

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): JOHN J. RUEDA (SBN 87669) HANSEN, BOYD, CULHANE & WATSON, LLP 1331 TWENTY-FIRST STREET SACRAMENTO, CA 95814		TELEPHONE: (916) 444-2550	FOR COURT USE ONLY <b>FILED</b> <b>NOT RECORDED</b> 99 JUL 26 PM 3:04 PURSUANT TO CODE CCF 411.20 LEGAL PROCESS #4
ATTORNEY FOR (NAME): ROBERT RAMIREZ, SONNY LOSOYA & YOLANDA DOTSON Insert name of court, judicial district or branch court, if any, and post office and street address: SUPERIOR COURT OF CALIFORNIA 720 NINTH STREET SACRAMENTO, CA 95814 "LIMITED CIVIL"		<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <b>VOIDED</b>  <small>PURSUANT TO CODE CCF 411.20</small> </div>	
PLAINTIFF: MJB BIXBY CONSTRUCTION, INC.			
DEFENDANT: ROBERT RAMIREZ, SONNY LOSOYA and YOLANDA DOTSON		TR# 104921 CLK B. MUSHEER 7/28/99 08:52:42 R47 264.00	
<p style="text-align: center;"><b>ANSWER - Contract</b></p> <input checked="" type="checkbox"/> TO COMPLAINT OF (name): MJB BIXBY CONSTRUCTION, CO. <input type="checkbox"/> TO CROSS-COMPLAINT OF (name):		CASE NUMBER: 99AM02630	

1. This pleading, including attachments and exhibits, consists of the following number of pages: 3
2. DEFENDANT (name): ROBERT RAMIREZ, SONNY LOSOYA and YOLANDA DOTSON

answers the complaint or cross-complaint as follows:

3. **Check ONLY ONE of the next two boxes:**

- a.  Defendant generally denies each statement of the complaint or cross-complaint. (Do not check this box if the verified complaint or cross-complaint demands more than \$1,000.)
- b.  Defendant admits that all of the statements of the complaint or cross-complaint are true EXCEPT:  
 (1) Defendant claims the following statements are false (use paragraph numbers or explain):

Continued on Attachment 3.b.(1).

(2) Defendant has no information or belief that the following statements are true, so defendant denies them (use paragraph numbers or explain):

Continued on Attachment 3.b.(2).

(Continued)

If this form is used to answer a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

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## ANSWER - Contract

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4.  AFFIRMATIVE DEFENSES

Defendant alleges the following additional reasons that plaintiff is not entitled to recover anything:

A. The complaint and each cause of action set forth therein, fail to set forth facts and allegations sufficient to constitute a valid cause of action or claim for relief against these answering defendants, and each of them.

B. The complaint and each cause of action set forth therein, fail to set forth facts and allegations sufficient to constitute a valid cause of action or claim for relief against answering defendant ROBERT RAMIREZ, in that ROBERT RAMIREZ is not a party to the contract sued upon.

C. The first cause of action is time barred under the provisions of the Mechanic's Lien Law including, but not limited to, Civil Code sections 3115 and 3144.

D. Paragraph 32 of the written agreement sued upon plaintiff herein (attached to the Complaint as Exh. 1) requires that plaintiff and answering defendants arbitrate the controversies that are at issue in this action. Defendants have not waived arbitration and in fact have demanded that plaintiff institute arbitration, but plaintiff has at all times failed and refused to arbitrate the controversies between the parties and has made no attempt to submit the matter to arbitration. The matter has not been arbitrated. As the disputes at issue in this action are the subject of arbitration, this action is barred.

Continued on Attachment 4.

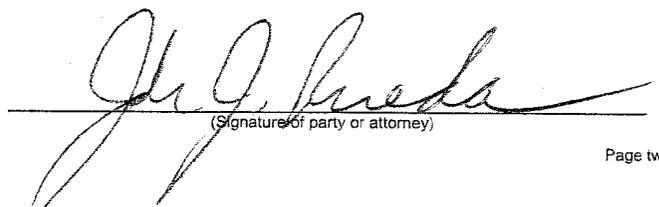
5.  Other:

## 6. DEFENDANT PRAYS

- a. that plaintiff take nothing.
- b.  for costs of suit.
- c.  other (specify): Reasonable attorneys fees.

JOHN J. RUEDA

(Type or print name)



(Signature of party or attorney)

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PETITIONER/PLAINTIFF: MJB BIXBY CONSTRUCTION, INC.

CASE NUMBER:

RESPONDENT/DEFENDANT: ROBERT RAMIREZ, SONNY LOSOYA & YOLANDA DOTSO

99AM02630

ATTACHMENT 4

AFFIRMATIVE DEFENSES (CONTINUATION)

PAGE 3

E. Plaintiff itself has breached the contract sued upon in several respects including but not limited to the following: failing to perform repairs and work called for under the contract in a substantial and workmanlike fashion; failing to complete repairs and work called for under the contract; failing to have contracted for repairs properly approved and reinspected by a termite and pest company as called for under the contract; overcharging for various items and repairs. By reason of plaintiff's breaches of the contract, plaintiff's claims for amounts allegedly due and owing are barred or, alternatively, are reduced by an amount according to proof at trial.

F. By reason of plaintiff's breach of the contract as set forth in paragraph 4E above, the allegations are incorporated hereby this reference, answering defendants and each of them are entitled to an offset in an amount according to proof at trial as against the amount which plaintiff claims is due and owing to it under the contract.

G. As a result of plaintiff's failure to perform and/or complete work in a substantial and workmanlike fashion and the other breaches and failures of performance on the part of plaintiff as alleged in 4E above, there is a failure of consideration to support performance on the part of these answering defendants, and each of them, to pay any amounts alleged by plaintiff to be due and owing under the contract.

H. The provisions of the contract by which plaintiffs charged defendants the amount of \$1,600 for repairing earth-to-wood contacts and \$1,600 for debris removal are unenforceable in that these charges were unconscionable at the time the contract was made in that they were grossly in excess of any reasonable amount to be charged for the work in question and bore no reasonable relation to the true value of the services provided for.

I. By reason of the grossly excessive overcharges for items of work as described in 4E above, and the breaches on contract described in Paragraph 4H, there is a failure of consideration to support plaintiff's claims for amounts due and owing for such work.

J. Plaintiff and/or his employees and agents damaged certain personal property located in the house at the time when the repairs called for under the subject contract were being performed. Defendants are entitled to an offset for the value of such destroyed personal property.