



STANISLAUS COUNTY SUPERIOR COURT Civil Division

www.stanct.org

(209) 530-3100

Revised Apr-12

Ex Parte Stay of Execution Unlawful Detainer

This packet includes the necessary forms to request a Temporary Stay of Execution of a judgment in an unlawful detain or eviction case.

Judicial Council forms, local forms and information are available in the Clerk's Office, the Stanislaus County Law Library located at 1101 13th Street, Modesto, and on the following Websites:

Stanislaus County Superior Court

- <http://www.stanct.org/courts/index.html>
Local forms
- <http://www.stanct.org/courts/forms/index.html>
Judicial Council's Self-Help website
- <http://www.courts.ca.gov/selfhelp>
For more information on Libraries, Websites, or Self-Help Legal Books
- <http://www.courts.ca.gov/selfhelp/lowcost/libraries.html>
California Superior Court's Interactive Electronic Forms Program

Superior Court Self-Help Center, 800 11th Street, Room 220, Modesto

PROVIDING ASSISTANCE TO PARTIES REPRESENTING THEMSELVES

Services are offered on a first come, first serve basis.

Material prepared and/or distributed by the Superior Court Self Help Center IS INTENDED FOR INFORMATIONAL AND EDUCATIONAL PURPOSES ONLY. Such material is NOT LEGAL ADVICE and is not intended to be legal advice as to your specific case. IT IS NOT INTENDED TO TAKE THE PLACE OF COMPETENT LEGAL ADVICE FROM AN ATTORNEY. You are strongly urged to seek the advice of a licensed attorney before starting or completing your case in order to protect valuable legal rights that you may have, of which you may be unaware. Please contact a competent attorney of your choice or contact the LAWYERS REFERENCE SERVICE of the Stanislaus County Bar Association at (209) 571-5727 for a referral. The Clerk's Office cannot give you legal advice.

STAY OF EXECUTION

This packet of forms is to request a temporary stay of the execution of a judgment for eviction and allows you to request an extension of time before you are permanently locked out of the premises. **You should begin this request no later than 48 hours before your lockout date/time.**

NOTE: The granting of this motion is not automatic and will be up to the Judge to decide. If you are not prepared to **deposit rent with the court for each day you request for the extension of time to move out** your request may be denied. You can only ask for up to 40 days from the date of Entry of the Judgment.

1. **GIVE 24-HOUR NOTICE:** You must give the Plaintiff or the Plaintiff's Attorney 24 hour's prior notice of your intent to seek an order to Stay the Execution of Judgment. You do this by contacting the Plaintiff or Plaintiff's Attorney by telephone and stating:

"I will be submitting a request to Stay the Execution of the Judgment twenty-four hours from the time of this call."

NOTE: Remember the **DATE & TIME** of the call and the **RESPONSE (if any)** received from the Plaintiff or their attorney, because this information is required for the request.

2. **PREPARE THE DOCUMENTS:** Complete the Ex Parte Motion, Declaration and Points and Authorities, along with the Order on Ex Parte Motion as explained in the pages that follow.
3. **FILING YOUR DOCUMENTS:** Take the original and 2 copies (copies will be made for you if you have a fee waiver on file) to the Clerk's office for filing. The Clerk will file-mark the documents and set a **HEARING DATE**. There will be a filing fee due at the time of filing unless you qualify for a Fee Waiver. You can get a Fee Waiver packet from the Clerk's Office or the Self Help Center. If you qualify for a Fee Waiver, the Clerk's Office will make the copies for you.
4. **SERVING DOCUMENTS:** A copy of the documents must be given to the Plaintiff or Plaintiff's Attorney, prior to the time of the hearing. Someone other than you must **HAND DELIVER** a copy of the DOCUMENTS to the Plaintiff or the Plaintiff's Attorney. They must be over 18 years old and CANNOT be you or anyone else living in the home or named as a defendant in the lawsuit. Once they deliver a copy of the documents to the plaintiff or plaintiff's attorney have them complete, date and sign a PROOF OF SERVICE.

FILE the Proof of Service with the Clerk's Office, if possible, otherwise bring it with you to the hearing. Be sure to attend the hearing.

5. **ORDER:** If the Judge grants the stay, the courtroom clerk will notify the Sheriff's Office and the Clerk's office will fax a copy of the signed order to the Sheriff's office once signed by the Judge.

Name, Address & Telephone

Tom Tenant
123 Anywhere St.
Somewhere, CA

IN PRO PER

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

Plaintiff: **Larry Landlord**

CASE NO. **123456**

Vs.

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

Defendant: **Tom Tenant**

Defendant, **Tom Tenant**, hereby move(s) the
Court for an ex parte order to stay the judgment rendered herein until **Date (up to 40 days)** 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: **January 21**, 20 **14**

/s/

Print Name: **Tom Tenant**
Defendant

DECLARATION IN SUPPORT OF MOTION

I **Tom Tenant**, 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 **January 15, 2014** in the matter here.

I have lived at the subject premises for **2 years**. The following people reside with me: **my wife and daughter**. My present source of income is **unemployment** and totals \$ **1083.00** 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 **January 20, 2014**. 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 **January 23, 2014**. 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 **January 15, 2014** be stayed until at least **February 28, 2014**.

Because I do not have the resources to find immediate temporary housing and it would work a severe hardship to be evicted because **Explain the hardship and attach any evidence (such as a letter from a doctor, etc.) Examples might be: too ill to vacate, immediately, prohibitive costs or housing shortages, small children, etc.**

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5 For these reasons, I submit that in order to avoid extreme hardship; this Court should
6 grant a stay of execution until **February 28, 2014**.

7 I tried, but was unable to work out an agreement with the plaintiff/plaintiff's attorney. I
8 notified the plaintiff/plaintiff's attorney of this Ex Parte Motion for Stay of Execution by
9 **telephone** (telephone, fax, in person) on **January 20, 2014**,
10 200__ at _____ a.m./p.m. and advised of my intent to request a hearing.

11 The plaintiff/plaintiff's attorney's office responded by saying: **"Okay, I will inform**
12 **the attorney and our client.**

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

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

16 Dated: **January 21, 2014**

/s/

17 Print Name: **Tom Tenant**

18 Defendant

19 MEMORANDUM OF POINTS AND AUTHORITIES

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

22 2. In situations where justice requires a stay of execution, the Court may do without the
23 consent of the adverse party for a period of up to 40 days. Code of Civil Procedure Section 918
24 (b). California Residential Landlord Tenant Practice, California Continuing Education of the Bar
25 (1986), § 7.208, p. 674. This 40 day figure is derived from the provision that the court may stay
26 execution for a period which extends for 10 days beyond the last date on which a notice of
27 appeal could be filed. Code of Civil Procedure Section 918 (b). The last date on which a notice
28

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.
15

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: January 21 , 20 14

/s/

Print Name: Tom Tenant
Defendant

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2 PROOF OF PERSONAL SERVICE

3 I declare that I am a citizen of the United States of America and a resident of Stanislaus
4 County, California. I am over the age of eighteen years and not a party to the within entitled
5 action. My business address is: 3456 Tenth Street, Modesto, CA
6

7 I personally served the within:

8 EX PARTE NOTICE OF MOTION AND MOTION TO SET ASIDE DEFAULT AND
9 VACATE JUDGMENT AND TO RECALL AND QUASH ANY WRITS OF EXECUTION
10 AND WRITS OF POSSESSION AND MEMORANDUM OF POINTS AND AUTHORITIES

11 on the parties in said action, by personally delivering to and leaving with the following persons
12 in the County of Stanislaus, State of California, on the date set opposite their respective names, a
13 true copy thereof to-wit:

14 **Anthony Drew Rowe 300 H Street, Modesto, CA January 21, 2014**

15 (Name) (Address) (Date)

16 (Name) (Address) (Date)

17 (Name) (Address) (Date)

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on January 21, 2014, at Modesto, California

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22 **Susy Server**

23 Declarant
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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 of 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 _____

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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.
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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.”
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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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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 _____

Print Name: _____
Defendant

1
2 **PROOF OF PERSONAL SERVICE**

3 I declare that I am a citizen of the United States of America and a resident of Stanislaus
4 County, California. I am over the age of eighteen years and not a party to the within entitled
5 action. My business address is: _____
6 _____.

7 I personally served the within:

8 **EX PARTE MOTION OF STAY OF EXECUTION; DECLARATION**
9 **IN SUPPORT THEREOF; POINTS AND AUTHORITIES**

10 on the parties in said action, by personally delivering to and leaving with the following persons
11 in the County of Stanislaus, State of California, on the date set opposite their respective names, a
12 true copy thereof to-wit:

13 _____
14 (Name) (Address) (Date)

15 _____
16 (Name) (Address) (Date)

17 _____
18 (Name) (Address) (Date)

19 I declare under penalty of perjury that the foregoing is true and correct.

20 Executed on _____, 20_____, at Modesto, California

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22 _____
23 Declarant
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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.

ORDER ON EX PARTE MOTION FOR
STAY OF EXECUTION

Vs.

Defendant:

Good cause appearing:

IT IS ORDERED the Ex Parte Motion for Stay of Execution is hereby

GRANTED DENIED upon payment in the amount of \$_____ by

_____ to _____ no later than

_____ a.m./p.m. on _____. Upon so doing there shall be no further action

taken by Plaintiff or by anyone acting for or with Plaintiff, including the Sheriff of Stanislaus

County, to enforce or execute the Judgment herein entered against Defendant in the above-

entitled action until _____ (date).

Dated:

JUDGE OF THE SUPERIOR COURT