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| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):<br>David W. Byers SBN 074210 916-366-3692<br>LAW OFFICES OF DAVID W. BYERS<br>3020 Explorer Drive, Suite 7<br>Sacramento, Ca 95827<br>ATTORNEY FOR (Name): DEFENDANT | TELEPHONE NO.:<br>FOR COURT USE ONLY<br>05 OCT -4 AM 8:48<br>DEPUTY |
| NAME OF COURT: SACRAMENTO COUNTY SUPERIOR COURT<br>STREET ADDRESS: 301 BICENTENNIAL CIRCLE<br>MAILING ADDRESS: Same<br>CITY AND ZIP CODE: SACRAMENTO, CA 95826<br>BRANCH NAME: CAROL MILLER JUSTICE CENTER                  | DEPUTY  |
| PLAINTIFF: MARK BIXBY as the Trustee of the MARK BIXBY<br>REVOCABLE LIVING TRUST Dated October 2, 1996,<br>DEFENDANT: DAVI ANTHONY RODRIGUES dba BLACK MARKET<br>AYATOLLA OF GONDOLA  |   |
| <b>ANSWER - Unlawful Detainer</b>   |   |
| CASE NUMBER:<br>05UD07078   |   |

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): 4, 6(a)(3), 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): September 19, 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)

**ANSWER - Unlawful Detainer**

PLAINTIFF (Name): MARK BIXBY, et., al.  
DEFENDANT (Name) DAVI ANTHONY RODRIGUES, dba BLACK MARKET

CASE NUMBER:  
05UD05730

3. AFFIRMATIVE DEFENSES (cont'd)

- j. Facts supporting affirmative defenses checked above (identify each item separately by its letter from page one):
  - (c) Defendant attempted to pay his rent in the amount of \$3,360.00 by cashiers check within the three day period on September 19, 2005. Plaintiff's office was closed.
  - (d) Plaintiff waived his claim for rent under the 3 day pay or quit by having included said amount in his cross complaint for damages filed on September 2, 2005 in case no. 05AS02658.

(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): The complaint fails to request late fees in a proper manner.

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) :

6.  Number of pages attached (specify) : one

**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)  
  
David W. Byers, Attorney  
(TYPE OR PRINT NAME)

▶ .....  
(SIGNATURE OF DEFENDANT OR ATTORNEY)  
  
▶ /s/ David W. Byers  
(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 RODRIGUES  
.....  
(TYPE OR PRINT NAME)

▶ .....  
(SIGNATURE OF DEFENDANT)

SHORT TITLE:

RODRIGUES V. BIXBY

CASE NUMBER:

05AS02658

ATTACHMENT (Number): 3j

Page 1 of 1

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

(Add pages as required)

continued...

(e) Plaintiff (landlord) in this matter has filed this second Unlawful Detainer in retaliation for (1) Defendant's filing a complaint in the Sacramento Superior Court, case number 05AS02658 for Landlord's breach of the commercial lease agreement between the parties, (2) in retaliation for Defendant's filing of a Motion to Consolidate the civil case and the first unlawful detainer, (3) and in retaliation for an application to stay the trial in the first unlawful detainer action.

(i) (1) Despite Plaintiff's being informed that the rent had been properly tendered within the Three days and that the rent was deposited in Defendants attorney's Trust account and was available upon request, Plaintiff refused to accept the rent in this commercial lease.

(i) (2) The three day notice is defective in that it improperly includes late charges.

(i) (3) The three day notice is defective in that it is not signed.

(i) (4) This is a commercial lease involving many issues regarding the Landlord's failure to complete Tenant Improvements and his interference with the Tenant's business. These issues have been ongoing for a year and have culminated in the Tenant (Defendant herein) filing a Superior Court action for damages and the Landlord filing a previous Unlawful Detainer based on the alleged failure to comply with a 30 day notice to Perform Covenants. These are all issues in the Superior Court civil case. Now Landlord (Plaintiff herein) files this SECOND Unlawful Detainer (while the first one is still pending and under a stay order pending the Motion to Consolidate) based on the alleged non-payment of rent. However, Tenant tendered the rent and has continued to do so but Landlord has refused to accept it. Landlord therefore should be barred by estoppel, unclean hands, waiver and unconscionable conduct from prevailing in this action. The rent is available to pay and has been available to pay at all times.

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