

California Eviction Defense: Protecting Low-Income Tenants 2017

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Unlawful Detainer Sample Packet

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COMPLAINT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____ SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	FOR COURT USE ONLY
PLAINTIFF: DEFENDANT: <input type="checkbox"/> DOES 1 TO _____	
COMPLAINT — UNLAWFUL DETAINER* <input type="checkbox"/> COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT (Amendment Number): _____	CASE NUMBER: _____
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000 but does not exceed \$25,000 <input type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (amount demanded exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint (check all that apply): <input type="checkbox"/> from unlawful detainer to general unlimited civil (possession not in issue) <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlawful detainer to general limited civil (possession not in issue) <input type="checkbox"/> from unlimited to limited	

1. PLAINTIFF (name each):

alleges causes of action against DEFENDANT (name each):

2. a. Plaintiff is (1) ☐ an individual over the age of 18 years. (4) ☐ a partnership.
 (2) ☐ a public agency. (5) ☐ a corporation.
 (3) ☐ other (specify): _____

b. ☐ Plaintiff has complied with the fictitious business name laws and is doing business under the fictitious name of (specify): _____

3. Defendant named above is in possession of the premises located at (street address, apt. no., city, zip code, and county): _____

4. Plaintiff's interest in the premises is ☐ as owner ☐ other (specify): _____

5. The true names and capacities of defendants sued as Does are unknown to plaintiff.

6. a. On or about (date): _____ defendant (name each): _____

- (1) agreed to rent the premises as a ☐ month-to-month tenancy ☐ other tenancy (specify): _____
 (2) agreed to pay rent of \$ _____ payable ☐ monthly ☐ other (specify frequency): _____
 (3) agreed to pay rent on the ☐ first of the month ☐ other day (specify): _____
 b. This ☐ written ☐ oral agreement was made with
 (1) ☐ plaintiff. (3) ☐ plaintiff's predecessor in interest.
 (2) ☐ plaintiff's agent. (4) ☐ other (specify): _____

* NOTE: Do not use this form for evictions after sale (Code Civ. Proc., § 1161a).

PLAINTIFF (Name):	CASE NUMBER:
DEFENDANT (Name):	

6. c. ☐ The defendants not named in item 6a are
- (1) ☐ subtenants.
- (2) ☐ assignees.
- (3) ☐ other (specify):
- d. ☐ The agreement was later changed as follows (specify):
- e. ☐ A copy of the written agreement, including any addenda or attachments that form the basis of this complaint, is attached and labeled Exhibit 1. ~~(Required for residential property; unless item 6f is checked. See Code Civ. Proc., § 1166.)~~
- f. ☐ (For residential property) A copy of the written agreement is not attached because (specify reason):
- (1) ☐ the written agreement is not in the possession of the landlord or the landlord's employees or agents.
- (2) ☐ this action is solely for nonpayment of rent (Code Civ. Proc., § 1161(2)).
7. ☐ a. Defendant (name each):

was served the following notice on the same date and in the same manner:

- (1) ☐ 3-day notice to pay rent or quit
- (2) ☐ 30-day notice to quit
- (3) ☐ 60-day notice to quit
- (4) ☐ 3-day notice to perform covenants or quit
- (5) ☐ 3-day notice to quit
- (6) ☐ Other (specify):
- b. (1) On (date): the period stated in the notice expired at the end of the day.
- (2) Defendants failed to comply with the requirements of the notice by that date.
- c. All facts stated in the notice are true.
- d. ☐ The notice included an election of forfeiture.
- e. ☐ A copy of the notice is attached and labeled Exhibit 2. (Required for residential property. See Code Civ. Proc., § 1166.)
- f. ☐ One or more defendants were served (1) with a different notice, (2) on a different date, or (3) in a different manner, as stated in Attachment 8c. (Check item 8c and attach a statement providing the information required by items 7a-e and 8 for each defendant.)
8. a. ☐ The notice in item 7a was served on the defendant named in item 7a as follows:
- (1) ☐ by personally handing a copy to defendant on (date):
- (2) ☐ by leaving a copy with (name or description):
- a person of suitable age and discretion, on (date): at defendant's
- ☐ residence ☐ business AND mailing a copy to defendant at defendant's place of residence on (date): because defendant cannot be found at defendant's residence or usual place of business.
- (3) ☐ by posting a copy on the premises on (date): ☐ AND giving a copy to a person found residing at the premises AND mailing a copy to defendant at the premises on (date):
- (a) ☐ because defendant's residence and usual place of business cannot be ascertained OR
- (b) ☐ because no person of suitable age or discretion can be found there.
- (4) ☐ (Not for 3-day notice; see Civil Code, § 1946 before using) by sending a copy by certified or registered mail addressed to defendant on (date):
- (5) ☐ (Not for residential tenancies; see Civil Code, § 1953 before using) in the manner specified in a written commercial lease between the parties.
- b. ☐ (Name):
- was served on behalf of all defendants who signed a joint written rental agreement.
- c. ☐ Information about service of notice on the defendants alleged in item 7f is stated in Attachment 8c.
- d. ☐ Proof of service of the notice in item 7a is attached and labeled Exhibit 3.

PLAINTIFF (Name):	CASE NUMBER:
DEFENDANT (Name):	

9. ☐ Plaintiff demands possession from each defendant because of expiration of a fixed-term lease.
10. ☐ At the time the 3-day notice to pay rent or quit was served, the amount of rent due was \$
11. ☐ The fair rental value of the premises is \$ per day.
12. ☐ Defendant's continued possession is malicious, and plaintiff is entitled to statutory damages under Code of Civil Procedure section 1174(b). (State specific facts supporting a claim up to \$600 in Attachment 12.)
13. ☐ A written agreement between the parties provides for attorney fees.
14. ☐ Defendant's tenancy is subject to the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):

Plaintiff has met all applicable requirements of the ordinances.

15. ☐ Other allegations are stated in Attachment 15.
16. Plaintiff accepts the jurisdictional limit, if any, of the court.

17. PLAINTIFF REQUESTS

- | | |
|----------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| a. possession of the premises. | f. <input type="checkbox"/> damages at the rate stated in item 11 from |
| b. costs incurred in this proceeding: | (date): for each day that |
| c. <input type="checkbox"/> past-due rent of \$ | defendants remain in possession through entry of judgment. |
| d. <input type="checkbox"/> reasonable attorney fees. | g. <input type="checkbox"/> statutory damages up to \$600 for the conduct alleged in Item 12. |
| e. <input type="checkbox"/> forfeiture of the agreement. | h. <input type="checkbox"/> other (specify): |

18. ☐ Number of pages attached (specify): _____

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400–6415)

19. (Complete in all cases.) An unlawful detainer assistant ☐ did not ☐ did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, state.)

- | | |
|----------------------------------------|----------------------------|
| a. Assistant's name: | c. Telephone No.: |
| b. Street address, city, and zip code: | d. County of registration: |
| | e. Registration No.: |
| | f. Expires on (date): |

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF)

**FEE WAIVERS
(FW 001, 002, & 003)**

FW-001**Request to Waive Court Fees****CONFIDENTIAL**

Clerk stamps date here when form is filed.

If you are getting public benefits, are a low-income person, or do not have enough income to pay for your household's basic needs and your court fees, you may use this form to ask the court to waive your court fees. The court may order you to answer questions about your finances. If the court waives the fees, you may still have to pay later if:

- You cannot give the court proof of your eligibility,
- Your financial situation improves during this case, or
- You settle your civil case for \$10,000 or more. The trial court that waives your fees will have a lien on any such settlement in the amount of the waived fees and costs. The court may also charge you any collection costs.

Fill in court name and street address:

Superior Court of California, County of

1 Your Information (person asking the court to waive the fees):

Name: _____

Street or mailing address: _____

City: _____

State: _____

Zip: _____

Phone number: _____

Fill in case number and name:

Case Number: _____

Case Name: _____

2 Your Job, if you have one (job title): _____

Name of employer: _____

Employer's address: _____

3 Your Lawyer, if you have one (name, firm or affiliation, address, phone number, and State Bar number): _____a. The lawyer has agreed to advance all or a portion of your fees or costs (check one): Yes ☐ No ☐

b. (If yes, your lawyer must sign here) Lawyer's signature: _____

If your lawyer is not providing legal-aid type services based on your low income, you may have to go to a hearing to explain why you are asking the court to waive the fees.

4 What court's fees or costs are you asking to be waived?

- ☐ Superior Court (See Information Sheet on Waiver of Superior Court Fees and Costs (form FW-001-INFO).)
- ☐ Supreme Court, Court of Appeal, or Appellate Division of Superior Court (See Information Sheet on Waiver of Appellate Court Fees (form APP-015/FW-015-INFO).)

5 Why are you asking the court to waive your court fees?

- a. ☐ I receive (check all that apply; see form FW-001-INFO for definitions): ☐ Food Stamps ☐ Supp. Sec. Inc. ☐ SSP ☐ Medi-Cal ☐ County Relief/Gen. Assist. ☐ IHSS ☐ CalWORKS or Tribal TANF ☐ CAPI
- b. ☐ My gross monthly household income (before deductions for taxes) is not more than the amount listed below. (If you check 5b, you must fill out 7, 8, and 9 on page 2 of this form.)

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income	If more than 6 people at home, add \$433.34 for each extra person.
1	\$1,237.50	3	\$2,100.00	5	\$2,962.50	
2	\$1,668.75	4	\$2,531.25	6	\$3,393.75	

c. ☐ I do not have enough income to pay for my household's basic needs and the court fees. I ask the court to: (check one and you must fill out page 2):

- ☐ waive all court fees and costs
- ☐ let me make payments over time

☐ waive some of the court fees**6** ☐ Check here if you asked the court to waive your court fees for this case in the last six months.(If your previous request is reasonably available, please attach it to this form and check here.) ☐

I declare under penalty of perjury under the laws of the State of California that the information I have provided on this form and all attachments is true and correct.

Date: _____

Print your name here

Sign here

Judicial Council of California, www.courts.ca.gov
 Revised March 1, 2016, Mandatory Form
 Government Code, § 88633
 Cal. Rules of Court, rules 3.51, 8.26, and 8.818

Request to Waive Court Fees

FW-001, Page 1 of 2



Your name: _____

Case Number: _____

If you checked 5a on page 1, do not fill out below. If you checked 5b, fill out questions 7, 8, and 9 only.
If you checked 5c, you **must** fill out this entire page. If you need more space, attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.

- 7 ☐ Check here if your income changes a lot from month to month.
If it does, complete the form based on your average income for the past 12 months.

8 **Your Gross Monthly Income**

a. List the source and amount of **any** income you get each month, including: wages or other income from work before deductions, spousal/child support, retirement, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest, trust income, annuities, net business or rental income, reimbursement for job-related expenses, gambling or lottery winnings, etc.

(1)	_____	\$ _____
(2)	_____	\$ _____
(3)	_____	\$ _____
(4)	_____	\$ _____

b. Your total monthly income: \$ _____

9 **Household Income**

a. List the income of all other persons living in your home who depend in whole or in part on you for support, or on whom you depend in whole or in part for support.

Name	Age	Relationship	Gross Monthly Income
(1)	_____	_____	\$ _____
(2)	_____	_____	\$ _____
(3)	_____	_____	\$ _____
(4)	_____	_____	\$ _____

b. Total monthly income of persons above: \$ _____

Total monthly income and household income (8b plus 9b): \$ _____

To list any other facts you want the court to know, such as unusual medical expenses, etc., attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.

Check here if you attach another page. ☐

Important! If your financial situation or ability to pay court fees improves, you must notify the court within five days on form FW-010.

10 **Your Money and Property**

a. Cash \$ _____

b. All financial accounts (List bank name and amount):

(1)	_____	\$ _____
(2)	_____	\$ _____
(3)	_____	\$ _____

c. Cars, boats, and other vehicles

Make / Year	Fair Market Value	How Much You Still Owe
(1)	\$ _____	\$ _____
(2)	\$ _____	\$ _____
(3)	\$ _____	\$ _____

d. Real estate

Address	Fair Market Value	How Much You Still Owe
(1)	\$ _____	\$ _____
(2)	\$ _____	\$ _____

e. Other personal property (jewelry, furniture, furs, stocks, bonds, etc.):

Describe	Fair Market Value	How Much You Still Owe
(1)	\$ _____	\$ _____
(2)	\$ _____	\$ _____

11 **Your Monthly Deductions and Expenses**

a. List any payroll deductions and the monthly amount below:

(1)	_____	\$ _____
(2)	_____	\$ _____
(3)	_____	\$ _____
(4)	_____	\$ _____

b. Rent or house payment & maintenance \$ _____

c. Food and household supplies \$ _____

d. Utilities and telephone \$ _____

e. Clothing \$ _____

f. Laundry and cleaning \$ _____

g. Medical and dental expenses \$ _____

h. Insurance (life, health, accident, etc.) \$ _____

i. School, child care \$ _____

j. Child, spousal support (another marriage) \$ _____

k. Transportation, gas, auto repair and insurance \$ _____

l. Installment payments (list each below):

Paid to:	
(1)	\$ _____
(2)	\$ _____
(3)	\$ _____

m. Wages/earnings withheld by court order \$ _____

n. Any other monthly expenses (list each below):

Paid to:	How Much?
(1)	\$ _____
(2)	\$ _____
(3)	\$ _____

Total monthly expenses (add 11a – 11n above): \$ _____

FW-002**Request to Waive Additional
Court Fees (Superior Court)****CONFIDENTIAL***Clerk stamps date here when form is filed.*

This form asks the court to waive *additional* court fees that are not covered in a current order. If you have not already received an order that waived or reduced your court fees, you must complete and file a *Request to Waive Court Fees (Superior Court)*, form FW-001, along with this form.

1 Your Information *(person asking the court to waive the fees):*

Name: _____

Street or mailing address: _____

City: _____ State: _____ Zip: _____

Phone number: _____

2 Your lawyer, if you have one *(name, firm or affiliation, address, phone number, and State Bar number):*

a. The lawyer has agreed to advance all or a portion of your fees or costs *(check one)*: ☐ Yes ☐ No

b. *(If yes, your lawyer must sign here):*

Lawyer's signature: _____

If your lawyer is not providing legal-aid type services based on your low income, you may have to go to a hearing to explain why you are asking the court to waive the fees.

3 Date your last court fee waiver order, if any, was granted: _____**4** Has your financial situation improved since your last *Request to Waive Court Fees*? ☐ No ☐ Yes
*(If yes, you must fill out a new Request to Waive Court Fees, form FW-001, and attach it to this form.)***5** What other fees do you want your court fee waiver order to cover? *(Check all that apply):*a. ☐ Jury fees and expensesb. ☐ Court-appointed interpreter fees for a witnessc. ☐ Fees for a peace officer to testify in courtd. ☐ Fees for court-appointed expertse. ☐ Other *(specify)*: _____**6** Why do you need these other services? *(Explain)*: _____

Notice: The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for \$10,000 or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

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

Date: _____

*Print your name here**Sign here*

Judicial Council of California, www.courts.ca.gov
Revised July 1, 2015, Mandatory Form
Government Code, § 68511.3
California Rules of Court, Rule 3.51

**Request to Waive Additional Court Fees
(Superior Court)**

FW-002, Page 1 of 1

FW-003**Order on Court Fee Waiver
(Superior Court)**

Clerk stamps date here when form is filed.

① Person who asked the court to waive court fees:

Name: _____

Street or mailing address: _____

City: _____ State: _____ Zip: _____

② Lawyer, if person in ① has one (name, address, phone number, e-mail, and State Bar number):

③ A request to waive court fees was filed on (date): _____☐ The court made a previous fee waiver order in this case on (date): _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number: _____**Case Name:** _____**Read this form carefully. All checked boxes ☒ are court orders.**

Notice: The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for **\$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

④ After reviewing your: ☐ Request to Waive Court Fees ☐ Request to Waive Additional Court Fees the court makes the following orders:a. ☐ The court grants your request, as follows:**(1) ☐ Fee Waiver.** The court grants your request and waives your court fees and costs listed below. (Cal.

Rules of Court, rules 3.55 and 8.818.) You do not have to pay the court fees for the following:

- Filing papers in Superior Court
- Making copies and certifying copies
- Sheriff's fee to give notice
- Court fee for phone hearing
- Reporter's fee for attendance at hearing or trial, if reporter provided by the court
- Assessment for court investigations under Probate Code section 1513, 1826, or 1851
- Preparing, certifying, copying, and sending the clerk's transcript on appeal
- Holding in trust the deposit for a reporter's transcript on appeal under rule 8.130 or 8.834
- Making a transcript or copy of an official electronic recording under rule 8.835
- Giving notice and certificates
- Sending papers to another court department
- Court-appointed interpreter in small claims court

(2) ☐ Additional Fee Waiver. The court grants your request and waives your additional superior court fees and costs that are checked below. (Cal. Rules of Court, rule 3.56.) You do not have to pay for the checked items.

- ☐ Jury fees and expenses
- ☐ Fees for court-appointed experts
- ☐ Other (specify): _____
- ☐ Fees for a peace officer to testify in court
- ☐ Court-appointed interpreter fees for a witness

Your name: _____

Case Number: _____

- b. ☐ The court **denies** your fee waiver request, as follows:

Warning! If you miss the deadline below, the court cannot process your request for hearing or the court papers you filed with your original request. If the papers were a notice of appeal, the appeal may be dismissed.

- (1) ☐ The court **denies** your request because it is incomplete. You have **10 days** after the clerk gives notice of this order (see date of service on next page) to:
- Pay your fees and costs, or
 - File a new revised request that includes the items listed below (*specify incomplete items*):

- (2) ☐ The court **denies** your request because the information you provided on the request shows that you are not eligible for the fee waiver you requested (*specify reasons*): _____

The court has enclosed a blank *Request for Hearing About Court Fee Waiver Order (Superior Court)*, form FW-006. You have **10 days** after the clerk gives notice of this order (see date of service below) to:

- Pay your fees and costs in full or the amount listed in c. below, or
- Ask for a hearing in order to show the court more information. (*Use form FW-006 to request hearing.*)

- c. ☐ The court needs more information to decide whether to grant your request. You must go to court on the date below. The hearing will be about (*specify questions regarding eligibility*): _____

- ☐ Bring the following proof to support your request if reasonably available:

Name and address of court if different from above:

Hearing
Date

→ Date: _____ Time: _____
Dept.: _____ Room: _____

Warning! If item c is checked, and you do not go to court on your hearing date, the judge will deny your request to waive court fees, and you will have 10 days to pay your fees. If you miss that deadline, the court cannot process the court papers you filed with your request. If the papers were a notice of appeal, the appeal may be dismissed.

Date: _____

Signature of (check one):

☐ Judicial Officer

☐ Clerk, Deputy



Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation*, Form MC-410. (Civil Code, § 54.8.)

Clerk's Certificate of Service

I certify that I am not involved in this case and (*check one*): ☐ A certificate of mailing is attached.

- ☐ I handed a copy of this order to the party and attorney, if any, listed in (1) and (2), at the court, on the date below.

- ☐ This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in (1) and (2), from (city): _____, California on the date below.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

MOTION TO STRIKE

INLAND COUNTIES LEGAL SERVICES

Tori L. Praul (258883)
Darrell K. Moore (136845)
I.C. Morales (068915)
1040 Iowa Ave., Ste. 109
Riverside, CA 92507
Tel: (951) 368-2573
Fax: (951) 774-4431

Attorneys for Defendant, [REDACTED]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE, MORENO VALLEY DIVISION

Plaintiff,

vs.

Defendants.

Case No.: M [REDACTED]

EX PARTE APPLICATION FOR ORDER
SETTING ASIDE DEFAULT, VACATING
DEFAULT JUDGMENT, AND STAY
EXECUTION OF WRIT OF POSSESSION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF [REDACTED]

DATE: 05/12/2016
TIME: 1:00 p.m.
DEPT: MV1

TO PLAINTIFF, [REDACTED]

NOTICE IS HEREBY GIVEN that on MAY 12, 2016 at 1:00 p.m., or as soon thereafter as the matter may be heard, in Department MV1 of the above entitled court located at 13800 Heacock St., Moreno Valley, CA 92553, Defendant, [REDACTED] erroneously sued as [REDACTED] will move for an order to set aside the default and vacate the default judgment in the above entitled matter. Defendant further moves for a stay of the Writ of Possession and requests that the Court allow this matter to proceed to a trial on the merits.

NOTICE OF MOTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION [REDACTED]

1 This motion will be made pursuant to California Code of Civil Procedure § 473.5, on the
2 ground that Defendant was not served with the Summons and Complaint and therefore did not
3 have actual notice of the law suit and did not have the opportunity to respond. Plaintiff filed two
4 different Proofs of Service prepared by a non-registered process server alleging substituted
5 service, yet fails to identify the person served with the papers and alleges substituted service on

6 Defendant herself while claiming that personal service was attempted unsuccessfully. Defendant
7 also did not receive the Clerk's Notice of Complaint for Unlawful Detainer because she does not
8 receive mail at her home address because her mail is regularly stolen.

9 Defendant further moves the Court to set aside the judgment and stay the lockout on the
10 grounds of surprise and excusable neglect, as set forth in Code of Civil Procedure § 473(b).
11 Defendant was not served with the summons and complaint and was unaware of any court filing,
12 therefore she was surprised when she learned of the default. She did not receive any notice from
13 the court and neglected to check court records because she had no knowledge of any filing.
14

15 Defendant possesses a number of valid affirmative defenses to the unlawful detainer: (1)
16 The Three Day Notice to Pay Rent or Quit is defective in many ways, including demanding rent
17 in excess of one year, no days and times to pay the rent, no phone number of person to whom
18 rent was to be paid, and it overstates that amount of rent owed; (2) Defendant was not served
19 with the Three Day Notice to Pay Rent or Quit—she found it on her doorstep on February 14,
20 2016, after the gardener retrieved it from the yard and left it there; and (3) Defendant's unit is
21 uninhabitable—Plaintiff has been served with numerous Notices, Orders to Abate, and has been
22 fined by the City of Riverside several times. Plaintiff appealed those citations, a hearing took
23 place at which defendant testified, and his appeal was denied. Yet, the Plaintiff still refuses to
24 make the repairs. Defendant has ample evidence to present at trial.
25

NOTICE OF MOTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION

The motion will be based upon this notice of motion, the declaration of [REDACTED], the Memorandum of Points and Authorities served and filed herein and on such evidence and oral argument as may be presented at the hearing on the motion. Defendant has attached a proposed Answer, as required by CCP 473.5 and 473(b).

Respectfully submitted,

INLAND COUNTIES LEGAL SERVICES

Dated: _____

Tori L. Praul
Attorney for Defendant, [REDACTED]

NOTICE OF MOTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION

1
2
3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **STATEMENT OF FACTS**

5 Defendant entered into a rental agreement to rent the property located at [REDACTED]
6 [REDACTED], Riverside, CA 92501 in October 2014. See Declaration of [REDACTED] ¶ 1. Soon
7 thereafter, it became evident that the property suffered from a number of problems related to
8 tenantability. In addition, Defendant learned that the other tenants in the property were engaging
9 in criminal activity because police visits were common. See [REDACTED] Declaration ¶2. She began
10 missing her mail and finding mail strewn in the front yard. See [REDACTED] Declaration ¶3-4.
11 Because of that, Defendant set up all accounts to receive correspondence electronically where
12 that was an option and had important mail sent to her daughter's home in San Clemente, CA. She
13 rarely checks the mailbox. See [REDACTED] Declaration ¶5.

14 On February 2, 2016, plaintiff filed an Unlawful Detainer Complaint against Defendant.
15 That day was Defendant's birthday and she was at home most of the week that followed, due to a
16 health condition. See [REDACTED] Declaration ¶ 8. Defendant lives alone and no other tenants have
17 lived in the property since September 2015. See [REDACTED] Declaration ¶¶ 9-10. Defendant
18 received no visitors to her home that week.

19 On February 10, 2016, plaintiff filed a Proof of Service of Summons with the Riverside
20 County Superior Court. That Proof of Service alleged service via Substituted Service on
21 2/10/2016 at either 13:00 p.m. or 3:00 p.m. (illegible). The Proof of Service does not identify the
22 person upon whom the documents were served. In fact, it attaches a Declaration by the person
23 that allegedly carried out the service that lists four different dates and times where personal
24 service was attempted but not carried out. See Proof of Service filed with Riverside Superior
25 Court on February 10, 2016, courtesy copy attached as Exhibit B. Plaintiff did not obtain an
Order to Post and Mail the Summons and Complaint. More than two months later, plaintiff filed
another Proof of Service of Summons that again claimed the Summons and Complaint were
served via substituted service at 13:00 p.m. on February 10, 2016. However, this Proof of

NOTICE OF MOTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION [REDACTED]

1 Service states that the documents were left with Defendant. The same Declaration alleging
2 unsuccessful attempts to personally serve Defendant was attached to this second Proof of
3 Service. See Proof of Service filed with Riverside Superior Court on April 21, 2016, courtesy
4 copy attached as Exhibit C. Defendant did not receive any copies of any court documents in the
5 mail in February. See [REDACTED] Declaration ¶ 11.

6 On February 14, 2016, Defendant found a copy of the Three Day Notice that is attached
7 to plaintiff's Complaint on her front porch. The gardener was present and informed her that he
8 found it in the yard and placed it there for her. See [REDACTED] Declaration ¶ 6. Defendant called
9 and emailed plaintiff to discuss, but received no response. See [REDACTED] Declaration ¶ 7.
10 Thereafter, defendant received no communications from plaintiff, no mail from plaintiff, and no
11 mail from the court. See [REDACTED] Declaration ¶ 5 and 11.

12 Over three months after the suit was filed—May 6, 2016—the mailman knocked on
13 defendant's door and delivered an item via USPS Priority Mail. That envelope was addressed
14 from Plaintiff and enclosed was a Request for Entry of Default and Clerk's Judgment. That was
15 the first court document that Defendant had seen. See [REDACTED] Declaration ¶ 12. Defendant later
16 accessed the Riverside Superior Court's website and paid to obtain the other filings in the case.
17 See [REDACTED] Declaration ¶ 14. She immediately sought legal assistance. See [REDACTED]
18 Declaration ¶ 13.

19 Defendant was very surprised by the fact that a law suit was filed, because she had
20 negotiated regarding the rent last year and the property was the subject of an active, ongoing case
21 with Code Enforcement. Had she known of the law suit earlier, she would have responded
22 accordingly. Defendant possesses affirmative defenses to the Unlawful Detainer and has attached
23 a Proposed Answer to this Application. She is also prepared to present supporting evidence at
24 trial.
25

NOTICE OF MOTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION [REDACTED]

1 **RELIEF REQUESTED**

2 THE COURT SHOULD GRANT DEFENDANT'S MOTION UNDER CODE OF CIVIL
3 PROCEDURE SECTION 473.5 FOR RELIEF FROM THE DEFAULT AND DEFAULT
4 JUDGMENT ON THE GROUND THAT DEFENDANT DID NOT RECEIVE ACTUAL
5 NOTICE OF THE LAW SUIT IN TIME TO DEFEND, SHE FILED A TIMELY MOTION
6 FOR RELIEF, AND THE DEFAULT AND DEFAULT JUDGMENT WERE NOT CAUSED
7 BY DEFENDANT'S AVOIDANCE OF SERVICE OR INEXCUSABLE NEGLECT.

8 **A. Motion For Relief From Default For Lack Of Actual Notice**

9 When service of summons has not resulted in actual notice to a party in time to defend
10 the action and a default or default judgment has been entered against him or her in the action, the
11 party may serve and file a notice of motion to set aside the default or default judgment and for
12 leave to defend the action (Cal. Code Civ. Proc. § 473.5(a)).

13 In the present case, Defendant did not receive actual notice of the allegations of the
14 Complaint. She was not served as alleged, therefore had no opportunity to respond in a timely
15 manner.

16 **B. The Court May Grant Relief on Timely Motion if Defendant Not at Fault**

17 On a finding by the court that the motion was made within the period permitted by Code
18 of Civil Procedure Section 473.5(a) and that his or her lack of actual notice in time to defend the
19 action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside
20 the default or default judgment on whatever terms as may be just and allow the party to defend
21 the action (Cal. Code Civ. Proc. § 473.5(c); Goya v. P.E.R.U. Enterprises (1978) 87 Cal. App. 3d
22 886, 890-891, 151 Cal. Rptr. 258).

23 Defendant made a timely motion to set aside the default and default judgment. Upon
24 discovering that judgment had been entered against her, she immediately sought legal advice and
25 assistance to respond accordingly.

NOTICE OF MOTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION

1 Defendant's lack of actual notice in time to defend the action was not caused by her
2 avoidance of service or inexcusable neglect. Defendant was home during the alleged service
3 attempts and had no idea that legal action was being taken. She has attempted to contact Plaintiff
4 on numerous occasions regarding the property, but he refuses to respond. The only document
5 Defendant was aware of was a Three Day Notice that she found nearly two weeks after the law
6 suit was filed. She attempted to discuss that notice with the Plaintiff because it demanded rent
7 she had already paid, but he would not respond. Had Defendant been aware of the filing, she
8 would have responded accordingly in the nearly three months that have passed since the alleged
9 service. As such, the Court should grant relief.

10 **C. The Court Has Wide Discretion In Granting Relief**

11 A trial court has a wide discretion to grant relief under Code of Civil Procedure Section
12 473 (Berman v. Klassman (1971) 17 Cal. App. 3d 900, 909, 95 Cal. Rptr. 417). The particular
13 facts of this case, such as the egregious conditions of the property and involvement of the City in
14 trying to abate those problems, the fact that conflicting Proofs of Service were filed, and the fact
15 that Plaintiff filed a lawsuit based on a defective notice all weigh heavily in favor of granting
16 relief. Given the wide discretion of the court and the policy favoring a trial on the merits, the
17 court should exercise this discretion and grant relief.

18 AN ALTERNATIVE GROUND FOR RELIEF IS REQUESTED UNDER
19 CODE OF CIVIL PROCEDURE SECTION 473(b) FOR RELIEF FROM
20 THE DEFAULT AND DEFAULT JUDGMENT ON THE GROUND OF
21 SURPRISE AND EXCUSABLE NEGLECT.

22 **D. Policy Favors Relief If Surprise Or Excusable Neglect Is Shown.**

23
24 A party is entitled to relief under California Code of Civil Procedure § 473(b) on the
25 grounds of surprise or excusable neglect, and doubts should be resolved in favor of an

NOTICE OF MOTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION

1 application to set aside a default judgment on that ground (Karlein v. Karlein (1951) 103 Cal.
2 App. 2d 496, 498, 229 P.2d 831).

3 In the present case, Defendant had no idea that any court case had been filed. She was
4 surprised when she received the Request for Default because she had received no other
5 paperwork and because of the ongoing Code Enforcement case related to the property.

6 Moreover, even if the Court finds that the Clerk's Notice of filing was properly mailed,
7 Defendant did not receive it because she does not generally receive mail at her home address and
8 does not check the mail. That behavior may be construed as excusable neglect.

9 Defendants will be greatly harmed if the judgment remains in place and the sheriff's
10 lockout proceeds. See [REDACTED] Declaration ¶ 18. Defendant filed this motion within the statutory
11 period and has more than one affirmative defenses to the underlying unlawful detainer. The
12 prejudice to Defendant and the hardship to her if the judgment is not set aside and the lockout
13 proceeds as scheduled greatly outweighs any prejudice to Plaintiff.

14 CONCLUSION

15 Relief should be granted and the judgment entered against Defendant should be set aside
16 on the grounds of lack of actual notice, as set forth in CCP 473.5. The Court must inquire into
17 service and require the alleged process server to testify, as he/she is not a registered process
18 server and proving service is a required element of Plaintiff's law suit. An additional ground for
19 setting aside the judgment is provided for by CCP 473(b), on the basis of surprise and excusable
20 neglect because defendant had no idea any legal action was being taken and she does not check
21 her home mail.

22 WHEREFORE, Defendant respectfully requests that the Court grant Defendant's Ex
23 Parte Application to Set Aside the Default and Vacate the Default Judgment, that any Writ of
24 Possession be recalled and quashed if it has been issued by the time of the hearing, that she be
25 permitted to file her proposed Answer, and that the Court allow her to proceed to trial on the
merits.

NOTICE OF MOTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION [REDACTED]

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Respectfully submitted,
INLAND COUNTIES LEGAL SERVICES,

Dated: _____

Tori L. Praul,
Attorney for Defendant

NOTICE OF MOTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION

DEMURRER

1 Tori L. Praul, #258883
2 Eulalio Castellanos, #153676
3 INLAND COUNTIES LEGAL SERVICES, INC.
4 (D. K. Moore, #136845; I. C. Morales, #068915)
5 1040 Iowa Avenue, Ste. 109
6 Riverside, California 92507
7 Telephone No. (951) 368-2555
8 Facsimile: (951) 368-2550

9 Attorneys for Defendant [REDACTED]

10
11
12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF RIVERSIDE – MORENO VALLEY BRANCH

14 ****

15 YYYYYYY,) Case No.: ZZZZZZ
16))
17) NOTICE OF DEMURRER AND
18) DEMURRER TO UNLAWFUL
19) DETAINER COMPLAINT;
20) MEMORANDUM OF POINTS AND
21) AUTHORITIES IN SUPPORT THEREOF.
22)
23) DATE: 10/22/2015
24 XXXXXXX,)
25))
26) TIME: 1:00 p.m.
27))
28) DEPT: MV1UD
29)
30)

31 TO PLAINTIFF:
32 PLEASE TAKE NOTICE that Defendant [REDACTED] hereby demurs to the unlawful
33 detrainer complaint. The hearing on the demurrer will take place at 1:00 p.m. on October 22, 2015,
34 in Department MV1UD of the above-entitled Court, located at 13800 Heacock Street, D201,
35 Moreno Valley, California 92553.

36 The Defendant demurs to the Plaintiff's unlawful detrainer complaint on the following
37 grounds:

38 A. The unlawful detrainer complaint fails to state facts sufficient to constitute a cause of

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action, because Plaintiff lacks standing to sue under California law. (Code of Civ. Proc. §430.10 (e).)

B. The Three Day Notice to Pay Rent or Quit is fatally defective per Code of Civ. Proc. 1161(2), therefore the Complaint fails to state a cause of action. (Code of Civ. Proc. § 430.10(e)).

C. The pleading is uncertain because it is ambiguous and unintelligible. (Code of Civ. Proc. § 430.10(f).

This demurrer is based on the attached notice, the attached memorandum of points and authorities, Defendant’s Request for Judicial Notice and accompanying exhibits, all papers and records on file in this action, and such evidence, both oral and documentary as may be presented at the hearing of this demurrer.

Dated: _____

Respectfully submitted,

Tori L. Praul
Inland Counties Legal Services
Attorneys for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I. BRIEF STATEMENT OF FACTS

1. Defendant was served with an Unlawful Detainer Complaint ("Complaint") demanding possession of the property located at _____.

2. Plaintiff's Complaint alleges that she—[REDACTED]—is owner of the property.
(Complaint ¶ 4.)

3. Plaintiff is not owner of the property, as evidenced by the Grant Deed recorded with the County of Riverside. Defendant has requested that the Court take judicial notice of this fact on the basis that a court may take judicial notice of something that cannot be reasonably controverted, such as recorded deeds. Patricia Gonzalez Alfaro v. Community Housing Improvement System & Planning Association, 171 Cal. App. 4th 1356, 1382 (2009).] (See Defendant's Request for Judicial Notice, Exhibit A.)

4. The 3 Day Notice to Pay Rent or Quit does not provide the phone number of the entity to whom rent is to be paid, as required by CCP 1161(2).

5. The Complaint includes numerous conflicting allegations, rendering it ambiguous and unintelligible.

II. LEGAL ARGUMENT

A. DEFENDANTS MAY DEMUR AGAINST THE UNLAWFUL DETAINER COMPLAINT IF IT DOES NOT STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION.

1. Plaintiff lacks standing to sue.

A party may object to an unlawful detainer complaint by demurrer on the ground that it does not state facts sufficient to constitute a cause of action. (Code Civ. Proc. §§430.10(e).) Code of Civil Procedure § 367 requires that an action be prosecuted in the name of the real party in interest. (Code of Civ. Proc. § 367; *see Killian v. Millard* 228 Cal. App. 3d 1601, 1605 (1991).) A complaint fails to state a cause of action if it shows on its face that the cause of action alleged is in

1 someone other than the plaintiff and, therefore, the pleader lacks the standing to sue. (See Parker
2 v. Bowron, 40 Cal. 2d 344, 351 (1953); Klopstock v. Superior Court, 17 Cal. 2d 13, 19
3 (1941); Charpentier v. Los Angeles Rams Football Co., 75 Cal. App. 4th 301, 307 (1999).)

4 In the instant case, paragraph 4 of the Complaint alleges that Plaintiff, [REDACTED], has an
5 ownership interest in the property. Such an allegation directly conflicts with title records on file
6 with the Riverside County Recorder, evidencing that [REDACTED] is not the owner of the property.

7 Defendant has requested the Court take judicial notice of the title records on the basis that they
8 contain facts that cannot be reasonably controverted. (See Defendant's Request for Judicial
9 Notice, Exhibit A.)

10 **2. The Three Day Notice to Pay Rent or Quit is fatally defective.**

11 A separate and independent ground for demurrer is the fact that the Three Day Notice to
12 Pay Rent or Quit is fatally defective and, therefore, the Complaint fails to state a cause of action.
13 Notice requirements in unlawful detainers are strictly construed. There is no cause of action for
14 unlawful detainer without proper notice. The Notice that forms the basis of the Complaint is
15 defective; therefore the complaint fails to state a cause of action and the unlawful detainer cannot
16 stand.

17
18 Under California Code of Civil Procedure §1161(2), the Plaintiff must include specific
19 information on a Three Day Notice in order for it to be valid. Specifically, the party entitled to
20 demand rent shall "after default in the payment of rent, pursuant to the lease or agreement
21 under which the property is held, and three days' notice, in writing, requiring its payment, stating
22 the amount which is due, the name, *telephone number*, and address of the person to whom the rent
23 payment shall be made, and, if payment may be made personally, the usual days and hours that
24 person will be available to receive the payment...." Code of Civ. Proc. 1161(2). In the present case,
25 plaintiff's Notice does not provide the telephone number required by statute. On that basis alone,
26 the 3 Day Notice to Pay Rent or Quit is defective because it fails to meet the requirements of Code
27

of Civil Procedure § 1161(2).

The rule of liberal construction of pleadings provided by CCP §452 is inapplicable in unlawful detainer actions. Because unlawful detainer is an action seeking forfeiture and is a summary proceeding in which the defendant's normal procedural rights are limited, the courts strictly construe the statutory procedures that regulate unlawful detainers and require strict compliance with all statutory notice requirements. Cal. Civil Code §1442. See also Kwok v. Bergren (1982) 130 Cal.App.3d 596, 599; Briggs v. Electronic Memories & Magnetic (1975) 53 Cal. App.3d 900, 905; Liebovich v. Shahrokhkany (1997) 56 Cal.App.4th 511, 513. Proper service of a valid notice is a prerequisite to an action in unlawful detainer. Code Civ. Proc. §1161. See also Kwok at 599. There is no cause of action for unlawful detainer if statutory notice procedures are not strictly complied with. Kwok at 599.

3. Defendant was not served with the Three Day Notice to Pay Rent Quit and Plaintiff has offered no evidence in support of her claim of personal service.

Paragraph 8 of plaintiff's Complaint alleges that defendant was personally served with the Three Day Notice on 09/11/2015. Plaintiff has not provided proof of service of the notice as required. Specifically, she did not check box 8d and has not attached a proof of service to the Complaint. Based on those facts, plaintiff has failed to present facts sufficient to state a cause of action.

B. DEFENDANTS MAY DEMUR AGAINST THE UNLAWFUL DETAINER COMPLAINT IF THE ALLEGATIONS ARE UNCERTAIN.

A party against whom an answer has been filed may object to it by demurrer on the ground that the allegations are uncertain. (Code Civ. Proc. §§ 430.10(f).) In the present case, the Complaint exhibits several inconsistencies on its face. In addition, the Complaint's allegations contradict Plaintiff's Exhibit Two.

Specifically, plaintiff verified the Complaint alleging the following:

- 1) That defendants moved into the property on 09/15/2015—four days after the alleged

date of service the Three Day Notice to Pay Rent or Quit as stated in paragraph 8.

2) Paragraphs 7 and 8 allege that the Three Day Notice to Pay Rent or Quit was both served and expired on 09/11/2015—allegations that cannot possibly be true, especially in light of defendant’s alleged move-in date.

3) Paragraph 9 states that plaintiff demands possession because of expiration of a fixed-term lease, yet paragraph 6 alleges an oral rental agreement for a month-to-month tenancy.

4) The Three Day Notice to Pay Rent or Quit allegedly served on defendant is dated 09/07/2015—a date prior to the alleged move-in date and a date that is inconsistent with plaintiff’s allegations in paragraphs 7 and 8.

5) The basis of plaintiff’s Complaint is allegedly nonpayment of rent, yet paragraphs 10 and 17 do not state that any rent was due at the time of filing.

Given these glaring inconsistencies, defendant has no way of ascertaining what exactly plaintiff is suing him for and, therefore, cannot properly respond to the allegations set forth. Such flaws cannot be corrected and this Complaint must be dismissed.

III. CONCLUSION

The Complaint filed by plaintiff fails to state a cause of action and plaintiff lacks standing to sue. Plaintiff is not the owner of the property, as alleged in her Complaint and evidenced by official County records. Moreover, the Three Day Notice to Pay Rent or Quit was not served and the Notice allegedly served is defective on its face. Finally, the allegations of the Complaint are inconsistent to the point that they render the complaint so ambiguous and unintelligible that it is uncertain. Based on these facts, the Court must sustain Defendant’s demurrer. Defendant respectfully asks the court to sustain the demurrer without leave to amend and to dismiss the complaint.

Dated: _____

Respectfully submitted,

Tori Praul
Inland Counties Legal Services
Attorneys for Defendant

**MOTION TO QUASH SERVICE OF
SUMMONS AND COMPLAINT**

1 INLAND COUNTIES LEGAL SERVICES
2 Tori L. Praul, SBN 258883
3 Darrell K. Moore, SBN 136845
4 Irene C. Morales, SBN 068915
5 1040 Iowa Avenue, Suite 109
6 Riverside, California 92507
7 Phone: (951) 368-2573
8 Facsimile: (951) 774-4431

9 Attorneys for [REDACTED]

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF RIVERSIDE – MORENO VALLEY BRANCH

12 ****

13 [REDACTED],) Case No.: [REDACTED]
14)
15 Plaintiff,) NOTICE OF MOTION AND MOTION
16) TO QUASH SERVICE OF SUMMONS
17) AND COMPLAINT; MEMORANDUM
18) OF POINTS AND AUTHORITIES IN
19 vs.) SUPPORT THEREOF.
20)
21 [REDACTED],) DATE: July 11, 2016
22) TIME: 1:00 p.m.
23) DEPT: MV1
24 Defendant)
25) Hon. Mark E. Petersen
26)
27)
28)

29 TO ALL PARTIES AND RESPECTIVE ATTORNEYS OF RECORD:

30 NOTICE IS HEREBY GIVEN that on, July 11, 2016, at 1:00 p.m., or as soon thereafter as
31 the matter may be heard, in Department MV1 of this court, located at 13800 Heacock St., Bldg.
32 D201, Moreno Valley, CA 92553, the Defendant will, and hereby does, move for a Motion to
33 Quash the Service of the Summons and Unlawful Detainer Complaint. This motion is made
34 pursuant to Code of Civil Procedure § 418.10 *et. seq.*, on the ground that the Court lacks personal
35 jurisdiction over client because plaintiff's service of the Summons and Unlawful Detainer
36 Complaint was defective. The Summons and Complaint was not properly served on Defendant, as
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Notice of Motion and Motion to Quash Service of Summons and Complaint; Memorandum of Points and Authorities
in support thereof.

1 required by Code of Civil Procedure § 415.10, § 415.20, or § 415.45. Defendant found the
2 Summons and Complaint in her mailbox, in a stamped envelope with no postmark. The Summons
3 and Complaint was not posted to his door or served on any other individual in the home.
4 Defendant lives alone.

5 This motion to quash is based on the attached notice, the declaration of [REDACTED]
6 [REDACTED], the attached memorandum of points and authorities, all papers and records
7 on file in this action, and such evidence, both oral and documentary as may be presented at the
8 hearing of this motion.

9 Dated: _____

10 Respectfully submitted,
11 Inland Counties Legal Services,

12
13 By: Tori L. Praul
14 Attorney [REDACTED]
15 [REDACTED]

MEMORANDUM OF POINTS AND AUTHORITIES

I. BRIEF STATEMENT OF FACTS

1. On June 22, 2016, Plaintiff filed an Unlawful Detainer Complaint against defendant seeking possession of the property located at [REDACTED], Corona, CA 92882. Defendant presently resides in the unit at issue. See Declaration of [REDACTED], ¶ 2.

2. Defendant has not been served with that Unlawful Detainer Summons and Complaint, case number MVC1602196. See Declaration of [REDACTED], ¶¶ 5-7.

3. In addition to defendant, her three minor children and one adult child live in the home. See Declaration of [REDACTED], ¶ 3.

4. Defendant and her three minor children were in West Covina on June 25-26, babysitting her friend's two children. Her adult son was at camp in Big Bear, CA. See Declaration of [REDACTED], ¶ 4.

5. Defendant returned home late at night on June 26 and found the Summons and Complaint laying on her porch. See Declaration of [REDACTED], ¶ 5.

6. The Summons and Complaint were not posted to defendant's door pursuant to a court order, nor were they served on any other person in the household. See Declaration of [REDACTED], ¶ 7.

8. As of this date, June 29, 2016, defendant has not been served with the Summons and Complaint in any manner required by Code of Civil Procedure. See Declaration of [REDACTED], ¶ 7.

9. At the time of this motion, no proof of service has been filed by Plaintiff.

II. LEGAL ARGUMENT

A. A MOTION TO QUASH SERVICE OF SUMMONS IS THE PROPER VEHICLE BY WHICH TO CHALLENGE DEFECTIVE SERVICE OF A SUMMONS AND COMPLAINT.

California Code of Civil Procedure § 410.50(a) provides that jurisdiction over a person

is acquired either by (a) a general appearance or (b) service of summons in the manner prescribed by California Code of Civil Procedure § 413.10, *et seq.*, and § 415.10 *et seq.* An improperly served defendant may specially appear to object to the jurisdiction of the court over his or her person and move to quash such improper service. Civ. Proc. Code § 418.10. California Rule of Court 3.1327 specifically allows for a motion to quash in unlawful detainer actions.

In the present case, the Summons and Unlawful Detainer Complaint have been filed with the Court. Service of the pleadings on the Defendant has not been carried out as required by law. As such, this motion is timely and the proper method for challenging the Court's jurisdiction over the Defendant.

B. COMPLIANCE WITH STATUTORY PROVISIONS GOVERNING SERVICE OF PROCESS IS REQUIRED IN ORDER FOR THE COURT TO ACQUIRE PERSONAL JURISDICTION OVER A PARTY.

Service of summons in conformity with the mode prescribed by statute is deemed jurisdictional, and, absent such service, no jurisdiction is acquired by the court in the particular action. *See Renoir v. Redstar Corp.* (2004) 123 Cal. App. 4th 1145; *Schering Corp. v. Superior Court*, (1975) 52 Cal. App. 3d 737, 741; *Sternbeck v. Buck* (1957) 148 Cal. App. 2d 829, 832. Code of Civil Procedure § 415.10 states that "[a] summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served." Code Civ. Proc. § 415.10. Alternatively, "if a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served... a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house... in the presence of a competent member of the household...." Code Civ. Proc. 415.20. Finally, if neither personal service nor substituted service is carried out, a plaintiff may petition the court for an Order to Post and Mail the Summons and Complaint. Code Civ. Proce. § 415.45.

In the present case, the Defendant was not served with the Summons and Unlawful Detainer Complaint. She found the documents lying on her front porch. They have not been served

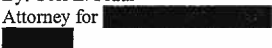
in any other manner as of this date. Such service was defective and failed to meet the requirements set forth by Code of Civil Procedure 415 *et. seq.* As such, the court lacks jurisdiction over the Defendant until such a time that proper service is effected.

III. CONCLUSION

Service by simply leaving papers on a porch is improper and defective under California’s statutory scheme. Defective service is grounds for a Motion to Quash Service of Summons under Code of Civil Procedure 418.10 *et. seq.* Because the service was defective, the Court has not acquired jurisdiction over the Defendant. Based on these facts, the Court must grant defendant’s Motion to Quash Service of Summons and Unlawful Detainer Complaint. Defendant respectfully requests that the Court grant her Motion to Quash and provide whatever relief the Court deems just and proper.

Dated: _____

Respectfully submitted,
Inland Counties Legal Services,

By: Tori L. Praul
Attorney for 

ANSWER UNLAWFUL DETAINER

1. **Defendant** (each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs):
- answers the complaint as follows:
2. **Check ONLY ONE of the next two boxes:**
- a. ☐ Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000.)
- b. ☐ Defendant admits that all of the statements of the complaint are true EXCEPT:
- (1) Defendant claims the following statements of the complaint are false: state paragraph numbers from the complaint or explain below or on form MC-025: ☐ Explanation is on MC-025, titled as Attachment 2b(1).
- (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (state paragraph numbers from the complaint or explain below or on form MC-025): ☐ Explanation is on MC-025, titled as Attachment 2b(2).
3. **AFFIRMATIVE DEFENSES (NOTE: For each box checked, you must state brief facts to support it in item 3k (top of page 2).)**
- a. ☐ (nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.
- b. ☐ (nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c. ☐ (nonpayment of rent only) On (date): before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d. ☐ Plaintiff waived, changed, or canceled the notice to quit.
- e. ☐ Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- f. ☐ By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.
- g. ☐ Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):
- (Also, briefly state in item 3k the facts showing violation of the ordinance.)
- h. ☐ Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- i. ☐ Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (A temporary restraining order, protective order, or police report not more than 180 days old is required naming you or your household member as the protected party or a victim of these crimes.)
- j. ☐ Other affirmative defenses are stated in item 3k.

CASE NUMBER:

3. AFFIRMATIVE DEFENSES (cont'd)

- k. Facts supporting affirmative defenses checked above (identify facts for each item by its letter from page 1 below or on form MC-025):

☐ Description of facts is on MC-025, titled as Attachment 3k.

4. OTHER STATEMENTS

- a. ☐ Defendant vacated the premises on (date):

- b. ☐ The fair rental value of the premises alleged in the complaint is excessive (explain below or on form MC-025):

☐ Explanation is on MC-025, titled as Attachment 4b.

- c. ☐ Other (specify below or on form MC-025 in attachment):

☐ Other statements are on MC-025, titled as Attachment 4c.

5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.

- b. costs incurred in this proceeding.

- c. ☐ reasonable attorney fees.

- d. ☐ that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.

- e. ☐ Other (specify below or on form MC-025):

☐ All other requests are stated on MC-025, titled as Attachment 5e.

6. Number of pages attached: _____

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code §§ 6400—6415)

7. (Must be completed in all cases.) An unlawful detainer assistant ☐ did not ☐ did for compensation give advice or assistance with this form. (If defendant has received any help or advice for pay from an unlawful detainer assistant, state):

- a. Assistant's name:

- b. Telephone No.:

- c. Street address, city, and zip code:

- d. County of registration:

- e. Registration No.:

- f. Expires on (date):

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____ SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	FOR COURT USE ONLY
Plaintiff: Defendant:	
ANSWER—UNLAWFUL DETAINER	CASE NUMBER:

1. Defendant (each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs):

 answers the complaint as follows:
2. Check **ONLY ONE** of the next two boxes:
 - a. ☐ Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000.)
 - b. ☐ Defendant admits that all of the statements of the complaint are true EXCEPT:
 - (1) Defendant claims the following statements of the complaint are false state paragraph numbers from the complaint or explain below or on form MC-025: ☐ Explanation is on MC-025, titled as Attachment 2b(1).
 - (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (state paragraph numbers from the complaint or explain below or on form MC-025):
☐ Explanation is on MC-025, titled as Attachment 2b(2).
3. AFFIRMATIVE DEFENSES (**NOTE:** For each box checked, you must state brief facts to support it in item 3k (top of page 2).)
 - a. ☐ (nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.
 - b. ☐ (nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
 - c. ☐ (nonpayment of rent only) On (date): _____ before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
 - d. ☐ Plaintiff waived, changed, or canceled the notice to quit.
 - e. ☐ Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
 - f. ☐ By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.
 - g. ☐ Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage): _____
 (Also, briefly state in item 3k the facts showing violation of the ordinance.)
 - h. ☐ Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
 - i. ☐ Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (A temporary restraining order, protective order, or police report not more than 180 days old is required naming you or your household member as the protected party or a victim of these crimes.)
 - j. ☐ Other affirmative defenses are stated in item 3k.

Page 1 of 2

k. Facts supporting affirmative defenses checked above (identify facts for each item by its letter from page 1 below or on form MC-025):

- ☐ Description of facts is on MC-025, titled as Attachment 3k.

OTHER STATEMENTS

a. ☐ Defendant vacated the premises on (date):

b. ☐ The fair rental value of the premises alleged in the complaint is excessive (explain below or on form MC-025):

☐ Explanation is on MC-025, titled as Attachment 4b.

- c. ☐ Other (specify below or on form MC-025 in attachment):
☐ Other statements are on MC-025, titled as Attachment 4c.

a. ☐ that plaintiff take nothing requested in the complaint.

b. ☐ costs incurred in this proceeding.

c. ☐ reasonable attorney fees.

d. ☐ that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.

e. ☐ Other (specify below or on form MC-025):
☐ All other requests are stated on MC-025, titled as Attachment 5e.

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code §§ 6400—6415)

7. (Must be completed in all cases.) An unlawful detainer assistant ☐ did not ☐ did for compensation give advice or assistance with this form. (If defendant has received any help or advice for nav from an unlawful detainer assistant, state):

- a. Assistant's name: _____ b. Telephone No.: _____
- c. Street address, city, and zip code: _____
- d. County of registration: _____ e. Registration No.: _____ f. Expires on (date): _____

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT)

**ATTACHMENT 3K
(ANSWER)**

Case Title:

Case No: CUD-16-

Document: Attachment 3k (to Form UD-105)

3.a. Defendant's mailbox has been vandalized. Defendant requested that Plaintiff repair or replace, but Plaintiff has not corrected the problem.

Plaintiff is attempting to evict Defendant in violation of the San Francisco Residential Rent Stabilization and Arbitration Ordinance (SF Rent Control Ordinance), Chapter 37 in that Plaintiff unilaterally changed a material terms of the tenancy and is attempting to evict based on that changed term.

Plaintiff is attempting to evict Defendant for payments that are not rent, but money paid on the Section 8 Housing Assistance Payment contract by the San Francisco Housing Authority (SFHA).

Plaintiff failed to state a cause of action in unlawful detainer in that Plaintiff's primary motive is not one permitted under the SF Rent Control Ordinance.

Plaintiff is unlawfully discriminating against Defendant based on the source of income under the San Francisco Police Code, Article 33 SEC. 3304, in that Defendant is a Section 8 tenant.

Plaintiff failed to state a cause of action in unlawful detainer in that Plaintiff failed to properly serve on SFHA notice of termination of tenancy.

3.j. Other

(1) By serving the 10-Day Notice to Quit, Plaintiff breached the covenant of quiet enjoyment.

(2) The complaint fails to allege facts sufficient to state a cause of action.

(3) Plaintiff breached implied covenant of good faith and fair dealings by filing an unlawful detainer complaint without just cause under the SF Rent Control Ordinance.

(4) Plaintiff acted in bad faith.

(5) Plaintiff has unclean hands.

(6) Laches

(7) Estoppel

Attachment 3k_

**REQUEST/COUNTER REQUEST
FOR TRIAL**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY
TELEPHONE NO.: _____ FAX No. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____		
STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
PLAINTIFF: _____		
DEFENDANT: _____		CASE NUMBER: _____
<input type="checkbox"/> REQUEST <input type="checkbox"/> COUNTER-REQUEST TO SET CASE FOR TRIAL—UNLAWFUL DETAINER		
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant		

- ☐ Plaintiff's request. I represent to the court that all parties have been served with process and have appeared or have had a default or dismissal entered against them. I request that this case be set for trial.
- Trial preference. The premises concerning this case are located at (street address, apartment number, city, zip code, and county):
 - ☐ To the best of my knowledge, the right to possession of the premises is still in issue. This case is entitled to legal preference under Code of Civil Procedure section 1179a.
 - ☐ To the best of my knowledge, the right to possession of the premises is no longer in issue. No defendant or other person is in possession of the premises.
- Jury or nonjury trial. I request ☐ a jury trial ☐ a nonjury trial.
- Estimated length of trial. I estimate that the trial will take (check one):
 - ☐ days (specify number): _____
 - ☐ hours (specify if estimated trial is less than one day): _____
- Trial date. I am not available on the following dates (specify dates and reasons for unavailability): _____

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400–6415)

- (Complete in all cases.) An unlawful detainer assistant ☐ did not ☐ did for compensation give advice or assistance with this form. (If declarant has received any help or advice for pay from an unlawful detainer assistant, complete a–f.)
 - Assistant's name: _____
 - Street address, city, and zip code: _____
 - Telephone no.: _____
 - County of registration: _____
 - Registration no.: _____
 - Expires on (date): _____

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

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- An unlawful detainer case must be set for trial on a date not later than 20 days after the first request to set the case for trial is made (Code Civ. Proc., § 1170.5(a)).
- If a jury is requested, \$150 must be deposited with the court 5 days before trial (Code Civ. Proc., § 631).
- Court reporter and interpreter services vary. Check with the court for availability of services and fees charged.
- If you cannot pay the court fees and costs, you may apply for a fee waiver. Ask the court clerk for a fee waiver form.

PLAINTIFF: DEFENDANT:	CASE NUMBER:
------------------------------	--------------

PROOF OF SERVICE BY MAIL

Instructions: After having the parties served by mail with the Request/Counter-Request to Set Case for Trial—Unlawful Detainer, (form UD-150), have the person who mailed the form UD-150 complete this Proof of Service by Mail. An *unsigned* copy of the Proof of Service by Mail should be completed and served with form UD-150. Give the Request/Counter-Request to Set Case for Trial—Unlawful Detainer (form UD-150) and the completed Proof of Service by Mail to the clerk for filing. If you are representing yourself, someone else must mail these papers and sign the Proof of Service by Mail.

1. I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is (specify):

3. I served the Request/Counter-Request to Set Case for Trial—Unlawful Detainer (form UD-150) by enclosing a copy in an envelope addressed to each person whose name and address are shown below AND
 - a. ☐ depositing the sealed envelope in the United States mail on the date and at the place shown in item 3c with the postage fully prepaid.
 - b. ☐ placing the envelope for collection and mailing on the date and at the place shown in item 3c following ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
 - c. (1) Date mailed:
 - (2) Place mailed (city and state):

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

Date:

(TYPE OR PRINT NAME)	(SIGNATURE OF PERSON WHO MAILED FORM UD-150)
----------------------	----------------------------------------------

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	<u>Name</u>	<u>Address (number, street, city, and zip code)</u>
4.		
5.		
6.		
7.		
8.		
9.		

☐ List of names and addresses continued on a separate attachment or form MC-025, titled Attachment to Proof of Service by Mail.

DEMAND FOR JURY TRIAL

1 Irina Nadezhovskaya, SBN 278758
2 BAY AREA LEGAL AID
3 1035 MARKET STREET, 6TH FL.
4 SAN FRANCISCO, CA 94103
5 PHONE: 415-982-1300

6 ATTORNEY FOR DEFENDANT

7 SUPERIOR COURT OF CALIFORNIA
8 CITY AND COUNTY OF SAN FRANCISCO

9 Plaintiff,

10 vs.

11 Defendant

) Case No. CUD-16-

)
) DEMAND FOR JURY TRIAL AND
) MANDATORY SETTLEMENT
) CONFERENCE

12
13
14 Defendant hereby demands a trial by jury of all issues and a
15 mandatory settlement conference in the above-entitled case.

16
17 DATED:

18 BY: I. Nadezhovskaya
19 Irina Nadezhovskaya
20 Attorney for Defendant
21
22
23
24
25
26

27 Trial Date: Not yet set
28

Jury Demand

**MOTION FOR SUMMARY
JUDGEMENT**

1	Irina Naduhovskaya, SBN 278758	
2	Bay Area Legal Aid	
3	1035 Market Street, 6 th Floor	
4	San Francisco, CA 94103	
5	Telephone: (415) 982-1300 x6333	
6	Fax: (415) 982-4243	
7	Attorneys For Defendant,	
8		
9		
10		Case No. CUD-16
11	Plaintiff,	DEFENDANT'S NOTICE OF MOTION
12	v.	AND MOTION FOR SUMMARY
13		JUDGMENT; SEPARATE
14	Defendant.	STATEMENT OF UNDISPUTED
15		FACTS; MEMORANDUM OF POINTS
16		AND AUTHORITIES; DECLARATION
17		OF
18		Date:
19		Time: 9:30 a.m.
20		Dept: 501
21		Trial Date:
22		JURY TRIAL
23	TO PLAINTIFF	BY PLAINTIFF'S ATTORNEY OF RECORD:
24	PLEASE TAKE NOTICE that on	in Department 501 of the
25	above-referenced Court, located at 400 McAllister Street, San Francisco, California, Defendant	
26	will move the Court for Summary Judgment in favor of himself and against Plaintiff	
27	on the ground that Plaintiff's unlawful detainer action has no merit. Plaintiff's 3-day Notice	
28	to Pay Rent or Quit demands money that is not rent, but rather rental subsidy payments under the	
	Section 8 program; Plaintiff has no just cause under the San Francisco Residential Rent Stabilization	
	and Arbitration Ordinance; and Plaintiff is unlawfully discriminating against Defendant based on the	
	Defendant	MSJ - 1

source of rental payments for the unit. This motion involves no disputed issues of material fact and calls for a decision based on the law. Defendant respectfully requests that the Court grant his motion and dismiss the case with prejudice.

This motion will be based on this notice, the attached Memorandum of Points and Authorities, Statement of Undisputed Facts, Declaration of Exhibits, exhibits, and all papers and records on file herein, and such evidence, both oral and documentary, as may be presented at the hearing of this motion.

Dated: ,

By: _____
Irina Naduhovskaya
Attorney for Defendant

Defendant _MSJ - 2

1 Irina Naduhovskaya, SBN 278758
2 Bay Area Legal Aid
3 1035 Market Street, 6th Floor
4 San Francisco, CA 94103
5 Telephone: (415) 982-1300 x6333
6 Fax: (415) 982-4243
7 Attorneys For Defendant,

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

LIMITED JURISDICTION

Case No. CUD-16

Plaintiff,
v.

**DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Defendant.

Date: .
Time: 9:30 a.m.
Dept: 501

Trial Date:
JURY TRIAL

A. INTRODUCTION

Defendant ("Defendant") is a Section 8 voucher tenant residing in a unit covered by the San Francisco Rent Stabilization and Arbitration Ordinance, S.F. Admin. Code Ch. 37 ("SF Rent Ordinance"). Since the inception of the tenancy in 2005, San Francisco Housing Authority ("SFHA") has been making partial rent payments to the landlord on behalf of Defendant under the Section 8 program. After the new owner, , took over ownership of the property in November 2015, the property manager, Plaintiff ("Plaintiff"), served Defendant with a notice of termination of the Housing Assistance Payment Contract ("HAP Contract") under which had been receiving payments from SFHA for Defendant's tenancy. The notice purported to shift the responsibility for the entire amount of rent to Defendant.

Defendant MSJ - 1

1	When Defendant did not pay the portion of rent for which SFHA was responsible under the HAP
2	Contract, Plaintiff served Defendant with a Three-Day Notice to Pay Rent or Quit demanding
3	payment of SFHA's portion of rent. After the notice period expired, Plaintiff filed the instant
4	unlawful detainer action. Defendant now moves the Court for summary judgment on the basis that
5	this action has no merit.
6	Plaintiff's action fails as a matter of law for at least three reasons: First, Plaintiff's Three-Day
7	Notice demands rent that Defendant does not legally owe; notwithstanding Plaintiff's purported
8	unilateral "termination" of the HAP Contract, the contract remains in effect as a matter of law and
9	limits Defendant's rent obligation to well under the amount of rent alleged in the Three-Day Notice.
10	Second, Plaintiff's action violates SF Rent Ordinance prohibition against evictions without just
11	cause. The Complaint alleges that Defendant failed to pay rent, but the undisputed evidence shows
12	that at all relevant times Defendant has fully met his obligations to pay rent under the HAP
13	Contract. Finally, Plaintiff's admitted refusal to accept Section 8 rent payments amounts to unlawful
14	source-of-income discrimination against Defendant in violation of the San Francisco Police Code.
15	Because the relevant facts are undisputed and Plaintiff's claim is legally defective, the Court should
16	enter judgment in favor of Defendant.
17	
18	
19	<u>B. STATEMENT OF FACTS</u>
20	
21	Defendant is a Section 8 voucher holder. Exhibit A, Declaration of
22	("Decl. "), ¶ 2. Defendant has resided at street, San Francisco ("Subject
23	Property") since July 2005. Exhibit A, Decl. , ¶ 3. The Subject Property is covered by the SF
24	Rent Ordinance. Complaint, ¶ 14.
25	The previous owner of the Subject Property, , signed a Housing Assistance
26	Payment Contract with the SFHA. Exhibit B, Tenant/Owner Assisted Lease and HAP Contract
27	("HAP Contract"). Under the terms of the HAP Contract, the total amount of rent for this unit was
28	
	Defendant MSJ - 2

1 \$1,352, of which \$240 payable by the tenant, and \$1112 payable by SFHA. Exhibit B, HAP
 2 Contract, p. 1. In January 2015, SFHA's and Defendant's respective shares of the rent were adjusted
 3 by SFHA as follows: tenant \$179, SFHA \$1173. Exhibit C, HAP Contract Amendment, ("HAP
 4 Amendment").
 5 ~~In November 2015,~~ ~~became the new owner of the Subject Property and Plaintiff~~
 6 became the property manager for ~~Exhibit D, Grant Deed; Complaint, Exhibit 3,~~
 7 Management Contract. On or about November 19, 2016, ~~assumed the HAP Contract~~
 8 with SFHA previously signed by ~~Exhibit F, SFHA Section 8, Assumption of~~
 9 Housing Assistance Payment (HAP) Contract ("Assumption of HAP Contract").
 10
 11 In November 2015, Plaintiff served Defendant with Notice of Non-Renewal or Non-
 12 Extension of Section 8 Contract and Notice of Rent Payment Obligation ("90-Day Notice"). Exhibit
 13 G. The 90-Day Notice purports to terminate the HAP Contract with SFHA and shift the
 14 responsibility for 100% of the rent to Defendant as of March 1, 2016. Exhibit G, 90-Day Notice.
 15 The 90-Day Notice states that the owner will not accept any assistance payments from Section 8 for
 16 Defendant's unit after the expiration of the 90-Day notice and will return any such payments
 17 received. Exhibit G, 90-Day Notice. On or about March 1, 2016 Defendant paid to Plaintiff \$179,
 18 which represents his portion of the rent under the HAP Amendment issued in 2015. Exhibit A,
 19 Decl. ~~, ¶ 11; Exhibit H, Tenant Ledger.~~ On or about March 8, 2016, Plaintiff returned SFHA
 20 Section 8 payments for Defendant's tenancy and served Defendant with a Three-Day Notice to Pay
 21 Rent or Quit ("3-Day Notice") in the amount of \$1,173. Exhibit A, Decl. ~~, ¶ 12; Exhibit K,~~
 22 Letter from ~~, Defendant did not pay \$1,173 demanded in the 3-Day Notice and, on March 18,~~
 23 2016, Plaintiff filed this Unlawful Detainer action based on the 3-Day Notice. Exhibit A, Decl.
 24 ~~, ¶ 13; Complaint.~~
 25
 26
 27
 28 Defendant: MSJ - 3

1	C. <u>ARGUMENT</u>
2	I. Summary Judgment is Appropriate When an Action has No Merit
3	Under California Code of Civil Procedure § 437c, a party may move for summary judgment
4	on the basis that the action has “no merit.” C.C.P. § 437c(a). “A cause of action has no merit if . . .
5	[o]ne or more elements of the cause of action cannot be established” or “[a] defendant establishes an
6	affirmative defense to that cause of action.” C.C.P. § 437c(o).
7	Once the defendant has met his burden of showing that “one or more elements of the cause
8	of action . . . cannot be established,” or establishes an affirmative defense to that cause of action, the
9	burden then shifts to the plaintiff to show that a triable issue of material fact exists for that cause of
10	action. C.C.P. § 437c(p)(2). To meet his burden, “all that the defendant need do is to show that the
11	plaintiff cannot establish at least one element of the cause of action.” <u>Aguilar v. Atlantic Richfield</u>
12	<u>Co.</u> , (2001) 25 Cal.4th 826, 853.
13	
14	Code of Civil Procedure § 1170.7 provides that a motion for summary judgment can be
15	made in an unlawful detainer case after the answer is filed, upon five days’ notice, and shall be
16	decided on the same basis as a motion under § 437c. Under § 437c, a summary judgment motion
17	“shall be granted if all the papers submitted show that there is no triable issue of material fact and
18	that the moving party is entitled to a judgment as a matter of law.” C.C.P. § 437c(c).
19	
20	The instant action has no merit in that Plaintiff cannot establish at least two elements of the
21	cause of action in unlawful detainer: 1) Plaintiff’s 3-day Notice overstates the amount of rent due in
22	that it demands money that is not rent, but rental assistance payments by the San Francisco Housing
23	Authority under a Section 8 contract; and 2) Plaintiff cannot show that Plaintiff has good cause to
24	evict Defendant under the San Francisco Rent Stabilization and Arbitration Ordinance in that
25	Plaintiff unilaterally changed a material term of the tenancy and is attempting to evict Defendant
26	based on that new term. Finally, Defendant has an affirmative defense: unlawful source-of-income
27	
28	
	Defendant . MSJ - 4

1	discrimination in that Defendant is a Section 8 tenant and Plaintiff is refusing Section 8 housing
2	assistance payments.
3	II. 3-Day Notice to Pay Rent or Quit overstates the amount of rent due from
4	Defendant by \$1173.
5	An action in unlawful detainer requires strict compliance with the specifically prescribed
6	notice conditions. <u>Kwok v. Bergren</u> (1982) 130 Cal.App. 3d 596, 599. A 3-day notice demanding
7	rent must state the precise amount actually due. <u>Nourafchan v. Miner</u> (1985) 169 Cal.App. 3d 746,
8	753. In the present case, the notice overstates the amount of rent due by \$1173.
9	Defendant is a Section 8 voucher holder and his tenancy is governed by the Assisted Lease
10	and HAP Contract first signed by the old owner, _____, s, in 2005. Exhibit B, Assisted
11	Lease and HAP Contract. The HAP Contract terms delineate the responsibility for rent for the
12	tenant and SFHA respectively. The HAP Contract is amended annually and was last amended in
13	January 2015 defining the tenant's responsibility for rent as \$179. Exhibit C, HAP Contract
14	Amendment. The remaining \$1173 is not rent owed by the tenant, but payments on the contract
15	between SFHA and the owner. Exhibit B, HAP Contract; Exhibit C, HAP Contract Amendment.
16	_____ assumed the HAP Contract in November 2015 and agreed to "comply with the
17	terms and conditions for the Contract and Lease Agreement, ...". Exhibit F, Assumption of HAP
18	Contract. The terms of the HAP Contract assumed by _____ include the tenant's portion of rent
19	of \$179. Nowhere in the terms of the HAP Contract is the tenant responsible for SFHA payments.
20	Part C of HAP Contract: Tenancy Addendum, Sec. 5.d. states:
21	"The tenant is not responsible for paying the portion of rent to owner covered by the
22	PHA housing assistance payment under the HAP contract between the owner and the
23	PHA. A PHA failure to pay the housing assistance payment to the owner is not
24	violation of the lease. The owner may not terminate the tenancy for nonpayment of
25	the PHA housing assistance payment."
26	
27	
28	
	Defendant : MSJ - 5

1	Having assumed the HAP Contract with all its terms,	cannot now demand from
2	Defendant money payable by SFHA. The latest HAP Contract Amendment states that SFHA is	
3	responsible for \$1173, which is the exact amount demanded in the 3-Day Notice. Since the HAP	
4	Amendment was issued in January 2015, Defendant has paid his share of the rent every month,	
5	including March 2016. Dec. , ¶ 8 & 11. Defendant fulfilled his obligation under the Assisted	
6	Lease and HAP Contract and no additional rent is due from Defendant.	
7		
8	Plaintiff will argue that she terminated the HAP Contract and therefore is entitled to collect	
9	the full amount of rent from Defendant. However, no provision in the HAP Contract, or in the	
10	applicable local, state or federal law, allows Plaintiff to terminate the HAP Contract.	
11	The HAP Contract assumed by	in November 2015 states as follows:
12	Part B of HAP Contract: Body of Contract, Sec. 4.b., When HAP Contract terminates:	
13	"(1) The HAP contract terminates automatically if the lease is terminated by the	owner or the tenant.
14	(2) The PHA may terminate program assistance for the family for any ground	authorized in accordance with HUD requirements. If the PHA terminates program
15	assistance for the family, the HAP contract terminates automatically.	
16	(3) If the family moves from the contract unit, the HAP contract terminates	automatically.
17	(4) The HAP contract terminates automatically 180- calendar days after the last	housing assistance payment to the owner.
18	(5) The PHA may terminate the HAP contract if the PHA determines, in accordance	with HUD requirements, that available program funding is not sufficient to support
19	continued assistance for families in the program.	
20	(6) The PHA may terminate the HAP contract if the PHA determines that the	contract unit does not provide adequate space in accordance with the HQS because
21	of an increase in family size or a change in family composition.	
22	(7) If the family breaks up, the PHA may terminate the HAP contract, or may	continue housing assistance payments on behalf of family members who remain in
23	the contract unit.	
24	(8) The PHA may terminate the HAP contract if the PHA determines that the unit	does not meet all requirements of the HQS, or determines that the owner has
25	otherwise breached the HAP contract."	
26	In other words, the HAP Contract renews automatically each year unless one of the above	
27	enumerated circumstances for termination of the Contract occurs. The only ground which would	
28		
	Defendant	MSJ - 6

1 allow a landlord to terminate the HAP Contract is Part B, Sec. 4.b.(1) above – a termination of the
2 tenancy. Termination of the tenancy is a condition precedent to the termination of the HAP
3 Contract. In the present case, where the unit is controlled by the SF Rent Ordinance, termination of
4 the tenancy must be premised on one of the just causes enumerated in Chapter 37.9.

5 Nor does the SF Rent Ordinance or state law allow termination of the HAP Contract.

6 Plaintiff's reliance on the SF Rent Ordinance, Chapter 37.3(d)(3)¹ as granting authority to the owner
7 to terminate the HAP Contract is misplaced. That subsection does not say that the landlord *may*
8 terminate the contract. Instead, it limits the landlord's ability to increase rent on units *where* a
9 contract with a government agency was terminated. In order for it to apply, the HAP Contract must
10 first be lawfully terminated according to the contract terms outlined above. No such termination has
11 occurred. Therefore, and Defendant are still bound by the terms of the contract and
12 Plaintiff may not demand from Defendant any amount for which SFHA is responsible. Plaintiff's
13 remedy is to demand SFHA payments on the HAP Contract from SFHA.

14
15 Because the amount stated in the notice is not Defendant's portion of the rent, but payments
16 on the HAP Contract between SFHA and owner, Plaintiff's 3-Day Notice to Pay Rent or Quit
17 overstates the amount of rent due from Defendant by \$1173. Plaintiff cannot prove an essential
18 element of the action – notice for correct amount. This action is therefore fatally defective and the
19 Court should grant summary judgment in Defendant's favor.

20
21
22 **III. Plaintiff is attempting to evict without just cause in violation of the San
23 Francisco Rent Ordinance.**

24 Where a residential tenancy is governed by a local eviction control ordinance, the SF Rent
25 Ordinance prohibits evictions without just cause. Crisesales v. Estrada (2012) 204 Cal.App. 4th Supp.

26 1. In this case, the tenancy at issue is governed by the SF Rent Ordinance. Complaint, ¶ 14. Chapter

27
28 ¹ Chapter 37.3(d) incorporates the Costa Hawkins Rental Housing Act (Civil Code §§ 1954.50, et seq.). Plaintiff
cited this provision in her discovery responses as the authority for terminating the HAP Contract.

1	37.9(a) of the SF ordinance provides that a landlord may not evict a tenant except for one of the
2	enumerated just causes. Thus, the instant unlawful detainer action must be premised on one of the
3	just causes enumerated therein. As explained below, she cannot do so. Therefore her unlawful
4	detainer action must fail.
5	While Plaintiff alleges in the Complaint that this eviction is permitted under the SF Rent
6	Ordinance for nonpayment of rent, Plaintiff is wrong. Under Chapter 37.9(a)(1), a landlord has just
7	cause to evict a tenant for nonpayment of rent "to which the landlord is lawfully entitled [under the
8	rental agreement]." As discussed above, Plaintiff's unilateral "termination" of the HAP Contract was
9	not effective. Thus Defendant's obligation to pay monthly rent is limited to the amount stated in the
10	Amended HAP Contract -- \$179. Plaintiff is not "lawfully entitled" to receive more from Defendant
11	under the rental agreement. Because it is undisputed that Defendant paid the required amount,
12	Plaintiff has no "just cause" to evict Defendant for failure to pay what he was never obligated to
13	pay. Therefore, the Court should grant summary judgment for Defendant.
14	
15	Even if Plaintiff were entitled to unilaterally terminate the HAP Contract, which Plaintiff
16	was not, the result would be to add a covenant or obligation that was not included in Defendant's
17	rental agreement at the inception of the tenancy: i.e., the obligation to pay the entire rent without
18	SFHA assistance. Under the SF Rent Ordinance, Defendant's breach of this hypothetical obligation
19	(failing to pay the entire unsubsidized rent amount) cannot be the basis of an eviction.
20	
21	Generally, a landlord has just cause under the SF Rent Ordinance to evict a tenant for a
22	substantial violation of a lease obligation. S.F. Admin Code, Ch. 37.9(a)(2). However, under S.F.
23	Rent Board Rules and Regulations § 12.20, a landlord generally cannot evict a tenant for violation
24	of an obligation that was not included in the tenant's rental agreement at the inception of the
25	tenancy:
26	
27	"[A] tenant may not be evicted for violation of a covenant or obligation that was not
28	
	Defendant _MSJ - 8

1	included in the tenant's rental agreement at the inception of the tenancy unless: (1)
2	the change in the terms of the tenancy is authorized by the Rent Ordinance; or (2) the
3	change in the terms of the tenancy was accepted in writing by the tenant after receipt
4	of written notice from the landlord that the tenant need not accept such new term as
5	part of the rental agreement."
6	Here, the rental agreement at the inception of the tenancy in 2005 included the Assisted
7	Lease and the HAP Contract. As it has for the past 10 years, the agreement limited the portion of
8	rent payable by Defendant and provided for supplemental rental assistance payments by SFHA. If
9	Plaintiff's purported termination of the HAP Contract were effective, the terms of Defendant's
10	tenancy would fundamentally change: Defendant would have a new obligation to pay the full rent
11	amount without assistance. This new obligation would trigger the protections of SF Rent Board
12	Rules and Regulations § 12.20 because it was not included at the inception of the tenancy. Per §
13	12.20 Plaintiff cannot evict Defendant for failing to pay the unsubsidized amount because the
14	obligation was not included in the rental agreement at the inception of the tenancy and neither
15	exception applies: termination of the HAP Contract is not permitted by the SF Rent Ordinance, nor
16	did Defendant accept such a change in the terms of his tenancy.
17	In sum, Plaintiff cannot show a just cause for eviction under the SF Rent Ordinance, which
18	is an essential element of the cause of action in an unlawful detainer from a rent-controlled unit.
19	Without just cause, Plaintiff's action has no merit. Judgment should be entered for Defendant and
20	this action should be dismissed.
21	
22	IV. Plaintiff is discriminating against Defendant based on source of income in
23	violation of San Francisco Police Code, Article 33 because Defendant is a Section
24	8 tenant.
25	By attempting to terminate the HAP contract with SFHA and subsequently demanding the
26	same amount of rent from Defendant, Plaintiff is discriminating against Defendant based on the
27	source of the payments made for Defendant's tenancy. Such discrimination is unlawful under the
28	San Francisco Police Code and Plaintiff should not be allowed to evict Defendant based on such
	unlawful discrimination.
	Defendant _MSJ - 9

1	The San Francisco Police Code, Article 33, § 3304(a)(1) provides as follows:
2	"It shall be unlawful for any person to do any of the following acts wholly or partially because of a persons' ... source of income, ...:
3	(1) To interrupt, terminate, or fail or refuse to initiate or conduct any transaction in real property, including but not limited to the rental thereof; ...;
4	For the purpose of this Subsection (a), "source of income" means all lawful sources of income or rental assistance from any federal, State, local, or nonprofit-administered benefit or subsidy program. "Source of income" also means a rental assistance program, ... or housing subsidy program.
5	
6	
7	Section 3306 states:
8	"Any person who violates any of the provisions of this Article or who aids in the violation of any provisions of this Article shall be liable for, and the court must award to the individual whose rights are violated, three times the amount of special and general damages, or, in the case of unlawful discrimination in the rental of the unit, three times the amount of one month's rent that the landlord charges for the unit in question. In all cases, the court may award in addition thereto, not less than \$200 but not more than \$400, together with attorney's fees, costs of action, and punitive damages."
9	
10	
11	
12	
13	Section 3308 of the Police Code states that any person who violates any provision of Section
14	3304 "shall be deemed guilty of a misdemeanor and ... may be punished by a fine of not more than
15	\$2,000 or by imprisonment in the County Jail for a period of not more than six months, or both."
16	By returning Section 8 housing assistance payments for Defendant's tenancy and demanding
17	that Defendant instead pay Plaintiff directly from his own income, Plaintiff is doing the acts
18	specifically prohibited by § 3304(a)(1) – discriminating between the source of the money for the
19	rental unit. Plaintiff returned Section 8 payments and is now attempting to terminate a real property
20	transaction (i.e. rental of the unit) unless Defendant pays directly from his own income. Section 8
21	housing subsidy is federal rental assistance administered by the local housing authority and such
22	source of rent payments is specifically protected by § 3304. Drawing a distinction on the basis of the
23	source of rental payments for the unit and terminating Defendant's tenancy based on such distinction
24	is not permitted under Police Code and should not be permissible basis for an unlawful detainer.
25	Defendant respectfully requests that the Court dismiss Plaintiff's complaint with prejudice.
26	Defendant also requests that court award fines pursuant to § 3306, and costs and attorney's fees
27	according to proof.
28	
	Defendant _MSJ - 10

D. CONCLUSION

Because there are no material issues of fact in this case with regard to the above motion, and only issues of law are involved, Defendant respectfully requests that the Court grant his motion for summary judgment, dismiss the action with prejudice and award fines, costs and fees as permitted by law.

Respectfully submitted,

Dated: 1 6

By: _____
Irina Naduhovskaya,
Attorney for Defendant

Defendant _MSJ - 11

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2	Bay Area Legal Aid
3	1035 Market Street, 6 th Floor
4	San Francisco, CA 94103
5	Telephone: (415) 982-1300 x6333
6	Fax: (415) 982-4243
7	Attorneys For Defendant,
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Fax: (415) 982-4243
Attorneys For Defendant,

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

v. Plaintiff,

Defendant.

Case No. CUD-16-

DEFENDANT'S STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

Date:
Time: 9:30 a.m.
Dept: 501

Trial Date:
JURY TRIAL

STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendants' Undisputed Material Facts and Supporting Evidence:	Plaintiff's Response and Supporting Evidence:
----------------------------------------------------------------	-----------------------------------------------

Defendant. _MSJ - 1

1	Defendant is a Section 8 voucher holder. Exhibit A, Declaration of _____ Decl.	
2	_____, ¶ 2.	
3	Defendant has resided at _____ street, San Francisco ("Subject Property") since July 2005. Exhibit A, Decl. _____, ¶ 3.	
4	Previous owner of the property was _____.	
5	Exhibit A, Decl. _____, ¶ 4. _____ signed a Housing Assistance Payment Contract ("HAP Contract") with the San Francisco Housing Authority ("SFHA"). Exhibit B, Tenant/Owner Assisted Lease, Section 8 Housing Choice Voucher Program, and Housing Assistance Payment Contract, ("HAP Contract").	
6	Under the terms of the original HAP Contract, the total amount of rent for this unit was \$1,352. Exhibit B, HAP Contract, p. 1.	
7	Under the terms of the original HAP Contract, SFHA was responsible for paying \$1,112 of the total rent directly to the owner. Exhibit B, HAP Contract, p. 1.	
8	Under the terms of the original HAP Contract, Defendant was responsible for paying \$240 of the total rent directly to the owner. Exhibit B, HAP Contract, p. 1.	
9	Defendant's share of the rent was subsequently adjusted in January 2015 by SFHA to \$179. Exhibit C, HAP Contract Amendment, January 22, 2015.	
10	SFHA's portion of rent was subsequently adjusted in January 2015 to \$1,173. Exhibit C, HAP Contract Amendment, January 22, 2015.	
11	The subject property is covered by the San Francisco Rent Stabilization and Arbitration Ordinance, Chapter 37. Complaint, ¶ 14.	
12	In November 2015, _____ became the new owner of the subject property. Exhibit D, Grant Deed.	
13	Plaintiff _____ is the property manager for _____. Exhibit E, November 12 Letter from _____ to _____; Complaint, Exhibit 3, Management Contract.	
14	On or about November 19, 2016, _____ assumed the HAP Contract with SFHA previously signed by _____.	
15	Exhibit F, SFHA Section 8, Assumption of	
Defendant. MSJ - 2		

1	Housing Assistance Payment (HAP) Contract, ("Assumption of HAP Contract").	
2	In November 2015, served Defendant	
3	with Notice of Non-Renewal or Non-Extension	
4	of Section 8 Contract and Notice of Rent	
5	Payment Obligation, ("90-day Notice"). Exhibit	
6	G.	
7	The 90-day notice purports to terminate the	
8	HAP contract with SFHA. Exhibit G, 90-day	
9	Notice.	
10	The 90-day notice states that as of March 1,	
11	2016, Defendant will be responsible for 100%	
12	of the rent payment. Exhibit G, 90-day Notice.	
13	The 90-day notice states that the owner will not	
14	accept any assistance payments from a Section	
15	8 program for Defendant's unit after the	
16	expiration of the 90-day notice and will refund	
17	any such payments received. Exhibit G, 90-day	
18	Notice.	
19	On or about March 1, 2016 Defendant paid	
20	\$179 to Plaintiff . Exhibit A, Decl.	
21	¶ 11; Exhibit H, Tenant ledger.	
22	On or about March 8, 2016, Plaintiff served	
23	Defendant with a 3-day Notice to Pay Rent or	
24	Quit ("3-day Notice") in the amount of \$1,173.	
25	Exhibit A, Decl. ¶ 12.	
26	Defendant did not pay \$1,173 demanded in the	
27	3-day Notice. Exhibit A, Decl. ¶ 13.	
28	On or about March 9, Plaintiff returned to	
29	SFHA Section 8 payments for	
30	Exhibit K, Letter from to	
31	Return of rent paid by Section 8.	
32		
33	Date:	
34		Irina Naduhovskaya
35		Attorney for Defendant
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Defendant

MSJ - 3

1 Irina Naduhovskaya, SBN 278758
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4 San Francisco, CA 94103
5 Tel: (415) 982-4243
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7 inaduhovskaya@baylegal.org

8 Attorneys for Defendant

9 SUPERIOR COURT OF CALIFORNIA,

10 COUNTY OF SAN FRANCISCO

11 Plaintiff,

12 vs.

13 Defendant.

14) Case No. CUD-16
15) REQUEST FOR JUDICIAL NOTICE IN
16) SUPPORT OF DEFENDANT'S MOTION
17) FOR SUMMARY JUDGMENT
18)
19) Hearing Date:
20) Time: 9:30 am
21) Dept: 501
22) Trial date:
23) Jury Trial

24 To all parties and their attorney of record, please take notice that defendants hereby
25 request that the court take judicial notice of the following documents pursuant to Evidence Code
26 sections 452 (b) in connection with Defendant's motion for summary judgment. True and correct
27 copies of the documents for which judicial notice is requested are attached hereto and are
28 described as follows:

- 23 1. Exhibit A, Article 33: Prohibiting Discrimination Based on Race, Color, Ancestry,
24 National Origin, Place of Birth, Sex, Age, Religion, Creed, Disability, Sexual
25 Orientation, Gender Identity, Weight, or Height, SEC. 3301 through 3312. Also found
26 online at
27 <https://law.resource.org/pub/us/code/city/SanFrancisco/Police%20Code/article33.html>
- 28 2. Exhibit B, Section 37.3, Rent Limitations, Rent Board. Also found online at
<http://sfrb.org/section-373-rent-limitations>
3. Exhibit C, Section 37.9, Evictions, Rent Board. Also found online at
<http://sfrb.org/section-379-evictions>

1 4. Exhibit D, San Francisco Residential Rent Stabilization and Arbitration Board, Rules and
2 Regulations, Section 12.20, Evictions under Section 37.9(a)(2). Also found online at
3 <http://sfrb.org/part-12-legal-actions-under-ordinance-section-379e>

4 Date:

5 By: _____
6 Irina Naduhovskaya,
7 Attorney for Defendant

1 Irina Naduhovskaya, SBN 278758
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3 1035 Market Street, 6th Floor
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Attorneys for Defendant

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

9
10) Case No. CUD-16-
11)
12 Plaintiff,) DECLARATION OF IN
13 vs.) SUPPORT OF MOTION FOR
14) SUMMARY JUDGMENT
15)
16 Defendant.) Date: .
Time: 9:30 a.m.
Dept: 501
Trial Date: .
17)

18 I, say that I have personal knowledge of the facts stated in this declaration. If
19 called as a witness in this matter, I could and would competently testify as follows:

- 20 1. I am a Defendant in the above-entitled action
21 2. I have a Section 8 voucher and the San Francisco Housing Authority ("SFHA")
22 subsidizes a portion of my rent.
23 3. I have been residing at , San Francisco, using my voucher since July
24 2005.
25 4. was the old owner of the building where I live.
26 5. I pay about 30% of my income in rent.
27 6. At the beginning of my tenancy, my portion of rent was \$240.
28 7. Around January 2015, SFHA adjusted my portion of the rent to \$179 effective
April 2015.

Dec. in Support of Motion for Summary Judgment - 1

- 1 8. Starting April 2015, I have been paying \$179 per month in rent.
2 9. In November 2015, I received notice of transfer of ownership from
3 to a new owner, . The notice stated that is the new property
4 manager.
5 10. In November or December 2015, I received a 90-day Notice of Non-Renewal or
6 Non-Extension of Section 8 Contract and Notice of Change of Rent Payment Obligation
7 signed by . The notice informed me that as of March 1, 2016, the owner will no
8 longer accept Section 8 payments and I will be responsible for 100% of the rent, which at
9 that time was \$1352. A true and correct copy attached as Exhibit G.
10 11. On or about March 1, 2016, I paid \$179 to
11 12. On or about March 8, 2016, I received a 3-day Notice to Pay Rent or Quit
12 demanding \$1,173.
13 13. I did not pay the amount in the three-day notice.

14
15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17
18 Executed in San Francisco, California on , 2016.
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FORM INTERROGATORIES

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		UNLAWFUL DETAINER ASSISTANT (Check one box): An unlawful detainer assistant <input type="checkbox"/> did <input type="checkbox"/> did not for compensation give advice or assistance with this form. (If one did, state the following): ASSISTANT'S NAME: ADDRESS: TEL. NO.: COUNTY OF REGISTRATION: REGISTRATION NO.: EXPIRES (DATE):	
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF:			
SHORT TITLE:			

FORM INTERROGATORIES—UNLAWFUL DETAINER Asking Party: Answering Party: Set No.:	CASE NUMBER:
------------------------------------------------------------------------------------------------------------	--------------

Sec. 1. Instructions to All Parties

(a) These are general instructions. For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010-2030.410 and the cases construing those sections.

(b) These interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or objection.

Sec. 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use in unlawful detainer proceedings.

(b) There are restrictions that generally limit the number of Interrogatories that may be asked and the form and use of the Interrogatories. For details, read Code of Civil Procedure sections 2030.030–2030.070.

(c) In determining whether to use these or any interrogatories, you should be aware that abuse can be punished by sanctions, including fines and attorney fees. See Code of Civil Procedure section 128.7.

(d) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.

(e) Additional interrogatories may be attached.

Sec. 3. Instructions to the Answering Party

(a) An answer or other appropriate response must be given to each interrogatory checked by the asking party. Failure to respond to these interrogatories properly can be punished by sanctions, including contempt proceedings, fine, attorneys fees, and the loss of your case. See Code of Civil Procedure sections 128.7 and 2030.300.

(b) As a general rule, within five days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure sections 2030.260–2030.270 for details.

(c) Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(g) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

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

(DATE)

(SIGNATURE)

Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.

(b) **PLAINTIFF** includes any **PERSON** who seeks recovery of the **RENTAL UNIT** whether acting as an individual or on someone else's behalf and includes all such **PERSONS** if more than one.

(c) **LANDLORD** includes any **PERSON** who offered the **RENTAL UNIT** for rent and any **PERSON** on whose behalf the **RENTAL UNIT** was offered for rent and their successors in interest. **LANDLORD** includes all **PERSONS** who managed the **PROPERTY** while defendant was in possession.

(d) **RENTAL UNIT** is the premises **PLAINTIFF** seeks to recover.

(e) **PROPERTY** is the building or parcel (including common areas) of which the **RENTAL UNIT** is a part. (For example, if **PLAINTIFF** is seeking to recover possession of apartment number 12 of a 20-unit building, the building is the **PROPERTY** and apartment 12 is the **RENTAL UNIT**. If **PLAINTIFF** seeks possession of cottage number 3 in a five-cottage court or complex, the court or complex is the **PROPERTY** and cottage 3 is the **RENTAL UNIT**.)

(f) **DOCUMENT** means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(g) **NOTICE TO QUIT** includes the original or copy of any notice mentioned in Code of Civil Procedure section 1161 or Civil Code section 1946, including a 3-day notice to pay rent and quit the **RENTAL UNIT**, a 3-day notice to perform conditions or covenants or quit, a 3-day notice to quit, and a 30-day notice of termination.

(h) **ADDRESS** means the street address, including the city, state, and zip code.

Sec. 5. Interrogatories

The following interrogatories have been approved by the Judicial Council under section 2033.710 of the Code of Civil Procedure for use in unlawful detainer proceedings:

CONTENTS

- 70.0 General
- 71.0 Notice
- 72.0 Service
- 73.0 Malicious Holding Over
- 74.0 Rent Control and Eviction Control
- 75.0 Breach of Warranty to Provide Habitable Premises
- 76.0 Waiver, Change, Withdrawal, or Cancellation of Notice to Quit
- 77.0 Retaliation and Arbitrary Discrimination
- 78.0 Nonperformance of the Rental Agreement by Landlord
- 79.0 Offer of Rent by Defendant
- 80.0 Deduction from Rent for Necessary Repairs
- 81.0 Fair Market Rental Value

70.0 General

[Either party may ask any applicable question in this section.]

- ☐ 70.1 State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the responses to these Interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

- ☐ 70.2 Is **PLAINTIFF** an owner of the **RENTAL UNIT**? If so, state:
(a) the nature and percentage of ownership interest;
(b) the date **PLAINTIFF** first acquired this ownership interest.
- ☐ 70.3 Does **PLAINTIFF** share ownership or lack ownership? If so, state the name, the **ADDRESS**, and the nature and percentage of ownership interest of each owner.
- ☐ 70.4 Does **PLAINTIFF** claim the right to possession other than as an owner of the **RENTAL UNIT**? If so, state the basis of the claim.
- ☐ 70.5 Has **PLAINTIFF'S** interest in the **RENTAL UNIT** changed since acquisition? If so, state the nature and dates of each change.
- ☐ 70.6 Are there other rental units on the **PROPERTY**? If so, state how many.
- ☐ 70.7 During the 12 months before this proceeding was filed, did **PLAINTIFF** possess a permit or certificate of occupancy for the **RENTAL UNIT**? If so, for each state:
(a) the name and **ADDRESS** of each **PERSON** named on the permit or certificate;
(b) the dates of issuance and expiration;
(c) the permit or certificate number
- ☐ 70.8 Has a last month's rent, security deposit, cleaning fee, rental agency fee, credit check fee, key deposit, or any other deposit been paid on the **RENTAL UNIT**? If so, for each item state:
(a) the purpose of the payment;
(b) the date paid;
(c) the amount;
(d) the form of payment;
(e) the name of the **PERSON** paying;
(f) the name of the **PERSON** to whom it was paid;
(g) any **DOCUMENT** which evidences payment and the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
(h) any adjustments or deductions including facts.
- ☐ 70.9 State the date defendant first took possession of the **RENTAL UNIT**.
- ☐ 70.10 State the date and all the terms of any rental agreement between defendant and the **PERSON** who rented to defendant.
- ☐ 70.11 For each agreement alleged in the pleadings:
(a) identify all **DOCUMENTS** that are part of the agreement and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
(b) state each part of the agreement not in writing, the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to that provision, and the date that part of the agreement was made;
(c) identify all **DOCUMENTS** that evidence each part of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
(d) identify all **DOCUMENTS** that are part of each modification to the agreement, and for each state

the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT (see also §71.5);

- (e) state each modification not in writing, the date, and the name, ADDRESS, and telephone number of the PERSON agreeing to the modification, and the date the modification was made (see also §71.5).

- (f) identify all DOCUMENTS that evidence each modification of the agreement not in writing and for each state the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT (see also §71.5).

- ☐ 70.12 Has any PERSON acting on the PLAINTIFF'S behalf been responsible for any aspect of managing or maintaining the RENTAL UNIT or PROPERTY? If so, for each PERSON state:

- (a) the name, ADDRESS, and telephone number;
(b) the dates the PERSON managed or maintained the RENTAL UNIT or PROPERTY;
(c) the PERSON'S responsibilities.

- ☐ 70.13 For each PERSON who occupies any part of the RENTAL UNIT (except occupants named in the complaint and occupants' children under 17) state:

- (a) the name, ADDRESS, telephone number, and birthdate;
(b) the inclusive dates of occupancy;
(c) a description of the portion of the RENTAL UNIT occupied;
(d) the amount paid, the term for which it was paid, and the person to whom it was paid;
(e) the nature of the use of the RENTAL UNIT;
(f) the name, ADDRESS, and telephone number of the person who authorized occupancy;
(g) how occupancy was authorized, including failure of the LANDLORD or PLAINTIFF to protest after discovering the occupancy.

- ☐ 70.14 Have you or anyone acting on your behalf obtained any DOCUMENT concerning the tenancy between any occupant of the RENTAL UNIT and any PERSON with an ownership interest or managerial responsibility for the RENTAL UNIT? If so, for each DOCUMENT state:

- (a) the name, ADDRESS, and telephone number of each individual from whom the DOCUMENT was obtained;
(b) the name, ADDRESS, and telephone number of each individual who obtained the DOCUMENT;
(c) the date the DOCUMENT was obtained;
(d) the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT (original or copy).

71.0 Notice

[If a defense is based on allegations that the 3-day notice or 30-day NOTICE TO QUIT is defective in form or content, then either party may ask any applicable question in this section.]

- ☐ 71.1 Was the NOTICE TO QUIT on which PLAINTIFF bases this proceeding attached to the complaint? If not, state the contents of this notice.

- ☐ 71.2 State all reasons that the NOTICE TO QUIT was served and for each reason:

- (a) state all facts supporting PLAINTIFF'S decision to terminate defendant's tenancy;

- (b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts;
(c) identify all DOCUMENTS that support the facts and state the name, ADDRESS, and telephone number of each PERSON who has each DOCUMENT.

- ☐ 71.3 List all rent payments and rent credits made or claimed by or on behalf of defendant beginning 12 months before the NOTICE TO QUIT was served. For each payment or credit state:
- (a) the amount;
(b) the date received;
(c) the form in which any payment was made;
(d) the services performed or other basis for which a credit is claimed;
(e) the period covered;
(f) the name of each PERSON making the payment or earning the credit;
(g) the identity of all DOCUMENTS evidencing the payment or credit and for each state the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT.

- ☐ 71.4 Did defendant ever fail to pay the rent on time? If so, for each late payment state:

- (a) the date;
(b) the amount of any late charge;
(c) the identity of all DOCUMENTS recording the payment and for each state the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT.

- ☐ 71.5 Since the beginning of defendant's tenancy, has PLAINTIFF ever raised the rent? If so, for each rent increase state:

- (a) the date the increase became effective;
(b) the amount;
(c) the reasons for the rent increase;
(d) how and when defendant was notified of the increase;
(e) the identity of all DOCUMENTS evidencing the increase and for each state the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT.

[See also section 70.11 (d) - (f).]

- ☐ 71.6 During the 12 months before the NOTICE TO QUIT was served was there a period during which there was no permit or certificate of occupancy for the RENTAL UNIT? If so, for each period state:

- (a) the inclusive dates;
(b) the reasons.

- ☐ 71.7 Has any PERSON ever reported any nuisance or disturbance at or destruction of the RENTAL UNIT or PROPERTY caused by defendant or other occupant of the RENTAL UNIT or their guests? If so, for each report state:

- (a) a description of the disturbance or destruction;
(b) the date of the report;
(c) the name of the PERSON who reported;
(d) the name of the PERSON to whom the report was made;
(e) what action was taken as a result of the report;
(f) the identity of all DOCUMENTS evidencing the report and for each state the name, ADDRESS, and telephone number of each PERSON who has each DOCUMENT.

- ☐ 71.8 Does the complaint allege violation of a term of a rental agreement or lease (other than nonpayment of rent)? If so, for each covenant:
- (a) identify the covenant breached;
 - (b) state the facts supporting the allegation of a breach;
 - (c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts;
 - (d) identify all DOCUMENTS that support the facts and state the name, ADDRESS, and telephone number of each PERSON who has each DOCUMENT.

- ☐ 71.9 Does the complaint allege that the defendant has been using the RENTAL UNIT for an illegal purpose? If so, for each purpose:
- (a) identify the illegal purpose;
 - (b) state the facts supporting the allegations of illegal use;
 - (c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts;
 - (d) identify all DOCUMENTS that support the facts and state the name, ADDRESS, and telephone number of each PERSON who has each DOCUMENT.

[Additional interrogatories on this subject may be found in sections 75.0, 78.0, 79.0, and 80.0.]

72.0 Service

[If a defense is based on allegations that the NOTICE TO QUIT was defectively served, then either party may ask any applicable question in this section.]

- ☐ 72.1 Does defendant contend (or base a defense or make any allegations) that the NOTICE TO QUIT was defectively served? If the answer is "no," do not answer interrogatories 72.2 through 72.3.
- ☐ 72.2 Does PLAINTIFF contend that the NOTICE TO QUIT referred to in the complaint was served? If so, state:
- (a) the kind of notice;
 - (b) the date and time of service;
 - (c) the manner of service;
 - (d) the name and ADDRESS of the person who served it;
 - (e) a description of any DOCUMENT or conversation between defendant and the person who served the notice.
- ☐ 72.3 Did any person receive the NOTICE TO QUIT referred to in the complaint? If so, for each copy of each notice state:
- (a) the name of the person who received it;
 - (b) the kind of notice;
 - (c) how it was delivered;
 - (d) the date received;
 - (e) where it was delivered;
 - (f) the identity of all DOCUMENTS evidencing the notice and for each state the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT.

73.0 Malicious Holding Over

[If a defendant denies allegations that defendant's continued possession is malicious, then either party may ask any applicable question in this section. Additional questions in section 75.0 may also be applicable.]

- ☐ 73.1 If any rent called for by the rental agreement is unpaid, state the reasons and the facts upon which the reasons are based.
- ☐ 73.2 Has defendant made attempts to secure other premises since the service of the NOTICE TO QUIT or since the service of the summons and complaint? If so, for each attempt:
- (a) state all facts indicating the attempt to secure other premises;
 - (b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts;
 - (c) identify all DOCUMENTS that support the facts and state the name, ADDRESS, and telephone number of each PERSON who has each DOCUMENT.

- ☐ 73.3 State the facts upon which PLAINTIFF bases the allegation of malice.

74.0 Rent Control and Eviction Control

- ☐ 74.1 Is there an ordinance or other local law in this jurisdiction which limits the right to evict tenants? If your answer is no, you need not answer sections 74.2 through 74.6.
- ☐ 74.2 For the ordinance or other local law limiting the right to evict tenants, state:
- (a) the title or number of the law;
 - (b) the locality.
- ☐ 74.3 Do you contend that the RENTAL UNIT is exempt from the eviction provisions of the ordinance or other local law identified in section 74.2? If so, state the facts upon which you base your contention.
- ☐ 74.4 Is this proceeding based on allegations of a need to recover the RENTAL UNIT for use of the LANDLORD or the landlord's relative? If so, for each intended occupant state:
- (a) the name;
 - (b) the residence ADDRESSES from three years ago to the present;
 - (c) the relationship to the LANDLORD;
 - (d) all the intended occupant's reasons for occupancy;
 - (e) all rental units on the PROPERTY that were vacated within 60 days before and after the date the NOTICE TO QUIT was served.
- ☐ 74.5 Is the proceeding based on an allegation that the LANDLORD wishes to remove the RENTAL UNIT from residential use temporarily or permanently (for example, to rehabilitate, demolish, renovate, or convert)? If so, state:
- (a) each reason for removing the RENTAL UNIT from residential use;
 - (b) what physical changes and renovation will be made to the RENTAL UNIT;
 - (c) the date the work is to begin and end;
 - (d) the number, date, and type of each permit for the change or work;

- (e) the identity of each **DOCUMENT** evidencing the intended activity (for example, blueprints, plans, applications for financing, construction contracts) and the name, **ADDRESS**, and telephone number of each **PERSON** who has each **DOCUMENT**.

- ☐ 74.6 Is the proceeding based on any ground other than those stated in sections 74.4 and 74.5? If so, for each:
- (a) state each fact supporting or opposing the ground;
 - (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;
 - (c) identify all **DOCUMENTS** evidencing the facts and state the name, **ADDRESS**, and telephone number of each **PERSON** who has each **DOCUMENT**.

75.0 Breach of Warranty to Provide Habitable Premises

[If plaintiff alleges nonpayment of rent and defendant bases his defense on allegations of implied or express breach of warranty to provide habitable residential premises, then either party may ask any applicable question in this section.]

- ☐ 75.1 Do you know of any conditions in violation of state or local building codes, housing codes, or health codes, conditions of dilapidation, or other conditions in need of repair in the **RENTAL UNIT** or on the **PROPERTY** that affected the **RENTAL UNIT** at any time defendant has been in possession? If so, state:
- (a) the type of condition;
 - (b) the kind of corrections or repairs needed;
 - (c) how and when you learned of these conditions;
 - (d) how these conditions were caused;
 - (e) the name, **ADDRESS**, and telephone number of each **PERSON** who has caused these conditions.
- ☐ 75.2 Have any corrections, repairs, or improvements been made to the **RENTAL UNIT** since the **RENTAL UNIT** was rented to defendant? If so, for each correction, repair, or improvement state:
- (a) a description giving the nature and location;
 - (b) the date;
 - (c) the name, **ADDRESS**, and telephone number of each **PERSON** who made the repairs or improvements;
 - (d) the cost;
 - (e) the identity of any **DOCUMENT** evidencing the repairs or improvements;
 - (f) if a building permit was issued, state the issuing agencies and the permit number of your copy.
- ☐ 75.3 Did defendant or any other **PERSON** during 36 months before the **NOTICE TO QUIT** was served or during defendant's possession of the **RENTAL UNIT** notify the **LANDLORD** or his agent or employee about the condition of the **RENTAL UNIT** or **PROPERTY**? If so, for each written or oral notice state:
- (a) the substance;
 - (b) who made it;
 - (c) when and how it was made;
 - (d) the name and **ADDRESS** of each **PERSON** to whom it was made;
 - (e) the name and **ADDRESS** of each person who knows about it;
 - (f) the identity of each **DOCUMENT** evidencing the notice and the name, **ADDRESS**, and telephone number of each **PERSON** who has it;

- (g) the response made to the notice;
- (h) the efforts made to correct the conditions;
- (i) whether the **PERSON** who gave notice was an occupant of the **PROPERTY** at the time of the complaint.

- ☐ 75.4 During the period beginning 36 months before the **NOTICE TO QUIT** was served to the present, was the **RENTAL UNIT** or **PROPERTY** (including other rental units) inspected for dilapidations or defective conditions by a representative of any governmental agency? If so, for each inspection state:
- (a) the date;
 - (b) the reason;
 - (c) the name of the governmental agency;
 - (d) the name, **ADDRESS**, and telephone number of each inspector;
 - (e) the identity of each **DOCUMENT** evidencing each inspection and the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

- ☐ 75.5 During the period beginning 36 months before the **NOTICE TO QUIT** was served to the present, did **PLAINTIFF** or **LANDLORD** receive a notice or other communication regarding the condition of the **RENTAL UNIT** or **PROPERTY** (including other rental units) from a governmental agency? If so, for each notice or communication state:
- (a) the date received;
 - (b) the identity of all parties;
 - (c) the substance of the notice or communication;
 - (d) the identity of each **DOCUMENT** evidencing the notice or communication and the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

- ☐ 75.6 Was there any corrective action taken in response to the inspection or notice or communication identified in sections 75.4 and 75.5? If so, for each:
- (a) identify the notice or communication;
 - (b) identify the condition;
 - (c) describe the corrective action;
 - (d) identify each **DOCUMENT** evidencing the corrective action and the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

- ☐ 75.7 Has the **PROPERTY** been appraised for sale or loan during the period beginning 36 months before the **NOTICE TO QUIT** was served to the present? If so, for each appraisal state:
- (a) the date;
 - (b) the name, **ADDRESS**, and telephone number of the appraiser;
 - (c) the purpose of the appraisal;
 - (d) the identity of each **DOCUMENT** evidencing the appraisal and the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

- ☐ 75.8 Was any condition requiring repair or correction at the **PROPERTY** or **RENTAL UNIT** caused by defendant or other occupant of the **RENTAL UNIT** or their guests? If so, state:
- (a) the type and location of condition;
 - (b) the kind of corrections or repairs needed;
 - (c) how and when you learned of these conditions;
 - (d) how and when these conditions were caused;
 - (e) the name, **ADDRESS**, and telephone number of each **PERSON** who caused these conditions;

- (f) the identity of each **DOCUMENT** evidencing the repair (or correction) and the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

[See also section 71.0 for additional questions.]

76.0 Waiver, Change, Withdrawal, or Cancellation of Notice to Quit

[If a defense is based on waiver, change, withdrawal, or cancellation of the NOTICE TO QUIT, then either party may ask any applicable question in this section.]

- ☐ 76.1 Did the **PLAINTIFF** or **LANDLORD** or anyone acting on his or her behalf do anything which is alleged to have been a waiver, change, withdrawal, or cancellation of the **NOTICE TO QUIT**? If so:
- state the facts supporting this allegation;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of these facts;
 - identify each **DOCUMENT** that supports the facts and state the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

- ☐ 76.2 Did the **PLAINTIFF** or **LANDLORD** accept rent which covered a period after the date for vacating the **RENTAL UNIT** as specified in the **NOTICE TO QUIT**? If so:
- state the facts;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;
 - identify each **DOCUMENT** that supports the facts and state the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

77.0 Retaliation and Arbitrary Discrimination

[If a defense is based on retaliation or arbitrary discrimination, then either party may ask any applicable question in this section.]

- ☐ 77.1 State all reasons that the **NOTICE TO QUIT** was served or that defendant's tenancy was not renewed and for each reason:
- state all facts supporting **PLAINTIFF'S** decision to terminate or not renew defendant's tenancy;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;
 - identify all **DOCUMENTS** that support the facts and state the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

78.0 Nonperformance of the Rental Agreement by Landlord

[If a defense is based on nonperformance of the rental agreement by the LANDLORD or someone acting on the LANDLORD'S behalf, then either party may ask any applicable question in this section.]

- ☐ 78.1 Did the **LANDLORD** or anyone acting on the **LANDLORD'S** behalf agree to make repairs, alterations, or improvements at any time or provide services to the **PROPERTY** or **RENTAL UNIT**? If so, for each agreement state:
- the substance of the agreement;

- when it was made;
- whether it was written or oral;
- by whom and to whom;
- the name and **ADDRESS** of each person who knows about it;
- whether all promised repairs, alterations, or improvements were completed or services provided;
- the reasons for any failure to perform;
- the identity of each **DOCUMENT** evidencing the agreement or promise and the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

- ☐ 78.2 Has **PLAINTIFF** or **LANDLORD** or any resident of the **PROPERTY** ever committed disturbances or interfered with the quiet enjoyment of the **RENTAL UNIT** (including, for example, noise, acts which threaten the loss of title to the property or loss of financing, etc.)? If so, for each disturbance or interference, state:
- a description of each act;
 - the date of each act;
 - the name, **ADDRESS**, and telephone number of each **PERSON** who acted;
 - the name, **ADDRESS**, and telephone number of each **PERSON** who witnessed each act and any **DOCUMENTS** evidencing the person's knowledge;
 - what action was taken by the **PLAINTIFF** or **LANDLORD** to end or lessen the disturbance or interference.

79.0 Offer of Rent by Defendant

[If a defense is based on an offer of rent by a defendant which was refused, then either party may ask any applicable question in this section.]

- ☐ 79.1 Has defendant or anyone acting on the defendant's behalf offered any payments to **PLAINTIFF** which **PLAINTIFF** refused to accept? If so, for each offer state:
- the amount;
 - the date;
 - purpose of offer;
 - the manner of the offer;
 - the identity of the person making the offer;
 - the identity of the person refusing the offer;
 - the date of the refusal;
 - the reasons for the refusal.

80.0 Deduction from Rent for Necessary Repairs

[If a defense to payment of rent or damages is based on claim of retaliatory eviction, then either party may ask any applicable question in this section. Additional questions in section 75.0 may also be applicable.]

- ☐ 80.1 Does defendant claim to have deducted from rent any amount which was withheld to make repairs after communication to the **LANDLORD** of the need for the repairs? If the answer is "no", do not answer interrogatories 80.2 through 80.6.
- ☐ 80.2 For each condition in need of repair for which a deduction was made, state:
- the nature of the condition;
 - the location;
 - the date the condition was discovered by defendant;
 - the date the condition was first known by **LANDLORD** or **PLAINTIFF**;

- (e) the dates and methods of each notice to the **LANDLORD** or **PLAINTIFF** of the condition;
- (f) the response or action taken by the **LANDLORD** or **PLAINTIFF** to each notification;
- (g) the cost to remedy the condition and how the cost was determined;
- (h) the identity of any bids obtained for the repairs and any **DOCUMENTS** evidencing the bids.

☐ 80.3 Did **LANDLORD** or **PLAINTIFF** fail to respond within a reasonable time after receiving a communication of a need for repair? If so, for each communication state:

- (a) the date it was made;
- (b) how it was made;
- (c) the response and date;
- (d) why the delay was unreasonable.

☐ 80.4 Was there an insufficient period specified or actually allowed between the time of notification and the time repairs were begun by defendant to allow **LANDLORD** or **PLAINTIFF** to make the repairs? If so, state all facts on which the claim of insufficiency is based.

☐ 80.5 Does **PLAINTIFF** contend that any of the items for which rent deductions were taken were not allowable under law? If so, for each item state all reasons and facts on which you base your contention.

☐ 80.6 Has defendant vacated or does defendant anticipate vacating the **RENTAL UNIT** because repairs were requested and not made within a reasonable time? If so, state all facts on which defendant justifies having vacated the **RENTAL UNIT** or anticipates vacating the rental unit.

81.0 Fair Market Rental Value

*[If defendant denies **PLAINTIFF** allegation on the fair market rental value of the **RENTAL UNIT**, then either party may ask any applicable question in this section. If defendant claims that the fair market rental value is less because of a breach of warranty to provide habitable premises, then either party may also ask any applicable question in section 75.0.]*

☐ 81.1 Do you have an opinion on the fair market rental value of the **RENTAL UNIT**? If so, state:

- (a) the substance of your opinion;
- (b) the factors upon which the fair market rental value is based;
- (c) the method used to calculate the fair market rental value.

☐ 81.2 Has any other **PERSON** ever expressed to you an opinion on the fair market rental value of the **RENTAL UNIT**? If so, for each **PERSON**:

- (a) state the name, **ADDRESS**, and telephone number;
- (b) state the substance of the **PERSON'S** opinion;
- (c) describe the conversation or identify all **DOCUMENTS** in which the **PERSON** expressed an opinion and state the name, **ADDRESS**, and telephone number of each **PERSON** who has each **DOCUMENT**.

☐ 81.3 Do you know of any current violations of state or local building codes, housing codes, or health codes, conditions of delapidation or other conditions in need of repair in the **RENTAL UNIT** or common areas that have affected the **RENTAL UNIT** at any time defendant has been in possession? If so, state:

- (a) the conditions in need of repair;
- (b) the kind of repairs needed;
- (c) the name, **ADDRESS**, and telephone number of each **PERSON** who caused these conditions.

**REQUEST FOR PRODUCTION OF
DOCUMENTS**

Lili Graham SBN 284264
Legal Aid Society of Orange County
2101 North Tustin Avenue
Santa Ana, California 92705
Telephone: (714) 571-5200
Fax: (714) 571-5270
lgraham@legal-aid.com

Attorney for [REDACTED]

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

[REDACTED];

Plaintiff,

vs.

[REDACTED];

Defendants.

Case No.: [REDACTED]

DEFENDANT [REDACTED]'S
REQUEST FOR PRODUCTION OF
DOCUMENTS TO PLAINTIFF [REDACTED]
[REDACTED], SET ONE

C.C.P. §2031.010, et. seq.

PROPOUNDING PARTY: DEFENDANT [REDACTED]

RESPONDING PARTY: PLAINTIFF [REDACTED]

SET NUMBER: ONE

TO: PLAINTIFF AND ITS ATTORNEY OF RECORD, if any:

YOU ARE HEREBY requested under Code of Civil Procedure §2031.010 et. seq. to produce for inspection the following documents at [REDACTED], at the office of Defendant's attorneys, Legal Aid Society of Orange County, 2101 North Tustin Avenue, Santa Ana, California 29705. Producing copies of relevant documents will be accepted. For this set only, Defendant agrees to accept service by e-mail at [REDACTED].

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1 //

2 DEFINITIONS

3 "SUBJECT PREMISES" refers to the property which is the subject of this unlawful detainer
4 action, C [REDACTED]

5 [REDACTED]
6 " [REDACTED] refers to the [REDACTED]
7 [REDACTED]

8 "DOCUMENT(S)" shall mean any and all "writings" as that term is used in Evidence Code
9 Section 250 and all written, printed, typewritten, photographic, recorded, or graphic materials,
10 however produced or reproduced, which relate or pertain in any way to the subject matter to which
11 the document request refers; such DOCUMENT(S) include, without limitation, all originals, copies
12 and drafts of all notes, e-mails, text messages, memoranda, correspondence, public comments,
13 responses to public comments, advertisements, circulars, brochures, ledgers, journals, minutes,
14 books, telephone slips, expense accounts, timesheets, telegrams, cables, publications, photographs,
15 microfilm prints, contracts, manuals, recordings, tapes, voicemail messages, transcriptions of records
16 and recordings, business records, tape recordings, video recordings, reports, spreadsheets, data,
17 databases, agendas, studies, desk calendars, diaries, transcripts, affidavits, bills, receipts, checks,
18 memorandum of telephone or other conversations by or with any PERSON(S) and any other
19 pertinent information set forth in written language or any electronic or magnetic representation
20 thereof, whether or not such DOCUMENT(S) are in PLAINTIFF'S possession, custody, or control.

21 "COMMUNICATION(S)" shall mean any correspondence between two or more PERSONS
22 and any DOCUMENT or memoranda memorializing oral communications between two or more
23 PERSONS, including, without limitation, e-mails and electronic correspondence.

24 "PLAINTIFF" includes Plaintiff [REDACTED] and, where applicable, its
25 respective representatives, managers, officers, employees, attorneys, accountants, partners, and
26 agents, and all other PERSONS acting on behalf of [REDACTED] or purporting to act
27 on behalf of [REDACTED]
28

1 "YOU" and "YOUR" refer to Plaintiff [REDACTED] and, where applicable,
2 its respective representatives, managers, officers, employees, attorneys, accountants, partners, and
3 agents, and all other PERSONS acting on behalf of [REDACTED] or purporting to act
4 on behalf of [REDACTED].

5 "DEFENDANT" includes [REDACTED], and all members of his household.

6 ~~"PERSON" and "PERSONS" are used broadly and include any of the following without~~
7 ~~limitation:~~ natural persons, corporations, limited or general partnerships, joint ventures, firms,
8 limited liability companies, associations, proprietorships, agencies, boards, authorities, governmental
9 entities, the federal government, any state government, any city government or agency, or any
10 county government or agency, or any other entity.

11 "CITY" shall mean [REDACTED] and, where applicable, any officers, agents, attorneys,
12 representatives, and all others acting or purporting to act on their behalf, including but not limited to
13 the [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 "PROJECT" shall mean the demolition of the SUBJECT PREMISES and the construction of
17 a luxury apartment complex as proposed by PLAINTIFF in planning application [REDACTED]
18 [REDACTED]

19 "COMPLAINT" refers to the unlawful detainer complaint filed by PLAINTIFF against
20 DEFENDANT on [REDACTED].

21 "Relating to," "related to," "relate(s) to," and "regarding" means to refer to, reflect, concern,
22 pertain to, or in any manner be connected with the matter discussed.

23 DOCUMENTS REQUESTED IN THIS INSPECTION DEMAND

24 1. Any and all DOCUMENTS which memorialize part or all of any agreement between
25 PLAINTIFF and DEFENDANT regarding the SUBJECT PREMISES, including, but not limited to,
26 any rental agreement.
27
28

- 1 2. Any and all DOCUMENTS which memorialize part or all of any other agreement entered
2 into between PLAINTIFF and DEFENDANT from the inception of DEFENDANT's tenancy to the
3 date of the response to this inspection demand.
- 4 3. The ledger, account book, receipt book, or any other DOCUMENT which memorializes the
5 receipt of any and all payments for the SUBJECT PREMISES from the DEFENDANT or from any
6 PERSON on behalf of DEFENDANT from the inception of DEFENDANT's tenancy to the date of
7 the response to this inspection demand.
- 8 4. Any and all DOCUMENTS that are included in DEFENDANT's tenant file.
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] d.
- 14 6. A copy of any letter, check, money order, or payment that DEFENDANT sent PLAINTIFF
15 from the inception of DEFENDANT's tenancy to the date of the response to this inspection demand.
- 16 7. Any and all letters, notices, or other DOCUMENTS from PLAINTIFF to DEFENDANT that
17 address any issues with the SUBJECT PREMISES from the inception of DEFENDANT's tenancy to
18 the date of the response to this inspection demand.
- 19 8. Any and all other notices delivered to DEFENDANT by or on behalf of PLAINTIFF from
20 the inception of DEFENDANT's tenancy to the date of the response to this inspection demand.
- 21 9. Any and all DOCUMENTS relating to any repairs performed by PLAINTIFF or
22 PLAINTIFF's agents on the SUBJECT PREMISES from the inception of DEFENDANT's tenancy
23 to the date of the response to this inspection demand.
- 24 10. Any and all DOCUMENTS relating to any repairs performed by PLAINTIFF or
25 PLAINTIFF's agents on the [REDACTED] from the inception of DEFENDANT's tenancy to the
26 date of the response to this inspection demand.
- 27 11. Any and all COMMUNICATIONS from DEFENDANT to PLAINTIFF from the inception
28 of DEFENDANT's tenancy to the date of the response to this inspection demand.

- 1 12. Any and all COMMUNICATIONS from PLAINTIFF to DEFENDANT from the inception
2 of DEFENDANT's tenancy to the date of the response to this inspection demand.
- 3 13. Any and all COMMUNICATIONS between the CITY and PLAINTIFF from January 2012
4 through the present.
- 5 14. Any and all DOCUMENTS submitted by PLAINTIFF to the CITY relating to the PROJECT.
- 6 15. Any and all DOCUMENTS relating to any meetings between YOU and the CITY relating to
7 the PROJECT.
- 8 16. Any and all DOCUMENTS relating to any agreements between the YOU and the CITY,
9 including but not limited to agreements to indemnify in the event of lawsuits challenging the
10 PROJECT.
- 11 17. Any and all DOCUMENTS relating to the PROJECT.
- 12 18. Any and all COMMUNICATIONS relating to the PROJECT.
- 13 [REDACTED]
- 14 [REDACTED]
- 15 20. [REDACTED]
- 16 [REDACTED]
- 17 21. Any and all letters, ledgers, photographs, visual representations, or DOCUMENTS that
18 support any of PLAINTIFF's allegations in the COMPLAINT.

19 The above requested documents are believed to be in the possession, custody, or control of
20 PLAINTIFF, not privileged, and are relevant to the subject matter of this action or are reasonably
21 calculated to lead to the discovery of admissible evidence.

22

23

24 Date: [REDACTED] Legal Aid Society of Orange County

25

26

27 By: [REDACTED]
28 Attorney for Defendant

SPECIAL INTERROGATORIES

1 Lili Graham SBN 284264
2 Legal Aid Society of Orange County
3 2101 N Tustin Avenue
4 Santa Ana, California 92705
5 T: (714) 571-5200 F: (714) 571-5270
6 lgraham@legal-aid.com

7 Attorney for [REDACTED]

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF ORANGE

10 [REDACTED];

11 Plaintiffs,

12 vs.

13 [REDACTED];

14 Defendants.

Case No.: [REDACTED]

DEFENDANT'S SPECIAL
INTERROGATORIES TO PLAINTIFF

SET ONE

C.C.P. §2030.010

17 PROPOUNDING PARTY: DEFENDANT [REDACTED]

18 RESPONDING PARTY: PLAINTIFF [REDACTED]

19 SET NUMBER: ONE

20 TO: PLAINTIFF AND ITS ATTORNEY OF RECORD, if any:

21 YOU ARE HEREBY requested, under California Code of Civil Procedure § 2030.010 et.
22 seq., to answer the following Special Interrogatories separately, fully, in writing and under oath,
23 and to serve answers upon Counsel for DEFENDANT within the time and in the manner required
24 by the Code of Civil Procedure.

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action, [REDACTED]

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1 agents, and all other PERSONS acting on behalf of [REDACTED] or purporting to act
2 on behalf of [REDACTED]

3 "DEFENDANT" includes [REDACTED], and all members of his household.

4 "PERSON" and "PERSONS" are used broadly and include any of the following without
5 limitation: natural persons, corporations, limited or general partnerships, joint ventures, firms,

6 limited liability companies, associations, proprietorships, agencies, boards, authorities, governmental
7 entities, the federal government, any state government, any city government or agency, or any
8 county government or agency, or any other entity.

9 "CITY" shall mean [REDACTED] and, where applicable, any officers, agents, attorneys,
10 representatives, and all others acting or purporting to act on their behalf, including but not limited to
11 the [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 "PROJECT" shall mean the demolition of the SUBJECT PREMISES and the construction of
15 a luxury apartment complex as proposed by PLAINTIFF in planning application [REDACTED]
16 [REDACTED]

17 "COMPLAINT" refers to the unlawful detainer complaint filed by PLAINTIFF against
18 DEFENDANT on [REDACTED]

19 "Relating to," "related to," "relate(s) to," and "regarding" means to refer to, reflect, concern,
20 pertain to, or in any manner be connected with the matter discussed.

21 SPECIAL INTERROGATORIES

- 22 1. IDENTIFY all PERSONS answering or supplying information used in answering these
23 Special Interrogatories.
- 24 2. What are the nature and terms of the agreement entered into between PLAINTIFF and
25 DEFENDANT that governs the use of the SUBJECT PREMISES? Please include dates for
26 all lease or rental agreements.
- 27 3. Please describe in detail the manner in which YOU require DEFENDANT to pay the
28 monthly rent payments for the SUBJECT PREMISES.

- 1 4. If any DOCUMENTS, including any notices, were made, filed, or served regarding the
2 SUBJECT PREMISES, by PLAINTIFF between the inception of DEFENDANT's tenancy
3 and the date of this request, please describe the DOCUMENT, including the date, subject,
4 facts asserted, requests made, and the name and address of the PERSONS who received the
5 notice(s).
- 6 5. If any complaints or grievances were made/filed regarding the SUBJECT PREMISES, by
7 PLAINTIFF or the DEFENDANT between inception of tenancy and the date of this request,
8 please describe the response by management or the PLAINTIFF to the grievance or
9 complaint.
- 10 6. Individually describe the manner of service for all notices served by PLAINTIFF on
11 DEFENDANT between the inception of DEFENDANT's tenancy and the date of this
12 request.
- 13 7. IDENTIFY the PERSON who served the 60 Day Notice to Terminate Tenancy that is
14 attached to the COMPLAINT as Exhibit 2.
- 15 8. IDENTIFY any rental assistance or services that PLAINTIFF has offered to DEFENDANT
16 since the inception of DEFENDANT'S tenancy.
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
- 21 11. IDENTIFY all DOCUMENTS submitted to the CITY relating to the PROJECT.
- 22 12. DESCRIBE any and all COMMUNICATIONS relating to the PROJECT.
- 23 13. IDENTIFY any and all DOCUMENTS relating to the relocation assistance for
24 DEFENDANT or any other occupant of the [REDACTED] since January 2014.
- 25 14. DESCRIBE any and all COMMUNICATIONS relating to the relocation assistance for
26 DEFENDANT or any other occupant of the [REDACTED] since January 2014.
- 27 15. State the names, addresses, and phone numbers of all witnesses who will be called by
28 PLAINTIFF to testify in court regarding this unlawful detainer.

- 1 16. IDENTIFY all documents PLAINTIFF intends on producing at trial.
- 2 17. DESCRIBE all documents
- 3 18. IDENTIFY all PERSONS responsible for management, supervision, or repair of the
- 4 SUBJECT PREMISES.
- 5 19. State each PERSON's name, job title, address, and phone number referred to in Special
- 6 Interrogatories Paragraph 18.

7
8 Pursuant to C.C.P. § 2030 you have five days from the date of service to respond to these
9 interrogatories.

10
11 Date: [REDACTED] Legal Aid Society of Orange County
12
13 By: [REDACTED]
14 Attorney for Defendant
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**EX PARTE APPLICATION FOR
STAY OF EXECUTION**

1 [REDACTED]
2 [REDACTED]
3 Defendant, [REDACTED]
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8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
9 CENTRAL JUSTICE CENTER

10 [REDACTED]
11 Plaintiff,
12 vs. [REDACTED]
13 Inclusive,
14 Defendants.

Case No.: 3 [REDACTED]
} NOTICE OF EX-PARTE APPLICATION
} AND EX-PARTE APPLICATION FOR
} STAY OF EXECUTION;
} MEMORANDUM OF POINTS AND
} AUTHORITIES; DECLARATION OF
} [REDACTED]
} DATE: [REDACTED]
} TIME: [REDACTED]
} DEPT.: [REDACTED]

17
18 TO PLAINTIFF: [REDACTED] AND THEIR ATTORNEYS OF
19 RECORD:

20 PLEASE TAKE NOTICE THAT on [REDACTED] or as soon thereafter as
21 the matter may be heard, in [REDACTED] of the above-entitled Court, located at 700 W. Civic
22 Center Drive, Santa Ana, California, 92701, Defendant, [REDACTED] will and does move the Court
23 by ex-parte application for an order staying the execution of the judgment entered on [REDACTED]
24 [REDACTED] on the grounds that execution may be stayed because of the hardship that defendant would
25 suffer if the judgment were to be executed at this time in that defendant would suffer great and
26 irreparable injury if execution of the judgment is not stayed on an ex-parte basis.
27
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1 This ex-parte application will be based upon this Notice, the memorandum of points and
2 authorities in support thereof, the files and records of this case, the declaration of [REDACTED], and
3 such other and further oral and documentary evidence as may be presented at the hearing.
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5 Dated: [REDACTED]

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

This case involves an unlawful detainer action for the premises located at [REDACTED]

[REDACTED] Judgment was entered on [REDACTED]

Defendant is requesting ex-parte relief for an order staying the execution of the judgment on the grounds that they would suffer great hardship if the judgment were to be executed at this time in that the Defendant is suffering from end-stage [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Defendant is ready and able to pay rent as it falls due for the period during which execution is stayed and has purchased a Cashiers Check or Money Order in the amount of [REDACTED] payable to the Clerk of the Court or Plaintiff to pay for the rent for a period of forty (40) days.

II.

LEGAL ARGUMENT

**A. DEFENDANT WILL SUFFER GREAT HARDSHIP AND SUFFER
IRREPERABLE INJURY IF THIS COURT DOES NOT GRANT THEIR EX-PARTE
APPLICATION FOR A STAY OF EXECUTION**

Defendant has no choice but to seek a stay of execution due to the fact that the Defendant is [REDACTED] which impairs his ability to accomplish basic necessities of life. Mr.

1 [REDACTED] has lived with [REDACTED] for the past twenty years and was diagnosed with [REDACTED] last year. (See
2 Exhibit "A"). He suffers from "wasting," which is a medical term used to describe excessive weight
3 loss, and was warned by doctors that he was near death. [REDACTED] also suffers from [REDACTED]
4 [REDACTED] due to the effects of his
5 medications. (See Exhibit "B"). He was unable to attend his trial because of this. [REDACTED].

6
7 **B. THIS COURT HAS THE POWER TO STAY THE ENFORCMENT OF THE**
8 **JUDGMENT ENTERED IN THIS CASE**

9 *Code of Civil Procedure* § 918 states that, (a) Subject to subdivision (b), the trial court may
10 stay the enforcement of any judgment or order. (b) If the enforcement of the judgment or order would
11 be stayed on appeal only by the giving of an undertaking, a trial court shall not have power, without
12 the consent of the adverse party, to stay the enforcement thereof pursuant to this section for a period
13 which extends for more than 10 days beyond the last date on which a notice of appeal could be filed.
14 (c) This section applies whether or not an appeal will be taken from the judgment or order and
15 whether or not a notice of appeal has been filed."
16

17 **C. DEFENDANT IS READY AND ABLE TO PAY RENT AS IT FALLS DUE**
18 **FOR THE PERIOD DURING WHICH EXECUTION IS STAYED AND HAS**
19 **PURCHASED A CASHIERS CHECK OR MONEY ORDER FOR PAYMENT IN**
20 **FULL OF THE RENT THAT FALLS DUE FOR THE PERIOD DURING WHICH**
21 **EXECUTION WILL BE STAYED**
22

23 As shown by the declaration of [REDACTED] Defendant is ready and able to pay rent as it
24 falls due for the period during which execution is stayed. Defendant is asking that execution be
25 stayed for a period of forty (40) days. Defendant has in fact already purchased a Cashiers Check or
26 Money Order payable to the Clerk of the Court or Plaintiff in the total amount of [REDACTED] to cover
27
28

1 the rent for a period of forty (40) days. Therefore plaintiff will not suffer any damages resulting from
2 the stay of execution.

3 In *Medford v. Superior Court* (1983) 140 Cal.App. 3d 236, 240, the Court of Appeals stated
4 that, "The possibility of loss of back rent or accrued damages is not a consequence of granting such
5 relief to the tenant. The landlord gains sufficient protection from the deposit of the contract rent as it
6 becomes due." Thus any stay of execution may be conditioned on the payment of rent accruing
7 during the period of the stay, but not on payment of the back rent.

8 And *Code of Civil Procedure* § 1176(a) states in pertinent part that, "Stay of judgment shall
9 be granted when the court finds that the moving party will suffer extreme hardship in the absence of
10 a stay and that the nonmoving party will not be irreparably injured by its issuance."
11

12 III.

13 CONCLUSION

14 Based on the above, it is requested that defendant's ex-parte application for a stay of
15 execution for a period of forty (40) days be granted.
16

17 Dated: [REDACTED]
18 [REDACTED]
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I, [REDACTED]

1. I am over the age of 18 years and am a party to this action. I have personal

2. I make this declaration in support of my ex-parte application for an order of the Court

[REDACTED] If a writ is issued in accordance with the judgment, I will

3. If the Court does not grant my ex-parte application I will suffer great hardship and

_____. (See Exhibit "A".) I suffer from _____

██████████ (See Exhibit "B".) I was unable to attend my trial because of

4. I am ready and able to pay rent as it falls due for the period during which execution is

5. I respectfully request that the Court grant my ex-parte application for a stay of

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct and that this Declaration was executed on [REDACTED] in Santa Ana,
3 California.
4
5 [REDACTED]

NOTES