

FILED
 LOS ANGELES SUPERIOR COURT
 JUN 29 2007
 JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
 BY [Signature], **DEPUTY**

1 JOHN M. CORRELLI, ESQ.
 2 3835 R EAST THOUSAND OAKS BLVD.
 3 SUITE 119
 4 WESTLAKE VILLAGE, CALIFORNIA 91362
 5 (805)557-0660

6 Attorney for Cross-Defendants
 7 AMERICAN CONTRACTORS INDEMNITY COMPANY and NICOLAS RAUL ESPINOSA,
 8 JR., dba CASTLE DEVELOPMENT AND CONSTRUCTION

9
 10
 11 **SUPERIOR COURT OF CALIFORNIA**
 12 **COUNTY OF LOS ANGELES**
 13

14 KENNETH BERGER, THU PHAN,
 15)
 16) Plaintiff,
 17)
 18) vs.
 19)
 20) VISION REMODELING, INC., a California
 21) corporation, ASHER "MAX" ATIAS, RACHEL
 22) FADLON, DOES 1 TO 100,
 23)
 24) Defendants.

Case No.: BC 365437
 ANSWER OF CROSS-DEFENDANT
 NICOLAS RAUL ESPINOSA, JR., dba
 CASTLE DEVELOPMENT AND
 CONSTRUCTION TO UNVERIFIED
 CROSS-COMPLAINT OF VISION
 REMODELING, INC.

Action Filed: 1/16/2007
Assigned to Hon. William F. Fahey
Dept. 78

25 AND RELATED CROSS-ACTION)
 26)
 27) Discovery Cut-off: None Set
 28) Motion Cut-off: None Set
 Trial Date: April 28, 2008

29 COMES NOW Plaintiffs and Cross-Defendant NICOLAS RAUL ESPINOSA, JR.,
 30 dba CASTLE DEVELOPMENT AND CONSTRUCTION for himself and for no other person or
 31 entity, and answering the unverified Cross-Complaint ("Cross-Complaint") of Defendant and

32 Cross-Defendant VISION REMODELING, INC., a California corporation (herein referred to as
 33 "Cross-Complainant" and "VISION"), admit, deny and alleges as follows:

34 1. Pursuant to California Code of Civil Procedure §431.30(d), this answering Cross-
 35 Defendant denies, generally and specifically, each and every allegation contained in Cross-
 36 Complainant's unverified Cross-Complaint, and the whole thereof, and further deny that as
 37 proximate result of any conduct on the part of this answering Cross-Defendant, that Cross-
 38

CIT/CASE: BC365437 LEA/NEFA;
 RECEIPT #: CHA65780062
 DATE PAID: 06/29/07 02:00:38 PM
 PAYMENT: \$130.00
 RECEIVED:
 CHECKS
 CASH
 CHARGE
 CARD
 \$510

1 Complainant has been injured or damaged in the sum or sums alleged, or at all.

2 **FIRST AFFIRMATIVE DEFENSE**
3 **(Failure to State a Cause of Action)**

4 2. As and for his First Affirmative Defense to VISION's Cross-Complaint, this
5 answering Cross-Defendant alleges that VISION's Cross-Complaint herein does not state facts
6 sufficient to constitute any cause of action or claim whatsoever upon which relief may be granted as
7 against this answering Cross-Defendant.

8 **SECOND AFFIRMATIVE DEFENSE**
9 **(Statute of Limitations)**

10 3. As and for his Second Affirmative Defense to VISION's Cross-Complaint, this
11 answering Cross-Defendant alleges that the causes of action set forth in the Cross-Complaint are
12 barred by the provisions of §§337(1), 337.1(a)(1), 337.1(a)(2), 337.1(b), 337.15(a)(1), 337.15(a)(2),
13 338(b), 339(1), 340(1) 359, and all other applicable provisions of the California Code of Civil
14 Procedure.

15 **THIRD AFFIRMATIVE DEFENSE**
16 **(Failure to Mitigate)**

17 4. As and for his Third Affirmative Defense to VISION's Cross-Complaint, this
18 answering Cross-Defendant alleges that VISION, though under a duty to do so, has failed and
19 neglected to mitigate its alleged damages and, therefore, cannot recover against this answering
20 Cross-Defendant, whether as alleged or otherwise.

21 **FOURTH AFFIRMATIVE DEFENSE**
22 **(Comparative Fault of Plaintiffs)**

23 5. As and for his Fourth Affirmative Defense to VISION's Cross-Complaint, this
24 answering Cross-Defendant is informed and believe and thereon alleges that at all times mentioned
25 in VISION's Cross-Complaint, VISION was negligent, careless, reckless and unlawfully conducted
26 itself, individually and by and through its agents, employees and servants, so as to directly and
27 proximately contribute to the happening of the incident and the occurrence of VISION's alleged
28 damages, if any. This negligence bars either completely or partially the recovery sought by

1 VISION, if any such basis of liability even exists, and this answering Cross-Defendant is entitled to
2 a finding that the negligence and fault of VISION and/or its agents, employees and/or servants shall
3 be determined, apportioned and prorated, and that any judgment rendered against this answering
4 Cross-Defendant shall be reduced by the percentage of negligence and/or fault and/or unreasonable
5 conduct attributed to VISION and/or its agents, employees and/or servants.

6 **FIFTH AFFIRMATIVE DEFENSE**
7 **(Comparative Fault of Others)**

8 6. As and for his Fifth Affirmative Defense to VISION's Cross-Complaint, this
9 answering Cross-Defendant alleges that all of the acts and/or omissions alleged in the Cross-
10 Complaint were solely, entirely, and fully those of other Cross-Defendants and/or parties, named or
11 unnamed therein, other than this answering Cross-Defendant and, therefore, such parties are fully
12 and solely liable to VISION, if any such basis of liability even exists. As a result, this answering
13 Cross-Defendant is entitled to total indemnification from said parties including, but not limited to,
14 any and all damages, costs, and attorneys' fees that this answering Cross-Defendant may sustain as
15 a result of VISION's claims. In the alternative, if it should be found that this answering Cross-
16 Defendant is in some manner legally responsible for injuries or damages sustained by VISION, if
17 any, and should it be found that VISION's injuries or damages were proximately caused or
18 contributed to by other defendants cross-defendants in this case, whether named or unnamed, and/or
19 other persons or entities not parties to this action, then this answering Cross-Defendant is entitled to
20 a finding that the negligence and fault of each of the aforesaid person and/or parties, whether parties
21 to this action or not, shall be determined, apportioned and prorated, and that any judgment rendered
22 against this answering Cross-Defendant shall be reduced not only by the degree of comparative
23 negligence and/or fault of VISION, but also shall be reduced by the percentage of negligence and/or
24 fault and/or unreasonable conduct attributed to the aforesaid other Cross-Defendant(s) and/or third
25 persons or entities.

26 **SIXTH AFFIRMATIVE DEFENSE**
27 **(Estoppel)**

28 7. As and for his Sixth Affirmative Defense to VISION's Cross-Complaint, this

1 answering Cross-Defendant is informed and believe and thereon alleges that VISION engaged in
2 conduct and activities with respect to the subject of VISION's Cross-Complaint, and by reason of
3 these activities and conduct, are estopped to assert the claims made by them with respect to the
4 subject matter of the Cross-Complaint herein, or from asserting any claims for damages or seeking
5 any other relief as against this answering Cross-Defendant.

6 **SEVENTH AFFIRMATIVE DEFENSE**
7 **(Intervening or Superseding Cause)**

8 8. As and for his Seventh Affirmative Defense to VISION's Cross-Complaint, this
9 answering Cross-Defendant is informed and believe and thereon alleges that the alleged damages of
10 which VISION complains, if any, were directly and proximately caused and/or contributed to by the
11 acts of VISION and/or other Defendants, Cross-Defendants, persons and/or entities, and that these
12 acts were an intervening and superceding cause of such injuries and damages, if any, thus barring
13 VISION from any recovery as against this answering Cross-Defendant.

14 **EIGHTH AFFIRMATIVE DEFENSE**
15 **(Assumption of Risk)**

16 9. As and for his Eighth Affirmative Defense to VISION's Cross-Complaint, this
17 answering Cross-Defendant alleges that VISION expressly, voluntarily and knowingly assumed all
18 risks about which VISION complains in its Cross-Complaint and, therefore, is barred from any
19 recovery as against this answering Cross-Defendant either totally or to the extent of such
20 assumption.

21 **NINTH AFFIRMATIVE DEFENSE**
22 **(Active/Primary Liability of Cross-Complainant)**

23 10. As and for his Ninth Affirmative Defense to VISION's Cross-Complaint, this
24 answering Cross-Defendant alleges that VISION's conduct as described in its Cross-Complaint was
25 such that any and all liability based thereon was active and primary in nature, so as to preclude any
26 recovery sought in the Cross-Complaint.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

11. As and for his Tenth Affirmative Defense to VISION’s Cross-Complaint, this answering Cross-Defendant alleges that VISION is precluded from any recovery whatsoever pursuant to the equitable doctrine of unclean hands by virtue of the actions and conduct of VISION and/or its agents, employees, officers, directors, shareholders, and other persons acting on its behalf.

ELEVENTH AFFIRMATIVE DEFENSE
(Laches)

12. As and for his Eleventh Affirmative Defense to VISION’s Cross-Complaint, this answering Cross-Defendant alleges that VISION waited an unreasonably long period before asserting its claims against this answering Cross-Defendant as stated in its Cross-Complaint, and as such is precluded from any recovery whatsoever pursuant to the doctrine of laches.

TWELFTH AFFIRMATIVE DEFENSE
(Action Brought in Bad Faith and Without Reasonable Justification)

13. As and for his Twelfth Affirmative Defense to VISION’s Cross-Complaint, this answering Cross-Defendant is informed and believe and thereon alleges that the Cross-Complaint was brought as against this answering Cross-Defendant without reasonable cause and without a good faith belief that there was a justifiable controversy under the facts or the law which warranted the filing of the Cross-Complaint against this answering Cross-Defendant. VISION should therefore be deemed responsible for all of these answering Cross-Defendant’s necessary and reasonable defense costs, as more particularly set forth in California Code of Civil Procedure §1021.6.

THIRTEENTH AFFIRMATIVE DEFENSE
(Civil Code §1431.2)

14. As and for his Thirteenth Affirmative Defense to VISION’s Cross-Complaint, this answering Cross-Defendant alleges that the right of VISION to recovery herein, if any such right exists, is reduced and limited to the percentage of negligence attributable to each of this answering Cross-Defendant, individually, pursuant to California Civil Code §1431.2.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTEENTH AFFIRMATIVE DEFENSE
(Waiver)

15. As and for his Fourteenth Affirmative Defense to VISION's Cross-Complaint, this answering Cross-Defendant alleges that VISION, by its actions and conduct, and the actions and conduct of its authorized agents, employees, officers, directors, shareholders, and other persons acting on its behalf, waived any and all claim, right, and/or demand made by them with respect to the subject matter of the Cross-Complaint herein.

FIFTEENTH AFFIRMATIVE DEFENSE
(Prevention)

16. As and for his Fifteenth Affirmative Defense to VISION's Cross-Complaint, this answering Cross-Defendant alleges that the acts and conduct by VISION and its authorized agents, employees, officers, directors, shareholders, and other persons acting on its behalf, prevented and/or interfered with any such act or conduct, if any, required to be performed on the part of this answering Cross-Defendant.

SIXTEENTH AFFIRMATIVE DEFENSE
(Consent)

17. As and for his Sixteenth Affirmative Defense to VISION's Cross-Complaint, this answering Cross-Defendant alleges that VISION and its authorized agents, employees, officers, directors, shareholders, and other persons acting on its behalf, consented and/or acquiesced to the acts of this answering Cross-Defendant as described in the Cross-Complaint herein.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Reformation/Novation)

18. As and for his Seventeenth Affirmative Defense to VISION's Cross-Complaint, this answering Cross-Defendant alleges that VISION's Cross-Complaint is barred because the contract referred to therein by VISION was reformed and/or terminated by novation.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Conduct Excused)

19. As and for his Eighteenth Affirmative Defense to VISION's Cross-Complaint, this

1 answering Cross-Defendant alleges that any acts or failure to act on the part of this answering
2 Cross-Defendant were excused by the actions of VISION and its respective authorized agents,
3 employees, officers, directors, shareholders, and other persons acting on its behalf, and each of
4 them, herein.

5 **NINETEENTH AFFIRMATIVE DEFENSE**
6 **(Justification)**

7 20. As and for his Nineteenth Affirmative Defense to VISION's Cross-Complaint, this
8 answering Cross-Defendant alleges that the acts about which VISION complains were legally and
9 factually justified.

10 **TWENTIETH AFFIRMATIVE DEFENSE**
11 **(Privilege)**

12 21. As and for his Twentieth Affirmative Defense to VISION's Cross-Complaint, this
13 answering Cross-Defendant alleges that the conduct by Cross-Defendants alleged in the Cross-
14 Complaint was privileged pursuant to the provisions of the laws of the State of California and the
15 United States.

16 **TWENTY-FIRST AFFIRMATIVE DEFENSE**
17 **(Absence of Actual Causation)**

18 22. As and for his Twenty-First Affirmative Defense to VISION's Cross-Complaint,
19 this answering Cross-Defendant alleges that any and all damages alleged by VISION, if any exist,
20 were not and are not the result of acts or omissions by this answering Cross-Defendant actually
21 causing said damages or injuries.

22 **TWENTY-SECOND AFFIRMATIVE DEFENSE**
23 **(Absence of Proximate Causation)**

24 23. As and for his Twenty-Second Affirmative Defense to VISION's Cross-
25 Complaint, this answering Cross-Defendant alleges that any and all damages alleged by VISION, if
26 any exist, were not and are not the result of acts or omissions by this answering Cross-Defendant
27 proximately causing said damages or injuries.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TWENTY-THIRD AFFIRMATIVE DEFENSE
(Ratification)

24. As and for his Twenty-Third Affirmative Defense to VISION's Cross-Complaint, this answering Cross-Defendant alleges that VISION's claims are barred by the Doctrine of Ratification.

TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Lack of Damages)

25. As and for his Twenty-Fourth Affirmative Defense to VISION's Cross-Complaint, this answering Cross-Defendant alleges that VISION has not suffered damages caused by this answering Cross-Defendant.

TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Wrongful/Willful Conduct of Cross-Complainant and Agents)

26. As and for his Twenty-Fifth Affirmative Defense to VISION's Cross-Complaint, this answering Cross-Defendant alleges that VISION should be estopped from seeking any relief because of the wrongful/willful conduct of VISION and/or its authorized agents, employees, officers, directors, shareholders, and other persons acting on its behalf.

TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Failure to State Cause of Action for Attorneys' Fees)

27. As and for his Twenty-Sixth Affirmative Defense to VISION's Cross-Complaint, this answering Cross-Defendant alleges that VISION's Cross-Complaint and each cause of action contained therein fails to state facts sufficient to constitute a cause of action against this answering Cross-Defendant for attorneys' fees.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(Ambiguity and Unintelligibility)

28. As and for his Twenty-Seventh Affirmative Defense to VISION's Cross-Complaint, this answering Cross-Defendant alleges that VISION's Cross-Complaint and each cause of action contained therein is fatally ambiguous and unintelligible, and fails to constitute adequate or sufficient notice to this answering Cross-Defendant of the basis upon which said Cross-

1 Defendants are sued herein, the basis upon which this answering Cross-Defendant is allegedly
2 responsible for any damages sought herein by VISION, or the nature and/or extent of the damages
3 allegedly sustained by VISION.

4 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**
5 **(Additional Unknown Affirmative Defenses)**

6 29. As and for his Twenty-Eighth Affirmative Defense to VISION's Cross-Complaint,
7 this answering Cross-Defendant alleges that they presently have insufficient knowledge and
8 information upon which to form a belief as to whether this answering Cross-Defendant may have
9 additional, as yet unstated, defenses. Accordingly, this answering Cross-Defendant expressly
10 reserves the right to amend or request leave of the court to amend this Answer to assert additional
11 affirmative defenses in the event discovery and/or investigation reveals a factual and/or legal basis
12 for such affirmative defenses, and do not waive any rights by filing this document. Moreover, if
13 properly named, served and/or sued, this answering Cross-Defendant reserve the right to assert
14 necessary and appropriate cross and/or counterclaims against VISION and/or other culpable parties.

15 **PRAYER**

16 WHEREFORE, THIS ANSWERING CROSS-DEFENDANT HEREBY PRAY AS
17 FOLLOWS:

- 18 1. That Complainant take nothing by way of its Cross-Complaint;
- 19 2. That this answering Cross-Defendant be awarded judgment in this action;
- 20 3. That Cross-Complainant's action be dismissed;
- 21 4. That this answering Cross-Defendant be awarded costs of suit;
- 22 5. That this answering Cross-Defendant be awarded its actual attorneys fees
23 according to proof; and,
- 24 6. For such other and further relief as the court deems just, equitable and proper.

25 **DEMAND FOR JURY TRIAL**

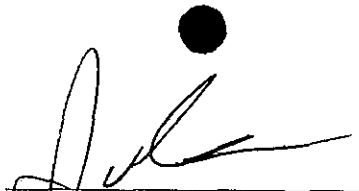
26 This answering Cross-Defendant demand a trial by jury.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: June 28, 2007



JOHN M. CORRELLI
Attorney for Cross-Defendants
AMERICAN CONTRACTORS INDEMNITY
COMPANY and NICOLAS RAUL
ESPINOSA, JR., dba CASTLE
DEVELOPMENT AND CONSTRUCTION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE BY MAIL (C.C.P. §§1013(a), 2015.5)

State of California)
)ss.
County of Ventura)

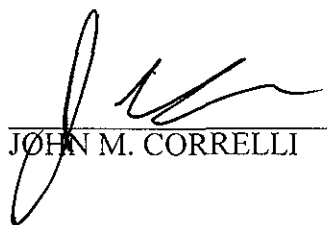
I am a resident of/employed in the State and County aforesaid; I am over the age of eighteen years and not a party to the within-entitled action; my business address is 3075 East Thousand Oaks Boulevard, Suite 100, Westlake Village, California 91362.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On the date this affidavit is dated, I served the within Answer of Cross-Defendant Nicolas Raul Espinosa, Jr., dba Castle Development and Construction to Unverified Cross-Complaint of Vision Remodeling, Inc. on all interested parties of record in said action by placing a true copy thereof in a sealed envelope with first-class postage thereon fully prepaid, in the United States Mail at Westlake Village, California, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct, and that this proof of service by mail was executed on June 28, 2007, at Westlake Village, California.



JOHN M. CORRELLI

SERVICE LIST – BERGER, ET AL. V. VISION REMODELING, INC., ET AL.
LASC Case No.: BC 365437

Attorney for Defendant VISION REMODELING, INC.	Attorney for Plaintiff and Cross-Defendants KENNETH BERGER, THU PHAN
MARC WEINBERG, ESQ. LAW OFFICES OF MARC WEINBERG 6320 CANOGA AVENUE SUITE 1500 WOODLAND HILLS, CALIFORNIA 91367 Telephone: (818)610-7646 Facsimile: (818)610-7647	CHRISTOPHER J. OLSEN, SBN: 109124 3075 EAST THOUSAND OAKS BOULEVARD SUITE 100 WESTLAKE VILLAGE, CALIFORNIA 91362 Telephone: (805)557-0660 Facsimile: (805)491-8324

1/1/08