

COURTROOM NEWS

Date: 5 May 2006

Jury Awards \$2.3 Million to Sacramento Family Displaced by Mold

SACRAMENTO, Calif. — A California state court jury found the insurer for a Sacramento couple guilty of bad faith and negligence in hiring remediation contractors and awarded family members more than \$2.3 million in damages on May 1. *Harold v. California Casualty Insurance Co., et al.*, No. 02AS04291 (Calif. Super., Sacramento Cty.).

Sacramento County Superior Court jurors ended an eight-week trial by finding California Casualty Insurance Co. substantially liable for the negligence of a contractor plaintiffs claimed had no mold remediation experience and whose work caused them to permanently vacate their home five years ago because of extensive mold contamination.

James and D. Lee Harold, two retired teachers, said they contacted California Casualty Insurance Co. after they returned from a trip to discover condensation on windows and cupping and bowing of hardwood floors. They were unable to detect any water intrusion immediately, but notified California Casualty of the damage.

They also notified a plumber, who discovered a broken pressurized hot water line in a dirt crawl space under the house.

California Casualty sent a claims adjuster a week after the Harolds discovered the damage. The adjuster hired Westmont Construction Co., which placed a blower and dehumidifier in the Harolds' laundry room in an effort to dry the house. The Harolds contended that this method was flawed and the area should have been contained.

The Harolds also complained that Westmont workers observed mold in subflooring but failed to alert the homeowners.

They also contended that in January 2001, Westmont retained a consultant, William Anderson, who discovered significant moisture levels in walls and floors and who issued a report warning of mold hazard and recommending a remediation protocol.

Instead of giving a copy of the report to the Harolds, the couple said, Westmont forwarded the report to California Casualty, which directly contracted with Westmont to make repairs.

The Harolds complained that Westmont ignored remediation guidelines in

making repairs and that they could detect the odor of mold after the work was supposedly finished in May 2001.

California Casualty refused to pay additional alternative living expenses at that time, but retained certified industrial hygienist John Sacco of Sacramento at their insistence, the Harolds said.

Sacco reported that the air in the house was within normal guidelines, but that rugs and other possessions were contaminated. He also discovered wet insulation and mold and high moisture content in some framing materials, according to a trial report.

California Casualty retained attorney Robert McLay in July 2001 and hired another certified industrial hygienist, David Carls, to oversee a second remediation effort.

The Harolds said it was in August 2001 that they first learned of the 'Anderson Report,' when McLay provided a copy.

Repairs began for a second time in November 2001, but elevated levels of Penicillium, Aspergillus and Basidiospores were found in the crawl space in March 2002, and subsequent meetings between the Harolds, the insurer and Carls did not resolve the remediation issues, the plaintiffs complained.

The Harolds said work stopped with 'gaping holes' in the subfloor between the house and the contaminated crawlspace. The couple has not lived in the house since and it remains empty.

California Casualty eventually sent a check to the Harolds for \$251,000 for the balance of the policy limits.

Trial was held before Judge Michael P. Kenney.

The Harolds relied at trial on Patricia A. Heinsohn Ph.D., CIH, of Micro Bios in Pacifica, Calif., who testified to the prior repair efforts and said that the house could not be remediated. The Harolds also called John Sacco, the certified industrial hygienist, and Linda Stezenbach, who testified to finding levels of Stachybotrys at 18,950 per cubic meter.

The Harolds also called epidemiologist Mark Shenker of University of California-Davis, who is board-certified in internal medicine.

Defendants called Andrew Saxon, M.D., of UCLA Medical School; and Coreen A. Robbins, MHS, Ph.D., CIH of Veritox in Redmond, Wash. Robbins testified on mold hazards and the remediation procedures and opined that the couple could have moved back into the house after

Westmont's repair work was completed.

Sources reported that Judge Kenney limited Robbins's testimony by precluding any reference to animal studies of mold hazards.

Jurors deliberated for 4 1/2 days.

They answered a lengthy Special Verdict form, finding that California Casualty failed to exercise reasonable care in hiring a qualified contractor and that the hiring of Westmont 'was a substantial factor in harming the Harolds.'

Jurors found Westmont negligent and concluded that Westmont's negligence, too, was a substantial factor in the harm suffered by the Harolds.

Jurors also found that Westmont and California Casualty intentionally withheld the Anderson Report from the couple.

Jurors found California Casualty liable for \$256,000 in breach of contract damages, after taking into account the \$251,000 payment to the Harolds.

On the bad faith count against the insurer, jurors awarded \$75,450 in economic damages for both Harolds, \$75,000 for James Harold's past non-economic damages and \$75,000 for D. Lee Harold's past non-economic damages.

Jurors awarded another \$150,000 in damages against Westmont on the negligence claim and an additional \$5,000 against Westmont on the Harolds' nuisance claim.

Jurors assessed a total of \$744,700 for failure to hire a qualified contractor/special risk of harm and \$777,543 on a second nuisance cause of action against California Casualty.

On the concealment claim, the jury awarded the Harolds \$146,090.73 against California Casualty and \$0 against Westmont.

Total damages were \$2,304,733.73.

Trial counsel for the Harolds included Peter W. Alfert of Hinton, Alfert & Sumner in Walnut Creek, Calif., who tried the insurance issues; Michael J. Cochrane of King, King & Fishleder in Oakland, who tried construction issues; and Karen H. Kahn of Kahn Brown & Poore, who tried medical aspects of the case.

Stephen M. Hayes of Hayes Davis Ellingson McLay & Scott in Sacramento was trial counsel for California Casualty. Ronald E. Enabnit of Matheny Sears Linkert & Long in Sacramento was counsel for Westmont Construction Co.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**JAMES HAROLD and D. LEE HAROLD,
Individuals,
Plaintiff(s),**

Case Number: 02AS04291

Department: 31

vs.

SPECIAL VERDICT

**CALIFORNIA CASUALTY INSURANCE
COMPANY, WESTMONT
CONSTRUCTION, INC.,
Defendant(s).**

We, the Jury in the above-entitled action, find the following special verdict on
the questions submitted to us:

NEGLIGENCE

Negligence - Westmont

**Question No. 1: Do you find that Westmont Construction, Inc.,
("Westmont") was negligent?**

YES



NO

If you answered "yes" to Question 1, please proceed to Question 2. If you
answered "no" to Question 1, please proceed to Question 10.

**Question No. 2: Do you find that Westmont's negligence was a
substantial factor in causing harm to the Harolds?**

YES



NO

If you answered "yes" to Question 2, please proceed to Question 3. If you answered "no" to Question 2, please proceed to Question 10.

Failure to Hire Qualified Contractor/Special Risk - California Casualty

Question No. 3: Do you find that California Casualty hired Westmont to repair the Harolds' residence?

YES

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NO

If you answered "yes" to Question 3 please proceed to Question 4. If you answered "no" to Question 3, please proceed to Question 10.

Question No. 4: Do you find that California Casualty failed to exercise reasonable care to employ a qualified contractor when it chose to hire Westmont to perform repairs at the Harolds' residence.

YES

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NO

If you answered "yes" to Question 4 please proceed to Question 5. If you answered "no" to Question 4, please proceed to Question 6.

Question No. 5: Do you find that California Casualty's hiring of Westmont was a substantial factor in causing physical harm to person or property?

YES

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NO

Please proceed to Question 6.

Question No. 6: Do you find that the work was likely to involve a special risk of harm to person or property?

YES

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NO

If you answered "yes" to Question 6 please proceed to Question 7. If you answered "no" to Question 6, please proceed to Question 10.

Question No. 7: Do you find that California Casualty knew or should have known that the work was likely to involve this risk?

YES

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NO

If you answered "yes" to Question 7 please proceed to Question 8. If you answered "no" to Question 7, please proceed to Question 10.

Question No. 8: Do you find that Westmont failed to use reasonable care to take specific safety measures appropriate to the danger to avoid the risk?

YES

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NO

If you answered "yes" to Question 8 please proceed to Question 9. If you answered "no" to Question 8, please proceed to Question 10.

Question No. 9: Do you find that Westmont's failure was a cause of harm to the Harolds?

YES

✓

NO

Please proceed to Question 10.

BREACH OF CONTRACT

Question No. 10: Do you find that California Casualty breached the insurance contract with the Harolds?

YES

✓

NO

Proceed to Question No. 11.

BREACH OF THE OBLIGATION OF GOOD FAITH & FAIR DEALING

Question No. 11: Do you find that California Casualty breached the obligation of good faith and fair dealing by unreasonably failing to pay, or delaying payment, of policy benefits?

YES

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NO

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Please proceed to Question No. 12.

Question No. 12: Do you find that California Casualty breached the obligation of good faith and fair dealing by failing to properly investigate the loss?

YES

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NO

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Please proceed to Question No. 13.

Question No. 13: Do you find that California Casualty breached the obligation of good faith and fair dealing by failing to reasonably inform the Harolds of their rights and obligations under the insurance policy?

YES

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NO

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Please proceed to Question No. 14.

Question No. 14: If you answered "yes" to either Question 11, Question 12, or Question 13, do you find that California Casualty's breach of the obligation of good faith and fair dealing was a substantial factor in causing harm to the Harolds?

YES

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NO

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Please proceed to Question No. 15.

NUISANCE - Westmont

Question No. 15: Did Westmont create a condition that was harmful to health, or was an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property?

YES

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NO

If you answered "yes" to Question 15 please proceed to Question 16. If you answered "no" to Question 15, please proceed to Question 21.

Question No. 16: Do you find that this condition interfered with the Harolds' use and enjoyment of the land?

YES

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NO

If you answered "yes" to Question 16, please proceed to Question 17. If you answered "no" to Question 16, please proceed to Question 21.

Question No. 17: Do you find that the Harolds consented to Westmont's conduct?

YES

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NO

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If you answered "yes" to Question 17, please proceed to Question 21. If you answered "no" to Question 17, please proceed to Question 18.

Question No. 18: Do you find that an ordinary person would have been reasonably annoyed or disturbed by Westmont's conduct?

YES

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NO

If you answered "yes" to Question 18, please proceed to Question 19. If you answered "no" to Question 18, please proceed to Question 21.

Question No. 19: Do you find that Westmont's conduct was a substantial factor in causing harm to the Harolds?

YES

✓

NO

If you answered "yes" to Question 19, please proceed to Question 20. If you answered "no" to Question 19, please proceed to Question 21.

Question No. 20: Do you find that the seriousness of the harm outweighed the public benefit?

YES

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NO

Please proceed to Question 21.

NUISANCE – California Casualty

Question No. 21: Did California Casualty, or its agents as defined in the jury instructions, create a condition that was harmful to health, or was an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property?

YES

✓

NO

If you answered "yes" to Question 21 please proceed to Question 22. If you answered "no" to Question 21, please proceed to Question 27.

Question No. 22: Do you find that this condition interfered with the Harolds' use and enjoyment of the land?

YES

✓

NO

If you answered "yes" to Question 22, please proceed to Question 23. If you answered "no" to Question 22, please proceed to Question 27.

Question No. 23: Do you find that the Harolds consented to California Casualty's conduct?

YES

NO

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If you answered "yes" to Question 23, please proceed to Question 27. If you answered "no" to Question 23, please proceed to Question 24.

Question No. 24: Do you find that an ordinary person would have been reasonably annoyed or disturbed by California Casualty's conduct?

YES

NO

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If you answered "yes" to Question 24, please proceed to Question 25. If you answered "no" to Question 24, please proceed to Question 27.

Question No. 25: Do you find that California Casualty's conduct was a substantial factor in causing harm to the Harolds?

YES

NO

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If you answered "yes" to Question 25, please proceed to Question 26. If you answered "no" to Question 25, please proceed to Question 27.

Question No. 26: Do you find that the seriousness of the harm outweighed the public benefit?

YES

NO

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Please proceed to Question 27.

CONCEALMENT - Westmont

Question No. 27: Do you find that Westmont intentionally failed to disclose the Anderson Mold Report to the Harolds?

YES _____

NO _____ ✓

If you answered "yes" to Question 27, please proceed to Question 28. If you answered "no" to Question 27, please proceed to Question 31.

Question No. 28: Do you find that Westmont intended to deceive the Harolds by concealing the Anderson Mold Report?

YES _____

NO _____

If you answered "yes" to Question 28, please proceed to Question 29. If you answered "no" to Question 28, please proceed to Question 31.

Question No. 29: Do you find that the Harolds reasonably relied on Westmont's deception?

YES _____

NO _____

If you answered "yes" to Question 29, please proceed to Question 30. If you answered "no" to Question 29, please proceed to Question 31.

Question No. 30: Was Westmont's concealment a substantial factor in causing harm to the Harolds?

YES _____

NO _____

Please proceed to Question 31.

CONCEALMENT – California Casualty

Question No. 31: Do you find that California Casualty intentionally failed to disclose the Anderson Mold Report to the Harolds?

YES

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NO

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If you answered "yes" to Question 31, please proceed to Question 32. If you answered "no" to Question 31, please proceed to Question 35.

Question No. 32: Do you find that California Casualty intended to deceive the Harolds by concealing the Anderson Mold Report?

YES

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NO

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If you answered "yes" to Question 32, please proceed to Question 33. If you answered "no" to Question 32, please proceed to Question 35.

Question No. 33: Do you find that the Harolds reasonably relied on California Casualty's deception?

YES

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NO

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If you answered "yes" to Question 33, please proceed to Question 34. If you answered "no" to Question 33, please proceed to Question 35.

Question No. 34: Was California Casualty's concealment a substantial factor in causing harm to the Harolds?

YES

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NO

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Please proceed to Question 35.

DAMAGES

Breach of Contract

Question No. 35: If you answered yes to Question 10, what is the amount of the covered loss under the insurance contract that California Casualty failed to pay for the residence. The maximum amount that can be awarded for breach of contract is \$256,000 due to the existence of the credit of \$251,000.

		\$ 256,000
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Regardless of how you answered Question 10 and Question 35, please proceed to Question 36.

Breach of the obligation of good faith and fair dealing

Question No. 36: If you answered "yes" to Question 14, what are the damages for breach of the obligation of good faith and fair dealing?

A.	Economic Damage for James and D. Lee Harold	\$ 75,450
B.	Past Non-Economic Damage for James Harold	\$ 75,000
C.	Future Non-Economic Damage for James Harold	\$ Ø
D.	Past Non-Economic Damage for D. Lee Harold	\$ 75,000
E.	Future Non-Economic Damage for D. Lee Harold	\$ Ø
D.	Total	\$ 225,450.

Regardless of how you answered Question 14 and Question 36, please proceed to Question 37.

Negligence - Westmont

Question No. 37: If you answered "yes" to Question 2, what are the damages for Westmont's negligence?

A.	Economic Damage for James and D. Lee Harold	\$ 75,000
B.	Past Non-Economic Damage for James Harold	\$ 37,500
C.	Future Non-Economic Damage for James Harold	\$ 0
D.	Past Non-Economic Damage for D. Lee Harold	\$ 37,500
E.	Future Non-Economic Damage for D. Lee Harold	\$ 0
D.	Total	\$ 150,000

75k each
75k rounded

Regardless of how you answered Question 2 and Question 37, please proceed to Question 38.

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Failure to Hire Qualified Contractor/Special Risk of Harm – California Casualty

Question No. 38: If you answered "yes" to Question 5 or Question 9, what are the damages for California Casualty's failure to hire a qualified contractor, or for special risk of harm?

A.	Economic Damage for James and D. Lee Harold	\$ 494,700
B.	Past Non-Economic Damage for James Harold	\$ 125,000
C.	Future Non-Economic Damage for James Harold	\$ 0
D.	Past Non-Economic Damage for D. Lee Harold	\$ 125,000
E.	Future Non-Economic Damage for D. Lee Harold	\$ 0
D.	Total	\$ 744,700

494,700
econ

250,000
non econ

Are any of the damages listed in the answer to Question 38 the same damages that you have awarded in response to a different question? Damages are considered the "same" if they were awarded for the same harm.

YES _____

NO _____

✓

If you answered "yes", identify the Answer(s) and the amount of any duplicated damages included in your answer to Question No. 38:

Answer No.: _____

Duplication: \$ _____

Regardless of how you answered Question 5, Question 9, and Question 38, please proceed to Question 39.

Question No. 39: If you answered both Question No. 37 and Question No. 38, what is the apportionment of fault between Westmont and California Casualty?

A. Westmont: 17 %
 B. California Casualty: 83 %
TOTAL: 100 %

Please proceed to Question 40.

Nuisance - Westmont

Question No. 40: If you answered "yes" to Question 20, what are the damages for the nuisance caused by Westmont?

A.	Economic Damage for James and D. Lee Harold	\$ <u>Ø</u>
B.	Past Non-Economic Damage for James Harold	\$ <u>2,500</u>
C.	Future Non-Economic Damage for James Harold	\$ <u>Ø</u>
D.	Past Non-Economic Damage for D. Lee Harold	\$ <u>2,500</u>
E.	Future Non-Economic Damage for D. Lee Harold	\$ <u>Ø</u>
D.	Total	\$ <u>5,000</u>

Ø
can
 \$5,000
panel

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Are any of the damages listed in the answer to Question 40 the same damages that you have awarded in response to a different question? Damages are considered the "same" if they were awarded for the same harm.

YES _____

NO _____



If you answered "yes", identify the Answer(s) and the amount of any duplicated damages included in your answer to Question No. 40:

Answer No.: _____

Duplication: \$ _____

Regardless of how you answered Question 20 and Question 40, please proceed to Question 41.

Nuisance – California Casualty

Question No. 41: If you answered "yes" to Question 26, what are the damages for the nuisance caused by California Casualty?

A.	Economic Damage for James and D. Lee Harold	\$ 102,543
B.	Past Non-Economic Damage for James Harold	\$ 262,500
C.	Future Non-Economic Damage for James Harold	\$ 75,000
D.	Past Non-Economic Damage for D. Lee Harold	\$ 262,500
E.	Future Non-Economic Damage for D. Lee Harold	\$ 75,000
D.	Total	\$ 777,543

102,543
econ

675,000
non econ

Are any of the damages listed in the answer to Question 41 the same damages that you have awarded in response to a different question? Damages are considered the "same" if they were awarded for the same harm.

YES _____

NO _____

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If you answered "yes", identify the Answer(s) and the amount of any duplicated damages included in your answer to Question No. 41:

Answer No.: _____

Duplication: \$ _____

Regardless of how you answered Question 26 and Question 41, please proceed to Question 42.

Question No. 42: If you answered both Question No. 40 and Question No. 41, what is the apportionment of fault between Westmont and California Casualty?

A. Westmont: 1 %

B. California Casualty: 99 %

TOTAL: 100 %

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Concealment – Westmont

Question No. 43: If you answered "yes" to Question 30, what are the damages for Westmont's concealment?

A.	Economic Damage for James and D. Lee Harold	\$
B.	Past Non-Economic Damage for James Harold	\$
C.	Future Non-Economic Damage for James Harold	\$
D.	Past Non-Economic Damage for D. Lee Harold	\$
E.	Future Non-Economic Damage for D. Lee Harold	\$
D.	Total	\$

Are any of the damages listed in the answer to Question 43 the same damages that you have awarded in response to a different question? Damages are considered the "same" if they were awarded for the same harm.

YES _____ NO _____

If you answered "yes", identify the Answer(s) and the amount of any duplicated damages included in your answer to Question No. 43:

Answer No.: _____

Duplication: \$ _____

Regardless of how you answered Question 30 and Question 43, please proceed to Question 44.

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Concealment – California Casualty

Question No. 44: If you answered "yes" to Question 34, what are the damages for California Casualty's concealment?

A.	Economic Damage for James and D. Lee Harold	\$ 133,092. ⁷³ 50
B.	Past Non-Economic Damage for James Harold	\$ 6,500
C.	Future Non-Economic Damage for James Harold	\$ Ø
D.	Past Non-Economic Damage for D. Lee Harold	\$ 6,500
E.	Future Non-Economic Damage for D. Lee Harold	\$ Ø
D.	Total	\$ 146,040.73

Are any of the damages listed in the answer to Question 44 the same damages that you have awarded in response to a different question? Damages are considered the "same" if they were awarded for the same harm.

YES _____

NO ✓

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If you answered "yes", identify the Answer(s) and the amount of any duplicated damages included in your answer to Question No. 44:

Answer No.: _____

Duplication: \$ _____

Dated: 5/1/06 _____

Foreperson

FILED
ENDORSE02 OCT 28 PM 2:06
LEGAL PROCESS #11

1 DANIEL A. KING, ESQ. (SBN 130150)
 2 KING, KING & FISHLER, A Professional Corporation
 3 Lake Merritt Plaza, Suite 810
 4 1999 Harrison Street
 5 Oakland, California 94612
 6 Telephone: (510) 874-4333
 7 Facsimile: (510) 874-4399

8 KAREN H. KAHN, ESQ. (SBN 098404)
 9 LAW OFFICES OF KAREN KAHN
 10 2100 Embarcadero, Suite 100
 11 Oakland, CA 94606
 12 Telephone: (510) 532-9575
 13 Facsimile: (510) 535-2579

14 Attorneys for Plaintiffs
 15 JAMES HAROLD and D. LEE HAROLD

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SUPERIOR COURT OF CALIFORNIA
 CITY AND COUNTY OF SACRAMENTO

JAMES HAROLD and D. LEE HAROLD,
 individuals

Plaintiffs,

v.

CALIFORNIA CASUALTY INSURANCE
 COMPANY, WESTMONT CONSTRUCTION,
 INC. and DOES 1 through 50

Defendants.

CASE NO. 02AS04291

FIRST AMENDED COMPLAINT

Jury Trial Demanded

BY FAX

Plaintiffs JAMES HAROLD and D. LEE HAROLD ("Plaintiffs") complain of defendants
 CALIFORNIA CASUALTY INSURANCE COMPANY ("California Casualty"), WESTMONT
 CONSTRUCTION, INC. ("Westmont Construction"), and DOES 1 through 50, and allege as
 follows.

Filed By
 King & Fishler
 Fax & File

Law Office of
 King, King & Fishler
 Lake Merritt Plaza
 1999 Harrison Street, Suite 810
 Oakland, CA 94612
 (510) 874-4333

FIRST AMENDED COMPLAINT

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GENERAL ALLEGATIONS

1. Plaintiffs purchased the homeowners insurance policy described below, and are the insureds and owners of the policy. They sue on behalf of themselves and on behalf of the general public for recovery of the sums and damages herein alleged.

2. California Casualty is and at all times mentioned was, a business organization of a form unknown to Plaintiffs. Plaintiffs are informed and believe, and thereupon allege, that California Casualty is a corporation authorized under the laws of the State of California to transact business in this state as an insurance company.

3. Westmont Construction is and at all times mentioned was, a business organization of a form unknown to Plaintiffs. Plaintiffs are informed and believe, and thereupon allege, that Westmont Construction is a corporation authorized under the laws of the State of California to transact business in this state.

4. Plaintiffs do not know the true names, capacities, and identities, whether corporate, partnership, individual or otherwise, of defendants sued herein as Does 1 through 50, inclusive, and for this reason sue such defendants by such fictitious names in accordance with Section 474 of the Code of Civil Procedure. Plaintiffs are informed and believe, and on that basis allege, that each of the fictitiously-named defendants is legally responsible for the events and actions referred to in this Complaint and wrongfully caused injury and damages to them, as alleged below. Plaintiffs will seek leave to amend this complaint to state these defendants' true names and capacities when they are ascertained.

5. California Casualty issued a homeowners insurance policy to Plaintiffs, policy number 204 1155871 05 03, which took effect on or about September 5, 2001 (the "Policy"). The Policy is presently in full force and effect, and was in full force and effect at all pertinent times mentioned herein. The Policy provides that California Casualty "will pay the reasonable cost incurred by you for necessary repairs" and assumes certain other obligations in the event of direct physical loss to Plaintiffs' property, including their home at 1160 Glen Aulin Court, Carmichael, California 95608 (the "Property"). A copy of the insurance policy provided to the Plaintiffs by California Casualty during the claims process is attached hereto as Exhibit A.

6. In November 2000, a hot water pipe broke causing direct physical loss to the Property. Plaintiffs promptly reported a claim to California Casualty and otherwise performed all terms and conditions of the Policy which they were required to perform for obtaining payments of insurance benefits.

7. California Casualty responded to the loss, agreeing that the damage caused by the break in the hot water pipe was covered under the Policy. California Casualty, however, failed to acknowledge its obligations pursuant to the terms of the Policy, including to indemnify Plaintiffs under the terms of the Policy. Instead, California Casualty misrepresented those obligations, including its obligations to pay actual cash value, to pay to repair or replace the premises and to pay additional living expense benefits.

8. Despite its obligations under the Policy, including the obligation to reimburse Plaintiffs for the cost of repairs, California Casualty volunteered to protect the property from further damage and to repair the damage itself. California Casualty employed Westmont Construction to do this work and assumed the right and responsibility to direct and control work performed by Westmont Construction. Thereafter, California Casualty took control of Plaintiffs' property ostensibly to allow its contractor to perform this work.

9. During the course of this work, California Casualty (including but not limited to Westmont Construction) learned that the property had become contaminated with toxic mold and bacteria as a result of the break in the hot water pipe. California Casualty (including but not limited to Westmont Construction) was aware that exposure to this type of mold and bacteria could cause serious health problems to Plaintiffs and others.

10. Knowing that Plaintiffs were being exposed and would continue to be exposed to the toxic mold and bacteria, California Casualty (including but not limited to Westmont Construction) concealed from Plaintiffs the existence of the toxic mold and bacteria at the Property. California Casualty (including but not limited to Westmont Construction) also made misrepresentations in order to hide the existence of the toxic mold and bacteria.

11. Without Plaintiffs' knowledge, California Casualty (including but not limited to Westmont Construction) attempted to remove visible mold and bacteria using industrial strength

1 clorox and without using any containment to prevent the spread of mold and bacteria. California
2 Casualty (including but not limited to Westmont Construction) caused further damage, spreading
3 the mold and bacteria throughout the Property and onto Plaintiffs' personal property.

4 12. In addition to the foregoing, California Casualty engaged in a practice of
5 misrepresenting to Plaintiffs the coverage available for Additional Living Expenses.

6 13. Plaintiffs are informed and believe, and based thereon allege, that California
7 Casualty's conduct as alleged in paragraphs 8 through 12 are the result of the policies and
8 procedures of California Casualty for handling property insurance claims.

9
10 **CAUSES OF ACTION**

11 **First Cause of Action**
12 **(For Breach of Contract Against California Casualty)**

13 14. Plaintiffs reallege and incorporate by this reference in this claim the allegations
14 contained in Paragraphs 1 through 13 of this Complaint.

15 15. Plaintiffs duly performed each and every condition and obligation that they were
16 required to perform under the Policy.

17 16. Defendant breached its contractual duties to Plaintiffs by failing to fulfill the
18 express obligations assumed by Defendant, including but not limited to its obligation to pay
19 insurance benefits under the Policy in a timely manner and their obligation to exercise
20 reasonable care in the handling of Plaintiffs' insurance claims. Also, Defendant breached its
21 contractual duties by intentionally misrepresenting and concealing information concerning its
22 obligations and Plaintiffs' rights under the Policy.

23 17. As a direct and legal result of Defendant's breach of its obligations, Plaintiffs
24 have suffered and will continue to suffer damages, including but not limited to loss of insurance
25 benefits, interest on those benefits, attorneys' fees, adjusters' fees, medical costs, other financial
26 losses and incidental damages, out-of-pocket expenses, loss of use of the property, and physical
27 injuries, all to their damage in an amount well in excess of the jurisdiction of this Court to be
28 shown according to proof.

Second Cause of Action
**(For Breach Of Implied Covenant of Good Faith
And Fair Dealing Against California Casualty)**

18. Plaintiffs reallege and incorporate by reference in this claim the allegations contained in Paragraphs 1 through 17 of this Complaint.

19. Defendant owed to Plaintiffs the duties of good faith and fair dealing implied by law in every contract of insurance.

20. Defendant breached these duties by, among other things, unreasonably and wrongfully: (a) refusing to pay to Plaintiffs the benefits due under the Policy; (b) attempting to avoid payment of Plaintiffs' legitimate claims, (c) failing and refusing to properly investigate Plaintiffs' claims for benefits, and (d) intentionally misrepresenting and concealing information concerning its obligations under the Policy.

21. As a direct and legal result of Defendant's actions, Plaintiffs have suffered and continue to suffer personal injuries, emotional and mental distress, anxiety, injuries to their nervous systems and persons, all of which have caused and continue to cause Plaintiffs mental harm, and physical injury and pain and suffering, in an amount well in excess of the jurisdiction of this Court to be shown according to proof.

22. As a further direct and legal result of Defendant's actions, Plaintiffs have suffered and will continue to suffer other damages, including but not limited to the loss of benefits due under the Policy, loss of use of the property, interest on those insurance benefits, attorneys' fees, adjusters' fees, medical costs, other financial losses and incidental damages, and other consequential damages and out-of-pocket expenses, in an amount well in excess of the jurisdiction of this Court to be shown according to proof.

23. The acts complained of in this Complaint were wilful, wanton, malicious, fraudulent and oppressive, and Defendant is guilty of oppression, fraud and malice. Further, all of the alleged acts were performed, authorized or ratified by one or more of Defendant's officers, directors, managing agents, or managerial employees, who acted with knowledge that said conduct would cause Plaintiffs harm. Defendant is therefore subject to the imposition of punitive and exemplary damages.

Third Cause of Action
(For Negligence Against Defendant California Casualty
and Does 1 through 10)

24. Plaintiffs reallege and incorporate by reference in this claim the allegations contained in Paragraphs 1 through 23 of this Complaint.

25. California Casualty and Does 1 through 10 undertook duties toward Plaintiffs to exercise reasonable care in the investigation, evaluation, and determination of Plaintiffs' claims for benefits under the Policy, including the duty to inform the Plaintiffs of their right to hire a contractor of their own choosing. Defendants breached their duties of due care by failing to exercise ordinary and reasonable care in the investigation, evaluation, and determination of Plaintiffs' claim under the Policy and by failing to inform the Plaintiffs of their right to hire a contractor of their own choosing.

26. By volunteering and undertaking the responsibility to protect the property from further damage and repair the damage, California Casualty and Does 1 through 10 also undertook duties toward Plaintiffs, including a duty to exercise reasonable care in the selection and supervision of any contractor it employed; to direct and control the repairs; to take special precautions to prevent peculiar, recognizable dangers arising out of the particular kind of work involved; to reasonably establish the scope of work to be performed so that it included all steps necessary to restore the Property to a habitable condition; and to disclose any known risks of harm to Plaintiffs.

27. California Casualty and Does 1 through 10 also breached their duties of care by failing to exercise ordinary and reasonable care in the selection and supervision of Westmont Construction; failed to take special precautions to prevent the growth and spread of mold which was a foreseeable and likely danger when the repairs to the Property were undertaken; failed to adequately direct and control the contractor with respect to the work performed in order to restore the Property to a habitable condition; limited the scope and extent of repairs performed for, and consequently the amount of benefits paid to, the Plaintiffs by arranging to have the work performed by its own agent, Westmont Construction; and failed to disclose any known risks of harm to Plaintiffs.

28. As a direct and legal result of those breaches of duty, Plaintiffs have suffered and will continue to suffer damages, including but not limited to the loss of insurance benefits, loss of use of the property, interest on those benefits, attorneys' fees, adjusters' fees, medical costs, and other incidental damages, and other consequential damages and out-of-pocket expenses, all to their damage in an amount in excess of the jurisdiction of this Court to be shown according to proof.

29. As a further direct and legal result of the actions of California Casualty and Does 1 through 10, Plaintiffs have suffered and continue to suffer personal injuries, emotional and mental distress, anxiety, injuries to their nervous systems and persons, all of which have caused and continue to cause Plaintiffs mental harm, and physical injury and pain and suffering, in an amount well in excess of the jurisdiction of this Court to be shown according to proof.

30. The acts complained of in this Complaint were wilful, wanton, malicious, fraudulent and oppressive, and Defendants are guilty of oppression, fraud and malice. Further, all of the alleged acts were performed, authorized or ratified by one or more of California Casualty's officers, directors, managing agents, or managerial employees, who acted with knowledge that said conduct would cause Plaintiffs harm. Defendants and each of them are therefore subject to the imposition of punitive and exemplary damages.

Fourth Cause of Action
(For Negligence Against Westmont Construction
and Does 11 through 25)

31. Plaintiffs reallege and incorporate by reference in this claim the allegations contained in Paragraphs 1 through 30 of this Complaint.

32. Defendants, Westmont Construction and Does 11 through 25, also undertook duties toward Plaintiffs, including the duty to exercise reasonable care in the repair of the Property and to disclose and warn the Plaintiffs about any known risks of harm to Plaintiffs, including the presence and effects on them of toxic mold.

33. Defendants, Westmont Construction and Does 11 through 25, breached their duties of due care by failing to exercise ordinary and reasonable care in repairing the Property

1 and by failing to disclose and warn the Plaintiffs about any known risks of harm to Plaintiffs,
2 including the presence and effects on them of toxic mold.

3 34. As a direct and legal result of those breaches of duty, Plaintiffs have suffered and
4 will continue to suffer damages, including but not limited to the loss of insurance benefits, loss
5 of use of the property, interest on those benefits, attorneys' fees, adjusters' fees, medical costs,
6 and other incidental damages, and other consequential damages and out-of-pocket expenses, all
7 to their damage in an amount in excess of the jurisdiction of this Court to be shown according to
8 proof.

9 35. As a further direct and legal result of the actions of Westmont Construction and
10 Does 1 through 25, Plaintiffs have suffered and continue to suffer personal injuries, emotional
11 and mental distress, anxiety, injuries to their nervous systems and persons, all of which have
12 caused and continue to cause Plaintiffs mental harm, and physical injury and pain and suffering,
13 in an amount well in excess of the jurisdiction of this Court to be shown according to proof.

14 36. The acts complained of in this Complaint were wilful, wanton, malicious,
15 fraudulent and oppressive, and Defendants are guilty of oppression, fraud and malice. Further,
16 all of the alleged acts were performed, authorized or ratified by one or more of Westmont
17 Construction's officers, directors, managing agents, or managerial employees, who acted with
18 knowledge that said conduct would cause Plaintiffs harm. Defendants and each of them are
19 therefore subject to the imposition of punitive and exemplary damages.

20
21 **Fifth Cause of Action**
22 **(For Intentional Infliction of Emotional Distress Against**
California Casualty, Westmont and Does 1 through 25)

23 37. Plaintiffs reallege and incorporate by reference in this cause of action the
24 allegations contained in Paragraphs 1 through 36 of this Complaint.

25 38. In doing the acts alleged above, Defendants engaged in a course of conduct which
26 was intentional, extreme and outrageous, and which was in wanton and reckless disregard of
27 Plaintiffs' rights and interests.
28

1 39. As a direct and legal result of Defendants' conduct as alleged herein, Plaintiffs
2 have suffered (and continue to suffer) damages, including but not limited to severe emotional
3 distress, personal injuries, loss of income, loss of benefits due under the Policy, loss of use of the
4 property, adjusters' fees, medical costs, and other consequential damages, all to their damage in
5 an amount well in excess of the jurisdiction of this Court to be shown according to proof.

6 40. As a further direct and legal result of Defendants' actions as alleged herein,
7 Plaintiffs were humiliated, hurt and injured in their health, strength and activity, sustained
8 injuries to their nervous systems and persons, all of which injuries have caused and continue to
9 cause Plaintiffs severe emotional distress. As a result of these injuries, Plaintiffs have suffered
10 damage in amount to be shown according to proof.

11 41. The acts complained of in this Complaint were wilful, wanton, malicious,
12 fraudulent and oppressive, and Defendants are guilty of oppression, fraud and malice. Further,
13 all of the alleged acts were performed, authorized or ratified by one or more of Defendants'
14 officers, directors, managing agents or managerial employees, who acted with knowledge that
15 said conduct would cause Plaintiffs harm. Defendants and each of them are therefore subject to
16 the imposition of punitive and exemplary damages.

17
18 **Sixth Cause of Action**
19 **(For Fraud By Concealment**
20 **Against Defendants California Casualty,**
 Westmont Construction and Does 1 through 25)

21 42. Plaintiffs reallege and incorporate by reference in this cause of action the
22 allegations contained in Paragraphs 1 through 41 of this Complaint.

23 43. In doing the acts alleged above, Defendants concealed or suppressed information
24 concerning the presence of toxic mold and bacteria from Plaintiffs.

25 44. While preparing the scope of damage to the Plaintiffs' home, Sue Nelson and
26 Bernard Sequeira, the owners of Westmont Construction and Vern Moulton of California
27 Casualty became aware of suspect mold growing as a result of the original water damage.
28 Westmont Construction and California Casualty were aware of the potential health risks

1 associated with the mold.

2 45. Ms. Nelson, Mr. Sequeira and Mr. Moulton concealed the presence of mold and
3 the potential health risks associated with the mold from Plaintiffs. They had a duty to inform
4 and warn the Plaintiffs about the presence of mold in the Property and the foreseeable risk of
5 harm to the Plaintiffs from exposure to toxic mold and bacteria, but they concealed the presence
6 of mold with the intent to defraud Plaintiffs.

7 46. Westmont Construction with the concurrence of California Casualty had the
8 property tested for mold by Anderson Environmental Consulting Group. They had this testing
9 performed without the knowledge or consent of Plaintiffs. The testing revealed in January 2001
10 that toxic mold was present in the house. Anderson Environmental Consulting Group also
11 warned Westmont Construction that the particles produced by the mold were toxic and might
12 cause serious health problems to persons exposed to the mold. Westmont Construction
13 immediately notified Vern Moulton of California Casualty about the results of the test and the
14 health risks associated with exposure to the mold. California Casualty and Westmont
15 Construction had a duty to inform and warn the Plaintiffs that mold discovered in the Property
16 had been tested and that toxic mold was present in the Property. They concealed the presence of
17 toxic mold and the foreseeable risk of harm to the Plaintiffs from exposure to toxic mold and
18 bacteria, with the intent to defraud Plaintiffs.

19 47. Mr. Sequeira, with the concurrence of Vern Moulton, advised Plaintiffs that they
20 needed to move out of the Property due to work to be performed on the floors. Mr. Sequeira and
21 Mr. Moulton concealed from Plaintiffs the true reason for asking the Plaintiffs to move out of the
22 Property, which was their discovery of the presence of toxic mold and the intent of California
23 Casualty and Westmont Construction to clean-up the mold contrary to expensive protocols
24 required for abating mold. Defendants were under a duty to inform and warn the Plaintiffs that
25 they intended to clean up the mold through ordinary repair methods but, instead, they concealed
26 their intent to clean-up the mold contrary to expensive protocols required for abating mold, with
27 the intent to defraud Plaintiffs.

1 48. Unaware of the toxic mold because of Westmount's and California Casualty's
2 concealment of the presence of toxic mold and their intent to clean it up through ordinary repair
3 methods, Plaintiffs continued to regularly enter their home in order to obtain supplies and for
4 other reasons. As a result, Plaintiffs unknowingly were exposing themselves to toxic mold and
5 bacteria which could, foreseeably, cause injury to the Plaintiffs. Plaintiffs would not have
6 entered the Property if they had they known of the presence of toxic mold and bacteria which
7 was intentionally concealed from them. They also would have hired competent companies to
8 abate the mold at their property, which would have decreased Plaintiffs' out-of-pocket expenses
9 and time associated with abating the mold problem.

10 49. As a direct and legal result of Defendants' conduct as alleged herein, Plaintiffs
11 have suffered (and continue to suffer) damages, including but not limited to severe emotional
12 distress, personal injuries, loss of income, loss of benefits due under the Policy, adjusters' fees,
13 medical costs, and other consequential damages, all to their damage in an amount well in excess
14 of the jurisdiction of this Court to be shown according to proof.

15 50. As a further direct and legal result of Defendants' actions as alleged herein,
16 Plaintiffs were humiliated, hurt and injured in their health, strength and activity, sustained
17 injuries to their nervous systems and persons, all of which injuries have caused and continue to
18 cause Plaintiffs severe emotional distress. As a result of these injuries, Plaintiffs have suffered
19 damage in amount to be shown according to proof.

20 51. The acts complained of in this Complaint were wilful, wanton, malicious,
21 fraudulent and oppressive, and Defendants are guilty of oppression, fraud and malice. Further,
22 all of the alleged acts were performed, authorized or ratified by one or more of Defendants'
23 officers, directors, managing agents, or managerial employees, who acted with knowledge that
24 said conduct would cause Plaintiffs harm. Defendants and each of them are therefore subject to
25 the imposition of punitive and exemplary damages.

Seventh Cause of Action
(For Fraud By Misrepresentation Against Defendants
California Casualty, Westmont Construction and Does 1 through 25)

52. Plaintiffs reallege and incorporate by reference in this cause of action the allegations contained in Paragraphs 1 through 51 of this Complaint.

53. In doing the acts alleged above, Defendants made false representations as to the habitability of the Plaintiffs' Property.

54. While preparing the scope of damage to the Plaintiffs' home, Sue Nelson and Bernard Sequeira, the owners of Westmont Construction and Vern Moulton of California Casualty became aware of suspect mold growing as a result of the original water damage. Westmont Construction and California Casualty were aware of the potential health risks associated with the mold.

55. Ms. Nelson, Mr. Sequeira and Mr. Moulton made representations about the nature of repairs being performed at the property, indicating that the house continued to be habitable, knowing these representations were false because of the potential health risks associated with the presence of mold in the house. They misrepresented the habitability of the Property and the nature of repairs with the intent to defraud Plaintiffs.

56. Westmont Construction with the concurrence of California Casualty had the property tested for mold by Anderson Environmental Consulting Group. The testing revealed in January 2001 that toxic mold was present in the house. Anderson Environmental Consulting Group also warned Westmont Construction that the particles produced by the mold were toxic and may cause serious health problems to persons exposed to the mold. Westmont Construction immediately notified Vern Moulton of California Casualty about the results of the test and the health risks associated with exposure to the mold.

57. Mr. Sequeira, with the concurrence of Vern Moulton, misrepresented to Plaintiffs that they needed to move out of the Property due to work to be performed on the floors. Mr. Sequeira and Vern Moulton knew their representations about the reasons for asking Plaintiffs to move out of the Property were false because the true reason Mr. Sequeira and Vern Moulton wanted the Plaintiffs to move out of the Property was their discovery of the presence of

1 toxic mold and the intent of California Casualty and Westmount Construction to clean-up the
2 mold contrary to expensive protocols required for abating mold.

3 58. Unaware of the falsity of Defendants' representations concerning the habitability
4 of the Property, Plaintiffs continued to regularly enter their home in order to obtain supplies and
5 for other reasons. As a result, Plaintiffs unknowingly were exposing themselves to toxic mold
6 and bacteria which could, foreseeably, cause injury to the Plaintiffs.

7 59. Unaware of the falsity of the representations of Westmont and California
8 Casualty concerning the nature of repairs at the Property and the intent of Westmont
9 Construction and California Casualty to use ordinary repair methods to remediate the mold,
10 Plaintiffs were deprived of their rights under the terms of the insurance policy to hire competent
11 companies to abate the mold at their property, which would have decreased Plaintiffs'
12 out-of-pocket expenses and time associated with abating the mold problem.

13 60. Defendants misrepresented to the Plaintiffs that the Property was habitable, and
14 that ordinary repairs were being made at the Property, with an intent to defraud the Plaintiffs and
15 to induce them to forego further repairs, including expensive protocols for the remediation of
16 toxic mold and bacteria.

17 59. Plaintiffs were unaware of the falsity of the representations that their Property had
18 been repaired and made habitable and Plaintiffs were also unaware of the concealed fact that
19 toxic mold and bacteria were present in the house. Plaintiffs were justified in relying upon the
20 representations of Defendants who had superior knowledge about the status of repairs of the
21 Property and whose attempts to remove the toxic mold prevented the Defendants from
22 discovering it. In reliance upon the Defendants' representations about the habitability of the
23 Property and the nature of repairs being undertaken at the Property, Plaintiffs initially stayed in
24 the house and thereafter continued to go into the house exposing themselves to toxic mold and
25 suffering personal injuries.

26 60. As a direct and legal result of Defendants' conduct as alleged herein, Plaintiffs
27 have suffered (and continue to suffer) damages, including but not limited to severe emotional
28 distress, personal injuries, loss of income, loss of benefits due under the Policy, adjusters' fees,

1 medical costs, and other consequential damages, all to their damage in an amount well in excess
2 of the jurisdiction of this Court to be shown according to proof.

3 61. As a further direct and legal result of Defendants' actions as alleged herein,
4 Plaintiffs were humiliated, hurt and injured in their health, strength and activity, sustained
5 injuries to their nervous systems and persons, all of which injuries have caused and continue to
6 cause Plaintiffs severe emotional distress. As a result of these injuries, Plaintiffs have suffered
7 damage in amount to be shown according to proof.

8 62. The acts complained of in this Complaint were wilful, wanton, malicious,
9 fraudulent and oppressive, and Defendants are guilty of oppression, fraud and malice. Further,
10 all of the alleged acts were performed, authorized or ratified by one or more of Defendants'
11 officers, directors, managing agents, or managerial employees, who acted with knowledge that
12 said conduct would cause Plaintiffs harm. Defendants and each of them are therefore subject to
13 the imposition of punitive and exemplary damages.

14
15 **Eighth Cause of Action**
16 **(For Nuisance Against Defendants California Casualty,**
Westmont Construction and Does 1 through 25)

17 63. Plaintiffs reallege and incorporate by reference in this cause of action the
18 allegations contained in Paragraphs 1 through 62 of this Complaint.

19 64. Defendants interfered with Plaintiffs' private use and enjoyment of their interest
20 in the Property.

21 65. The interference was substantial and unreasonable.

22 66. As a direct and legal result of Defendants' conduct as alleged herein, Plaintiffs
23 have suffered (and continue to suffer) damages, including but not limited to severe emotional
24 distress, personal injuries, loss of income, loss of benefits due under the Policy, loss of use of the
25 property, adjusters' fees, medical costs, and other consequential damages, all to their damage in
26 an amount well in excess of the jurisdiction of this Court to be shown according to proof.

27 67. As a further direct and legal result of Defendants' actions as alleged herein,
28 Plaintiffs were humiliated, hurt and injured in their health, strength and activity, sustained

1 injuries to their nervous systems and persons, all of which injuries have caused and continue to
2 cause Plaintiffs severe emotional distress. As a result of these injuries, Plaintiffs have suffered
3 damage in amount to be shown according to proof.

4 68. The acts complained of in this Complaint were wilful, wanton, malicious,
5 fraudulent and oppressive, and Defendants are guilty of oppression, fraud and malice. Further,
6 all of the alleged acts were performed, authorized or ratified by one or more of Defendants'
7 officers, directors, managing agents, or managerial employees, who acted with knowledge that
8 said conduct would cause Plaintiffs harm. Defendants and each of them are therefore subject to
9 the imposition of punitive and exemplary damages.

10
11 **Ninth Cause of Action**
12 **(For Unfair Business Practices Against**
Defendants California Casualty and Does 1 through 25)

13 69. Plaintiffs reallege and incorporate by reference in this cause of action the
14 allegations contained in Paragraphs 1 through 68 of this Complaint.

15 70. California Casualty has committed acts of unfair competition, as defined by
16 Business and Professions Code section 17200, by engaging in the following practices.

17 71. California Casualty had and continues to have an unfair, unlawful and fraudulent
18 practice of failing to acknowledge its obligations pursuant to the terms of property insurance
19 policies it issues, including its obligation to indemnify policyholders under the terms of the
20 policies. Instead, California Casualty has an unfair, unlawful and fraudulent practice of
21 misrepresenting those obligations, including its obligations to pay actual cash value, to pay to
22 repair or replace the premises and to pay additional living expense benefits as described below.

23 72. California Casualty had and continues to have an unfair, unlawful and fraudulent
24 practice of representing to policyholders that it will undertake to protect their property from
25 further damage and to repair the damage itself. With respect to this practice, California Casualty
26 has the practice of repairing toxic mold damage without taking proper precautions to protect
27 policyholders from the risk of serious health problems and further damage to property, and
28 without disclosing to policyholders the risks associated with the toxic mold and by concealing

1 the existence of toxic mold from policyholders.

2 73. California Casualty had and continues to have an unfair, unlawful and fraudulent
3 practice of misrepresenting to policyholders coverage available for Additional Living Expenses.

4 74. As a direct and legal result of the aforementioned acts, California Casualty has
5 received and continues to receive ill-gotten gains. The court has extraordinarily broad power
6 under section 17203 of the Business and Professions Code to fashion remedies which will
7 prevent unlawful business practices from occurring in the future and to restore to those who have
8 been injured any money or property, real or personal, and rights thereto, which have been
9 acquired by means of the defendant's unlawful business acts or practices.

10
11 **Tenth Cause of Action**
12 **(For Negligence Against Does 20 through 50)**

13 75. Plaintiffs reallege and incorporate by reference in this claim the allegations
14 contained in Paragraphs 1 through 6 of this Complaint.

15 76. Defendants undertook duties toward Plaintiffs to exercise reasonable care in the
16 investigation, evaluation, and repair of the Property.

17 77. Defendants breached their duties of due care by failing to exercise ordinary and
18 reasonable care in the investigation, evaluation, and repair of the Property.

19 78. As a direct and legal result of those breaches of duty, Plaintiffs have suffered and
20 will continue to suffer damages, including but not limited to property damage and other
21 incidental damages, and other consequential damages and out-of-pocket expenses, all to their
22 damage in an amount in excess of the jurisdiction of this Court to be shown according to proof.

23 WHEREFORE, Plaintiffs prays for judgment as follows:

24 1. For all benefits due under the Policy, together with interest thereon at the legal
25 rate;

26 2. For general damages for emotional distress, mental suffering and physical injury
27 in an amount according to proof;

1 3. For consequential damages legally caused by Defendants' conduct in an amount
2 according to proof;

3 4. For attorneys' fees and other expenses incurred to obtain the benefits due under
4 the Policy;

5 5. For exemplary and punitive damages;

6 6. For attorneys' fees and costs of suit herein incurred;

7 7. For prejudgment interest;

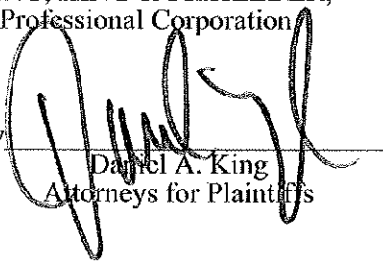
8 8. Pursuant to Business and Professions Code section 17203, and pursuant to the
9 equitable powers of this Court, Plaintiffs pray that the defendants be preliminarily and
10 permanently enjoined from the acts of unfair competition alleged above;

11 9. Pursuant to Business and Professions Code section 17203, and pursuant to the
12 equitable powers of this Court, Plaintiffs pray that defendants be ordered to restore to the public
13 all funds acquired by means of any act or practice declared by this Court to be unlawful, unfair
14 or fraudulent or to constitute unfair competition under Business and Professions Code section
15 17200 *et seq.*; and

16 10. For such other and further relief as the Court may deem just and proper.
17

18 KING, KING & FISHLEDER,
19 A Professional Corporation

20 Dated: October 28, 2002

21 By 
22 Daniel A. King
23 Attorneys for Plaintiffs

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