

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)

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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): David W. Byers 074210 LAW OFFICES OF DAVID W. BYERS 3020 Explorer Drive, Suite 7 Sacramento, Ca 95827 TELEPHONE NO.: 916-366-3692 FAX NO. (Optional): 916-366-3696 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Defendant	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 301 BICENTENNIAL CIRCLE MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, CA 95826 BRANCH NAME: CAROL MILLER JUSTICE CENTER	
PETITIONER/PLAINTIFF: DAVI ANTHONY RODRIGUES, DBA BLAC AYATOLLA OF GONDOLA RESPONDENT/DEFENDANT: MARK BIXBY, INDIVIDUALLY AND AS OF THE MARK BIXBY REVOCABLE LIVI	
PROOF OF SERVICE BY FIRST-CLASS MAIL - CIVIL	CASE NUMBER: 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)