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| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): David W. Byers SBN 074210 916-366-3692 LAW OFFICES OF DAVID W. BYERS 3020 Explorer Drive, Suite 7 Sacramento, Ca 95827 ATTORNEY FOR (Name): DEFENDANT | TELEPHONE NO.: FOR COURT USE ONLY 05 NOV 15 PM 4:15 K. BROWN DEPUTY |
| NAME OF COURT: SACRAMENTO COUNTY SUPERIOR COURT STREET ADDRESS: 301 BICENTENNIAL CIRCLE MAILING ADDRESS: same CITY AND ZIP CODE: SACRAMENTO, CA 95826 BRANCH NAME: CAROL MILLER JUSTICE CENTER | |
| PLAINTIFF: MARK BIXBY as the Trustee of the MARK BIXBY REVOCABLE LIVING TRUST Dated October 2, 1996, DEFENDANT: DAVI ANTHONY RODRIGUES dba BLACK MARKET AYATOLLA OF GONDOLA | |
| ANSWER - Unlawful Detainer | CASE NUMBER: 05UD08370 |

1. Defendant (names): DAVI ANTHONY RODRIGUES, dba BLACK MARKET
 AYATOLLA OF GONDOLA
 answers the complaint as follows:

2. Check ONLY ONE of the next two boxes:

- a. Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000).
- b. Defendant admits that all of the statements of the complaint are true EXCEPT
 - (1) Defendant claims the following statements of the complaint are false (use paragraph numbers from the complaint or explain): 10, 17
 - Continued on Attachment 2b(1).
 - (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (use paragraph numbers from the complaint or explain):
 - Continued on Attachment 2b(2).

3. AFFIRMATIVE DEFENSES (NOTE: For each box checked, you must state brief facts to support it in the space provided at the top of page two (item 3j).)

- a. (nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.
- b. (nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c. (nonpayment of rent only) On (date): November 7, 2005, before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d. Plaintiff waived, changed, or canceled the notice to quit.
- e. Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- f. By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or laws of the United States or California.
- g. Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):
- (Also, briefly state the facts showing violation of the ordinance in item 3j.)
- h. Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- i. Other affirmative defenses are stated in item 3j.

(Continued on reverse)

PLAINTIFF (Name): MARK BIXBY, et., al.

CASE NUMBER:
05UD05730

DEFENDANT (Name): DAVI ANTHONY RODRIGUES, dba BLACK MARKET

3. AFFIRMATIVE DEFENSES (cont'd)

j. Facts supporting affirmative defenses checked above (identify each item separately by its letter from page one):

[Redacted content]

SHORT TITLE: - -
- RODRIGUES V. BIXBY

CASE NUMBER:
05UD08370

ATTACHMENT (Number): 3j
(This Attachment may be used with any Judicial Council form.)

Page 1 of 2
(Add pages as required)

3(c) & 3(d):

Plaintiff filed and served a three (3) day notice to pay rent or quit on Defendant for the sum of \$7,056.00 which represents rent owed for the months of September and October of 2005. Plaintiff specifically states in the three (3) day notice that this \$7,056.00 does not include credit for the sum of \$3,696.00 which was lodged with Plaintiff's attorney Charles Tweedy, in trust, pending the outcome of a previous Unlawful Detainer action filed by Plaintiff and heard on October 28th, 2005 in Dept. 84 at 9am. On October 28th, 2005, the Court dismissed the Plaintiff's Unlawful Detainer, case number 05UD07078, for which this \$3,696.00, was specifically lodged. Plaintiff's second Unlawful Detainer, case number 05UD05730, was also heard on October 28th, 2005 in Dept. 84, and which resulted in a full day trial. The Court has taken this second Unlawful Detainer under submission and has yet to provide a written judgment in these cases. On November 4th, 2005, Defendant's counsel, Joshua Clark, contacted Plaintiff's counsel Charles Tweedy to discuss the three (3) day notice to pay or quit served on November 3rd, 2005. Mr. Tweedy indicated that he would not release the \$3,696.00, belonging to Defendant and held in trust for Plaintiff for September's rent, without a Stipulation for Order Releasing the Money. Mr. Clark immediately prepared this Stipulation for Order, faxed this to Mr. Tweedy's office, obtained his signature, and personally filed it with the Court, all on November 4th, 2005. (See Exhibit "A") On November 7th, 2005, Mr. Clark sent Mr. Tweedy a letter indicating that he had not received the Stipulation for Order and that Defendant would today pay the balance owed for October's rent. (See Exhibit "B") At this point, Plaintiff waived and/or canceled the three (3) day notice by agreeing to release the funds in his trust account. Regardless of Mr. Tweedy's earlier representations of a Stipulation for Order satisfying his concern about acting against a court order, Mr. Tweedy now refused to release the money which he has in trust for his client. (Continued)

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE:
- RODRIGUES V. BIXBY

CASE NUMBER:
05UD08370

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ATTACHMENT (Number): 3j

Page 2 of 2
(Add pages as required)

(This Attachment may be used with any Judicial Council form.)

On November 7, 2005, Defendant paid to Plaintiff the balance of the rent owed which was \$3,360. This payment was made timely and in the manner required by the three (3) day notice. Plaintiff indicated that he would not release the money, which represents Defendant's September rent, and would file yet another Unlawful Detainer if Defendant failed to pay September's rent. Defendant's counsel then sent Plaintiff's counsel yet another letter indicating that Plaintiff's counsel was acting in bad faith in not releasing this money. (See Exhibit "C") On November 8th, 2005, Mr. Tweedy indicated to Defendant that he should just pay November's rent, which would then be applied to the three (3) day notice. (See Exhibit "D") At this point, Defendant's counsel again changed, waived, and/or canceled the three (3) day notice to quit. Defendant again indicated that Plaintiff was already in possession of the entire amount due under the now defective three (3) day notice. On November 9, 2005, Plaintiff filed this Unlawful Detainer based on the non-payment of rent.

3(e):

Additionally, Plaintiff filed this third Unlawful Detainer to retaliate against Defendant. Throughout this time period during which the latest three day notice to pay or quit was served on Defendant, Plaintiff and Defendant continued to have conflict regarding access to Defendant's space. Defendant is informed and believes and thereon alleges that Plaintiff's action in filing this Unlawful Detainer is due to Defendant having prevailed in a previous Unlawful Detainer action based on rent. (Note: The second previous Unlawful Detainer action is still pending a decision after Trial.) Under the circumstances of this case where Plaintiff has paid the full amount due less the amount being held in Plaintiff's attorney's Trust Account, where Plaintiff and Defendant had both signed a Stipulation to release said funds, it is both retaliatory and bad faith for Plaintiff and his attorney to file this action. There is no money currently due other than what is presently held in Plaintiff's Attorney's Trust Account.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

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VERIFICATION

I, Davi Anthony Rodrigues, declare:

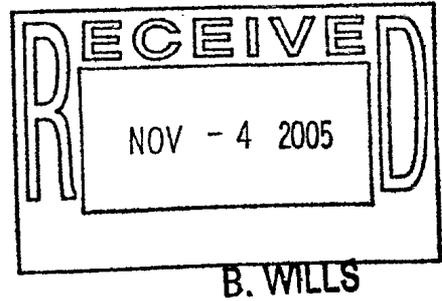
I am the Defendant in the above entitled matter.

I have read the foregoing ^{ANSWER} ~~Complaint~~ and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on NOV. 14th 2001, at Sacramento, California.


Davi Anthony Rodrigues

1 DAVID W. BYERS, CA. BAR #074210
 2 JOSHUA B. CLARK, CA BAR #212701
 3 LAW OFFICES OF DAVID W. BYERS
 3020 Explorer Drive, Suite 7
 Sacramento, Ca. 95827
 Telephone: (916)366-3692



4 Attorneys for Defendant
 5
 6
 7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF SACRAMENTO
 10 UNLAWFUL DETAINER DIVISION

11 MARK BIXBY, as the Trustee of the MARK
 12 BIXBY REVOCABLE LIVING TRUST, Dated
 October 2, 1996,
 13 Plaintiff,

Case No. 05UD07078

STIPULATION FOR ORDER
 TO RELEASE MONEY LODGED
 WITH PLAINTIFF'S COUNSEL
 CHARLES TWEEDY

14 v.

15 DAVI ANTHONY RODRIGUES aka ALEX
 16 FRIENDLY dba BLACK MARKET,
 17 AYATOLLA OF GONDOLA,
 18 Defendant.

19
 20 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff, MARK
 21 BIXBY, as the Trustee of the MARK BIXBY REVOCABLE LIVING TRUST, through
 22 Plaintiff's counsel, CHARLES TWEEDY, and Defendant, DAVI ANTHONY
 23 RODRIGUES aka ALEX FRIENDLY dba BLACK MARKET, AYATOLLA OF
 24 GONDOLA, through Defendant's counsel, DAVID W. BYERS, LAW OFFICES OF
 25 DAVID W. BYERS that:

26 The \$3,696.00 which Defendant, DAVI ANTHONY RODRIGUES aka ALEX
 27 FRIENDLY dba BLACK MARKET, AYATOLLA OF GONDOLA, lodged with
 28 Plaintiff's counsel, CHARLES TWEEDY, and placed in a trust account by Plaintiff's

Law Offices of David W. Byers
 3020 Explorer Drive, Suite 7
 Sacramento, CA. 95827
 (916) 366-3692

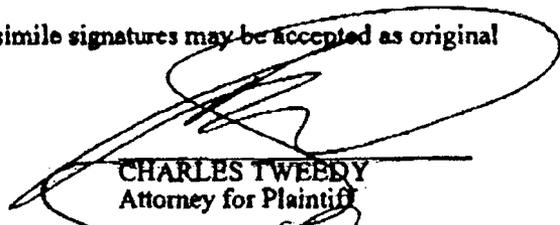
1
 STIPULATION

1 counsel, CHARLES TWEEDY, shall be released upon order of this court to Plaintiff,
2 MARK BIXBY, as the Trustee of the MARK BIXBY REVOCABLE LIVING TRUST.
3 This \$3,696.00 represents Defendant's, DAVI ANTHONY RODRIGUES aka ALEX
4 FRIENDLY dba BLACK MARKET, AYATOLLA OF GONDOLA, rent for the month
5 of September 2005 and an additional \$336.00 towards rent or additional rent for the
6 month of October 2005.

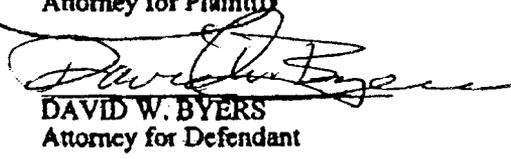
7 This stipulation is entered into with the understanding that these parties are not
8 waiving their respective rights to appeal the recent decisions made in Superior Court
9 Cases 05UD05730 and/or 05UD07078, which came regularly before the court on October
10 28, 2005 in Department 84 at 9:00am at 301 Bicentennial Circle, Sacramento, California.

11 Both parties agree that facsimile signatures may be accepted as original
12 signatures.

13 Dated: November 4, 2005


CHARLES TWEEDY
Attorney for Plaintiff

15 Dated: November 4, 2005


DAVID W. BYERS
Attorney for Defendant

18 ORDER

19 IT IS SO ORDERED that the \$3,696.00 lodged with Plaintiff's Counsel,
20 CHARLES TWEEDY, in his trust account shall be released to Plaintiff, MARK BIXBY,
21 as the Trustee of the MARK BIXBY REVOCABLE LIVING TRUST, upon the facts and
22 representations provided above.

23
24 Dated: _____

JUDGE OF THE SUPERIOR COURT

Law Office of David W. Byers
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Sacramento, CA 95817
(916) 366-3692



3020 Explorer Drive, Suite 7
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Sonora Office:
(209) 588-0240

David W. Byers¹
Joshua B. Clark

Email:
dave@byersweb.com
joshua@byersweb.com

Law Offices of David W. Byers

Of Counsel
Donald S. Frick

¹California & Hawaii

November 7, 2005

CHARLES A. TWEEDY
MOYER, PARSHALL & TWEEDY, LLP
11341 GOLD EXPRESS DRIVE
GOLD RIVER, CA 95670

Dear Mr. Tweedy,

Enclosed you will find a copy of the Stipulation for Order Releasing the Money Lodged with Plaintiff's Counsel Charles Tweedy. I filed this Stipulation for Order on Friday, November 4, 2005 and have yet to receive a signed order from the court. I prepared this Stipulation for Order upon your request for clear guidance from the court regarding the release of the \$3,696.00 held by you in trust for your client.

As stated in the order, this \$3696.00 represents rent and additional rent from my client, David Rodrigues for the month of September. My client is prepared to pay the balance of \$3,360.00 in the form of cashiers check to Mark Bixby by the time and at the place requested in the three (3) day notice to pay or quit. This payment by my client in the amount of \$3,360.00 therefore satisfies the requested amount of \$7,056.00 provided for in the three (3) day notice served upon my client and represents payment in full for rent for the months of September and October 2005.

If you have any questions, please contact me at my office.

Sincerely,

LAW OFFICES OF DAVID W. BYERS

JOSHUA B. CLARK



3020 Explorer Drive, Suite 7
Sacramento, CA 95827
(916) 366-3692
Fax: (916) 366-3696

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Law Offices of David W. Byers

Of Counsel
Donald S. Frick

¹California & Hawaii

November 7, 2005

CHARLES A. TWEEDY
MOYER, PARSHALL & TWEEDY, LLP
11341 GOLD EXPRESS DRIVE
GOLD RIVER, CA 95670

Dear Mr. Tweedy,

I am writing to confirm our conversation of earlier today. As I stated in that conversation, the money which you currently hold in trust for your client, represents September 2005 rent and additional rent. Your latest correspondence threatening to file yet another Unlawful Detainer proceeding against my client based on my client not paying you rent for the month of September is absurd. On September 30, 2005, Commissioner Wong ordered the \$3,696.00 cashiers check from my client to be lodged with you in trust for your client pending the outcome of the Unlawful Detainer Trial set for hearing on October 28, 2005 at 9am in Department 84.

At the Trials on October 28, 2005 in Department 84, the Unlawful Detainer for which the \$3,696.00 was specifically ordered to be lodged was dismissed in my client's favor based on my pre-trial motions. While we have yet to have a decision on the second Unlawful Detainer, this money which was lodged with you in trust for your client, had no relation to the decision still under submission with the Court. You are well aware of this fact. You also failed to raise the issue regarding this money on deposit at the time of Trial.

The latest three (3) day notice to pay or quit from your office and client demanding \$7,056 for rent and late charges for September and October 2005 rent is wrong. My associate, Joshua B. Clark, spoke with you in these regards on Friday, November 4, 2005. In that conversation you indicated that you needed a stipulation for order to be able to release this money from your trust account to distribute it to your client. My associate prepared this stipulation for order, sent it to you for your signature via fax and then personally filed it with the court on Friday November 4, 2005. Today, my associate personally went to the Unlawful Detainer filing division to attempt to pick up this signed order and was unable to do so because the court has not processed this request. We have promptly and in good faith agreed to the release of the funds. Furthermore, upon your request, we promptly and in good faith prepared the stipulation and hand carried it to the court.

November 7, 2005

page 2 of 3

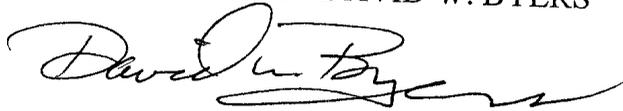
Today my office received a letter from your office dated November 3, 2005 which enclosed a signed copy of the stipulation for order my associate prepared on Friday November 4, 2005. Clearly the date on this letter is inaccurate. However, I am not pointing this error out to you for any other reason than to make the point that my office has been doing the leg work to get your client the money that you have in a trust account for your client. To then turn around and claim that you won't release this money without a order from the court and that you don't have the money in hand yet is acting in bad faith.

My client has tendered to your client the \$3,360.00 which he owes for the rent for the month of October 2005. My client's November rent will be tendered shortly but is not part of the current three (3) day notice. The \$3,696.00 which you hold in a trust account for your client, again represents September rent and additional rent. The stipulation for order, which has already been signed by both parties and filed with the Court, will be provided to your office as soon as the Court has made this available.

If you and your client file yet another Unlawful Detainer based on the facts set forth in this letter, I will advise my client about all legal remedies available to him.

Sincerely,

LAW OFFICES OF DAVID W. BYERS

A handwritten signature in cursive script that reads "David W. Byers". The signature is written in black ink and is positioned above the printed name.

DAVID W. BYERS

LAW OFFICES OF
MOYER, PARSHALL & TWEEDY, LLP
 11341 Gold Express Drive, Suite 110
 Gold River, California 95670

TELEPHONE
 (916) 631-8388
 (916) 853-9291

FACSIMILE
 (916) 631-8188
 (916) 853-9272

November 8, 2005

Via Facsimile to (916) 366-3696

David W. Byers, Esq.
 Law Offices of David W. Byers
 3020 Explorer Drive, Suite 7
 Sacramento, CA 95827

Re: Mr. Davi Rodrigues

Dear Mr. Byers:

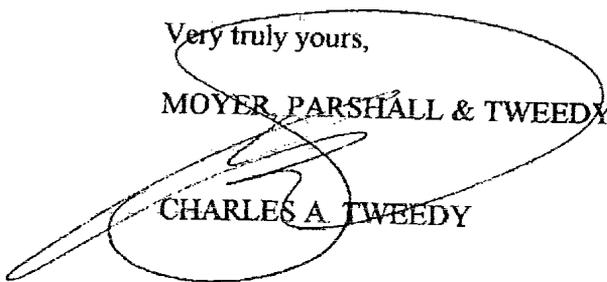
Contrary to your assertion, the funds in my trust account are held as security for damages caused by your delay of the trial of the initial unlawful detainer action which is still pending, not for the September rent.

I suggest that your client pay the \$3,360 which is presently due for November which we will apply to the three day notice. It is not necessary to be concerned whether I am acting in good faith by insisting that you comply with the court's order that the money be held until further order of the court. All I am asking for is that your client pay what is due.

If you wish to risk your client's lease on your perception that I am somehow obligated to wait for the court to order the release of these funds to enforce my client's right to receive rent, proceed at your own peril. I will withhold filing until the end of the day to allow your client time to do the right thing. If he chooses not to pay his rent, then the consequences are of his own doing.

Very truly yours,

MOYER, PARSHALL & TWEEDY, LLP



CHARLES A. TWEEDY