\* Miscellaneous Fee: \$5.00

**Important Information About Cashier's Checks**

In accordance with State and Federal regulations, if a Cashier's Check becomes lost or stolen, The Golden 1 will be unable to place a stop payment on the Cashier's Check until the 90th day following the date of the check.