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8 Attorney for Plaintiff
9 and Cross-defendant—
10 MARK J. BIXBY

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF SACRAMENTO

13 —oOo—

14 MJB/BIXBY CONSTRUCTION, INC.,

15 Plaintiff,

16 v.

17 DAVID AND LYNN ERNCE,

18 Defendant(s).

19 CASE NO. 01 AS 07168

20 GENERAL DENIAL OF MJB/BIXBY
21 CONSTRUCTION, INC. AND MARK J.
22 BIXBY, DBA: BIXBY CONSTRUCTION

23 DAVID E. ERNCE and LYNN TRINKA
24 ERNCE,

25 Cross-complainant(s),

26 v.

MJB/BIXBY CONSTRUCTION, INC., a
Corporation, and MARK J. BIXBY,
Individually, and dba: BIXBY
CONSTRUCTION,

Cross-defendant(s).

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1 Plaintiff(s) and Cross-defendant(s), **MJB/BIXBY CONSTRUCTION, INC., a**
2 **Corporation, and MARK J. BIXBY, Individually, and dba: BIXBY CONSTRUCTION**
3 (hereinafter collectively referred to as "**BIXBY**"), hereby answer Defendant(s) and Cross-
4 complainant(s), **DAVID and LYNN ERNCE's** Cross-complaint for Breach of Contract; Breach of
5 Implied Covenant of Good Faith and Fair Dealing; Intentional Misrepresentation; Negligence;
6 Trespass; and Violation of Business and Professions Code Section 17200 as follows:

7 **GENERAL DENIAL**

8 Pursuant to California Code of Civil Procedure section 431.30(d), Plaintiff and Cross-
9 Defendants, **MJB/BIXBY CONSTRUCTION, INC., a Corporation, and MARK J. BIXBY,**
10 **Individually, and dba: BIXBY CONSTRUCTION** generally deny each and every allegation of
11 said Cross-complaint, the whole thereof, including each and every alleged cause of action
12 contained therein, and further denies that Defendants and Cross-complainants are entitled to the
13 relief requested or any relief at all, that Defendants and Cross-complainants sustained or will
14 sustain damages in the sum or sums alleged, in any other sum, or at all, or are entitled to attorneys'
15 fees in the sum or sums alleged, or any other sums at all.

16 **FIRST AFFIRMATIVE DEFENSE**

17 **(Failure to State a Cause of Action)**

18 1. As and for a first, separate and affirmative defense to the Cross-complaint, and to
19 each and every cause of action contained therein, Plaintiffs and Cross-defendants allege that
20 Defendants and Cross-complainants Cross-complaint, and each of the purported causes of action
21 contained therein, fails to state facts sufficient to constitute a cause or causes of action against
22 Plaintiffs and Cross-defendants.

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(Parole Evidence Rule)

10. As and for a further affirmative defense to the Cross-complaint, and to each and every cause of action contained therein, Plaintiffs and Cross-defendants allege that Defendants and Cross-complainants' Complaint and the allegations contained therein are barred by the Parole Evidence Rule.

ELEVENTH AFFIRMATIVE DEFENSE

(Laches)

11. As and for a further affirmative defense to the Cross-complaint, and to each and every cause of action contained therein, Plaintiffs and Cross-defendants allege that Defendants and Cross-complainants and the allegations contained therein are barred by the doctrine of laches.

TWELFTH AFFIRMATIVE DEFENSE

(Failure to Perform)

12. As and for a further affirmative defense to the Cross-complaint, and to each and every cause of action contained therein, Plaintiffs and Cross-defendants allege that Defendants and Cross-complainants failed to perform and breached agreements and duties entitling Plaintiffs and Cross-defendants to a set-off against any claims by Defendants and Cross-complainants.

WHEREFORE, Plaintiffs and Cross-defendants, **MJB/BIXBY CONSTRUCTION, INC., a Corporation, and MARK J. BIXBY, Individually, and dba: BIXBY CONSTRUCTION**, pray judgment as hereinafter set forth:

A. Defendants and Cross-complainants take nothing by reason of their Cross-complaint;

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1 B. For costs of suit incurred herein; and

2 C. For such other and further relief as the Court deems just and appropriate.

3 **DATED:** July 10, 2002

Respectfully submitted,
LAW OFFICES OF EDWARD R. BRENNER

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5 By:



**EDWARD R. BRENNER, Attorney for—
MJB/BIXBY CONSTRUCTION, INC.,
MARK J. BIXBY, and MARK J. BIXBY, dba:
BIXBY CONSTRUCTION**

1 CASE NAME: MJB/BIXBY CONSTRUCTION, INC. v. ERNCE
2 COURT: SACRAMENTO COUNTY SUPERIOR COURT
3 CASE NO. 01 AS 07168 and Related Cross-action

4 PROOF OF SERVICE

5 The undersigned declares:

6 I am a citizen of the United States and a resident of the County of Sacramento. I am over the
7 age of eighteen years and not a party to the within above-entitled action; my business address is
8 California Plaza, 2180 Harvard Street, Suite 560, Sacramento, CA 95815.

9 I am familiar with this office's practice whereby the mail is deposited in a U.S. Mail Box in
10 the City of Sacramento, California after the close of the day's business.

11 On July 11, 2002, I served the within:

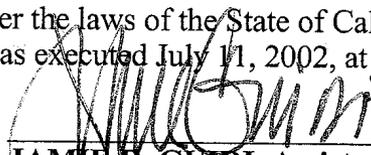
12 **GENERAL DENIAL OF MJB/BIXBY CONSTRUCTION, INC.**
13 **AND MARK J. BIXBY, DBA: BIXBY CONSTRUCTION**

- 14 By transmitting via facsimile the document(s) listed above to the fax number(s) set forth
15 below on this date before 5:00 p.m.
- 16 By placing the document(s) listed above in a sealed envelope with postage thereon fully
17 prepaid, in the United States mail at Sacramento, California addressed as set forth below.
- 18 By causing personal delivery by _____ of the document(s) listed
19 above to the person(s) at the address(es) set forth below.
- 20 By placing the document(s) listed above in a sealed envelope and affixing a pre-paid air
21 bill, and causing the envelope to be delivered to an agent for delivery.
- 22 By personally delivering the document(s) listed above to the person(s) at the address(es) set
23 forth below.

24 to the parties addressed as follows:

25 Norman C. Hile, Esq. Counsel for David and Lynn Ernce
26 **ORRICK, HERRINGTON & SUTCLIFFE, LLP**
400 Capitol Mall, Suite 3000
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct and that this Declaration was executed July 11, 2002, at Sacramento, California.



JAMIE R. GUIDI, Assistant to:
EDWARD R. BRENNER