

**ADVANCED  
LANDLORD /TENANT LAW**

**SELF - HELP  
REGIONAL TRAININGS  
APRIL 29 – 30, 2008  
SACRAMENTO**

**RONNETTE V. RAMOS  
MOLLY L. STAFFORD**

Superior Court of California  
County of Los Angeles



**CALIFORNIA RURAL LEGAL ASSISTANCE, Inc.**



**PREPARED BY:  
FELICIA VISONE AND KATHERINE WOOD  
JUSTICECORPS**

**NOTICE: EVERYONE WHO LIVES IN THIS RENTAL UNIT MAY BE EVICTED BY COURT ORDER. READ THIS FORM IF YOU LIVE HERE AND IF YOUR NAME IS NOT ON THE ATTACHED SUMMONS AND COMPLAINT.**

1. If you live here and you do not complete and submit this form within 10 days of the date of service shown on this form, you will be evicted without further hearing by the court along with the persons named in the Summons and Complaint.
2. If you file this form, your claim will be determined in the eviction action against the persons named in the Complaint.
3. If you do not file this form, you will be evicted without further hearing.

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address): <b>SILLY SALLY</b> 456 EVICTION AVE. #123 LOS ANGELES, CA 90012	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name): <b>SLEF-REPRESENTED</b>		
NAME OF COURT: <b>LOS ANGELES SUPERIOR COURT</b> STREET ADDRESS: <b>111 N. HILL STREET</b> MAILING ADDRESS: <b>SAME AS ABOVE</b> CITY AND ZIP CODE: <b>LOS ANGELES, CA 90012</b> BRANCH NAME: <b>CENTRAL DISTRICT</b>		
PLAINTIFF: <b>LARRY LANDLORD</b>  DEFENDANT: <b>TANYA TENANT</b>		
<b>PREJUDGMENT CLAIM OF RIGHT TO POSSESSION</b>		CASE NUMBER: <b>08U123456</b>
Complete this form only if ALL of these statements are true: 1. You are NOT named in the accompanying Summons and Complaint. 2. You occupied the premises on or before the date the unlawful detainer (eviction) Complaint was filed. 3. You still occupy the premises.		(To be completed by the process server) DATE OF SERVICE: (Date that this form is served or delivered, and posted, and mailed by the officer or process server)

**I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:**

1. My name is (specify):  
**SILLY SALLY**
2. I reside at (street address, unit No., city and ZIP code):  
**456 EVICTION AVE. #123  
LOS ANGELES, CA 90012**
3. The address of "the premises" subject to this claim is (address):  
**456 EVICTION AVE. #123  
LOS ANGELES, CA 90012**
4. On (insert date): **04/05/2008**, the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (This date is the court filing date on the accompanying Summons and Complaint.)
5. I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).
8. I was not named in the Summons and Complaint.
9. I understand that if I make this claim of right to possession, I will be added as a defendant to the unlawful detainer (eviction) action.
10. (Filing fee) I understand that I must go to the court and pay a filing fee of \$ **180.00** or file with the court the form "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file with the court the form for waiver of court fees within 10 days from the date of service on this form (excluding court holidays), I will not be entitled to make a claim of right to possession.

(Continued on reverse)

PLAINTIFF (Name): LARRY LANDLORD	CASE NUMBER: 08U123456
DEFENDANT (Name): TANYA TENANT	

**NOTICE: If you fail to file this claim, you will be evicted without further hearing.**

11. (Response required within five days after you file this form) I understand that I will have five days (excluding court holidays) to file a response to the Summons and Complaint after I file this Prejudgment Claim of Right to Possession form.

12. Rental agreement. I have (check all that apply to you):
- a.  an oral rental agreement with the landlord.
  - b.  a written rental agreement with the landlord.
  - c.  an oral rental agreement with a person other than the landlord.
  - d.  a written rental agreement with a person other than the landlord.
  - e.  other (explain):

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

**WARNING: Perjury is a felony punishable by imprisonment in the state prison.**

Date: 04/22/2008

..... SILLY SALLY .....  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF CLAIMANT)

**NOTICE: If you file this claim of right to possession, the unlawful detainer (eviction) action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.**

**— NOTICE TO OCCUPANTS —**

**YOU MUST ACT AT ONCE if all the following are true:**

1. You are NOT named in the accompanying Summons and Complaint.
2. You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed. (The date is the court filing date on the accompanying Summons and Complaint.)
3. You still occupy the premises.

(Where to file this form) You can complete and SUBMIT THIS CLAIM FORM WITHIN 10 DAYS from the date of service (on the reverse of this form) at the court where the unlawful detainer (eviction) complaint was filed.

(What will happen if you do not file this form) If you do not complete and submit this form and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee, YOU WILL BE EVICTED.

After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to occupy the premises will be decided by the court. If you do not file this claim, you will be evicted without a hearing.

**Breach of Implied Warranty of Habitability**

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- The amount of rent demanded in the notice, and/or the daily rental value demanded in the complaint, is excessive because landlord has failed to provide a tenantable dwelling as follows, of which the landlord had actual and/or constructive notice and which are listed by way of example and not limitation:
  - Damp/leaking ceiling/walls
  - Hole(s) in walls/floor/carpet
  - Falling plaster/peeling paint
  - Lack of/inadequate heat
  - Lack of/inadequate hot water
  - Missing/torn window screens
  - Missing/broken windows
  - Defective/leaking plumbing
  - Missing/broken smoke detectors
  - Infestation of roaches/rodents/insects/vermin
  - Common areas unclean
  - Inadequate trash collection
  - Unsafe stairways/rallings
  - Inadequate security/locks
  - Defective electrical/wiring
  - Other:
- Defective conditions listed above have existed and have not been abated for 60 days after notice as set forth in Civil Code Section 1942.3, creating a rebuttable presumption that lessor breached warranty of habitability.
- The premises are located in the City of Los Angeles, subject to the Los Angeles Housing Code. Landlord failed to pay fees required by L.A.M.C. Section 161.101, which is an affirmative defense to this cause of action. L.A.M.C. Section 161.903.3 et.seq.
- Less than a year has passed since the subject property was placed in REAP, and landlord has unlawfully increased the rent during that time. L.A.M.C. Section 162.09(B).
- The landlord has filed the unlawful detainer without first checking in writing if the tenant has paid rent into REAP. L.A.M.C. Section 162.09(A) (2).
- The property was removed from REAP less than 180 days, before the filing of this complaint, requiring the landlord to evict the tenant for cause.
- Under L.A.M.C. Section 161.805, the General Manager of the housing Department has issued orders regarding violations existing at the premises; so the landlord may not bring an eviction action without stating a cause as listed in L.A.M.C. Section 151.09.
- Deferdant's premises are subject to the Los Angeles City Housing Code (L.A.M.C. Section 161.00 et. seq.). Under L.A.M.C. Section 161.807, a landlord may not increase rent for a period of one year after the Department determined that the landlord has complied with the Order to Comply/Repair. In this case the notice to pay rent or quit demands rent in excess of the lawful amount.
- A substandard order was issued by a governmental agency with respect to the subject property and the landlord has failed to register with County Board of Supervisors. Health and Safety Code Section 17997

**REPAIR AND DEDUCT**

- Tenant does not owe rent demanded because repairs were paid for and deducted from the rent for the cost of repairs which landlord knew were needed and failed to provide within a reasonable time.

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1 Estoppel

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- 3  Landlord is estopped from evicting because:
- 4  Rent was accepted by the landlord from tenant for a period of time after the notice expired; lessor has accordingly waived the breach and the notice and created a new tenancy.
- 5  Within the notice period, tenant tendered the full amount of rent demanded to landlord, but said tender was refused.
- 6  Within the rental period, tenant tendered the full amount of rent demanded to landlord, but said tender was refused. Said tender extinguished tenant's obligation, pursuant to CC §1485. In addition, said refusal of rent is a violation of the covenant of good faith and fair dealing.
- 7  Tenant was unable to contact landlord within the notice period due to landlord's action and/or failure to act and was therefore prevented from paying the rent demanded. CC §1511.
- 8  Landlord has accepted late payment of rent in the past and so waived the alleged breach.
- 9  Landlord accepted rent with actual and/or constructive knowledge of the alleged breach. As a result, landlord has waived the alleged breach.
- 10  Landlord made an oral agreement with tenant that the rent demanded in the notice could be paid at a later date, upon which tenants detrimentally relied.
- 11  Tenant paid rent to the former landlord prior to receiving notice of change of ownership. CC §1111.
- 12  Tenant was not notified pursuant to CC §1962 of the change of ownership, which prevented payment of rent.
- 13  Plaintiff has waived the alleged breach and is estopped from prosecuting this action because the tenant has paid rent and detrimentally relied on the waiver.
- 14  Plaintiff cannot evict pursuant to L.A.M.C. Ordinance 174.501 and Sections 151.04 and 151.09 and L.A.M.C. Ordinance 164.685
- 15  The notice could not be issued and no rent was owing pursuant to Civil Code Section 1942.4
- 16  Other: \_\_\_\_\_

16 RENT CONTROL

- 17  The premises are subject to the Rent Stabilization Ordinance, L.A.M.C. Sections 151.00, et seq. at the time the notice was served:
- 18  The rent demanded exceeded the legal amount, which could be demanded.
- 19  The premises were not registered as required by L.A.M.C. Section 151.05.
- 20  Landlord did not post and/or serve on tenant the Certificate of Registration as required by L.A.M.C. Section 151.05(A).
- 21  Landlord has not served tenant with a written notice stating the reasons for termination with specific facts, which permit determination of the date, place, witnesses and circumstances concerning the reason. L.A.M.C. Section 151.09(C).
- 22  Landlord does not state and/or have cause for the eviction. L.A.M.C. Section 151.09(A).
- 23  Landlord allegedly seeks possession for use and occupancy by a manager, or the landlord, or the landlord's family, or to vacate the unit to comply with a governmental agency or, to perform work on the building, or to permanently remove the rental unit from the market, but has not filed and/or served the required notice or declaration under L.A.M.C. Section 151.09(C).
- 24  Landlord has failed to pay relocation assistance. L.A.M.C. Section 151.09(G).
- 25  Plaintiff is not proceeding in good faith as required by L.A.M.C. Section 151.09A (8), (9), (10) and (11), and/or the notice fails to so state.
- 26  The intent of landlord in seeking possession is retaliation against tenant for exercising his/her rights under the Ordinance.

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**Defective Notice**

- The notice was defective because:
  - It demanded more rent than tenant owed.
  - The notice to pay or quit does not identify an address (or, if rent is requested in person, available hours) where the rent can be paid. CCP Section 1161.
  - It was not in the alternative.
  - It did not adequately describe the property.
  - It was served before the rent was late.
  - It asked for rent for a period beyond one year.
  - It did not give defendant 30 days to move.
  - It did not give defendant 60 days to move pursuant to CC Section 1946.1
  - Landlord failed to serve a 30-day notice to change terms of tenancy.
  - It did not unequivocally demand possession.
  - It was based on a breach of covenant but did not specify what tenant must do to cure the breach and/or it did not give tenant 3 days to cure the breach.
  - It did not declare a forfeiture of the lease.
  - It was not served.
  - It was not served as alleged in complaint.
  - Landlord served upon tenant multiple notices, which confused the tenant as to what was expected of tenant.
  - The notice attached to the complaint is different from the notice served.
  - Code violations have existed for 6 months, so the rent landlord is charging this tenant is excessive. CC Section 1954.52.
  - Less than a year has elapsed since the property was removed from REAP, and landlord should not have raised the rent, L.A.M.C. Section 162.09(B).
  - The Notice fails to comply with the requirements of the Fair Debt Collection Practices Act 15 U.S.C.S. Section 1692.
  - It failed to give tenant 90 days to move pursuant to CC Section 1954.535
  - Complaint is improperly verified.
  - Other.

**Premature Filing of the Complaint**

- The complaint was filed before expiration of the notice period because:
  - 3 days had not yet expired.
  - 30 days had not yet expired.
  - The notice was served by posting and mailing and tenant should have been given an additional 5 days to act as required by CCP Section 1013(a).

**Retaliation**

- The landlord served the notice and filed this lawsuit to retaliate against tenant for having done the following:
  - Complaining to a governmental agency or agencies concerning tenantability.
  - Complaining to the landlord or landlord's agent concerning tenantability.
  - Participating in a tenant's union or otherwise trying to organize tenants.
  - Otherwise asserting tenant's legal rights.
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Discrimination

- In seeking to terminate the tenancy landlord is acting arbitrarily and is discriminating against tenant in violation of the Constitution and laws of the United States, and/or State and local laws, on the basis of:
  - Race
  - National origin
  - Sexual orientation
  - Family status
  - Disability
  - Other \_\_\_\_\_
  - Gender
  - Age
  - Religion
  - Presence of children in the household

Homeownership/Miscellaneous

- Tenant has paid landlord returnable deposits and requests that the court deduct those amounts from the judgment, if any.
- A landlord/tenant relationship does not exist between plaintiff and defendant.
- Plaintiff's claim of title and right to possession is based on a void or voidable instrument.
- Title to the subject property is in dispute.
- Defendant is entitled to a 30-day Notice and possible relocation benefits.
- The landlord has violated the Implied Covenant of Good Faith and Fair Dealing.
- Landlord has violated the Implied Covenant of Quiet Enjoyment.
- There is another action pending and/or please take judicial notice of case # \_\_\_\_\_; the action is barred under collateral estoppel or res judicata.

WHEREFORE, defendant(s) pray for judgement as follows:

Plaintiff take nothing by way of this action and possession be denied to plaintiff;

1. If there is a written rental agreement/lease that provides for attorneys fees to the prevailing party, plaintiff be ordered to pay If there is a written rental agreement/lease that provides for attorneys fees to the prevailing party, plaintiff be ordered to pay defendant(s)' attorney fees and costs in this action; if the defense of habitability was plead, defendant(s) also pray for the following:
2. Pursuant to Civil Code of Procedure section 1174.2 plaintiff be ordered to make all repairs and to correct all defective conditions;
3. Pursuant to Civil Code of Procedure 1174.2 defendant's rent be reduced until all repairs and corrections to the premises are completed; and
4. The court retains jurisdiction of this case until all court ordered repairs and conditions are completed.

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# Your Trial Day



Prepared by:  
**Neighborhood Legal Services**  
1 (800) 433-6251



## Eviction Process Step 1 - THE Day of TRIAL

### How Should I Dress?

You should wear clothes that you would wear to attend church (dress conservatively). If you have tattoos, you should try to cover them up.

### What Should I Bring to my Trial?



- Pictures of the defects in your apartment;
- Certified copies of any health department reports;
- Copies of any letters that you had given to the landlord/manager [for example, letters you sent asking for repairs];
- All your rent receipts or proof of payment of rent [for example, money order stubs];
- Witnesses. A letter from a neighbor is not acceptable. The person must come to your trial to talk with the judge.

**If I Do Not Have My Proof on the Day of My Trial, Can I Get a Continuance? NO!!!** The judge will NOT delay your trial because you don't have all your documents or witnesses. You must bring any proof you have to your trial.

### What Should I Do After I Go Inside the Courtroom?



1. Right away go to the person in uniform ("bailiff") and tell her/him your name then sit down anywhere in the courtroom.
2. The judge will call your name to see if you are in the courtroom. When you hear the judge call your name, stand up, state your first and last name and that you are the "tenant."
3. The judge will ask you if you have talked with the landlord about the case or tried to "settle" the case to avoid going to trial. If you have not talked with the landlord, the judge will tell you and the landlord to go out in the hallway to talk about making a deal ("settling the case").

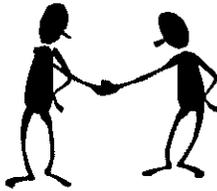


## Should You Settle (make a deal)?

**YOU HAVE TO SPEAK UP** and ask for what you want. The landlord will not make offers. The worst that could happen is that he says no.

For example:

- If you did not pay rent because your apartment was in bad condition and the landlord did not fix the problems, you should try to make a deal with the landlord. Ask the landlord to agree not to make you pay the rent that you owe and ask for extra time to move. Or, ask the landlord to let you pay less rent until repairs are made, then pay what you usually pay.
- If you want to stay, you should tell the landlord or the landlord's attorney that you want to stay.
- If you want to move out, you should ask the landlord to agree that you do not have to pay the rent money you owe or the costs and attorney's fees. Sometimes landlords only want to get the apartment back and will agree to give up the rent you owe if you move out.



**You can settle if you feel that what the landlord is offering you is just and fair.**

- **If you do not agree** with what the landlord is offering, tell the landlord or his attorney that you want to go trial.
- **But remember**, the judge can only decide legal issues. If you do not have proof to support your defenses, you will probably lose your case. For example, if you do not have a rent receipt to prove that you have already paid the rent, telling the judge that you paid may not be enough because the judge has to decide who to believe - you or the landlord.



## Eviction Process Step 1 (continued): The Trial Begins - What Happens?



### 1. The Plaintiff (landlord) Goes First

- The plaintiff (landlord) will call witnesses to prove why you should be evicted.
- After the plaintiff asks his/her witness questions, you also can ask the witness questions. **BUT**, this is **not** the time to tell your side of the story and it is **not** the time to tell the judge that the landlord is lying. You have to wait your turn to tell your side.
- **NOTE:** Even if the landlord or the landlord's witness says something to the judge that is not true, do not react. For example, do not start shaking your head, make any noises, make faces or roll your eyes. The judge will see you.

### 2. Then the Defendant (you, the tenant) Presents His or Her Case

- Tell your side of the story to the judge like you are telling the story. Get right to the point.
- Offer to show the judge all of the documents, photographs or other evidence you brought with you to court.
- You can ask your witnesses questions. Have the questions written down so you won't forget anything.
- After you have finished with your questions, the landlord or the landlord's attorney will ask your witnesses questions.

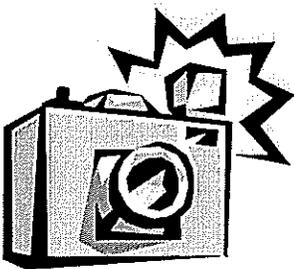
## Eviction Process Step 1 (continued): The Trial Begins - Examples of How To Show the Judge Your Evidence

If you did not pay the rent because the landlord would not fix the problems in your apartment ...



A. You say: "I did not pay the rent because of the bad conditions and the landlord would not make repairs."

B. Then show the judge your pictures. Show the judge one picture at a time and tell the judge the following information about each picture:



1. Who took the picture and when was the picture taken.
2. What is the defect that is shown in the picture. Tell the judge exactly what it is. For example, say that when you turn on the water, the water leaks underneath the sink and that you have to catch the water in a bucket.
3. How long has the defect existed. Be specific. Do not just tell the judge that it's been a problem since you have moved in. Unless you have health reports or other proof from the date that you moved in the judge might not believe you.
4. When did you tell the manager/landlord about the defect. How often did you complain about the problem. If you tell the judge, "every day", the judge may not believe you. But maybe you had told the manager the last two months when you paid your rent;
5. Did the landlord repair the defect. For example, did the landlord/manager promise to repair the defect, but then never did.
6. If you or your family or friends did not cause the problem, tell the judge. For example, if there are cockroaches, you should tell the judge that you do not leave food out, you wash the dishes on a regular basis.
7. If it is true, you should tell the judge that you and your family did NOT refuse a worker access to your apartment to make repairs;
8. Tell the judge how the defect affects you and your family. Like when the sink leaks you cannot wash the dishes or that cockroaches will spread disease.



C. Then show the judge your other proof - the health reports and or any letter(s) that you had given to the manager about the necessary repairs.

D. You can have witnesses, but they can only tell the judge things that are related to why you are being evicted AND you must have questions to ask your witness - the judge will not ask the questions for



After you have finished with your questions, the landlord or the landlord's attorney can ask you or your witnesses questions.

### ANOTHER EXAMPLE:

If the landlord is evicting you because he gave you a three day notice on the 3<sup>rd</sup> of the month, you tried to pay on the 8<sup>th</sup> of the month when you usually pay the rent.



A. You say: "I usually pay my rent on the 8<sup>th</sup> of the month and the landlord accepts it."



B. Show the judge all of your rent receipts that prove that you have always or usually paid your rent on the 8<sup>th</sup> of the month and not on the 1<sup>st</sup> of the month

### The judge may let you make a final statement at the end.

- In your statement you should tell the judge why you should win - again only legal issues. The judge cannot make a decision based on the fact that you have a family and have no place to go.

## Step 2 - The Court's Decision

The judge will usually give his or her decision while you are still in court. If not, you will be notified by mail, usually within a few days after the trial.



The court's written decision will include four things:

1. A statement that will say you are allowed to stay (you win) or the plaintiff wins (you lose);
2. Whether or not you have to pay back rent;
3. Whether the side who wins can get money from the losing side for money filing or other court fees. (If you win and want the other side to pay your costs, you must file a form with the court within 10 days after trial);
4. Whether the losing side has to pay for the winning side's attorney's fees. (if there is a written agreement allowing such fees and the winning party hired an attorney).

**Read the decision carefully.**

If you do not understand what it says, ask someone to explain it to you.

**If You Win At Trial - you do not have to move out but you will have to pay the rent you owe.**

- Even if you don't have to move, sometimes the judge will order you to pay the back rent and that it be paid within 5 days. If it is not paid, the judgment will be reversed meaning your landlord wins and you will have to move out.
- If the judge does not make you pay the back rent, the landlord will probably serve you with a notice to pay rent or quit. If you do not pay the rent or move out, your landlord may start the eviction procedure over again.

**If You Lose At Trial - you have to move out -  
See Step three: What Happens If You Lose Your Case**

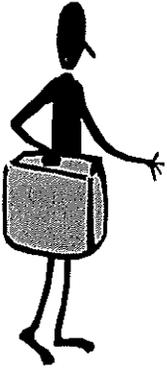
## Eviction Process Step 3: What Happens If You Lose Your Case

If the judge tells you in the courtroom that you lose:

- Right away ask the judge for more time to move if you need more than one week.

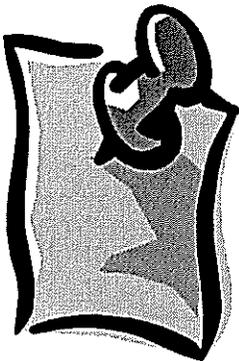
You say: "With all do respect, your honor, I request 30 days to move."

- Make sure you can explain why you need more time. You might have to pay for the extra time.
- If the judge does not give you more time, **YOU DO NOT HAVE TO MOVE OUT THAT SAME DAY AS YOUR TRIAL.**



## Final Notice - Notice to Vacate

The **Notice to Vacate** is a paper that says you have five days to move out. The sheriff will tape a copy of the notice to your door that tells you when you have to move out before the sheriff comes to get you out.



You won't get a Notice until after you lose your case.

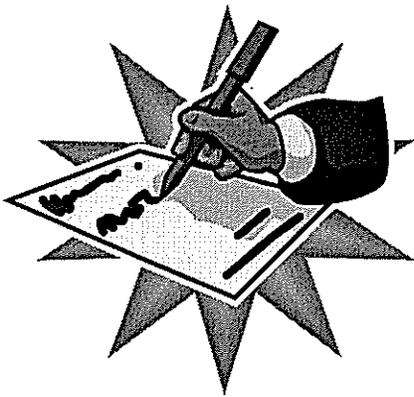
You lose when:

- (1) You lose at trial;
- (2) You do not show up at trial;
- (3) The court orders you to pay the landlord a certain amount of money so that you can stay and you don't pay; or
- (4) You do not file an answer to the Summons and Complaint.

If you wait until the last minute to move, the sheriff will not give you time to pack your things. He will give you a couple of minutes to get out. It does not matter if you have children or are disabled or sick. You will have to get out immediately.

**Eviction Process Step 3 (continued):**  
**How do I get my personal possessions back if I did not have time to get them out before the sheriff locks me out?**

First, You must write a note to the manager (make sure you put the date on the note and keep a copy for yourself) and give it to the manager the day after the sheriff comes.



The note should say this...

(Date)

Dear Manager/Landlord:

I was not able to take all of my things with me before I had to move out. Please do not throw any of my things away. I will contact you soon to set a time to get my things.

Thank you,

\_\_\_\_\_  
(your name)



Second, You might have to pay the landlord a fee for storing your things until you can get them.



Third, If you do not give a note to the manager, the manager can claim that he did not know that you were coming back for your things and throw your things away.

[SAMPLE]  
MOTION TO SET ASIDE  
DEFAULT JUDGMENT

1 MS. CLIENT  
2 1000 Sacramento Street, #3  
3 San Francisco, CA 94115

4 Phone: 415-474-1000

5 Defendant In Propria Persona

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 CITY AND COUNTY OF SAN FRANCISCO  
8 COURT OF LIMITED JURISDICTION

9 MARGARET PEGGY PLAINTIFF

10 Plaintiff,

11 v.

12 MS. CLIENT,  
13 et al.,

14 Defendants.

Case No. 123456

**APPLICATION FOR ORDER  
SHORTENING TIME ON NOTICE OF  
DEFENDANT'S MOTION TO SET ASIDE  
DEFAULT AND DEFAULT JUDGEMENT**

Date: March 27, 2007  
Time: 11:00 a.m.  
Dept.: 301

17  
18 I, MS. CLIENT, declare:

19 1. I am the DEFENDANT in the above entitled action. I am making this declaration in  
20 support of my application for an order shortening time on a notice of my Motion to Set Aside  
21 Default and Default Judgment.

22 2. It is necessary that the time regularly required for motions be shortened so that this  
23 matter will not be delayed as a result of the default and default judgment entered in the case and  
24 so that the motion will be heard prior to my eviction from his home. I am accordingly requesting  
25 a stay of execution for possession of the premises be granted until April 3, 2007

26 3. On March 23, 2007, I telephoned and informed Scott Okamoto, Esq., the attorney for  
27 plaintiff in this action that I would seek an order from the court shortening time on notice of  
28 Motion to Set Aside Default and Default Judgment on the *ex parte* calendar at 11:00 a.m. on

1 March 27, 2007 in Department 301 of the Superior Court Limited Jurisdiction at 400 McAllister  
2 St., San Francisco, CA.

3 I declare under penalty of perjury that the foregoing is true and correct and that this  
4 declaration was executed on March 24, 2007 at San Francisco, California.

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7 MS. CLIENT  
8 Defendant In Propria Persona  
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1 MS. CLIENT  
2 1000 Sacramento Street, #3  
3 San Francisco, CA 94115

4 Phone: 415-474-1000

5 Defendant In Propria Persona

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 CITY AND COUNTY OF SAN FRANCISCO  
8 COURT OF LIMITED JURISDICTION

9 MARGARET PEGGY PLAINTIFF

10 Plaintiff,

11 v.

12 MS. CLIENT,  
13 et al.,

14 Defendants.

Case No.

**DECLARATION OF DEFENDANT MS.  
CLIENT**

Date:  
Time:  
Dept.:

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18 I, MS. CLIENT, declare:

19 1. I am the named defendant in the above-entitled Unlawful Detainer Action. If  
20 called as witness in this matter I would and could competently testify as follows:

21 2. I have resided in my home at \_\_\_\_\_ for over \_\_\_ years. This is the  
22 first time in my life that I have ever been evicted and I am generally not familiar with Court  
23 procedures. Throughout this eviction process, I have been actively seeking legal advice and  
24 representation, so that I may defend myself and contest the allegations being made by my  
25 landlord.

26 3. On February 12, 2007, I was served with a Three Day Notice to Perform Covenant  
27 or Quit. Although I was unfamiliar with the eviction process, I understood that it was very  
28 important for me to act quickly to seek legal advice and assistance. I immediately began to

1 inquire, via the telephone and internet, as to which local agencies could help me. I learned that  
2 the Eviction Defense Collaborative (EDC) could provide assistance.

3 4. On February 15, 2007, I went to the EDC and after meeting with one of the EDC  
4 counselors, I understood that if I received any additional papers, I would need to take them to the  
5 EDC immediately. After leaving the EDC, I went to the Housing Rights Committee to obtain  
6 more information about how to defend myself in an unlawful detainer action.

7 5. On or about February 16, 2007 I went to the San Francisco Tenant's Union to obtain  
8 more information and met with a tenant counselor by the name of \_\_\_\_\_. Mr. \_\_\_\_\_ gave  
9 me a list of tenant's attorneys who might be able to help me. I called \_\_\_\_\_ and spoke  
10 with them about my case.

11 6. On February 22, 2007, I received a Notice to Defendants, which I took in person to the  
12 EDC. At the EDC on February 22, I was instructed that I should wait until I was served with the  
13 actual summons and complaint to my responsive pleading.

14 7. On February 23, 2007, I went to the San Francisco Rent Board at 25 Van Ness, met  
15 with a counselor and filed a petition for wrongful eviction.

16 8. On February 26, 2007, late in the afternoon, I found a note posted on my door. The  
17 note was from the San Francisco Sheriff's Department and it instructed me to come to the  
18 Sheriff's Office at City Hall to pick-up some papers.

19 9. On February 27, 2007, the next day, I went to the Sheriff's Office and picked up the  
20 papers.

21 10. On February 28, I took the papers to the EDC and met with a volunteer attorney  
22 named Erin. I showed her the papers that I had picked up. I told her about getting a note from  
23 the Sheriff's Office on February 26 instructing me to pick up some papers as soon as possible. I  
24 told her that I was "freaked out" about the 5-day time period. I was instructed unequivocally that  
25 I had not been legally served with the summons and complaint and that I did not have a five-day  
26 deadline to respond. I clearly understood that the EDC would prepare a response and that I  
27 should return on March 6 to pick it up.

1 11. On March 6, 2007, I returned to the EDC to pick up the Motion to Strike which had  
2 been prepared for my case. I took the Motion to Strike to court and filed it on March 7, 2007.  
3 The Court later told me that a default judgment had already been entered in my case and that  
4 they should not have accepted the Motion to Strike. I returned to the EDC and was referred to  
5 the Homeless Advocacy Project (HAP) for help with a Motion to Set Aside Default and Default  
6 Judgment. I was also referred to the Lawyer's Committee on Civil Rights to obtain pro bono  
7 representation for my case. I met with the Lawyer's Committee on Civil Rights and I have  
8 followed-up with them several times as they are seeking a firm to represent me.

9 12. On March 13, I went to HAP for an intake appointment and met with Michael  
10 Zaugg, Esq. Mr. Zaugg then gave me a follow-up appointment for March 16 at 1:00 p.m.

11 13. On March 16, I returned to HAP and I met with Theodore M. Janowsky, Esq. Later  
12 that same day, I spoke with Lawyer Attorney, Esq. from Smith Clark JonesLLP regarding her  
13 firm providing pro bono representation for my case.

14 14. On March 20, I went to Ms. Attorney's office to further discuss pro bono  
15 representation.

16 15. On March 21, I had a conference call with Ms. Attorney and another representative  
17 from her firm, and I understood that they would take my case if the judgment was vacated. Also  
18 on March, I had a follow-up meeting with Mr. Janowsky from HAP to begin work on my  
19 Motion to Set Aside Default and Default Judgment.

20 I declare under penalty of perjury that the foregoing is true and correct and that this declaration  
21 was executed on March 24, 2007, at San Francisco, California.

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23 Dated: March 24, 2007

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25 \_\_\_\_\_  
26 MS. CLIENT  
27 Defendant in Propria Persona  
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Phone:

Defendant In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO  
COURT OF LIMITED JURISDICTION

Plaintiff,

v.

et al.,

Defendants.

Case No.

**NOTICE OF DEFENDANT'S MOTION  
TO VACATE JUDGEMENT PURSUANT  
TO CCP § 473**

Date:  
Time: .  
Dept.:

TO PLAINTIFF:

PLEASE TAKE NOTICE that on \_\_\_\_\_ the hearing on \_\_\_\_\_'S motion to vacate judgment of defendant will be held at \_\_\_\_\_. or as soon thereafter as the matter can be heard in the Law and Motion Department of the above-entitled Superior Court, Dept.

\_\_\_\_\_ California This motion is based on C.C.P. Section 473 (b) wherein defendant's supervising attorney of the limited scope attorney representing defendant at his settlement conference was unable to review the settlement agreement permitting judgment to be entered without notice to defendant upon alleged breach due to her excusable neglect or inadvertence.

This motion is based on based upon the provisions of Sections 473(b) of the Code of Civil Procedure of the State of California, this notice, the attached memorandum of points and

1 authorities; the declaration of \_\_\_\_\_, the Declaration of \_\_\_\_\_, all papers and  
2 records on file herein and such evidence both oral and documentary as may be presented at the  
3 hearing of this motion. Defendant hereby seeks an order to vacate the judgment and an order to  
4 recall the writ for possession of the premises at \_\_\_\_\_, CA.

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6 Dated:

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9 Defendant In Pro Per  
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1 CLIENT SMITH  
2 1000 Sacramento Street, #3  
3 San Francisco, CA 94115

4 Phone: 415-474-1000

5 Defendant In Propria Persona

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 CITY AND COUNTY OF SAN FRANCISCO  
8 COURT OF LIMITED JURISDICTION

9 MARGARET PEGGY PLAINTIFF

10 Plaintiff,

11 v.

12 CLIENT SMITH ,  
13 et al.,

14 Defendants.

Case No.

**ORDER TO SET ASIDE DEFAULT AND  
DEFAULT JUDGMENT**

Date:

Time:

Dept.:

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18 TO PLAINTIFF AND HIS ATTORNEY OF RECORD:

19 Good cause appearing therefore:

20 IT IS HEREBY ORDERED THAT the default and default judgment previously entered  
21 in the above-mentioned action be vacated and that defendant file a responsive pleading within  
22 five days. It is further ordered that the writ of execution for the premises at 1000 Sacramento  
23 Street #3, San Francisco be hereby recalled and quashed.

24 Dated:

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26 \_\_\_\_\_  
27 JUDGE OF THE SUPERIOR COURT,  
28 LIMITED JURISDICTION

1 CLIENT SMITH  
2 1000 Sacramento Street, #3  
3 San Francisco, CA 94115

4 Phone: 415-474-1000

5 Defendant In Propria Persona

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 CITY AND COUNTY OF SAN FRANCISCO

8 COURT OF LIMITED JURISDICTION

9 MARGARET PEGGY PLAINTIFF

10 Plaintiff,

11 v.

12 CLIENT SMITH,  
13 et al.,

14 Defendants.

Case No. 123456

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO SET ASIDE DEFAULT AND  
DEFAULT JUDGMENT**

Date: April 3, 2007

Time: 9:30 a.m.

Dept.: 301

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18 **I. STATEMENT OF FACTS**

19 This is an unlawful detainer action involving a 14 year tenancy. In its complaint, plaintiff  
20 alleges that defendant violated the lease agreement by using his residential unit for the purpose  
21 of conducting internet business activity. On February 15, 22, 28 and March 6, Mr. Client  
22 accessed eviction defense services through the non-profit Eviction Defense Collaborative (EDC).  
23 (DEFENANDANT CLIENT DECLARATION p. 2, ¶'s 4, and 8-11; BETTENCOURT  
24 DELCARATION, pgs. 1-2, ¶'s 5-7). On February 28, while at the EDC, Mr. Client was  
25 mistakenly advised that he had not been legally served and that there was not a five-day deadline  
26 for him to file a responsive pleading (DEFENANDANT CLIENT DECLARATION p. 2, ¶ 7;  
27 BETTENCOURT DELCARATION, pgs. 1-2, ¶ 6). Default and default judgment were taken  
28

1 on March 5. On March 6, Mr. Client picked up his responsive pleading from the EDC. On  
2 March 7, he attempted to file his response with the Clerk of the Superior Court.

3  
4 **II. MR. ABRAHAM'S MISTAKE WAS EXCUSABLE UNDER THE**  
5 **CIRCUMSTANCES AND WARRANTS DISCRETIONARY RELIEF UNDER CCP**  
6 **§473(b).**

7 A "mistake" warranting discretionary relief under 473(b) may be either a mistake of fact  
8 or a mistake of law. A mistake of fact occurs when a party understands facts to be other than  
9 what they really are. A mistake of law occurs when a party correctly understands the facts as  
10 they really are but misunderstands the legal ramifications of those facts. Douglass v. Todd  
11 (1892) 96 C 655,659. The law further requires that the mistake be "material". Lieberman v.  
12 Aetna Insurance Co. (1967) 249 CA2d 515, 530; City of Ontario v. Super.Ct. (1970) 2 C3d 335,  
13 345. In this case Mr. Client's reliance in the EDC's mistaken interpretation of the facts lead  
14 directly to the entry of default and default judgment. This mistake of fact therefore rises to the  
15 level of being a "material mistake"

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17 The mistake of fact occurred when the EDC neglected to ascertain that Mr. Client had  
18 been served with the summons and complaint at the Sheriff's Office on February 27. When he  
19 went to the EDC on February 28<sup>th</sup>, Mr. Client handed her the papers that he had picked up. Mr.  
20 Client then told the EDC counselor that he got a note from the Sheriff's Office on February 26  
21 instructing him to "pick up papers as soon as possible". He told her that he had picked up the  
22 papers on the 27<sup>th</sup>. The mistake was made by the EDC counselor when she mistakenly believed  
23 that the papers had been picked up from the court. BETTENCOURT DECLARATION p. 2 ¶ 6.  
24 It is without question that on February 28 Mr. Client was advised that he had not been served and  
25 that he therefore did not have a five-day deadline to respond. BETTENCOURT  
26 DECLARATION p.2 ¶6. He was in fact advised that the EDC would prepare a responsive  
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1 pleading and that he should return to their office on March 6 to pick up the pleading and file it  
2 with court. The circumstances demonstrate that Mr. Client was in no way “grossly careless or  
3 negligent” when he did not ascertain and understand that the actual five day deadline expired on  
4 March 5, 2007. There is no evidence of him missing appointments or failing to follow advice.  
5 Because the evidence shows that Mr. Client acted with reasonable care under these  
6 circumstances the court should grant discretionary relief. Both the EDC’s mistake and Mr.  
7 Client’s missing the 5-day deadline by 2 days were excusable.  
8

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10 **II. 473(b) DISCRETIONARY RELIEF SHOULD BE GRANTED BECAUSE MR.**  
11 **CLIENT HAS PROVIDED AMPLE EVIDENCE OF REASONABLE CARE**  
12 **AND LEGALLY COGNIZABLE “SURPRISE”, “INADVERTENCE” OR**  
13 **“EXCUSABLE NEGLIGENCE”**

14 Cal. Civ. Proc. Code Section 473(b) provides that: the court may relieve a party from a  
15 judgment, order, or other proceeding taken against the party through the party’s mistake,  
16 inadvertence, surprise, or excusable neglect. Parage v. Couedel, 60 Cal. App.4TH 1037, 1042  
17 (1998). The purpose of the section is to give a party the opportunity of repairing damage done  
18 because of his failure or that of his counsel to make the showing he could made provided that  
19 failure is due either to mistake, inadvertence, surprise or excusable neglect. San Francisco  
20 Lathing, Inc. v. Superior Court, 271 Cal. App. 2d 78 (1969).

21 In considering mistake, surprise or excusable neglect, the court has broad discretion  
22 under C.C.P. Section 473(b) and such discretion is liberally construed so that lawsuits would be  
23 determined upon their merits, and so as to prevent one party from taking advantage of the other’s  
24 excusable mistakes or errors. Laguna Village, Inc. v. Laborers’ Int’l Union of North America, 35  
25 Cal. 3d 174 (1983) citing Riskin v. Towers, 24 Cal.2d 274 (1944). Furthermore, little evidence  
26 is required to justify a trial court’s order to set aside a default if the party in default promptly  
27 seeks relief. Shamblin v. Brattain, 44 Cal. 3d 474, 478 (1988). Where a party in default moves  
28 promptly to seek relief and no prejudice to the opposing party will result from setting aside a

1 default, "very slight evidence will be required to justify a court in setting aside the default."

2 Elston v. City of Turlock, 38 Cal. 3d 227, 233 (1985); Miller v. City of Hermosa Beach, 13 Cal.  
3 4TH 1118, 1136 (1993). The law looks with disfavor upon a party who, regardless of the merits  
4 of the case, attempts to take advantage of the mistake, surprise or neglect of his adversary. Au-  
5 Yang v. Barton, 21 Cal. 4TH 958 (1999) citing Weitz v. Yankoski 63 Cal.2d 849 (1966).

7 To determine whether the mistake or neglect was excusable, the court inquires whether a  
8 reasonably prudent person under the same or similar circumstances might have made the same  
9 error. Generale Bank Nederland v. Eyes of the Beholder Ltd., 61 Cal. App.4<sup>th</sup> 1384, 1399 (1998).  
10 Excusable neglect is distinguished from "willfully slumber[ing]" and making no effort to protect  
11 oneself. Gillingham v. Lawrence, 11 Cal. App. 231, 234 (1909). For example, mis-reliance on a  
12 clerk's assertion that the trial would not be held on the date set when the case was falsely omitted  
13 from the court calendar was considered a prima facie case of excusable neglect. Lynch v.  
14 DeBoom, 26 Cal. App. 311, 314 (1915). Alternately, where the excuse proffered by appellants  
15 was that, in the press of business, they lost track of time for the hearing on the motion, this  
16 clearly does not rise to the level of excusable neglect. Robbins v. Los Angeles Unified School  
17 Dist., 3 Cal. App.4<sup>th</sup> 313, 319 (1992). Other cases in which relief was denied demonstrate  
18 inexcusable and unreasonable tardiness by the defendant in failing to provide accurate or  
19 sufficient information necessary to draft an answer. Thus where the defendant never told his  
20 attorney he was served, where he failed to read the papers, failed to provide his attorney with  
21 grounds for a defense, or left the state without determining that an answer was prepared and  
22 verified, the defendant's behavior was found culpable and relief was denied. Berset v. Berset  
23 126 Cal. App.2d 684 (1954), Graner v. Erlanger, 86 Cal. 60 (1890).

24 The legal standards for "surprise" "inadvertence" and "excusable neglect" all include  
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1 a requirement that the party seeking relief demonstrate that the circumstances could not have  
2 been avoided through the exercise of reasonable care and prudence. State Farm Fire &  
3 Casualty Co. v. Pietak (2001) 90 CA4th 600, 611; Elms v. Elms (1946) 72 CA 2d 508, 513.

4  
5 In Mr. Client's case, his actively seeking legal assistance proves that he was in fact  
6 exercising reasonable care and prudence. Mr. Client's engagements with the EDC counselors  
7 on February 15, 22, 28 and March 6, his engagement with Lawyer's Committee for Civil Rights,  
8 San Francisco Tenant's Union, Housing Rights Committee, the San Francisco Rent Stabilization  
9 and Arbitration Board and The Homeless Advocacy Project, show that he took his obligation to  
10 respond seriously. Client did not misplace his legal papers and he did not forget about them or  
11 set them to the side. To the contrary he has been very careful, organized and consistent to make  
12 sure that he is holding up his end of the bargain as he accesses legal services and provides for his  
13 defense. This is the quality of effort that the court should recognize as a basis for granting  
14 discretionary relief.

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17 Mr. Client was in a relationship of trust with the EDC and it is certainly understandable  
18 that he would not dispute the counselor's assessment that he had not been legally served and that  
19 he was not under the 5-day deadline. The facts show that Mr. Client clearly knew that his job  
20 through this eviction process was to provide all necessary information and then be very careful to  
21 follow the instructions that were being given to him. The facts, as presented in the multiple  
22 declarations, establish quite clearly that there was never undue tardiness or delay in making  
23 appointments or having papers filed with the court. To the contrary, he was careful and prudent.  
24 In this motion, Mr. Client has provided ample documentary evidence to show that his actions  
25 rose above the level of "carelessness" or a "willful slumbering on rights."  
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28 As a matter of public policy, the court should use its discretionary power whenever  
possible to promote access to justice for defendants *in pro per*, especially when they have acted

1 with reasonable care and prudence. This is such a case. Mr. Client should be granted  
2 discretionary relief and allowed an opportunity to defend in a trial on the merits.

3 **III. CONCLUSION**

4 For the foregoing reasons defendant respectfully requests that the default and default  
5 judgment entered in this case be vacated, that the writ of execution for possession be recalled and  
6 quashed, and defendant be allowed to file his responsive pleading.

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8 Dated: March 24, 2007  
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12 CLIENT SMITH  
13 Defendant In Propria Persona  
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Phone:

Defendant In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO  
COURT OF LIMITED JURISDICTION

Plaintiff,

v.

et al.,

Defendants.

Case No.

**EXHIBIT A  
PROPOSED RESPONSIVE PLEADING**

Date:

Time:

Dept.:



1 on \_\_\_\_\_ in Department \_\_\_ of the Superior Court Limited Jurisdiction at  
2 \_\_\_\_\_ CA.

3 I declare under penalty of perjury that the foregoing is true and correct and that this  
4 declaration was executed on \_\_\_\_\_ at San Francisco, California.

5 \_\_\_\_\_

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7 Defendant In Propia Persona

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[SAMPLE]  
STIPULATION  
JUDGMENTS

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and state bar number, and address):  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>           CASE NUMBER: _____
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF:  DEFENDANT:	
<b>STIPULATION FOR ENTRY OF JUDGMENT (Unlawful Detainer)</b>	

1. IT IS STIPULATED by plaintiff (name each): \_\_\_\_\_ and  
defendant (name each): \_\_\_\_\_
2.  Plaintiff  Defendant (specify name): \_\_\_\_\_ is awarded
- a.  possession of the premises located at (street address, apartment number, city, and county): \_\_\_\_\_
- b.  cancellation of the rental agreement.  forfeiture of the lease.
- c.  past due rent \$ \_\_\_\_\_
- d.  total holdover damages \$ \_\_\_\_\_
- e.  attorney fees \$ \_\_\_\_\_
- f.  costs \$ \_\_\_\_\_
- g.  deposit of \$ \_\_\_\_\_  See item 3.
- h.  other (specify): \_\_\_\_\_
- i. Total \$ \_\_\_\_\_ to be paid by  (date): \_\_\_\_\_  installment payments (see item 5)
3.  Deposit. If not awarded under item 2g, then plaintiff must
- a.  return deposit of \$ \_\_\_\_\_ to defendant by (date): \_\_\_\_\_
- b.  give an itemized deposit statement to defendant within three weeks after defendant vacates the premises (Civ. Code, § 1950.5).
- c.  mail the  deposit  itemized statement to the defendant at (mailing address): \_\_\_\_\_
4.  A writ of possession will issue immediately, but there will be no lockout before (date): \_\_\_\_\_
5.  AGREEMENT FOR INSTALLMENT PAYMENTS
- a. Defendant agrees to pay \$ \_\_\_\_\_ on the (specify day) \_\_\_\_\_ day of each month beginning on (specify date) \_\_\_\_\_ until paid in full.
- b. If any payment is more than (specify) \_\_\_\_\_ days late, the entire amount in item 2i will become immediately due and payable plus interest at the legal rate.
6. a.  Judgment will be entered now.
- b.  Judgment will be entered only upon default of payment of the amount in item 2i or the payment arrangement in item 5a. The case is calendared for dismissal on (date and time) \_\_\_\_\_ in \_\_\_\_\_ department (specify) \_\_\_\_\_ unless plaintiff or defendant otherwise notifies the court.
- c.  Judgment will be entered as stated in Judgment —Unlawful Detainer Attachment (form UD-110S), which is attached.
- d.  Judgment will be entered as stated in item 7.

PLAINTIFF:	CASE NUMBER:
DEFENDANT:	

7.  Plaintiff and defendant further stipulate as follows (*specify*):

8. a. The parties named in item 1 understand that they have the right to (1) have an attorney present and (2) receive notice of and have a court hearing about any default in the terms of this stipulation.

b. Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF PLAINTIFF OR ATTORNEY)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF PLAINTIFF OR ATTORNEY)

Continued on *Attachment 8b* (form MC-025).

c. Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

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(SIGNATURE OF DEFENDANT OR ATTORNEY)

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(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)

Continued on *Attachment 8c* (form MC-025).

9. IT IS SO ORDERED.

Date:

\_\_\_\_\_  
JUDICIAL OFFICER

1 \_\_\_\_\_  
2 \_\_\_\_\_  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 CITY AND COUNTY OF SAN FRANCISCO  
10 COURT OF LIMITED JURISDICTION

11 \_\_\_\_\_ )  
12 Plaintiff, )  
13 vs. )  
14 \_\_\_\_\_ )  
15 Defendants. )  
16 \_\_\_\_\_ )

Case No.  
STIPULATION FOR ENTRY OF JUDGMENT  
OR DISMISSAL OF ACTION  
(Move out agreement)

17 Plaintiff(s)  
18 and Defendant(s)

19 stipulate to the following:

- 20 1. Plaintiff(s) shall be awarded restitution of the premises located at  
21 \_\_\_\_\_,  
22 San Francisco, California;  
23 2. Defendant(s) agree to vacate the premises on or before \_\_\_\_\_;  
24 3. Should Defendant(s) vacate the premises on or before the date specified in Paragraph 2  
25

1 Plaintiff shall waive recovery of all unlawful detainer damages and unpaid rent through that  
2 date and pay to Defendant(s) \$ \_\_\_\_\_ by certified funds or cashiers check on  
3 \_\_\_\_\_ date;

4 4. Should Defendant(s) fail to vacate the premises on or before the date specified in  
5 Paragraph 2., above, Plaintiff(s) may upon ex parte application to the Court have judgment for  
6 possession entered and money judgment of \_\_\_\_\_;

7 5. Plaintiff(s) shall provide any prospective landlords who make inquiry regarding  
8 Defendant(s)' tenancy with [initial one]:

9 a. \_\_\_\_\_ favorable

10 b. \_\_\_\_\_ neutral

11 references on behalf of Defendant(s).

12 6. The parties acknowledge that Plaintiff(s) is holding security deposits and last month's rent  
13 in the amount of \_\_\_\_\_ and interest on the deposits in the amount of  
14 \_\_\_\_\_.

15 [Initial one]:

16 a. \_\_\_\_\_ The deposits and interest will be paid by Plaintiff(s) to  
17 Defendant(s) within \_\_\_\_\_ days of Defendant vacating the premises.

18 b. \_\_\_\_\_ The deposits and interest will be returned pursuant to law.

19 c. \_\_\_\_\_ The deposits and interest are forfeited by Defendant(s);

20 7. Each party shall bear their own costs and attorneys' fees incurred herein;

21 8. If Defendant(s) vacate the premises on or before the date specified in Paragraph 2 above,  
22 then Plaintiff(s) shall file a dismissal with prejudice of this action within 5 days after  
23 Defendant(s) vacates.

24 [Initial one Paragraph 9]

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1 9. \_\_\_\_\_ This is not intended as a general release of claims by the parties.

2 OR

3 9. \_\_\_\_\_ Each party releases the other from all claims, demands and causes  
4 of action, known or unknown, present or future, arising out of Defendant(s) tenancy at  
5 the premises, except that Defendant(s) is not waiving any rights regarding:

6 \_\_\_\_\_

7 Each party hereto acknowledges that it is familiar with the provisions of Section 1542 of  
8 the California Civil Code which provides as follows:

9 A general release does not extend to claims which the creditor does not know or  
10 suspect to exist in his favor at the time of executing the release, which if known  
11 by him must have materially affected his settlement with the debtor.

12 The parties hereby expressly waive the provisions of Section 1542 of the  
13 California Civil Code and any right they may have to invoke said provisions or any  
14 similar provision or common-law rule now or in the future. Each party hereto fully  
15 understands that it cannot hereafter make further claims or seek any further recovery  
16 of any nature whatsoever based upon, arising out of, or in connection with said disputes  
17 or any of them, and each such party hereby expressly waives all unknown claims caused  
18 by, or alleged to be caused by any act or omission of any party in connection with said  
19 Action or Cross-Complaint, or any of them. The parties acknowledge that they  
20 voluntarily execute this settlement agreement with full knowledge of its significance and  
21 with the express intent to affecting the legal consequences provided by Section 1542 of  
22 the California Civil Code, i.e., the extinguishment of all obligations.

22 OR

23

24 9. \_\_\_\_\_ Each party releases the other from all claims, demands and causes

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1 of action, known or unknown, present or future, arising out of Defendant(s) tenancy at  
2 the premises, except that Defendant(s) is not waiving any rights under the San Francisco  
3 Residential Rent Stabilization and Arbitration Ordinance. Each party hereto  
4 acknowledges that it is familiar with the provisions of Section 1542 of the California  
5 Civil Code which provides as follows:

6 A general release does not extend to claims which the creditor does not know or  
7 suspect to exist in his favor at the time of executing the release, which if known  
8 by him must have materially affected his settlement with the debtor.

9 The parties hereby expressly waive the provisions of Section 1542 of the  
10 California Civil Code and any right they may have to invoke said provisions or any  
11 similar provision or common-law rule now or in the future. Each party hereto fully  
12 understands that it cannot hereafter make further claims or seek any further recovery  
13 of any nature whatsoever based upon, arising out of, or in connection with said disputes  
14 or any of them, and each such party hereby expressly waives all unknown claims caused  
15 by, or alleged to be caused by any act or omission of any party in connection with said  
16 Action or Cross-Complaint, or any of them. The parties acknowledge that they  
17 voluntarily execute this settlement agreement with full knowledge of its significance and  
18 with the express intent to affecting the legal consequences provided by Section 1542 of  
19 the California Civil Code, i.e., the extinguishment of all obligations.

20 Dated:

21 Plaintiff(s) \_\_\_\_\_

22 Dated:

23 Defendant(s) \_\_\_\_\_

24 Approved as to form:

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1 Dated:  
2 Attorney for Plaintiff(s) \_\_\_\_\_

3 Dated:  
4 Attorney for Defendant(s) \_\_\_\_\_

5 Date:  
6 Judge Pro Tem: \_\_\_\_\_

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO  
COURT OF LIMITED JURISDICTION

\_\_\_\_\_  
Plaintiff,  
vs.  
\_\_\_\_\_  
\_\_\_\_\_  
Defendants.  
\_\_\_\_\_

Case No.  
STIPULATION FOR ENTRY OF JUDGMENT  
OR DISMISSAL OF ACTION  
(Pay and Stay)

Plaintiff(s)  
and Defendant(s)  
stipulate to the following:

1. This matter shall be stayed through \_\_\_\_\_, except that  
Plaintiff(s) may bring an "Ex Parte Motion for Entry of Judgment" before that date if, and  
only if, Defendant(s) has failed to comply with the provisions of Paragraphs 2 or 3 below.

//

1 2. Defendant(s) shall make the following payments of back rent in the amount of  
2 \_\_\_\_\_ for the period of \_\_\_\_\_ on each of the dates listed by [list  
3 acceptable forms of payment] \_\_\_\_\_.

4 [Initial one] This amount

5 1. \_\_\_\_\_ does

6 2. \_\_\_\_\_ does not include a reduction for habitability defects at the  
7 premises.

8 Date Payment is Due Amount of Payment

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 The term "due" means that the payment will have been received by Plaintiff(s) within three  
20 days of the date the payment is due. Payments made to Plaintiff(s) at the following address:

21 \_\_\_\_\_

22 3. In addition to the above payments of back rent, until, the date listed in Paragraph 1,  
23 Defendant(s) shall pay their regular monthly rent of \_\_\_\_\_ on the \_\_\_\_\_ of each  
24 month unless that day is a Sunday or a holiday, in which case the rent shall be due on the next  
25

26

27

1 business day. The terms "due means that the payment will have been received by Plaintiff(s)  
2 within three days of the date the payment is due. Plaintiff(s) does not waive his/her right to  
3 impose rent increases permitted under the San Francisco Residential Rent Stabilization and  
4 Arbitration Ordinance during the period of this agreement.

5 4. The "Ex Parte Motion for Entry of Judgment" authorized by Paragraph 1 shall be upon 72  
6 hours written notice to Defendant(s). The notice shall be served by personal delivery to  
7 Defendant(s) at \_\_\_\_\_; or  
8 by facsimile at \_\_\_\_\_. The

9 "Ex Parte Motion for Entry of Judgment" shall be supported by declarations which state all  
10 facts which support the motion. At the hearing on the "Ex Parte Motion for Entry of  
11 Judgment" Defendant(s) may present written and oral evidence opposing the motion. If the  
12 Court finds that Defendant(s) has violated Paragraph 2 or 3 above, then judgment may be  
13 entered for Plaintiff(s) for possession of the premises located at

14 \_\_\_\_\_  
15 and any unpaid rent and daily damages through the date of entry of judgment.

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5. Plaintiff(s) agrees to make the following repairs by the corresponding dates. If these repairs are not made, Defendant(s) may deduct the agreed upon value from the following month's rent payment:

<u>Repair</u>	<u>Date</u>	<u>Monthly Value if Repair is Not Completed</u>
_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	

6. Each party shall bear their own costs and attorneys' fees incurred herein.

7. The parties acknowledge that Plaintiff(s) is holding security deposits and last month's rent in the amount of \_\_\_\_\_ and interest on the deposits in the amount of \_\_\_\_\_. Should judgment be entered for Plaintiff(s) as provided in Paragraph 4 above, then:

[Initial one]:

a. \_\_\_\_\_ The deposits and interest will be applied to any unpaid rent and any balance remaining shall be paid by Plaintiff(s) to Defendant(s) within \_\_\_\_\_ days of Defendant vacating the premises.

b. \_\_\_\_\_ The deposits and interest will be returned pursuant to law.

8. If Defendant(s) make all of the payments required by Paragraphs 2 and 3 above, then Plaintiff(s) shall file a dismissal with prejudice of this action within 15 days after the date specified in Paragraph 1. Should Plaintiff(s) fail to file the dismissal in a timely manner,

1 Defendant(s) may upon 72 hours written notice to Plaintiff(s) counsel make an ex parte  
2 application to the Court to have the case dismissed.

3

4 Dated:

5 Plaintiff(s) \_\_\_\_\_

6 Dated:

7 Defendant(s)

8 \_\_\_\_\_

9 Approved as to form:

10 Dated:

11 Attorney for Plaintiff(s)

\_\_\_\_\_

12 Attorney for Defendant(s)

\_\_\_\_\_

13 Judge Pro Tem:

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[SAMPLE]  
STAY OF EXECUTION

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Phone:

Defendant In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO  
COURT OF LIMITED JURISDICTION

Plaintiff,

v.

Defendants.

Case No.

Sheriff's No.:

**EX PARTE APPLICATION FOR STAY  
OF EXECUTION ON WRIT POSSESSION**

Date:  
Time:  
Dept.:

I, \_\_\_\_\_, declare:

1. I am a defendant in the above-entitled unlawful detainer action.

2. The facts set forth in this declaration are personally known to me. If called as a witness, I could and would competently testify as follows.

3. I am currently scheduled to be evicted by the Sheriff on \_\_\_\_\_.

4. I must have a stay of execution until \_\_\_\_\_, so that my wife and I and our two children will have time to move all of our belongings from our home.

5. I am willing to deposit into the Court the prorated daily amount of the monthly contract rent (i.e. \$11.83 per day for the 7 days of the stay I am requesting, for a total of \$82.81).

1 . On \_\_\_\_\_, at approximately \_\_\_\_\_, I called and informed \_\_\_\_\_,  
2 the attorney for Plaintiff that I would seek a stay of execution in Room \_\_\_\_\_,  
3 Street, \_\_\_\_\_, CA at \_\_\_\_\_. on \_\_\_\_\_.

4 I declare under penalty of perjury that the foregoing is true and correct and that this  
5 declaration was executed on \_\_\_\_\_, at \_\_\_\_\_, California.  
6

7 \_\_\_\_\_  
8  
9 Defendant in propria persona

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 All courts have the power to stay execution of judgments and orders. CA Code of Civil  
12 Procedure section 918 provides:

13 "(a) Subject to Subdivision (b), the trial court may stay the enforcement of any judgment  
14 or order. If the enforcement of the judgment or order would be stayed on appeal only by  
15 the giving of an undertaking, a trial court shall not have power, without the consent of the  
16 adverse party, to stay the enforcement thereof pursuant to this section for a period which  
17 extends for more than 10 days beyond the last date on which a notice of appeal could be  
18 filed."

19 Code of Civil Procedure section 1176(a) provides that a stay of a judgment in an  
20 unlawful detainer action shall be granted if the court finds that the moving party will suffer  
21 extreme hardship in the absence of such stay, and that the non-moving party will not be  
22 irreparably injured by its issuance. Should the stay not be granted, \_\_\_\_\_ and his family face  
23 the extreme hardship of being summarily evicted, with no time to move their belongings from  
24 their home. An additional one-week stay would give them time to move in an orderly fashion.  
25 These facts show the extreme hardship that will occur should the stay not be granted. For the  
26 non-moving party, there is no irreparable injury. The non-moving party will be made whole by  
27 \_\_\_\_\_'s deposit of the pro rated value of the rent for the one-week stay. Plaintiff has  
28 no evidence to show any form of injury.

A defendant in an unlawful detainer action has thirty days from the entry of judgment to  
file an appeal. Cal. Rule of Court 102. In the instant case, judgment was entered on \_\_\_\_\_

1 less than 30 days ago. Based on the facts as set forth in Defendant's Ex Parte Application for  
2 Stay of Execution, and in view of the Court's authority and good cause for its exercise in this  
3 matter, defendant respectfully requests that the Stay of Execution be granted until the time  
4 requested in the Application.

5 Pursuant to Rule of the Court 379, Plaintiff's attorney's name, address, and phone  
6 number are as follows:

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Dated:

\_\_\_\_\_  
Defendant In propia persona



1 It is further ordered that the Clerk of the Superior Court, Court of Limited Jurisdiction, Shall  
2 remit to the Judgment Creditor said sums forthwith.

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Dated:

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JUDGE OF THE SUPERIOR COURT,  
LIMITED JURISDICTION