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7 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **IN AND FOR THE COUNTY OF SACRAMENTO**

9 **DEBORAH A. DOTY, et al.,**

10 *Plaintiffs,*

11 v.

12 **MARK J. BIXBY, et al.,**

13 *Defendants,*

Case No. 01AS07640

**DECLARATION OF  
DOUG HAWKINS**

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15  
16 1. My name is Doug Hawkins. My wife, Michelle, and I are homeowners who  
17 have had the misfortune to transact business with MJB/Bixby Construction, Inc. ("Bixby  
18 Inc.") and Mark J. Bixby.

19 2. I am prepared to testify competently and consistently with this Declaration.

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21 3. My wife and I employed Mr. Bixby and Bixby Inc. to perform a mold  
22 remediation job on our home. The cost was paid by our property insurer, First American  
23 Property & Casualty Insurance Co. ("First American"). Nevertheless, as described in this  
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4. We had toxic molds in our home. The toxic molds made our children, my wife and me ill.

5. Mr. Bixby and Bixby Inc. held themselves out to us as experts in mold remediation, and as having special skills in that construction field. Mr. Bixby and Bixby Inc. told my wife and me that Mr. Bixby and Bixby Inc. were "certified" in mold remediation. I understood that to mean that Mr. Bixby and Bixby Inc. personnel had received special training and schooling in mold remediation, which led to their receipt of the "certification."

6. Mr. Bixby and Bixby Inc. did not complete the work under the contract in a timely manner or satisfactorily. The work, which was to have taken only about 12 weeks, as represented to us by Mr. Bixby and Bixby Inc., actually extended over a nine-month period from April 2001 to January 2002. Despite multiple requests that the work be completed within the time period represented, Mr. Bixby and Bixby Inc. did not complete the work within that time.

7. Throughout the entire nine-month construction period, the lives of my wife and me and those of our children, were severely disrupted. We were required to move out of our home to live with my wife's parents in Loomis, California. That was approximately 25 miles from our home, neighborhood and schools.

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2 8. Because my children attended school at different times, my wife had to make  
3 the 50-mile round trip drive three times daily every school day with my newborn baby  
4 daughter in the car. My wife has informed me that was very hard on my daughter, and  
5 she cried a lot.

6 9. As a result of the lengthy delays caused by Mr. Bixby and Bixby Inc., my wife  
7 and I and our family suffered extreme inconvenience, stress and emotional distress. As a  
8 direct result of the stress caused by the delays, my wife and I suffered strains in our  
9 marriage, which required counseling. The counseling was paid by insurance, except that  
10 we incurred a cost of \$100 in the amount of the deductible.

11  
12 10. Based upon documentation we have seen and conversations with personnel of  
13 First American, we believe that Mr. Bixby and Bixby Inc. received approximately  
14 \$128,000 from First American for the work Mr. Bixby and Bixby Inc. performed on our  
15 home. The amount received by Mr. Bixby and Bixby Inc. is reflected in the total price in  
16 documentation attached to this Declaration as Exhibit 1.

17 11. When my wife and I finally were able to begin to move back into our home,  
18 Mr. Bixby and Bixby Inc. held our furniture hostage, and refused to deliver it until First  
19 American paid additional amounts for the storage and moving of the furniture, even  
20 though Mr. Bixby and Bixby Inc. had previously been fully paid, as previously agreed,  
21 for such services. Finally, we were once again living in our house, but without furniture.  
22 The money was paid to Mr. Bixby and Bixby Inc. by First American because we were  
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2 under duress. Certain documents relating to Mr. Bixby's and Bixby Inc.'s action in  
3 holding our furniture hostage are attached to this Declaration as Exhibit 2.

4 12. Mr. Bixby and Bixby Inc. represented the costs for the storage of our furniture  
5 as \$1,506 per month. We have been informed by the storage company, however, that the  
6 actual cost was only \$280 per month. A copy of documentation from the storage  
7 company to that effect is attached as Exhibit 3. Exhibit 3 also includes an invoice from  
8 Mr. Bixby and Bixby Inc. reflecting their \$1,506 monthly charge for the storage of our  
9 personal and household items.

10 13. As a result of their misrepresentations, Mr. Bixby and Bixby Inc. were greatly  
11 overpaid for the storage costs. Under our contract, according to what my wife and I were  
12 told by Mr. Bixby and Bixby Inc., they were to receive only the actual cost plus a 20%  
13 markup, which would have been \$336 per month. The \$1,506 per month charged by Mr.  
14 Bixby and Bixby Inc. was far above that amount, being more than four times. I recognize  
15 that the contract specifies \$1,506 for 30 days' storage, but as reflected in Exhibit 3, that  
16 amount includes one-time costs for pallets and other items beyond merely the monthly  
17 storage fee. The only provision of the contract relating to storage beyond the 30 days is  
18 the provision for costs plus 20%. A copy of the contract my wife and I had with Mr.  
19 Bixby and Bixby Inc. is attached as Exhibit 4.

20 14. Mr. Bixby and Bixby Inc. or their subcontractors lost and damaged a number  
21 of our personal and household items in the process of the moving and storage process.  
22 When we submitted a claim, we discovered that Mr. Bixby and Bixby Inc. had failed to  
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1  
2 pay for insurance on our personal and household items, although they were supposed to  
3 do so. We are still evaluating our losses. At this time, I estimate the value of the lost and  
4 damaged items as being approximately \$2,000 to \$4,000 (or even more).

5 15. We never accepted the work of Mr. Bixby and Bixby Inc. I am aware that Mr.  
6 Bixby and Bixby Inc. claim we did so, but those claims are false. What happened is that  
7 the mortgage company paid Mr. Bixby and Bixby Inc. a 98% completion check, but we  
8 notified Mr. Bixby and Bixby Inc. that, in fact, there were numerous incomplete and  
9 unsatisfactory items. Mr. Bixby still is claiming, without justification, that additional  
10 monies are due to him. My wife and I have identified numerous other unsatisfactory  
11 items, such as paint washing off the exterior of our home when it rained, large cracks in  
12 exterior stucco, warped bathroom cabinets, unsecured plumbing and more.

13  
14 16. Exhibit 5 attached to this Declaration contains a receipt in the amount of \$219  
15 from Cascade Plumbing. The receipt indicates that a condensation line had been left  
16 dripping in the wall during reconstruction. The dripping caused additional mold.

17 17. Exhibit 5 also contains a receipt in the amount of \$152 from AC-DC Electrical  
18 Services for repair of a wire that had been left by Mr. Bixby and Bixby Inc. in a "nicked"  
19 condition and for short-circuits Mr. Bixby and Bixby Inc. left, which damaged two  
20 switches. The receipt further states that an outlet in the master bath had been  
21 "deliberately ruined."

22  
23 18. After we moved back into our home, we discovered that, due to improper  
24 cleaning by Mr. Bixby and Bixby Inc. of our home, furniture, drapes, carpets and other

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2 items, there was still toxic mold in our home. The cleaning was supposed to remove any  
3 remaining mold particles.

4  
5 19. The remaining toxic mold in our home was a serious health threat for us, and  
6 again made my children, my wife and me ill again. That required that we receive medical  
7 attention at a additional cost. Exhibit 6 contains receipts from Frederick F. Herman,  
8 M.D., an allergy and clinical immunology physician in the aggregate amount of \$1,092.  
9 We also incurred other associated medical costs for medicine, an air cleaner and an air  
10 filter in the aggregate amount of \$244. We have the receipts for those amounts.

11  
12 20. My wife and I understand from invoices and conversations with First American  
13 personnel that First American paid an additional amount of more than \$20,000 for a  
14 second cleaning of our home by another firm.

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16 21. Exhibit 7 contains the Report on the results of the second mold inspection  
17 showing that our home was clean at last. Exhibit 7 also shows a new proof of Loss in the  
18 amount of \$150,000, \$22,000 more than the \$128,000 paid to Mr. Bixby and Bixby Inc.,  
19 as reflected in Exhibit 1.

20  
21 22. Mr. Bixby and Bixby Inc. also were employed, under the contract my wife and  
22 I had with them, to reconstruct our home after the interior and walls had been largely  
23 gutted by Mr. Bixby and Bixby Inc. in the mold remediation process.

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25 23. Much of Mr. Bixby's and Bixby Inc.'s work is shoddy and substandard. As  
discussed above, we have many items that are not properly constructed or are damaged.

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2 24. Mr. Bixby and Bixby Inc. left wooden cabinets, mirrors, doors and other items  
3 from bathrooms, plus all of the miniblinds from the entire house, uncovered in the yard  
4 during the Winter. Those items were damaged by the weather and exposure, and had to  
5 be replaced.

6 25. My wife's and my out-of-pocket losses discovered to date due to Mr. Bixby's  
7 and Bixby Inc.'s inappropriate actions and omissions do not include damages for  
8 emotional distress and other claims we may have.

9  
10 26. In addition, I am also aware of attempts by Mr. Bixby and Bixby Inc. to  
11 mislead First American, our insurance company.

12 27. For example, when we discovered that Mr. Bixby and Bixby Inc. had  
13 overbilled First American, he asked us not to bring it up, and instead, in return for  
14 refraining from doing so, Mr. Bixby and Bixby Inc. offered us new construction in our  
15 home in the form of new baseboards throughout the house and other "little things" they  
16 would "throw in." Instead, we refused the offer.

17 28. Mr. Bixby and Bixby Inc. charged for work not performed by them and  
18 materials not supplied by them. For example, Mr. Bixby and Bixby Inc. charged  
19 thousands of dollars for replacing our old patio cover with a new patio cover. There is no  
20 new patio cover. The old patio cover is still over our patio. In addition, Mr. Bixby and  
21 Bixby Inc. charged approximately \$238 for replacing our old toilet with a new toilet.  
22 There is no new toilet. We still have our old toilet. Those amounts were invoiced by Mr.  
23 Bixby and Bixby Inc. to, and were paid by, First American. Copies of documentation  
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2 indicating that those items were to be replaced by Mr. Bixby and Bixby Inc. are attached  
3 as Exhibit 8.

4 29. The City of Citrus Heights determined that Mr. Bixby and Bixby Inc. had  
5 failed to comply with the City's permitting and inspection process as to significant  
6 portions of the work Mr. Bixby and Bixby Inc. had performed under the contract they had  
7 with us. As a result, the City required the work to cease. Documentation from the City is  
8 attached as Exhibit 9. Mr. Bixby and Bixby Inc. have never complied with the City's  
9 requirements.

10  
11 30. When my wife and I raised questions or complaints about the work of Mr.  
12 Bixby and Bixby Inc., Mr. Bixby became extremely aggressive, threatening, intimidating,  
13 harassing and hostile toward my wife and me on several occasions. On those occasions,  
14 among other things, Mr. Bixby used highly abusive and threatening language toward us.

15 31. For example, attached to this Declaration as Exhibit 10 are Michelle's  
16 handwritten notes of telephone conversations. As the notes indicate, in one conversation,  
17 Mr. Bixby threatened to "bury" and "kill" me. I was standing in the yard talking with Mr.  
18 Bixby on the cellphone. Michelle informed me that she could overhear Mr. Bixby's  
19 statements clearly (as did a neighbor standing in the yard) because Mr. Bixby was  
20 screaming so loudly on the telephone.

21  
22 32. Those and other threats by Mr. Bixby against my wife and me deeply disturbed  
23 and distressed us. My wife and I took, and continue to take, Mr. Bixby's threats very  
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2 seriously. We feared, and continue to fear, greatly for the safety of our children and  
3 ourselves.

4 33. When my wife and I raised questions or complaints about the work of Mr.  
5 Bixby and Bixby Inc., Mr. Bixby also made up false claims and asserted them against us,  
6 which threatened, intimidated and harassed us. He threatened false claims for a variety of  
7 matters, such as regarding previous work I had performed on Mr. Bixby's  
8 swimming pool and alleged "harassment" by us for even raising questions and  
9 complaints.

10  
11 34. Exhibit 11 to this Declaration contains letters from Mr. Bixby and Bixby Inc.  
12 making such assertions and otherwise threatening, intimidating and harassing us.

13 35. I believe Mr. Bixby's threats and false claims were intended to frighten us into  
14 simply accepting his inferior and substandard work without further complaint.

15  
16 36. Earlier, when Mr. Bixby and Bixby Inc. were first beginning their work, Mr.  
17 Bixby also told us that Mr. Bixby and Bixby Inc. had agreements, arrangements or  
18 understandings with an insurance adjuster/mold inspector issuing reports to insurance  
19 companies. As described by Mr. Bixby, the inspector would make false reports on  
20 purported mold damage and the causes of such damage in such a manner as to lead  
21 insurance companies to make insurance payments for mold remediation work when the  
22 purported mold damage was not covered by insurance policies.

23 37. My wife and I have filed a Complaint with the California Contractors State  
24 License Board regarding Mr. Bixby's and Bixby Inc.'s inappropriate actions and

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2 omissions. The Board's acknowledgement of the filing of our Complaint is attached as  
3 Exhibit 12.

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5 38. Mr. Bixby and Bixby Inc. appear to be engaged in other activities that may be  
6 illegal. An acquaintance of mine, who also knows Mr. Bixby, told me of certain activities  
7 in which the acquaintance and employees of Mr. Bixby and Bixby Inc. had engaged  
8 involving sales to them by Mr. Bixby of cocaine, marijuana and pills.

9 39. I experienced an incident in which Mr. Bixby himself personally offered me  
10 cocaine when I visited Mr. Bixby's place of business.

11  
12 40. My wife informed me that she personally smelled smoke in our home that  
13 definitely was not cigarette smoke, when Chris Calderone and other employees of Mr.  
14 Bixby and Bixby Inc. were on the job were working on our home. She informed me that  
15 she believes they were using marijuana because they also had red eyes, and they were  
16 behaving in a slow-reacting way and other manner that she associated with intoxicated  
17 people.

18 41. In this case, the Plaintiffs have informed us that they are asserting "unfair  
19 competition" claims in their own and the public interest against Mr. Bixby and Bixby Inc.

20 42. The Plaintiffs also have informed us that, among other things, as provided in  
21 Business and Professions Code Section 17204, such claims against "unfair competition"  
22 may be asserted by "any person acting for the interests of itself ... or the general public."  
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DECLARATION

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

Dated: 7-28-, 2002.

  
\_\_\_\_\_  
Doug Hawkins