

1 96. Plaintiffs incorporate here the allegations of paragraphs 1 through 42.

2 97. From October 1991 through November 1991, Defendant Bixby and Does 1
3 through 100 negligently constructed the roof on the addition to Plaintiffs' master bedroom
4 pursuant to First Agreement so as to require Plaintiffs to replace the roofing work done by said
5 defendants, and each of them.

6
7 98. Plaintiffs are informed and believe that Defendant Bixby Corporation
8 incorporated on or around June 27, 1995, after Plaintiffs entered into First Agreement. Plaintiffs
9 are further informed and believe that upon incorporation, Defendant Bixby Corporation assumed
10 all of the construction business activities and all of the assets and liabilities of Defendant Bixby's
11 construction business. Plaintiffs never agreed that Defendant Bixby would be relieved of liability
12 resulting for his dealings and actions with Plaintiffs.

13
14
15 99. Bixby Defendants never informed Plaintiffs of Defendant Bixby Corporation's
16 incorporation but continued to operate seamlessly with Plaintiffs under the same or a
17 substantially similar name as Defendant Bixby had done all along. Defendant Bixby thereby
18 inextricably combined, mixed, and confused his personal construction business and activities
19 with the construction business and activities of Defendant Bixby Corporation in such a manner
20 that the construction business and activities of Defendant Bixby and Defendant Bixby
21 Corporation were indistinguishable from one another. Unbeknownst to Plaintiffs, Plaintiffs
22 continued to do business with Defendant Bixby, both as an individual and as an agent of
23 Defendant Bixby Corporation.

24
25
26 100. As a legal result of said negligence, Plaintiffs have suffered damages in an amount
27
28

1 in excess of \$25,000.00 according to proof.

2 Wherefore, Plaintiffs pray as set forth below.

3 VII. SIXTH CAUSE OF ACTION

4 (NEGLIGENCE AGAINST BIXBY DEFENDANTS BIXBY, DEFENDANT FLYNN, AND
5 DOES 1 THROUGH 100)

6 101. Plaintiffs incorporate here the allegations of paragraphs 1 through 42.

7 102. From September 1993 through November 1993 Defendant Bixby, Defendant
8 Flynn and Does 1 through 100 negligently replaced approximately one-half of Plaintiffs' roof
9 pursuant to Second Agreement by causing or failing to repair leaks in the roof, improperly
10 nailing shakes, and not securing shakes so as to require Plaintiffs to replace or repair the roofing
11 work done by said defendants, and each of them.

12 103. Furthermore, said defendants, and each of their, negligent performance of Second
13 Agreement caused interior damage to Plaintiffs' attic and house as well as the growth of toxic
14 mold in the interior of the house that required remediation.

15 104. Plaintiffs are informed and believe that Defendant Bixby Corporation
16 incorporated on or around June 27, 1995, after Plaintiffs entered into Second Agreement with
17 Defendant Bixby. Plaintiffs are further informed and believe that upon incorporation, Defendant
18 Bixby Corporation assumed all of the construction business activities and all of the assets and
19 liabilities of Defendant Bixby's construction business. Plaintiffs never agreed that Defendant
20 Bixby would be relieved of liability resulting for his dealings and actions with Plaintiffs.

21 105. Bixby Defendants never informed Plaintiffs of Defendant Bixby Corporation's
22
23
24
25
26
27
28

1 incorporation but continued to operate seamlessly with Plaintiffs under the same or a
2 substantially similar name as Defendant Bixby had done all along. Defendant Bixby thereby
3 inextricably combined, mixed, and confused his personal construction business and activities
4 with the construction business and activities of Defendant Bixby Corporation in such a manner
5 that the construction business and activities of Defendant Bixby and Defendant Bixby
6 Corporation were indistinguishable from one another. Unbeknownst to Plaintiffs, Plaintiffs
7 continued to do business with Defendant Bixby, both as an individual and as an agent of
8 Defendant Bixby Corporation.
9
10

11 106. As a legal result of said negligence, Plaintiffs have suffered damages in an amount
12 in excess of \$25,000.00 according to proof.
13

14 VIII. SEVENTH CAUSE OF ACTION

15 (NEGLIGENCE AGAINST BIXBY DEFENDANTS AND DOES 1 THROUGH 100)

16 107. Plaintiffs incorporate here the allegations of paragraphs 1 through 42.

17 108. Bixby Defendants and Does 1 through 100 negligently inspected Plaintiffs' roof
18 and attic for leaks so as cause the leaks to go undetected until further and substantial damage was
19 done to Plaintiffs' attic and house.
20

21 109. As a legal result of said negligence, Plaintiffs have suffered damages in an amount
22 in excess of \$25,000.00 according to proof.
23

24 IX. EIGHTH CAUSE OF ACTION

25 (ASSAULT AGAINST BIXBY DEFENDANTS AND DOES 1 THROUGH 100)

26 110. Plaintiffs incorporate here the allegations of paragraphs 1 through 42.
27
28

1 111. On or around February 17, 2001, at the Rio Del Oro Racquet Club in the County
2 of Sacramento, California, Defendant Bixby, acting on behalf of himself and each of the Bixby
3 Defendants, committed assault against Plaintiff Robert by threatening to physically attack
4 Plaintiff Robert; repeating extreme obscenities towards Plaintiff Robert by multiple, repeated
5 obscene statements and gestures, more commonly known as "flipping him off"; physically
6 following Plaintiff Robert in a threatening manner over an extended period; repeatedly
7 threatening continued harassment; humiliating Plaintiff Robert in front of those present in the
8 facility; and failing to cease these behaviors when requested to do so by Plaintiff Robert.
9 Attached hereto as Exhibit A is a report regarding these acts that Plaintiff Robert filed with the
10 Rio Del Oro Racquet Club.

11
12
13 112. Defendant Bixby, acting on behalf of himself and each of the Bixby Defendants
14 has in fact carried out and acted on his threats of continued harassment. Thereafter, every time
15 Plaintiff Robert and Defendant Bixby encountered each other at the Rio Del Oro Racquet Club,
16 Defendant Bixby, acting on behalf of himself and each of the Bixby Defendants, and each of
17 them, made the same obscene gestures and made harassing statements towards Plaintiff Robert.

18
19
20 113. In the late Spring 2001 Plaintiffs attended a court hearing in small claims
21 court in which Bixby Defendants were the defendants. Outside the courtroom after the hearing,
22 Defendant Bixby, acting on behalf of himself and each of the Bixby Defendants, continued to
23 verbally harass and taunt Plaintiff Robert and also Plaintiff Deborah.

24
25 114. On or around June 30, 2001, in the County of Sacramento, California, Defendant
26 Bixby, acting on behalf of himself and each of the Bixby Defendants, assaulted Plaintiff Robert

1 in that Defendant Bixby physically pursued Plaintiff Robert shouting obscenities such that
2 Plaintiff Robert promptly got into his car on the driver's side and locked the door. Defendant
3 Bixby made an obscene gesture and additional obscene statements, grabbed the driver's side
4 window and wrapped his fingers around the top. Plaintiff Robert reached down to roll his
5 window all the way up, but Plaintiff Robert could not roll up his window without risking
6 breaking Defendant Bixby's fingers. When Defendant Bixby noticed that Plaintiff Robert was
7 going to roll up the window, Defendant Bixby, acting on behalf of himself and each of the Bixby
8 Defendants, told Plaintiff Robert words to the effect of "do it and see what happens."

11 115. Defendant Bixby, acting on behalf of himself and each of the other Bixby
12 Defendants, performed each of the above acts with the intention of causing Plaintiffs to become
13 apprehensive of harmful and offensive contact.

15 116. Plaintiff Robert did in fact, as a direct result of the actions of Defendant Bixby,
16 acting on behalf of himself and the other Bixby Defendants, become apprehensive and feared for
17 his physical and emotional safety and that of his family and property.

18 117. At the time of Defendant Bixby's performance of each of the above acts,
19 Defendant Bixby, and each of them, had the ability to cause harmful and offensive contact.

21 118. As a legal consequence of said acts, Plaintiff Robert suffered extreme mental
22 distress and fear, has been afraid to use the health club or otherwise encounter Defendant Bixby,
23 and has avoided being seen with his teenage daughter in the vicinity of the club so as to disguise
24 her identity from Defendant Bixby, all to Plaintiff Robert's damage in an amount in excess of
25 \$25,000.00 according to proof.

1 119. As a legal consequence of said acts, Plaintiff Deborah also suffered extreme
2 mental distress to her damage in an amount in excess of \$25,000.00 according to proof.

3
4 120. Bixby Defendants, and each of them, acted wilfully, intentionally, and knowingly
5 in assaulting Plaintiff Robert and causing Plaintiffs extreme mental distress and fear. Bixby
6 Defendants, and each of their, actions towards Plaintiffs were oppressive and malicious and done
7 for the intentional and wrongful motive causing Plaintiff Robert imminent fear of harmful or
8 offensive contact and causing Plaintiffs extreme mental distress and fear. Therefore, Plaintiffs
9 are entitled to punitive damages in an amount in excess of \$25,000.00 according to proof.
10

11 Wherefore, Plaintiffs pray as set forth below.

12 X. NINTH CAUSE OF ACTION

13 (BATTERY AGAINST BIXBY DEFENDANTS AND DOES 1 THROUGH 100)

14 121. Plaintiffs incorporate here the allegations of paragraphs 1 through 42.

15
16 122. On or around June 30, 2001, in the County of Sacramento, California, Defendant
17 Bixby, acting on behalf of himself and each of the Bixby Defendants, assaulted Plaintiff Robert
18 in that Defendant Bixby physically pursued Plaintiff Robert shouting obscenities such that
19 Plaintiff Robert promptly got into his car on the driver's side and locked the door. Defendant
20 Bixby made an obscene gesture and additional obscene statements, grabbed the driver's side
21 window and wrapped his fingers around the top. Plaintiff Robert reached down to roll his
22 window all the way up, but Plaintiff Robert could not roll up his window without risking
23 breaking Defendant Bixby's fingers. When Defendant Bixby noticed that Plaintiff Robert was
24 going to roll up the window, Defendant Bixby, acting on behalf of himself and each of the Bixby
25
26
27
28

1 Defendants, told Plaintiff Robert words to the effect of “do it and see what happens.”

2 123. As a legal consequence of said acts, Plaintiff Robert suffered extreme mental
3 distress and fear, has been afraid to use the health club or otherwise encounter Defendant Bixby,
4 has avoided being seen with his teenage daughter in the vicinity of the club so as to disguise her
5 identity from Defendant Bixby, all to Plaintiff Robert’s damage in an amount in excess of
6 \$25,000.00 according to proof.
7

8 124. Bixby Defendants, and each of them, acted wilfully, intentionally, and knowingly
9 in battering Plaintiff Robert and causing him extreme mental distress and fear. Bixby
10 Defendants, and each of their, actions towards Plaintiff Robert were oppressive and malicious
11 and done for the intentional and wrongful motive causing Plaintiff Robert physical harm and
12 extreme mental distress and fear. Therefore, Plaintiff Robert is entitled to punitive damages in
13 an amount in excess of \$25,000.00 according to proof.
14
15

16 Wherefore, Plaintiff Robert prays as set forth below.

17 XI. TENTH CAUSE OF ACTION

18 (UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS AND PROFESSIONS
19 CODE § 17200, ET SEQ. AGAINST BIXBY DEFENDANTS AND DOES 1 THROUGH 100)
20

21 125. Plaintiffs incorporate here the allegations of Paragraphs 1 through 42, 54 through
22 73, 111 through 120, and 122 through 124 above.

23 126. Plaintiffs are informed and believe that Bixby Defendants have followed the same
24 or similar business practices with other customers as they did with Plaintiffs.
25

26 127. The aforementioned actions of Defendant Bixby Defendants, and each of them,
27
28

1 violated Business and Professions Code § 17200, et seq.

2 128. As a direct and proximate result of the ongoing unlawful business practices of
3 Bixby Defendants, and each of them, Plaintiffs seeks from Bixby Defendants, and each of them,
4 restitution of unlawful profits received by Bixby Defendants, and each of them, on behalf of
5 itself and other similarly situated property owners and customers of Bixby Defendants in an
6 amount in excess of \$25,000.00 according to proof.
7

8 129. Plaintiffs also seek statutory penalties against Bixby Defendants, and each of
9 them, for their willful violations of Business and Professions Code § 17200, et seq., in an amount
10 in excess of \$25,000.00 according to proof.
11

12 130. Plaintiffs also seek attorney fees against Bixby Defendants, and each of them,
13 under the Private Attorney General Doctrine and Code of Civil Procedure § 1021.5 in an amount
14 according to proof.
15

16 Wherefore, Plaintiffs pray as set forth below.

17 XII. ELEVENTH CAUSE OF ACTION

18 (INJURY TO REAL PROPERTY AGAINST BIXBY DEFENDANTS AND DOES 1
19 THROUGH 100)
20

21 131. Plaintiffs incorporate here the allegations of Paragraphs 1 through 42.

22 132. At all times relevant herein, Plaintiffs were the lawful owners, and were in lawful
23 possession, of the real property which is the subjection of this action.
24

25 133. On or around October 1991 Plaintiffs and Defendant Bixby entered into First
26 Agreement whereby Defendant Bixby agreed to construct an addition to Plaintiffs' master
27

1 bedroom, including the roof, in a substantial and workmanlike manner in accordance with
2 industry standards and in accordance with the law and appropriate ordinances and regulations.

3
4 134. On or around October 1991 through November 1991 Defendant Bixby breached
5 First Agreement by not performing the work in a substantial and workmanlike manner in
6 accordance with industry standards and by improper construction of the roof including improper
7 overhangs and improper felting, among other things.

8
9 135. Plaintiffs are informed and believe that Defendant Bixby Corporation
10 incorporated on or around June 27, 1995, after Plaintiffs entered into First Agreement. Plaintiffs
11 are further informed and believe that upon incorporation, Defendant Bixby Corporation assumed
12 all of the construction business activities and all of the assets and liabilities of Defendant Bixby's
13 construction business. Plaintiffs never agreed that Defendant Bixby would be relieved of liability
14 resulting for his dealings and actions with Plaintiffs.

15
16 136. Bixby Defendants never informed Plaintiffs of Defendant Bixby Corporation's
17 incorporation but continued to operate seamlessly with Plaintiffs under the same or a
18 substantially similar name as Defendant Bixby had done all along. Defendant Bixby thereby
19 inextricably combined, mixed, and confused his personal construction business and activities
20 with the construction business and activities of Defendant Bixby Corporation in such a manner
21 that the construction business and activities of Defendant Bixby and Defendant Bixby
22 Corporation were indistinguishable from one another. Unbeknownst to Plaintiffs, Plaintiffs
23 continued to do business with Defendant Bixby, both as an individual and as an agent of
24 Defendant Bixby Corporation.
25
26
27
28

1 137. However, the defects in the work performed by Defendant Bixby under the First
2 Agreement constituted latent defects in that they were hidden or concealed and could not be
3 discovered by reasonable and customary observation or inspection.
4

5 138. The defects in the work performed by Defendant Bixby under the First Agreement
6 constituted latent defects and were hidden or concealed and could not be discovered by
7 reasonable and customary observation or inspection because, among other things, there was no
8 exterior evidence of these defects nor was there any reason for Plaintiffs to suspect that the work
9 was defective. The defects were hidden from reasonable and customary observation or
10 inspection under the surface of the roof.
11

12 139. Once the additional leaking caused under Second Agreement occurred within two
13 years before the filing of the complaint, Plaintiffs acted with diligence to locate and repair
14 leaking, to make demand upon Bixby Defendants, and to file this lawsuit.
15

16 140. As a legal result of said acts, Plaintiffs have suffered an injury to real property in
17 an amount in excess of \$25,000.00 according to proof.
18

19 141. Bixby Defendants, and each of them, acted wilfully, intentionally, and knowingly
20 in causing injury to Plaintiffs' real property. Bixby Defendants, and each of their, actions
21 towards Plaintiffs were oppressive and malicious and done for the intentional and wrongful
22 motive of inducing Plaintiffs into contracting with Bixby Defendants, and each of them, to
23 perform additional work that was unnecessary and to cover up Bixby Defendants defective work
24 and incompetence. Therefore, Plaintiffs are entitled to punitive damages in an amount in excess
25 of \$25,000.00 according to proof.
26
27
28

1 147. Bixby Defendants never informed Plaintiffs of Defendant Bixby Corporation's
2 incorporation but continued to operate seamlessly with Plaintiffs under the same or a
3 substantially similar name as Defendant Bixby had done all along. Defendant Bixby thereby
4 inextricably combined, mixed, and confused his personal construction business and activities
5 with the construction business and activities of Defendant Bixby Corporation in such a manner
6 that the construction business and activities of Defendant Bixby and Defendant Bixby
7 Corporation were indistinguishable from one another. Unbeknownst to Plaintiffs, Plaintiffs
8 continued to do business with Defendant Bixby, both as an individual and as an agent of
9 Defendant Bixby Corporation.
10
11

12 148. Plaintiffs are informed and believe that on or around September 1993 through
13 November 1993 Defendant Flynn and Defendant Bixby breached Second Agreement by not
14 performing the work in a substantial and workmanlike manner according to standard practices by
15 causing or failing to repair leaks in the roof, improper nailing and installing loose shakes, not
16 installing shakes under part of the air conditioning and heating unit, leaving exposed felting and a
17 hole under the air conditioning and heating unit, and failing to move the large air conditioning
18 and heating unit mounted on Plaintiffs' roof as was necessary in order to properly discharge
19 Defendant Bixby's and Defendant Flynn's duties to Plaintiffs, among other things; and by failing
20 to comply with the legal requirement of obtaining a permit prior to performing the work under
21 the Second Agreement and having the work inspected by the appropriate government authorities
22 after completion.
23
24
25

26 149. However, the defects in the work performed by Defendant Bixby and Defendant
27
28

1 Flynn under Second Agreement constituted latent defects in that they were hidden or concealed
2 and could not be discovered by reasonable and customary observation or inspection.

3
4 150. The defects in the work performed by Defendant Bixby and Defendant Flynn
5 under the supervision and control of Defendant Bixby constituted latent defects and were hidden
6 or concealed and could not be discovered by reasonable and customary observation or inspection
7 because, among other things, the air conditioning and heating unit was mounted close to the roof,
8 its lowest point being only approximately three inches about the sloping roof. Neither Bixby
9 Defendants nor Defendant Flynn told Plaintiffs that the air conditioning and heating unit was not
10 moved in order for the repairs to be done. Furthermore, since the air conditioning and heating
11 unit was mounted so close to the roof, it hid from reasonable and customary observation or
12 inspection the actual leak and missing shakes and exposed felting.
13
14

15 151. Once the additional leaking occurred within two years before the filing of the
16 complaint, Plaintiffs acted with diligence to locate and repair leaking, to make demand upon
17 Bixby Defendants, and to file this lawsuit.

18 152. The leaking damaged the interior of Plaintiffs' attic and the interior of the house
19 and caused growth in Plaintiffs' attic and house of dangerous toxic molds.
20

21 153. Bixby Defendants assumed duties to Plaintiffs to locate, report to Plaintiffs
22 regarding, repair leaks and other defects in Plaintiffs' roof, and to inform Plaintiffs of the
23 inadequacies and defects in Defendant Bixby's and Defendant Flynn's work in the procedures
24 used in the performance of Second Agreement and the failure to obtain the necessary building
25 permits and job inspections. Bixby Defendants failed to discharge these duties, and actively
26
27
28

1 disguised and hid from Plaintiffs information regarding improper construction methods and
2 procedures by Defendant Bixby and Defendant Flynn, failures to obtain necessary permits and
3 inspections, and the existence of a leak and defects in Plaintiffs' roof.

4
5 154. As a legal result of said acts, Plaintiffs have suffered an injury to real property in
6 an amount in excess of \$25,000.00 according to proof.

7 155. Bixby Defendants, Defendant Flynn, and Does 1 through 100 acted wilfully,
8 intentionally, and knowingly in causing injury to Plaintiffs' real property. Each of said
9 defendants', and all of their, actions towards Plaintiffs were oppressive and malicious and done
10 for the intentional and wrongful motive of inducing Plaintiffs into contracting with said
11 defendants, and each of them, to perform additional work that was unnecessary and to cover up
12 said defendants', and each of their, defective work and incompetence. Therefore, Plaintiffs are
13 entitled to punitive damages in an amount in excess of \$25,000.00 according to proof.
14
15

16 Wherefore, Plaintiffs pray as set forth below.

17 XIV. THIRTEENTH CAUSE OF ACTION

18 (INTENTIONAL INFLICTION OF EMOTION DISTRESS AGAINST BIXBY DEFENDANTS
19 AND DOES 1 THROUGH 100)
20

21 156. Plaintiffs incorporate here the allegations of Paragraphs 1 through 42, 54 through
22 73, 111 through 120, and 122 through 124.

23 157. Bixby Defendants', and each of their, conduct as described above was intentional
24 and malicious and done for the purpose of causing Plaintiffs to suffer humiliation, mental
25 anguish, and emotion and physical distress.
26
27
28

1 158. As a proximate result of Bixby Defendants', and each of their, conduct as
2 described above, Plaintiffs suffered humiliation, mental anguish, emotion and physical distress,
3 and has been injured in mind and body in an amount in excess of \$25,000.00 according to proof.
4

5 159. Bixby Defendants, and each of them, acted wilfully, intentionally, and knowingly
6 in causing Plaintiffs humiliation, mental anguish, emotional and physical distress and injury in
7 mind and body. Bixby Defendants, and each of their, actions towards Plaintiffs were oppressive
8 and malicious and done for the intentional and wrongful motive of causing Plaintiffs humiliation,
9 mental anguish, emotional and physical distress and injury in mind and body. Therefore,
10 Plaintiffs are entitled to punitive damages in an amount in excess of \$25,000.00 according to
11 proof.
12

13 Wherefore, Plaintiffs pray as set forth below.
14

15 XV. FOURTEENTH CAUSE OF ACTION

16 (NEGLIGENT INFLICTION OF EMOTION DISTRESS AGAINST BIXBY DEFENDANTS
17 AND DOES 1 THROUGH 100)
18

19 160. Plaintiffs incorporate here the allegations of Paragraphs 1 through 42, 75 through
20 95, 111 through 120, and 122 through 124.

21 161. Bixby Defendants, and each of them, knew, or should have known, that their
22 failure to exercise due care taking the actions described above would cause Plaintiffs severe
23 emotional distress.
24

25 162. As a proximate result of Bixby Defendants, and each of their, conduct described
26 above, Plaintiffs suffered severe emotional distress and mental suffering in an amount in excess
27

1 of \$25,000.00 according to proof.

2 Wherefore, Plaintiffs pray as set forth below.

3
4 XVI. FIFTEENTH CAUSE OF ACTION

5 (CLAIM ON LICENSE/CONTRACTOR'S BOND AGAINST DEFENDANT FRONTIER,
6 DEFENDANT STAR, DEFENDANT AMERICAN AND DOES 1 THROUGH 100)

7 163. Plaintiffs incorporate here the allegations of Paragraphs 1 through 42.

8
9 164. Bixby Defendants have on file with the California State Contractor's License
10 Board a bond, as required by Business and Professions Code § 7071.5, et seq. Defendant
11 Frontier is the surety on the bond.

12 165. Defendant Flynn had on file with the California State Contractor's License Board
13 a bond, as required by Business and Professions Code § 7071.5, et seq. From July 16, 1993,
14 through October 1, 1994, Defendant American was the surety on the bond. From October 1,
15 1994, through May 17, 1997, Defendant Star was the surety on the bond.

16
17 166. By the actions and omissions alleged herein, Bixby Defendants have willfully and
18 unjustifiably breached First Agreement and Second Agreement, negligently performed First
19 Agreement and Second Agreement, defrauded Plaintiffs, negligently misrepresented facts to
20 Plaintiffs, failed to disclose information they had a duty to disclose, negligently performed First
21 Agreement and Second Agreement, negligently inspected Defendant Bixby's work, committed
22 unfair business practices, assaulted Plaintiffs, battered Plaintiff Robert, caused injury to
23 Plaintiffs' real property, and caused Plaintiffs emotional distress as is more fully described
24 above.
25
26
27
28

1 167. By the actions and omissions alleged herein, Defendant Flynn breach Second
2 Agreement, negligently performed Second Agreement and caused injury to Plaintiffs' real
3 property as is more fully described above.
4

5 168. As a legal result of Bixby Defendants' willful and deliberate acts or omissions,
6 Plaintiffs have suffered damages in an amount in excess of \$25,000.00 according to proof.

7 169. As a further legal result of Bixby Defendants' willful and deliberate acts or
8 omissions, Plaintiffs have incurred attorney's fees in an amount according to proof.
9

10 170. As a legal result of Defendant Flynn's willful and deliberate acts or omissions,
11 Plaintiffs have suffered damages in an amount in excess of \$25,000.00 according to proof.
12

13 XVII. SIXTEENTH CAUSE OF ACTION

14 (INJUNCTION AGAINST DEFENDANT BIXBY AND DOES 1 THROUGH 100)

15 171. Plaintiffs incorporate here the allegations of Paragraphs 1 through 42, 111 through
16 120, and 122 through 124 above.

17 172. No adequate remedy at law exists because no amount of damages awarded against
18 Defendant Bixby, and each of them, in favor of Plaintiffs will stop Defendant Bixby, and each of
19 them, from continuing to contact, molest, harass, attack, strike, threaten, batter, telephone, send
20 messages to, follow, stalk, destroy the personal property of, disturb the peace of, or block
21 movements in public places or thoroughfares of Plaintiffs, members of their family, or their
22 property.
23

24 173. Also, Defendant Bixby's, and each of their, actions violate Plaintiffs' and their
25 family members' constitutional rights to freedom of travel, freedom of association, and right to
26
27

1 privacy. No amount of damages awarded to Plaintiffs for these violations would be adequate to
2 compensate them for these violations because these are personal rights.

3
4 174. Furthermore, Plaintiff Robert has been unable to enjoy Rio Del Oro Racquet Club,
5 without or without his daughter, because Defendant Bixby, and each of them, is also a member
6 and Plaintiff Robert does not want to encounter Defendant Bixby, and each of them, especially
7 when he with his daughter because Defendant Bixby, and each of them, does not know who
8 Plaintiff Robert's daughter is and Plaintiff Robert does not want Defendant Bixby, and each of
9 them, to learn her identify and begin harassing, pursuing, taunting, assaulting, and battering her
10 or risk damage to Plaintiffs' automobile in the parking lot .

11
12 175. Since Plaintiff Robert has stopped using the facilities at Rio Del Oro Racquet
13 Club, he has had difficulty maintaining his weight and his arthritis has become more debilitating.
14 Additionally, Plaintiff Robert's physician has instructed Plaintiff Robert to maintain an exercise
15 program to reduce varicose veins.

16
17 176. There are few other health clubs in the Greater Sacramento Area that offer the
18 same variety and quality of exercise equipment and facilities suitable for Plaintiffs' use as does
19 Rio Del Oro Racquet Club. Those that do would cost Plaintiff significant amounts of money
20 because of the initiation fees and increased monthly fees. Furthermore, Rio Del Oro Racquet
21 Club is the facility that Plaintiffs and their family have been members of for years and Plaintiffs'
22 children have many friends at the club.

23
24
25 177. Therefore, Plaintiffs request an injunction against Defendant Bixby, and each of
26 them, prohibiting Defendant Bixby, and each of them, from contacting, molesting, harassing,
27

1 attacking, striking, threatening, battering, telephoning, sending any messages to, following,
2 stalking, destroying the personal property of, disturbing the peace of, keeping under surveillance,
3 or blocking the movements in public places or thoroughfares Plaintiffs, members of their family,
4 and their property. Plaintiffs further request an injunction against Defendant Bixby, and each of
5

1 G. Seventh Cause of Action:

- 2 1. General damages in an amount in excess of \$25,000.00 according to proof;

3 H. Eighth Cause of Action:

- 4 1. General damages in an amount in excess of \$25,000.00 according to proof;
- 5 2. Punitive damages in an amount in excess of \$25,000.00 according to
- 6 proof;
- 7

8 I. Ninth Cause of Action:

- 9 1. General damages in an amount in excess of \$25,000.00 according to proof;
- 10 2. Punitive damages in an amount in excess of \$25,000.00 according to
- 11 proof;
- 12

13 J. Tenth Cause of Action:

- 14 1. Damages in an amount in excess of \$25,000.00 according to proof;
- 15 2. Civil Penalties in an amount in excess of \$25,000.00 according to proof;
- 16 3. Restitution in an amount in excess of \$25,000.00 according to proof;
- 17 4. Attorney's fees in an amount according to proof;
- 18

19 K. Eleventh Cause of Action:

- 20 1. General damages in an amount in excess of \$25,000.00 according to proof;
- 21 2. Punitive damages in an amount in excess of \$25,000.00 according to
- 22 proof;
- 23

24 L. Twelfth Cause of Action:

- 25 1. General damages in an amount in excess of \$25,000.00 according to proof;
- 26
- 27

1 2. Punitive damages in an amount in excess of \$25,000.00 according to
2 proof;

3
4 M. Thirteenth Cause of Action:

5 1. General damages in an amount in excess of \$25,000.00 according to proof;
6 2. Punitive damages in an amount in excess of \$25,000.00 according to
7 proof;

8
9 N. Fourteenth Cause of Action:

10 1. General damages in an amount in excess of \$25,000.00 according to proof;
11 2. Punitive damages in an amount in excess of \$25,000.00 according to
12 proof;

13
14 O. Fifteenth Cause of Action:

15 1. Claim on Bixby Defendants' bond;
16 2. Claim on Defendant Flynn's bond;

17
18 P. Sixteenth Cause of Action:

19 1. An injunction against Defendant Bixby prohibiting Defendant Bixby from
20 contacting, molesting, harassing, attacking, striking, threatening, battering,
21 telephoning, sending any messages to, following, stalking, destroying the
22 personal property of, disturbing the peace of, keeping under surveillance,
23 or blocking the movements in public places or thoroughfares Plaintiffs,
24 members of their family, or their property.
25
26 2. An injunction against Defendant Bixby requiring Defendant Bixby to stay
27

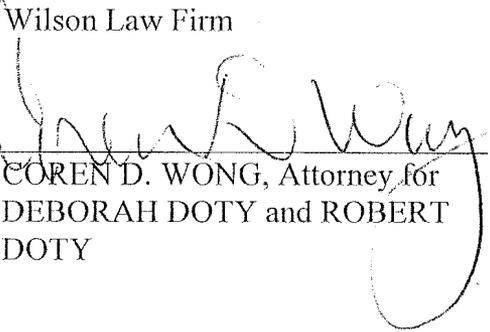
1 at least 100 feet from Plaintiffs, members of their family, and their
2 property.

3
4 Q. All Causes of Action:

- 5 1. Costs;
- 6 2. Attorney's fees;
- 7 3. Interest according to proof; and
- 8 4. Such further relief as the court deems proper.

9
10 Dated: December 13, 2001

Wilson Law Firm

11
12 By 

COREN D. WONG, Attorney for
DEBORAH DOTY and ROBERT
DOTY