

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):  
 David W. Byers SBN 074210  
 LAW OFFICES OF DAVID W. BYERS  
 3020 Explorer Drive, Suite 7  
 Sacramento, Ca 95827  
 ATTORNEY FOR (Name): DEFENDANT

TELEPHONE NO.:  
 916-366-3692

FOR COURT USE ONLY  
 FILED/ENDORSED  
 UNLAWFUL DETAINERS  
 05 AUG 22 PM 4:39  
 JOSE L. DE LA CRUZ, CLERK  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SACRAMENTO  
 L. DE LA CRUZ  
 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:  
 05UD05730

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):
    - 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) \_\_\_\_\_, 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):

(e) Plaintiff in this matter has filed this complaint against Defendant in retaliation for Defendant's filing a complaint in the Sacramento Superior Court, case number 05AS02658 for breach of contract, specifically the lease agreement between these parties, and declaratory relief.

- (1)  All the facts are stated in Attachment 3j.
- (2)  Facts are continued in Attachment 3j.

4. OTHER STATEMENTS

- a.  Defendant vacated the premises on (date) :
- b.  The fair rental value of the premises alleged in the complaint is excessive (explain) :
- c.  Other (specify): These parties are currently involved in litigation in the downtown branch of the Sacramento Superior Court, case number 05AS02658, involving overlapping issues. Defendant in this matter is filing a motion to consolidate this action with the pre-existing action in the Sacramento Superior Court, Downtown Branch.

5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.
- b. costs incurred in this proceeding.
- c.  reasonable attorney fees.
- d.  that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.
- e.  other (specify): Defendant requests this action be stayed until the Sacramento Superior Court orders a consolidation of cases 05ASS02658 and 05UD05730.

- 3.  Number of pages attached (specify): two

**UNLAWFUL DETAINER ASSISTANT (Business and Professions Code sections 6400-6415)**

7. (Must be completed in all cases) An unlawful detainer assistant  did not  did for compensation give advice or assistance with this form. (If defendant has received any help or advice for pay from an unlawful detainer assistant, state):

- a. Assistant's name:
- b. Telephone No.:
- c. Street address, city, and ZIP:
- d. County of registration:
- e. Registration No.:
- f. Expires on (date):

(TYPE OR PRINT NAME)

JOSHUA B. CLARK

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

**VERIFICATION**

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

DAVI ANTHONY RODRIGUES  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF DEFENDANT)

SHORT TITLE:  
- RODRIGUES V. BIXBY

CASE NUMBER:  
05UD05730

ATTACHMENT (Number): 3j.

Page 1 of 2

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

(Add pages as required)

Plaintiff (landlord) has violated the following covenants of the Lease

Agreement, as follows:

1. Plaintiff has failed to provide and/or complete the tenant improvements in a timely manner.

2. Plaintiff has demanded that Defendant (tenant) provide access beyond the scope of the tenant improvements and requirements of the Lease Agreement.

3. Plaintiff's improper demand for Thirty (30) Days to remove vehicles and fraudulent attempts to cite incorrect or non-existent language in the Lease.

4. Plaintiff's improper demand of Thirty (30) Days to affirmatively provide a fire inspection when such is not required by the Lease.

Plaintiff has refused to specify the basis of this demand.

5. Plaintiff's improper installation of the tenant improvements without permits and without obtaining proper inspection by the County of his work.

6. Plaintiff's improper demand in Thirty (30) Days to remove hazardous materials or obtain consent with specifying what hazardous materials are alleged to be on the premises. Defendant denies any hazardous materials are on the premises.

7. Failure of Plaintiff to give reasonable notice of entry into the building or to specify allowed purpose of entry.

8. Plaintiff served Thirty (30) Day Notice on 07/05/05 in retaliation for Defendant's having filed Sacramento Superior Court Case No. 05AS02658 on 06/20/05.

(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:  
05UD05730

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

Page 2 of 2  
(Add pages as required)

1  
2  
3 9. This Unlawful Detainer was filed in retaliation for Defendant's  
4 attempting to force Plaintiff to complete tenant's tenant improvements  
5 in timely and workmanlike manner, as promised. Throughout the Thirty  
6 (30) Day period Defendant has attempted to clarify Plaintiff's Thirty  
7 (30) Day Notice demands and to point out Plaintiff's use in the Notice  
8 incorrect language in the Lease, which was deleted or changed by  
9 Amendments to the Lease. Instead of acting reasonably Plaintiff  
10 filed this Unlawful Detainer.

11 10. Defendant contends that Plaintiff is not the current owner of  
12 the subject property and thus has no standing to bring this action  
13 as he is not the owner nor is he entitled to possession.

14 11. Defendant cannot obtain Certificates of Occupancy. It is  
15 Plaintiff, as Landlord, who must obtain Certificates of Occupancy,  
16 however, Plaintiff can not as he has failed to obtain the necessary  
17 permits to construct the tenant improvements and failed to call for  
18 the required inspections of his work.

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

|   |                           |
|---|---------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):<br>David W. Byers <span style="float:right">074210</span><br>LAW OFFICES OF DAVID W. BYERS<br>3020 Explorer Drive, Suite 7<br>Sacramento, Ca 95827<br>TELEPHONE NO.: 916-366-3692 <span style="float:right">FAX NO. (Optional): 916-366-3696</span><br>E-MAIL ADDRESS (Optional):<br>ATTORNEY FOR (Name): Defendant | FOR COURT USE ONLY        |
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO</b><br>STREET ADDRESS: 301 BICENTENNIAL CIRCLE<br>MAILING ADDRESS:<br>CITY AND ZIP CODE: Sacramento, CA 95826<br>BRANCH NAME: CAROL MILLER JUSTICE CENTER   |                           |
| PETITIONER/PLAINTIFF: DAVI ANTHONY RODRIGUES, DBA BLAC AYATOLLA OF GONDOLA<br>RESPONDENT/DEFENDANT: MARK BIXBY, INDIVIDUALLY AND AS OF THE MARK BIXBY REVOCABLE LIVI  |                           |
| <b>PROOF OF SERVICE BY FIRST-CLASS MAIL - CIVIL</b>   | CASE NUMBER:<br>05UD05730 |

**(Do not use this Proof of Service to show service of a Summons and Complaint.)**

1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:  
3020 Explorer Drive, Suite 7  
Sacramento, CA 95827
3. On (date): August 22, 2005 I mailed from (city and state): Sacramento, CA the following **documents** (specify):  
Answer- Unlawful Detainer

The documents are listed in the *Attachment to Proof of Service by First-Class Mail - Civil (Documents Served)* (form POS-030(D)).

4. I served the documents by enclosing them in an envelope and (check one):
  - a.  **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
  - b.  **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelope was addressed and mailed as follows:
  - a. **Name** of person served: CHARLES A. TWEEDY
  - b. **Address** of person served:  
MOYER, PARSHALL, & TWEEDY  
11341 Gold Express Drive  
Sacramento, CA 95670

The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail-Civil (Persons Served)* (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 22, 2005

Jessica Vela  
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

  
(SIGNATURE OF PERSON COMPLETING THIS FORM)