

Name, Address & Telephone

IN PRO PER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS

Plaintiff:

CASE NO.

Vs.

EX PARTE MOTION FOR STAY OF
EXECUTION; DECLARATION IN
SUPPORT THEREOF; POINTS AND
AUTHORITIES

Defendant:

Defendant, _____, hereby move(s) the Court for an ex parte order to stay the judgment rendered herein until _____ in order to avoid extreme hardship upon Defendant.

This Motion is based upon the supporting Declaration, the attached Points and Authorities, and upon all the papers and records on file herein.

Dated: _____, 20 _____

Print Name: _____
Defendant _____

DECLARATION IN SUPPORT OF MOTION

I _____, declare:

I am the defendant in the above-referenced matter, and this declaration is in support of my/our application for a stay of execution of the judgment entered on _____ in the matter here.

I have lived at the subject premises for _____. The following people reside with me: _____. My present source of income is _____ and totals \$ _____ month.

I have not had an opportunity to secure alternative housing as of this date. I do not have friends or relatives in the area with whom I can stay while I continue my search for alternate housing.

The writ of restitution was posted by the Sheriff on or about _____. Since I have not found other housing as yet and do not have friends or relatives with whom I can reside, I will have no place to go if I am evicted on _____. I must have time to relocate and make arrangements to move my personal property.

In order to avoid irreparable harm to me and to allow additional time to relocate, I request that the judgment entered in this case on _____ be stayed until at least _____.

Because I do not have the resources to find immediate temporary housing and it would work a severe hardship to be evicted because _____

For these reasons, I submit that in order to avoid extreme hardship; this Court should grant a stay of execution until _____.

I tried, but was unable to work out an agreement with the plaintiff/plaintiff's attorney. I notified the plaintiff/plaintiff's attorney of this Ex Parte Motion for Stay of Execution by _____ (telephone, fax, in person) on _____, 200__ at _____ a.m./p.m. and advised of my intent to request a hearing.

The plaintiff/plaintiff's attorney's office responded by saying: _____

and did/did not indicate any opposition to this motion.

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

Dated: _____, 20 _____

Print Name: _____
Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

1. The Judge of the Court may stay the execution of a judgment or order. Code of Civil Procedure Section 918 (a).

2. In situations where justice requires a stay of execution, the Court may do without the consent of the adverse party for a period of up to 40 days. Code of Civil Procedure Section 918 (b). California Residential Landlord Tenant Practice, California Continuing Education of the Bar (1986), § 7.208, p. 674. This 40 day figure is derived from the provision that the court may stay execution for a period which extends for 10 days beyond the last date on which a notice of appeal could be filed. Code of Civil Procedure Section 918 (b). The last date on which a notice

1 of appeal can be filed form Superior Court unlawful detainer judgment is 30 days after the notice
2 of entry of judgment is mailed by the clerk or opposite party, or 90 days after the entry of
3 judgment, whichever earlier. California Rules of Court, Rule 122 (a). Therefore the judge can
4 stay the execution of an unlawful detainer judgment for 40 days after the notice of entry of
5 judgment served.
6

7 3. In Industrial Indemnity Co. v. Levine (1975) Cal. App. 3d 698, 700, 122 Cal Rptr.
8 712, the Court remarked, "The stay of execution granted under Code of Civil Procedure Section
9 681 (a) (now code of Civil (Procedure Section 918 (a)), is used to allow the judgment debtor
10 time to gather his resources so that the judgment may be satisfied without unnecessary hardship."
11

12 4. In Medford v. Superior Court (1983) 140 Cal. App. 3d 236, 240; 189 Cal. Rptr. 227,
13 230, the Court stated that a stay of execution may be conditioned on the tenant's payment of rent
14 accruing during the period of the stay, but not on payment of back rent.
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16 5. Special circumstances such as hardship, which exist in this case, should be considered
17 in granting a temporary stay of execution in an unlawful detainer case, Kaiser v. Hancock,
18 (1914) 25 Cal.App. 323, 328; 143 P. 614.
19

20 Dated: _____, 20 _____

21 Print Name: _____
22 Defendant
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