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

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

Plaintiffs,

11 v.

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

Defendants,

Case No. 01AS07640

**DECLARATION OF
G. GREGORY CARVER**

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16 1. My name is G. Gregory Carver. I am a property owner who has had the
17 misfortune to transacted business with MJB/Bixby Construction, Inc. ("Bixby Inc.") and
18 Mark J. Bixby, receiving poor quality workmanship, unprofessional behavior and
19 improper billing from Bixby Inc. and Mark J. Bixby.

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

22 3. I employed Mr. Bixby and Bixby Inc. to perform extensive construction work
23 on a rental property I own in Sacramento, California.
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2 4. Mr. Bixby and Bixby Inc. held themselves out as experts in older property
3 renovation and construction, and as having special premium skills in that field.

4 5. Mr. Bixby and Bixby Inc. did not complete the work in a timely manner or
5 satisfactorily. The first stage of work (not including the foundation), which was to have
6 taken only about four weeks, as represented to us by Mr. Bixby and Bixby Inc., actually
7 extended over an eight-week period. Despite multiple requests that the work be
8 completed within the time period represented, Mr. Bixby and Bixby Inc. did not complete
9 the work within that time.

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11 6. Mr. Bixby and Bixby Inc. left many items poorly and incompletely
12 constructed, such as cabinets, floors, plumbing, door and window moldings, and
13 installation of toilets. Mr. Bixby and Bixby Inc. improperly and incompletely repaired the
14 foundation to the building, severely damaging the foundation and framing of the building.
15 Exhibit 1 to this Declaration sets forth details (omitting attachments) regarding Mr.
16 Bixby's and Bixby Inc.'s untimely work and shoddy construction under their contract
17 with me.

18 7. In addition, Mr. Bixby and Bixby Inc. overbilled me for the work. The time
19 records maintained by Mr. Bixby's and Bixby Inc.'s employees were incorrect in certain
20 cases, which I or my partner, Brian Carver, pointed out to Mr. Bixby and Bixby Inc.
21 While in two instances these overbillings were acknowledged, addressed, and corrected
22 by the staff of Bixby Inc., on all other occasions, even though the staff of Bixby Inc.
23 acknowledged billing problems existed, Mr. Bixby insisted on payment anyway, refusing
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2 to make corrections to the billing. Exhibit 1 also sets forth details about these
3 occurrences.

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5 8. Moreover, the final copy of the contract contains material changes to the terms
6 of our agreement between the draft I approved (with some agreed changes) and the final
7 copy. Mr. Bixby made these material changes without informing me despite his
8 assurances to the contrary. Mr. Bixby submitted the final copy to me, and told me that it
9 was the same as the draft with the changes to which we had agreed. Therefore, I did not
10 read the final copy so as to check it word-for-word against the draft. Exhibit 1 sets forth
11 details about those actions of Mr. Bixby and Bixby Inc., as well.

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13 9. When I raised issues myself and through my partner about the billing
14 irregularities and the improper and incomplete construction, Mr. Bixby became
15 belligerent, threatening, intimidating, and aggressive and insisted on payment of the
16 excessive amount billed. Details as to some of this behavior are contained in Exhibit 1,
17 and other details are contained in Exhibit 2, as well as in the Declaration of Brian Carver.

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19 10. Mr. Bixby and Bixby Inc. claimed at the end that I owed them \$6,184.17. I
20 submitted a detailed calculation setting forth why I only owed them a remaining balance
21 of \$3,239.06.

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23 11. Mr. Bixby and Bixby Inc. caused an excessive lien to be placed upon my
24 property in the amount of \$15,000, although only \$2,945.11 (\$6,184.17 less \$3,239.06)
was in dispute (apart from amounts I believe Mr. Bixby and Bixby Inc. owe me for
incomplete and shoddy construction). Even according to Mr. Bixby's and Bixby Inc.'s

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2 own assertions, I would have owed only a maximum amount of \$6,184.17. Mr. Bixby
3 threatened to place an even greater lien upon the property if I continued to complain. Mr.
4 Bixby's correspondence showing this behavior is attached as part of Exhibit 2 to this
5 Declaration.

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7 12. I filed (and continue to pursue) a complaint to the Contractors State License
8 Board about the matters described in this Declaration.

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10 13. When I paid under protest the amount of \$6,184.17, which was \$2,945.11 more
11 than I believe I owed (apart from amounts I believe Mr. Bixby and Bixby Inc. owe me for
12 incomplete and shoddy construction), Mr. Bixby informed me that he would cause the
13 existing \$15,000 lien to be removed once I terminated my Complaint with the
14 Contractors State License Board. I took that statement as a threat to me to withdraw my
15 complaint to the Contractors State License Board or Mr. Bixby and Bixby Inc. would
16 leave the lien on the property. This correspondence is attached to this Declaration as part
17 of Exhibit 2.

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

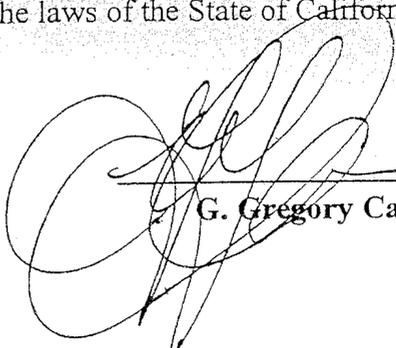
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22 15. The Plaintiffs also have informed me that, among other things, as provided in
23 Business and Professions Code Section 17204, such claims against "unfair competition"
24 may be asserted by "any person acting for the interests of itself ... or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

16. Among the remedies that the Plaintiffs have informed me they are entitled to
seek under the statute are injunctive relief, appointment of a receiver to prevent future

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2 **25. DECLARATION**

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

6 **Dated:** July 3, 2002.

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G. Gregory Carver