

# **UNLAWFUL DETAINER EX PARTE APPLICATION FOR STAY FOR EXECUTION OF JUDGMENT**



## **How To Guide**

### **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.

# I. General Information to Set Aside a Default Judgment with the Court

Once an eviction default judgment has been entered it is difficult to stop it without a very good reason. To successfully persuade a court to set aside a default judgment and stay an eviction, you will have to convince the judge that you were prevented from filing an answer or attending your trial for a reason beyond your control. Basically, you have to persuade the court you should be given a “second chance” in your case.

**ONCE THE SHERIFF LOCKS YOU OUT, IT IS USUALLY TOO LATE TO FILE THESE DOCUMENTS!**

**You may apply to have the eviction “stayed” and the default judgment set aside, but only BEFORE the sheriff lock-out.** Judges typically rule that once the tenants have been locked out, the court cannot reverse the lock-out and let the tenant back in. Why? Because new people might be living there already.

**Simply filing an Ex Parte/Motion to Set Aside does not delay the Sheriff Lock Out. Only an Order from the Court can stop the Sheriff Lock Out.** If you do not agree with this guide or have other questions, CONTACT a licensed attorney immediately to get further assistance!

## What is a Default Judgment?

A default judgment (automatic loss) is a binding judgment against the other party usually because it failed to take some action required by law. To illustrate the concept, imagine a basketball game. The Landlord/Plaintiff is the Home Team, and the Tenant/Defendant is the Visiting Team. If the Visiting Team does not show up on time for the game, we would say that they have forfeited, and *lost by default*.

## Why the Court Enters Default Judgments?

Usually, the Court enters a default and/or default judgment when defendants have:

- failed to file a written Answer to the complaint with the court on time, *or*
- failed to “appear” (present themselves) for their trial at the appointed date and time.

### A. Failing to file a written Answer with the Court

- It is usually not sufficient grounds to say you did not know you had to file an answer
  - The first line of the Summons informed you have only five (5) days to file a written Answer.
  - Also, the Court mails a 1-page courtesy notice telling you that an eviction lawsuit has been filed;

**Most importantly, the Court may stay the eviction & set aside the default only when it finds that you have proven that, *through no fault of your own*, you were *prevented* from filing an answer for some very good reasons. Some examples are:**

- you were not served with a copy of the Summons and Complaint; or
- if you have been served with a copy, you were nonetheless prevented from filing your Answer because of fraud, surprise, mistake, excusable neglect or inadvertence *beyond your control*;
- if you were hospitalized or bedridden and could not file a timely answer (you will need to establish this by your declaration and your hospitalization records or a doctor’s note);
- if the landlord’s actions (i.e. accepted your rent, etc.) led you to believe that you did not have to file an answer; (you will need to establish this by declarations and any documentary evidence)

### B. Failing to attend your trial

- Failure to attend because you did not receive the Notice of Trial in the mail is difficult to prove.

**The court internally schedules the trial dates after a party requests it and sends a two-page notice in the mail to the parties. Sometimes the tenant does not know about the trial date and misses it. At that time, the Court will automatically find for the Plaintiff/Landlord and enter a default judgment against the tenant/defendant.**

- If you received the notice but were unable to attend because of an unexpected hospitalization or illness (you will need to establish this by hospital or doctor records in addition to your declaration.)
- If you got into an accident on the way to court;
- If you did not get the Notice in the mail because it was addressed wrong, other people have access to your mail, or the post office lost it;

## **II. What you will need if you did not file a written Answer with the Court on time:**

**You will need the following documents:**

- Summons and Complaint*—including its Exhibits (attached documents – Notice, Lease/rental agreement, proof of service of the notice);
- Request for Entry of Default*—including a request for either a Clerk’s Judgment (for possession only) or for a Court’s Judgment (includes a judgment for money).
- Proof of Service of Summons*—there may be multiple Proofs of Service of Summons. Obtain them all including for “All Unknown Occupants.”
- Civil Case Summary* – the court index/summary of action or documents in the file.

**Once you have those documents:**

- Review first the Proof of Service of Summons, where you will find on what date and time and in what manner the Plaintiff’s “process server” declares s/he served you, either personally to you or by other means.
- If the Proof of Service of Summons states that you were served by posting and subsequent mailing, the file must also have and you will also need to obtain a copy of another document called
  - Application and Order to Serve Summons by Posting for Unlawful Detainer* which has been signed by a judge.

**How to Refute the Proof of Service of Summons:**

- Courts give a *presumption of validity* to a Proof of Service of Summons.
  - You will need to convince the judge that you were not properly served in the manner set forth in the Proofs of Service of Summons.
  - To do so, you will need to *refute* the declaration of the person who has declared under penalty of perjury that you were properly served and *convince* the judge you were not.
- Look at who the process server says he served, where, and on what date and time. If he states he served you personally, is it true? Look at where, and what date and time?
  - To refute the Proof of Service of Summons, you need some documentary proof that you could not have been served as stated on the Proof of Service of Summons. Such evidence might be that you were at work or out of town on the date & time the process server claims they served you or you were not present at the location stated.

- To prove it, you may need to include in your Ex Parte Application copies of your airplane ticket, your workplace timesheet, or other receipts that can show where you were at the time you were allegedly served the Summons and Complaint.

**You will need to prepare for your Ex Parte (Emergency) Court Date if no Answer was filed:**

- The Ex Parte Application
- The Motion to Set Aside Default Judgment (Separate Packet – How To & Forms)
- Proposed Answer (Separate Packet - How To & Forms)
- Fee Waiver (Separate Packet - How To & Forms)

**III. When You Filed Your Answer, but Failed to “Appear” for Your Trial**

**You will need the following documents:**

- *Summons and Complaint*—including its Exhibits (attached documents)
- *Proof of Service of the Summons/Complaint* – the filing that shows who served the lawsuit against you and when, how, where etc.
- *Notice of Trial* – the letter that the court sends with your trial date on it.
- *Case Summary* – the court index/summary of action or documents in the file Evictions are considered “summary proceedings,” on an accelerated timeline.
- The law requires the Court to calendar an eviction trial within 21 days of the date that either party files the Request for Trial.
- The Court then mails a “Notice of Trial” to both parties, and a copy of that Notice and the Court Clerk’s Certificate of Mailing will be in the Court’s file.
- The law also has a presumption that *if something is mailed by regular mail, the addressee is presumed to have received it*. Therefore, you will have to overcome this presumption with evidence that you did not receive it.

**What you need to do:**

- First check the court file
  - Where did the Court Clerk send the Notice of Trial?
  - Determine to whom and to what address the Court mailed the Notice of Trial.
    - If it was not mailed to you or to the address you put on your Answer, that is evidence that you did not receive it due to the Court’s own error.
    - You should include a copy of the Notice of Trial and the Court Clerk’s Certificate of Mailing with your Ex Parte Application for Stay and your Motion to Set Aside the Default. You should indicate in your declaration that the Clerk sent the Notice of Trial to the wrong address.
  - **Was the Notice of Trial Returned to the Court?**
    - Ask the Court Clerk to print a “Case Summary” or “Case History.”
    - If the Notice of Trial did not reach you because it was returned to the Court, this is also evidence you did not receive it.
    - Request a photocopy of the Notice of Trial and the envelope in which it was returned to the Court and include these photocopies with your Ex Parte Application for Stay and your Motion to Set Aside the Default.
  - **When the Notice of Trial was properly mailed and was not returned to the Court.**

- In these situations it is more difficult to overcome the presumption that you received the Notice of Trial.
- The Court will look to evidence that someone else had the ability to intercept your mail. For example, if you do not have a secure mailbox, that may be evidence that someone else took the mail.
- You will need photographs of your mailbox, or the location to which your mail is delivered to show the Judge. Or any other evidence that shows why you would not get the trial date notice in the mail

**You will need to prepare for your Ex Parte (Emergency) Court Date if an Answer was filed but you missed the Court date:**

- The Ex Parte Application
- The Motion to Set Aside Default Judgment (Separate Packet – How To & Forms)

**What to Expect at the hearing:**

You will be required to present a copy of all your documents to the landlord/landlord's attorney at the Ex Parte Hearing. You may want to speak with the landlord about any negotiations about your case. The landlord is not required to negotiate with you at this stage, but may do so in order to come up with an agreement/settlement that makes sense before going in front of the Judge.

The Landlord or its attorney will be present. They will likely argue aggressively that the case is over and that you should not be allowed to "reopen" your case for a second chance. You must refute/counter the claims clearly and concisely. Just because you file these forms does not automatically entitle you to re-open your case.

**The Outcomes to the hearing:**

If you are successful at the Ex Parte Hearing, the court will likely accept your proposed Answer (if you did not file one already) that you filed and set a new trial date in which to return to have your day in court. The Lock Out should be "stayed" or postponed until after the new trial date. Be prepared to state your case at that new trial date with the necessary evidence, photos, testimony etc.

Also, if you are successful, the Court will give you an Order to Quash or cancel the Sheriff lock out of your home. You should not leave the Courtroom until you receive a signed Order from the Court cancelling the lock out to show the Sheriff just in case the Court cannot recall them in time. The Sheriffs may already be on the way to your home.

If the Judge does not grant your Motion, the Sheriff lock out will proceed as scheduled. Remember the Sheriff must serve a **FIVE (5) Day Vacate Notice before they return to escort or "Lock"** you out of your home. Remember that upon occasion, these notices are removed by the landlord's agents, neighbors and other vandals to hamper your ability to know when your lock out is.

If you are locked out, your landlord is required to keep your possessions in storage for you to pick up for a short period of time. The landlord may charge you for the storage of these possessions, but if you do not pick up your things within the timeframe under the law, the landlord may keep, sell, or discard all of your possessions left in the home after the lock out. Therefore, it is usually a good idea to transfer most of your valuables to storage or a friend/relative's home for safekeeping.

# STEPS TO PREPARING & FILING YOUR EX PARTE APPLICATION FOR STAY OF EXECUTION OF THE JUDGMENT

**1. Choose a court date and time.** Write this information in your Stay papers where it says to do so. See the table below for the days and times different Courts allow you to see a Judge for a Stay of Execution. **The times change constantly. Make sure the filing/hearing times are still valid/correct.**

**2. Give required prior telephone notice of the Court hearing date and time to the opposing party.**

You **must** call the Landlord/Plaintiff's attorney by **10:00 a.m. the Court** day before you file your papers in Court. (You may give notice to the landlord directly only if he or she is not represented by an attorney.) For example, if you want to go to Court on Monday at 1:30 p.m., you must give prior notice the preceding Friday by 10:00 a.m. (You may give less notice **only if** you have a good reason. When you give the notice you must state all of the following:

- your name,
- the case name and number,
- the date and time you will go to Court,
- the name and address of the court and the department or room number,
- that you are asking the court for an "Ex Parte Application for a Stay of Execution of the Judgment and an Order Shortening Time for Service and Hearing on a Motion to Set Aside the Judgment.

On the next two pages you will find the forms

- "Unlawful Detainer Ex Parte Application Schedules and Locations" that gives the locations, days and times to schedule your Ex Parte Application for Stay **EACH COURT HAS DIFFERENT HEARING & FILING TIMES** and
- "Ex-Parte Notice in an Unlawful Detainer Case" Script that you can use as a guide on how to give proper prior Ex Parte notice.

If you unable to reach the person, you can leave a voicemail message for him/her or a message with someone else at that person's home or office. After giving notice, write down: the date and time you called, if you left a message and who you left a message with, and if you spoke to someone, his/her name and what he/she said to you.

**3. Prepare Your Ex Parte Application for Stay of Execution of the Judgment**

Attached to this packet is a How-to Guide on how to fill out the required forms. Do not fill in that guide. We have also given you blank versions of the forms for you to fill out.

**4. Prepare a Motion to Set Aside the Judgment (A separate packet of forms).**

This Motion asks the Court to "re-open" your case, but this Motion on its own takes almost 3 weeks to be held in Court. As most people only have a few days, this "Ex-Parte" (meaning emergency in Latin) makes it so that it can be held in front of the Judge with a phone call to the other side before 10 am the court day before the hearing.

**4. Make 2 copies of all the Stay papers.** You will also need to fill out your Motion to Set Aside Papers and follow the instructions in that packet. If you did not file an ANSWER, you will also need to a "proposed" answer to file with your papers. Take all the originals you filled out and copies to file at the Clerk's office on the Court date for your Ex Parte Application for Stay Hearing.

**5. You may have to pay a filing fee, unless you qualify for a fee waiver. You may also have to file an Answer to the Unlawful Detainer Complaint if you have not already done so. Ask for that How To packet and Forms packet for the Unlawful Detainer Answer.**

**UNLAWFUL DETAINER EX PARTE APPLICATION - SCHEDULES AND LOCATIONS**

The Ex Parte Application and Motions are filed the morning of your Ex Parte Hearing. **You must file with the clerk by the time listed & be on time to the courtroom for your emergency hearing. Each courthouse in the county has different rules for Ex Parte filings/hearings.**

<u>Courthouse</u>	<u>Filing Information</u>	<u>Hearing/Courtroom Information</u>
Antelope Valley (Lancaster)	<ul style="list-style-type: none"> <li>File Ex Parte before 8:15 am on the day of the hearing</li> <li>File in Clerk's Office, Room 1000, 1<sup>st</sup> Floor</li> </ul>	<ul style="list-style-type: none"> <li>Ex Parte hearings are held in Dept. A22, Room 4001, 4<sup>th</sup> Floor at 8:30 a.m.</li> <li>Address: 42011 4<sup>th</sup> Street West, Lancaster, CA 93534</li> </ul>
Chatsworth	<ul style="list-style-type: none"> <li>File Ex Parte before 8:15 am on the day of the hearing</li> <li>File in Clerk's Office, Room 1200, 1<sup>st</sup> Floor</li> </ul>	<ul style="list-style-type: none"> <li>Ex Parte hearings are held in Dept. F44, Room 1800, 1<sup>st</sup> Floor at 8:30 am.</li> <li>Address: 9425 Penfield Ave., Chatsworth 91311</li> </ul>
Compton	<ul style="list-style-type: none"> <li>File Ex Parte before 8:15 am the day of the hearing</li> <li>File in Clerk's Office, Room 902, 9<sup>th</sup> Floor</li> </ul>	<ul style="list-style-type: none"> <li>Ex Parte hearings are held in Dept. 7, Room 504, 5<sup>th</sup> Floor at 8:30 am</li> <li>Address: 200 W. Compton Blvd., Compton, CA 90220</li> </ul>
Inglewood	<ul style="list-style-type: none"> <li>File Ex Parte before 11:00 am of the day of the hearing</li> <li>File in Clerk's Office, Room 630, 6<sup>th</sup> Floor</li> </ul>	<ul style="list-style-type: none"> <li>Ex Parte hearings are held in Dept. 8, Room 504, 5<sup>th</sup> Floor at 1:30pm</li> <li>Address: One Regent Street, Inglewood, CA 90301</li> </ul>
Long Beach	<ul style="list-style-type: none"> <li>File Ex Parte before 8:15 am of the day of the hearing</li> <li>File in Clerk's Office, Room 1401, 1<sup>st</sup> floor</li> </ul>	<ul style="list-style-type: none"> <li>Ex Parte hearings are held in Dept. S13, Room 3500, 3<sup>rd</sup> Floor at 8:30 am</li> <li>Address: 275 Magnolia Avenue, Long Beach, CA 90802</li> </ul>
Norwalk	<ul style="list-style-type: none"> <li>File Ex Parte before 8:15 am on the day of the hearing</li> <li>File in Clerk's Office Room 101, 1<sup>st</sup> Floor</li> </ul>	<ul style="list-style-type: none"> <li>Ex Parte hearings are held in Dept. W, Room 603, 6<sup>th</sup> Floor at 8:30 am</li> <li>Address: 12720 Norwalk Boulevard, Norwalk, CA 90650</li> </ul>
Pasadena	<ul style="list-style-type: none"> <li>File Ex Parte before 11:00 am on the day of the hearing</li> <li>File in the Clerk's Office Room 102, 1<sup>st</sup> Floor</li> </ul>	<ul style="list-style-type: none"> <li>Ex Parte hearings are held in Dept. A on the 4<sup>th</sup> Floor at 1:30 pm</li> <li>Address: 300 E. Walnut Avenue, Pasadena, CA 91101</li> </ul>
Santa Monica	<ul style="list-style-type: none"> <li>File Ex Parte before 8:15 am on the day of the hearing</li> <li>File in the Clerk's Office, Room 102, 1<sup>st</sup> Floor</li> </ul>	<ul style="list-style-type: none"> <li>Ex Parte hearings are held in Dept. S, Room 218, 2<sup>nd</sup> Floor at 8:30 am</li> <li>Address: 1725 Main Street, Santa Monica, CA 90401</li> </ul>
Stanley Mosk (Downtown) (Central Courthouse)	<ul style="list-style-type: none"> <li>File Ex Parte before 11:00 am on the day of the hearing</li> <li>File in Room 102, 1<sup>st</sup> Floor</li> </ul>	<ul style="list-style-type: none"> <li>Ex Parte hearings are held in <b>Dept. 91</b> (Room 632) <b>or Dept. 97</b> (Room 634), 6<sup>th</sup> Floor at 1:30 pm</li> <li>Address: 111 N. Hill St./110 N. Grand Avenue</li> <li>Los Angeles, CA 90012. <b>You must call the clerk at 213-830-0803 between 8:30 am-10:30am or 1:30 pm-3:30pm to get the Court Room Assignment if you do not already have it.</b></li> </ul>
Van Nuys	<ul style="list-style-type: none"> <li>File Ex Parte before 11:00 am on the day of the hearing</li> <li>File in Clerk's Office, Room 107, 1<sup>st</sup> Floor.</li> </ul>	<ul style="list-style-type: none"> <li>Ex Parte hearings are held in Dept. H, Room 630 6<sup>th</sup> Floor at 1:30 PM</li> <li>Address: 6230 Sylmar Avenue, Van Nuys, CA 91401</li> </ul>
West Covina	<ul style="list-style-type: none"> <li>File before 11:00 am on the day of the hearing.</li> <li>File in Clerk's Office, Room 107, 1<sup>st</sup> Floor</li> </ul>	<ul style="list-style-type: none"> <li>Ex Parte are held in Dept. 6, 1<sup>st</sup> Floor at 1:30 pm</li> <li>Address: 1427 West. Covina Parkway, West Covina, Ca. 91790</li> </ul>

## Ex-Parte Notice in an Unlawful Detainer Case

Important: You must give prior Ex Parte (or Emergency) notice of going to court to the landlord's attorney (or the landlord if the landlord does not have an attorney) **by 10:00 a.m. the day before you go court.** If you get transferred to voicemail, you must leave the below on the message.

### Script/What to Say:

"Hello, my name is: \_\_\_\_\_ (Your Name)

I am calling to give "Ex Parte" notice that on (date) \_\_\_\_\_ at (time) \_\_\_\_\_ am / pm

I am going into Department \_\_\_\_\_ of the Courthouse located at (street address, city, state, zip code)

\_\_\_\_\_ to file an (Pick One)

EX PARTE APPLICATION FOR A STAY PENDING A HEARING ON A MOTION TO SET ASIDE THE JUDGMENT AND FOR AN ORDER SHORTENING TIME FOR SERVICE OF THE MOTION TO SET ASIDE IN THE CASE OF

~~EX PARTE APPLICATION FOR ORDER STAYING EXECUTION OF THE JUDGMENT AND GRANTING ADDITIONAL TIME TO RELOCATE IN THE CASE OF~~

(name of plaintiff) \_\_\_\_\_ versus

(name of defendant) \_\_\_\_\_,

Case Number \_\_\_\_\_.

I can be reached at phone number \_\_\_\_\_."

### Please get the following important information:

1. Date and time you called to give notice: \_\_\_\_\_
2. Name and title of the person you spoke with: \_\_\_\_\_
3. Ask if the Plaintiff or Plaintiff's attorney will appear in court on this matter? \_\_\_\_\_
4. Anything else the person told you or did: \_\_\_\_\_

**IMPORTANT Filing Instructions: You must have all the documents filed by the time stated above in the "Filing Information" column.** You must be on time to your hearing and provide the landlord (or the attorney for the landlord) a copy of the documents. **If you are late for filing or the hearing, the court MAY NOT hear your motion.**

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PRINT YOUR NAME \_\_\_\_\_

PRINT YOUR MAILING ADDRESS \_\_\_\_\_

**Defendant In Pro Per**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

PRINT PLAINTIFF'S NAME AS SHOWN ON THE COMPLAINT \_\_\_\_\_,

**Plaintiff(s),**

**vs.**

PRINT DEFENDANT'S NAME AS SHOWN ON THE COMPLAINT \_\_\_\_\_,

**Defendant(s)**

Case No.: PRINT THE CASE NUMBER \_\_\_\_\_

**EX PARTE APPLICATION FOR STAY OF EXECUTION OF JUDGMENT, AND ORDER SHORTENING TIME FOR SERVICE; MEMORANDUM OF POINTS AND AUTHORITIES**

ASSIGNED JUDGE: \_\_\_\_\_  
DEPARTMENT: \_\_\_\_\_  
HEARING DATE: \_\_\_\_\_  
TIME: \_\_\_\_\_

PRINT THE DEPARTMENT, HEARING DATE AND TIME OF THE HEARING. IT IS NOT NECESSARY TO LIST THE JUDGES'S NAME

**TO PLAINTIFF, AND TO PLAINTIFF'S COUNSEL**

**Defendant(s)** PRINT YOUR NAME(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**

1 Application is made on the ground that with a stay, Defendant(s) will suffer irreparable  
2 harm by being evicted and Defendant's Motion to Set Aside will be moot.

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

6 Dated:

Defendant(s) without Attorney

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**MEMORANDUM OF POINTS AND AUTHORITIES**

A court of general jurisdiction has a statutory as well as an inherent duty and power to control its own processes and orders so as to make them conform to justice, including the granting of a stay. Section states in pertinent part: “(a) A court shall have the authority to control its processes and orders in accordance with the Federal Rules of Civil Procedure, 28 U.S.C. §128(a). This was confirmed in *Wright v. United States*, 551 U.S. 173 (2009), 2009 U.S. LEXIS 64749, where the Court affirmed the inherent power of a court to control and manage its docket, which includes the authority to order a stay pending the outcome of reexamination proceedings.” *Id at 9*.

**THIS SECTION JUST EXPLAINS THE LEGAL AUTHORITY FOR THE JUDGE TO CONSIDER AND GRANT YOUR MOTION. YOU NEED TO DATE AND SIGN BELOW.**

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

Dated:

Signature

Print Name

Defendant without Attorney

////

////

PRINT YOUR NAME HERE AND HERE

DECLARATION OF EX PARTE NOTICE

PRINT THE COURTHOUSE,  
WHERE YOUR CASE IS FILED, ITS  
ADDRESS, AND THE  
DEPARTMENT (COURTROOM)  
WHERE IT IS ASSIGNED

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:

PRINT THE DATE  
AND TIME OF  
YOUR HEARING

name is: \_\_\_\_\_.

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 on to

DEFENDANT'S LAST NAME

CASE NUMBER

Case Number: \_\_\_\_\_ PRINT YOUR PHONE NUMBER \_\_\_\_\_ at this telephone number: \_\_\_\_\_

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

NOTE:

- YOU WILL NOT BE ABLE TO SEE A JUDGE ON YOUR MOTION UNLESS YOU FIRST GIVE TELEPHONE NOTICE TO THE PLAINTIFF'S ATTORNEY OR THE PLAINTIFF IF THERE IS NO ATTORNEY.
- RULES REQUIRE THAT YOU CALL BY NO LATER THAN 10:00 a.m. **THE COURT DAY BEFORE YOUR COURT DATE.**
- YOU MAY BE ALLOWED TO CALL LATER THAN 10:00 A.M. THE DAY BEFORE YOUR HEARING ONLY IN EMERGENCIES BEYOND YOUR CONTROL. IF THAT HAPPENS, CHECK BOX "D" AND STATE YOUR REASONS. THIS IS NOT RECOMMENDED.

ON THE NEXT PAGE YOU MUST STATE WHEN YOU CALLED AND WHO YOU SPOKE WITH TO GIVE THE PROPER NOTICE.

Note: You should only mark A or B not both.

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A.  I gave the notice set forth above on this date and time: \_\_\_/\_\_\_/\_\_\_ at \_\_\_:\_\_\_ a.m.

Check box A if you gave notice by telephone and you spoke with the plaintiff's attorney, a person at the attorney's office, or plaintiff and fill in the appropriate

That person's name and telephone number are: \_\_\_\_\_

Check box B if you gave notice by leaving a voicemail with the plaintiff's attorney, a person at the attorney's office, or plaintiff and fill in the appropriate blanks.

B.  I left a 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 \_\_\_\_\_

Note: You should only mark C or D not both. Check C if you gave notice before 10 AM. Check D if you gave notice after 10 AM and indicate why you could not give notice earlier.

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

D.  This is an eviction action and I gave notice later than 10:00 a.m. the day before the hearing date (CAL.R.CT. 3.1203(b). 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 have personal knowledge that a default judgment has been entered against me because I have seen court documents saying this and this default judgment will result in a Sheriff's Notice to Vacate being issued very soon.

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  
2 the foregoing is true and correct to the best of my knowledge. Executed this date  
3 \_\_\_\_ / \_\_\_\_ / \_\_\_\_ in the city of \_\_\_\_\_, California.

4 SIGN YOUR NAME

5 Signed: \_\_\_\_\_

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7 Print Name PRINT YOUR NAME  
8 **Defendant/Declarant**

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PRINT THE DATE YOU SIGN  
THIS & THE CITY YOU ARE IN  
WHEN YOU SIGN

1 **DECLARATION OF DEFENDANT IN SUPPORT OF EX PARTE APPLICATION**  
2 **FOR A STAY OF EXECUTION OF JUDGMENT PENDING MOTION TO SET**  
3 **ASIDE HEARING AND ORDER SHORTENING TIME FOR SERVICE/HEARING**  
4 **THEREON**

5 I, PRINT YOUR NAME DECLARE AS FOLLOWS:

6 1. I am the Defendant in this action. I am over the age 18 years, and I have  
7 personal knowledge of the facts stated in this declaration. **Print the date default**  
8 thereto, I could and would do so truthfully. **was ordered.**

9 2. A Default/Default Judgment was ordered by the Court on: \_\_\_/\_\_\_/\_\_\_.  
10 The Sheriff is scheduled to evict me on: \_\_\_/\_\_\_/\_\_\_.

11 I am requesting that the Court grant my motion for a stay of execution of judgment. I am

12 **Check to box that applies.**

11 Court can hear

11 **Print the date the Sheriff is**  
12 **scheduled to evict you. If you have**  
13 **not received a notice to vacate from**  
14 **Sheriff, then leave blank.**

13 3. The Default/Default Judgment should not have been granted. I did not:

14  file an Answer to the Summons and Complaint; and/or

15  attend the trial in this case; because:

16 **EXPLAIN HERE WHY YOU DIDN'T FILE YOUR ANSWER OR GO TO YOUR**  
17 **COURT TRIAL.**

- 18 • REVIEW THE "PROOF OF SERVICE OF SUMMONS" TO SEE  
19 WHEN PLAINTIFF CLAIMED TO HAVE SERVED YOU.
  - 20 ○ IT MAY NOT BE ENOUGH JUST TO STATE YOU WEREN'T  
21 SERVED.
- 22 • IF YOU CAN PROVE THAT YOU WEREN'T SERVED BECAUSE  
23 YOU WERE SOMEWHERE ELSE DURING THE TIME PLAINTIFF  
24 CLAIMED TO HAVE SERVED YOU: YOU SHOULD EXPECT TO BE  
REQUIRED TO SHOW PROOF, EX: PLANE TICKETS OR YOUR  
WORK TIMESHEET.
- IF YOU MISSED YOUR TRIAL BECAUSE YOU DID NOT GET  
YOUR NOTICE OF TRIAL, YOU WILL NEED TO SHOW THAT IT  
WAS SOMEHOW PREVENTED FROM REACHING YOU.
  - Ex: IF IT WAS RETURNED TO THE COURT CLERK AS  
UNDELIVERABLE.
- IF YOU SUSPECT SOMEONE STOLE YOUR MAIL, YOU WILL  
HAVE TO SHOW THAT YOUR MAILBOX WAS UNSECURED.

YOU MAY HAVE TO PREPARE AN ANSWER ALONG WITH YOUR MOTION. CHECK THIS BOX & ATTACH ANSWER.

I believe I can win both my Motion to Set Aside and my 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:

HERE IS WHERE YOU TELL THE COURT THE HARDSHIP YOU WILL SUFFER IF THE COURT DOESN'T GRANT YOUR MOTION.

- IF YOU WERE NOT PROPERLY SERVED THE SUMMONS & COMPLAINT OR NEVER RECEIVED NOTICE OF TRIAL, YOU MAY HAVE BEEN DEPRIVED OF DUE PROCESS OF LAW.
- YOU MAY ALSO WRITE THAT YOU WOULD HAVE NO PLACE TO GO OR WILL BE HOMELESS.

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 YOU SIGNED THIS PAPER, California

PRINT THE DATE YOU SIGNED THIS PAPER

Signed: SIGN YOUR NAME

Print Name PRINT YOUR NAME  
Defendant/Declarant

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PRINT YOUR NAME  
PRINT YOUR MAILING ADDRESS  
PRINT YOUR PHONE NUMBER  
\_\_\_\_\_

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

**PRINT PLAINTIFF'S NAME AS SHOWN ON COMPLAINT**

Case No.: **PRINT CASE NUMBER**

Plaintiff(s),

**[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**

vs.

**PRINT DEFEDANT'S NAME AS SHOWN ON COMPLAINT**

ASSIGNED JUDGE: \_\_\_\_\_  
DEPARTMENT: \_\_\_\_\_  
HEARING DATE: \_\_\_\_\_  
TIME: \_\_\_\_\_

Defendant(s)

PRINT THE DEPARTMENT, HEARING DATE AND TIME OF THE HEARING. IT IS NOT NECESSARY TO LIST THE JUDGES'S NAME

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

Defendant's Motion to Stay of Execution of the Judgment and Order Showed Cause that the Defendant's Motion to Set Aside is granted. The Defendant's Motion to Set Aside is granted on the following date:

**LEAVE THIS AREA BLANK. THIS IS FOR THE JUDGE TO FILL IN.**

of the Judgment  
nt's Motion to  
and including the

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

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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 to the Stay Application and Order and the Motion to Set Aside by Defendant by  mail or by  personal service to \_\_\_\_\_

Other: \_\_\_\_\_

\_\_\_\_\_  
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\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Commissioner/Judge of the Superior Court