



1 **EDWARD R. BRENNER, CSBN 91315**
 2 **LAW OFFICES OF EDWARD R. BRENNER**
 3 **CALIFORNIA PLAZA**
 4 **2180 Harvard Street, Suite 560**
 5 **Sacramento, California 95815**
 6 **TEL (916) 925-3113**
 7 **FAX (916) 921-0247**

8 **Attorney for Plaintiff-**
 9 **MJB/ BIXBY CONSTRUCTION, INC.**

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **IN AND FOR THE COUNTY OF SACRAMENTO**
 12 **—oOo—**

13 **MJB/ BIXBY CONSTRUCTION, INC.,**
 14 **Plaintiff,**
 15 **v.**
 16 **DAVID and LYNN ERNCE,**
 17 **Defendant(s).**

18 **CASE NO. 01 AS 07168**
 19 **FIRST AMENDED COMPLAINT FOR**
 20 **FORECLOSURE OF MECHANICS'**
 21 **LIEN**
 22 **[Amount demanded exceeds \$10,000]**

23 **COMES NOW, Plaintiff, MJB/ BIXBY CONSTRUCTION, INC. and hereby complains**
 24 **of Defendants, DAVID and LYNN ERNCE as follows:**

- 25 1. Plaintiff, **MJB/ BIXBY CONSTRUCTION, INC.** is and at all times herein
 26 mentioned was, a corporation, organized and existing under the laws of California.
2. At all times herein mentioned, Plaintiff was a general contractor and was duly
 licensed to do business in the State of California.
3. Defendants, **DAVID and LYNN ERNCE**, a married couple, are and at all times
 mentioned were residents of the County of Sacramento, State of California.

//////

1 4. At all times herein mentioned, Defendants, were the owners or reputed owners of all
2 the certain real property situated in Sacramento County, California, described as follows: 2811
3 Third Avenue, Sacramento, California 95818, further described as Lot 227 as shown on the Map
4 entitled Heilbron Oaks, recorded on April 23, 1923, in Book 17 of Maps, Page 17.

5 5. On or about April 17, 2001, in Sacramento County, California, Plaintiff entered into
6 a written contract with Defendant for the construction or improvement of a kitchen project located
7 on the above-mentioned property and consisting of greater than ninety-seven percent (97%) of
8 kitchen home improvements. Under this contract, Plaintiff was to furnish all necessary labor,
9 services, materials, and equipment to be used or consumed in the construction performance of the
10 portion of work or improvement, for all of which Defendant agreed to pay Thirty-five Thousand
11 Dollars \$35,000.

12 6. After Plaintiff finished his contract, on or about September 27, 2001, Plaintiff duly
13 filed and recorded in Book 20010927, Page 0710, of the Official Records of Sacramento, County,
14 California, his claim of lien duly verified by the oath of Mark Bixby, a full and correct copy of
15 which is attached hereto, marked Exhibit "A," and made a part hereof by reference.

16 7. In this claim of lien, Plaintiff claimed a mechanics' lien on the work of
17 improvement and real property for the amount of the unpaid contract price alleged above which
18 price is the reasonable value of all labor, materials, services, and equipment Plaintiff has furnished.
19 Plaintiff has further incurred indebtedness as the necessary costs of recording and verifying the
20 claim of lien.

21 8. Defendants, **DAVE** and **LYNN ERNCE**, and each of them, have or claims to have
22 some right, title, or interest in the above-described real property for the amount of the unpaid
23 contract price alleged above which price in the reasonable value of all labor, materials, services,
24 and equipment Plaintiff has furnished. Plaintiff has further incurred indebtedness according to
25 proof, the necessary costs of recording and verifying the claim of lien.

1 **WHEREFORE**, Plaintiff prays judgment as follows:

2 1. For the sum of \$35,000 principal, together with interest at the rate of nine percent
3 (9%) per day from the date of termination to date of entry of judgment.

4 2. Adjudging on the Second Cause of Action that the mechanics' lien claims in the
5 claim of lien, referred to above as Exhibit "A," be foreclosed, and that the usual judgment be made
6 for the sale of the property according to law by a commissioner to be appointed by the Court; that
7 the proceeds of the sale be applied in payment of the amount due to Plaintiff.

8 3. Adjudging that if there is a deficiency of proceeds to satisfy the amounts due to the
9 Plaintiff, judgment for the deficiency be entered against the Defendants following proceedings
10 prescribed by law.

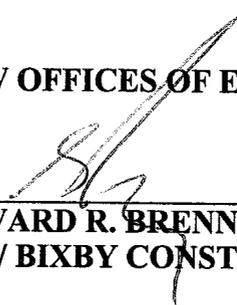
11 4. Permitting Plaintiff to become a purchaser at the foreclosure sale.

12 5. For cost of suit herein incurred.

13 6. For such other and further relief as the Court may deem proper.

14 **DATED:** April 30, 2002

15 **LAW OFFICES OF EDWARD R. BRENNER**

16 By: 

17 **EDWARD R. BRENNER, Attorney for—**
18 **MJB/ BIXBY CONSTRUCTION, INC.**

19
20
21 c:\core\data\bixbyv.Erncc.First Amended CXForeclosure of Mechanics' Lien/.001