

UNLAWFUL DETAINER EX PARTE APPLICATION FOR STAY



Forms

Self-Help Legal Access Centers

Santa Monica

1725 Main St.,
Room 210
Santa Monica, CA 90401

Inglewood

1 East Regent St.
Room 107
Inglewood, CA 90301

Torrance

825 Maple Ave.
Room 160
Torrance, CA 90503

Long Beach

275 Magnolia Ave.
Room 3101
Long Beach, CA 90802

December 2018

This guide is designed to help you fill out the forms yourself. It is not intended to provide legal advice nor strategy as to how to complete the case. The information provided in this packet only presents options and examples. This is not a substitute for professional legal advice from an attorney.

Please type or print in black ink.

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

This Page Intentionally Left Blank

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

_____,
Plaintiff(s),
vs.
_____,
Defendant(s)

Case No.: _____

**EX PARTE APPLICATION FOR ORDER
STAYING EXECUTION OF THE
JUDGMENT UNTIL A HEARING ON
DEFENDANT'S MOTION TO SET ASIDE
JUDGMENT (DEFAULT AND WRIT,
ALSO, IF ANY) AND AN ORDER
SHORTENING TIME FOR HEARING
AND SERVICE OF THE MOTION TO
SET ASIDE; MEMORANDUM OF
POINTS AND AUTHORITIES AND
DECLARATION IN SUPPORT THEREOF**

ASSIGNED JUDGE: _____
DEPARTMENT: _____
HEARING DATE: _____
TIME: _____

TO PLAINTIFF, AND TO PLAINTIFF'S COUNSEL OF RECORD, IF ANY,
Defendant(s) _____, request(s) an Order Staying
Execution of the Judgment until a hearing on his/her Motion to Set Aside the Default, Vacate the
Judgment, and Recall the Writ of Execution, if any, and an Order Shortening Time for Service of
and Hearing on the Motion to Set Aside. This Application is made on the ground that without a

1 stay, Defendant(s) will suffer irreparable harm by being evicted and Defendant's Motion to Set
2 Aside will be moot.

3 This Ex Parte Application is based on Defendant's Declaration of Ex Parte Notice,
4 Memorandum of Points and Authorities, Supporting Declaration(s) and upon all papers on file in
5 this action.
6

7 Dated: _____

Signed by: _____
Defendant(s) without Attorney

9 _____
10 Print Name

11 // //

12 // //

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 A court of general jurisdiction has a statutory as well as an inherent duty and power to
3 control its own processes and orders so as to make them conform to justice, including the
4 granting of a stay of execution. Code of Civil Procedure Section states in pertinent part: “(a)
5 Every Court shall have power: . . . (8) To amend and control its processes and orders so as to
6 make them conform to law and justice.” CCP §128(a). This was confirmed in *Revolution*
7 *Eyewear, Inc. v. Aspex Eyewear, Inc. (2009), 2009 U.S. LEXIS 64749*, wherein the court stated
8 that “The district court has the inherent power to control and manage its docket, which includes
9 the authority to order a stay pending the outcome of reexamination proceedings.” *Id at 9*.
10
11

12 Here, the court has authority to grant a stay to enable Defendant(s) sufficient time to
13 present and argue the underlying Motion to Set Aside the Default, Vacate the Judgment, and
14 Recall the Writ of Execution. If the stay is not granted, Defendant(s) will be locked out without
15 an opportunity to present the motion. As the attached Motion shows, Defendant should have the
16 right to have this eviction case heard on its merits. Therefore, the stay should be granted.
17
18

19 Dated: _____

Signed by: _____

Defendant(s) without Attorney

21 _____
22 Print Name

23 ////

24 ////

DECLARATION OF EX PARTE NOTICE

I, _____, DECLARE as follows:

1. I am over the age 18 years, and I have personal knowledge of the facts stated in this declaration. If called to testify thereto, I could and would do so truthfully.
2. I gave the following notice of this Ex Parte Application for a Stay of Execution of Judgment Pending a Motion to Set Aside the Default:

“My name is: _____.

I am calling to give notice that I am going to the _____ Court on ___/___/___ at ___:___ a.m. / p.m. in Department ___ of the Los Angeles Superior Court, located at _____

_____ to request an Ex Parte Application for a Stay of Execution of the Judgment Pending a Motion to Set Aside and an Order Shortening Time for Hearing and Service of a Motion to Set Aside in the Case of _____

vs. _____, Case Number: _____.

I can be reached at this telephone number: _____

3. I gave this ex parte notice in the manner set forth on the following page:

////

////

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

A. I gave the notice set forth above on this date and time: ___/___/___ at ___:___ a.m. /p.m. to:

___ the Plaintiff’s attorney,
___ a person at the Plaintiff’s attorney’s office, or
___ the Plaintiff (the landlord without an attorney)

That person’s name and telephone number are: _____

_____. When I gave the notice he/she responded:

“ _____ ”

B. I gave the notice set forth above by leaving a voicemail message on this date and time: ___/___/___ at ___:___ a.m. / p.m. because no one answered the call or my call was directed to voicemail. The person I called is ___ Plaintiff’s attorney or

___ the Plaintiff (the landlord without an attorney) named

_____ at

() - .

C. I gave the notice by 10:00 a.m. on the day before the hearing date for the stay as required by CAL.R.CT.3.1203(a).

D. This is an eviction action and I gave notice later 10:00 a.m. on or after the court day before the hearing date for the stay as allowed by CAL.R.CT. 3.1203(b) when notice is reasonable. The notice given here was reasonable because:

I have personally seen the Sheriff’s Notice to Vacate and I will be locked out on ___/___/____. I could not give the notice any earlier because: _____

_____.

Other _____.

I could not give the notice any earlier because: _____

_____.

///
///

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct to the best of my knowledge. Executed this date ____/____/____ in
3 the City of _____, California.

4
5 Signed By: _____
6 Defendant(s) without Attorney

7 _____
8 Print Name
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
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

4. If this Stay is granted, I believe I can win both my Motion to Set Aside and trial because I have valid defenses.

See my Proposed Answer filed with this Application.

5. I understand that I may be required to pay the rent for each day the stay is in effect.

6. I ask the Court to enter an order shortening time for service and hearing on my Motion to Set Aside to resolve this issue quickly to avoid any prejudice to Plaintiff if the Stay is granted.

7. If the Stay of Execution is not granted before and until my Motion is heard, I will suffer harm because: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on this date of ____/____/____, in the City of _____, California

Signed by: _____
Defendant(s) without an Attorney

Printed Name

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

_____,
Plaintiff(s),

vs.

_____,
Defendant(s)

Case No.: _____

**[PROPOSED] ORDER ON EX PARTE
APPLICATION FOR ORDER STAYING
EXECUTION OF THE JUDGMENT
UNTIL A HEARING ON DEFENDANT'S
MOTION TO SET ASIDE AND FOR AN
ORDER SHORTENING TIME FOR
HEARING AND SERVICE OF THE
MOTION TO SET ASIDE**

ASSIGNED JUDGE: _____
DEPARTMENT: _____
HEARING DATE: _____
TIME: _____

After consideration of Defendant's Ex Parte Application, all other pleadings and papers, and oral argument, if any, in this case, and upon good cause appearing, the Court orders:

Defendant's Ex Parte Application for Order Staying Execution of the Judgment and Order Shortening time for Hearing and Service of Defendant's Motion to Set Aside is granted. Execution of the Judgment is stayed up to and including the following date:

____/____/____.

The Defendant's Motion to Set Aside is calendared for hearing before this Court on

____/____/____.

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

Defendant is ordered to serve the Stay Application and Order and the Motion to Set Aside by mail or by personal service to Plaintiff or his/her attorney of record by: ____/____/____.

Any Opposition by Plaintiff or his/her attorney of record is to be served to Defendant by mail or by personal service by: ____/____/____.

Other: _____

Dated: _____

Commissioner/Judge of the Superior Court