

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.

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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.

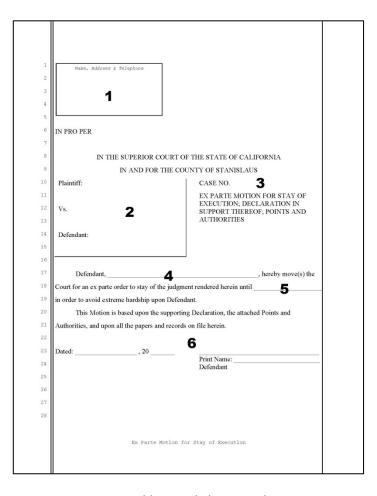
1. <u>GIVE 24-HOUR NOTICE</u>: You must give the Plaintiff or the Plaintiff's Attorney 24 hour's prior notice of your intent to seek an order to Stay the Execution of Judgment. You do this by contacting the Plaintiff or Plaintiff's Attorney by telephone and stating:

"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. <u>PREPARE THE DOCUMENTS</u>: 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. <u>FILING YOUR DOUCMENTS</u>: 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. <u>SERVING DOCUMENTS</u>: 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.





Directions

- Find the number on the sample form. Example: 1
- Go to the same number below to find out how to fill out the form.
- Type or print legibly in blue or black ink.
 DO NOT USE GEL PENS.

- 1. Write your name, address and phone number.
- 2. Write the name of the Plaintiff and the Defendant as they appear on the Complaint.
- 3. Write in your case number as it appears on the Complaint.
- 4. Write in name.
- 5. Write in the date you wish are requesting the Court temporary state the lockout. You can ask for up to 40 days from the date of entry of the judgment.

NOTE: You will be required to pay rent for each day you request for the extension of time to move out.

6. Write in the date, print your name and sign.



	DECLARATION IN SUPPORT OF MOTION
	7 , declare:

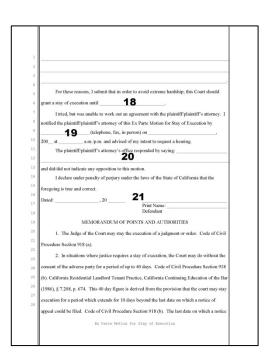
	I am the defendant in the above-referenced matter, and this declaration is in support of
1	my/our application for a stay of execution of the judgment entered on in
1	he matter here.
	I have lived at the subject premises for9 . The following people reside
∥,	with me: My present source of income is
	11 and totals \$ 12 month.
	I have not had an opportunity to secure alternative housing as of this date. I do not have
1	riends or relatives in the area with whom I can stay while I continue my search for alternate
1	nousing.
	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
Ш	reside, I will have no place to go if I am evicted on 14. I must have time to
Ш	relocate and make arrangements to move my personal property.
ľ	In order to avoid irreparable harm to me and to allow additional time to relocate, I request
	45
1	hat the judgment entered in this case on15 be stayed until at least
ŀ	
	Because I do not have the resources to find immediate temporary housing and it would
ľ	work a severe hardship to be evicted because
-	
-	17
1	
	Ex Parte Motion for Stay of Execution

Directions

- Find the number on the sample form.
 Example: 1
- Go to the same number below to find out how to fill out the form.
- Type or print legibly in blue or black ink.
 DO NOT USE GEL PENS.

- 7. Write in your name.
- 8. Write in the date the Judgment was entered.
- 9. Write the length of time you have lived at the residence.
- 10. Write in who else resides there with you. (Example: My two children or My boyfriend, etc.)
- 11. Write in from what source you earn your monthly income. (Example: Employment or Unemployment or social security, etc.)
- 12. Write in the amount of your monthly earnings.
- 13. Write in the date the Sheriff posted the lockout notice.
- 14. Write in the date scheduled for the lockout. (You can find this on the lockout notice.)
- 15. Write in the date the Judgment was entered. (Same as Item No. 8 above.)
- 16. Write in the date you are requested the lockout be extended to. (Same as Item No. 5 on previous page.)
- 17. You must tell the court was hardship you would suffer. (Example: You are elderly, a single parent with children, very low income, disable or ill.)

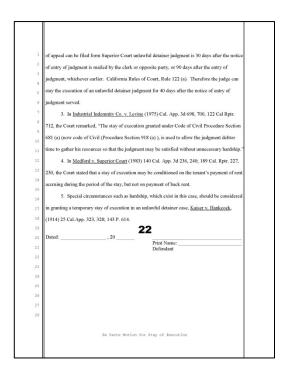




Directions

- Find the number on the sample form. Example: 1
- Go to the same number below to find out how to fill out the form.
- Type or print legibly in blue or black ink.
 DO NOT USE GEL PENS.

- 18. Write in the date you are requesting the extension to.
- 19. Write in how you contacted the plaintiff or plaintiff's attorney, along with the date and time you contacted the plaintiff or plaintiff's attorney
- 20. Write in any responses made by the plaintiff or plaintiff's attorney.
- 21. Write in the date, print your name and sign.



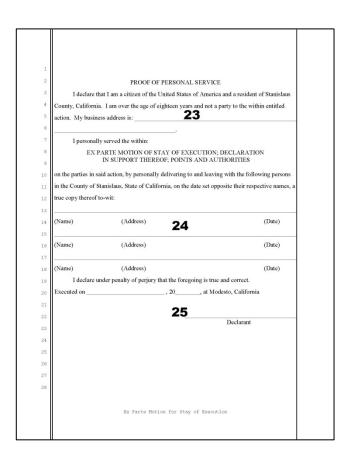
Ex Parte Stay of Execution Page 4

Directions

- Find the number on the sample form.
 Example: 1
- Go to the same number below to find out how to fill out the form.
- Type or print legibly in blue or black ink.
 DO NOT USE GEL PENS.

23. Write in the date, print your name and sign.



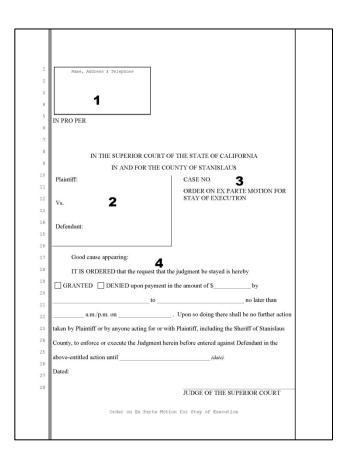


Directions

- Find the number on the sample form. Example: 1
- Go to the same number below to find out how to fill out the form.
- Type or print legibly in blue or black ink.
 DO NOT USE GEL PENS.

- 24. A copy of all documents must be hand delivered to the Plaintiff or Plaintiff's Attorney by someone over 18 years of age and NOT YOU <u>and</u> not a party to the action. Write in the address of the person who will be hand delivering a copy of the documents to the Plaintiff or Plaintiff's Attorney.
- 25. Write in the name and address of the plaintiff or plaintiff's attorney where the documents are to be delivered.
- 26. Have the person who will be delivering the copy date and sign. Make a complete 2 copies and have the person deliver one copy to the plaintiff or the plaintiff's attorney.
- 27. Take the original and one copy to the Clerk's office for filing.





Directions

- Find the number on the sample form. Example: 1
- Go to the same number below to find out how to fill out the form.
- Type or print legibly in blue or black ink.
 DO NOT USE GEL PENS.

- 1. Write in your name, address and telephone number.
- 2. Write the name of the Plaintiff and the Defendant as they appear on the Complaint.
- 3. Write in your case number as it appears on the Complaint.
- 4. Leave blank and the Court will complete the rest on the date of the hearing.



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1	Name, Address & Telephone	
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5		
6	NA DD O DED	
7	IN PRO PER	
8	IN THE SUIDEDIOD COURT OF	F THE STATE OF CALIFORNIA
9		UNTY OF STANISLAUS
10	Plaintiff:	CASE NO.
11	Tiumum.	EX PARTE MOTION FOR STAY OF
12	Vs.	EXECUTION; DECLARATION IN SUPPORT THEREOF; POINTS AND
13		AUTHORITIES
14	Defendant:	
15		
16		
17	Defendant,	, hereby move(s) the
18	Court for an ex parte order to stay of the judgme	ent rendered herein until
19	in order to avoid extreme hardship upon Defend	ant.
20	This Motion is based upon the supportin	g Declaration, the attached Points and
21	Authorities, and upon all the papers and records on file herein.	
22		
23	Dated:, 20	D ' (N
24		Print Name: Defendant
25		
26		
27		
28		

Ex Parte Motion for Stay of Execution



DECLARATION IN SUPPORT OF MOTION

1

2	I, declare:		
3	I am the defendant in the above-referenced matter, and this declaration is in support of		
5	my/our application for a stay of execution of the judgment entered on in		
6	the matter here.		
7	I have lived at the subject premises for The following people reside		
8	with me: My present source of income is		
9	and totals \$ month.		
10	I have not had an opportunity to secure alternative housing as of this date. I do not have		
12	friends or relatives in the area with whom I can stay while I continue my search for alternate		
13	housing.		
14	The writ of restitution was posted by the Sheriff on or about		
15	Since I have not found other housing as yet and do not have friends or relatives with whom I can		
16			
17	reside, I will have no place to go if I am evicted on I must have time to		
18	relocate and make arrangements to move my personal property.		
19	In order to avoid irreparable harm to me and to allow additional time to relocate, I reques		
20	that the judgment entered in this case on be stayed until at least		
22	·		
23	Because I do not have the resources to find immediate temporary housing and it would		
24	work a severe hardship to be evicted because		
25			
26			
27			
28			



For these	e reasons, I submit that in order to avoid extreme hardship; this Court should
grant a stay of e	execution until
I tried, b	out was unable to work out an agreement with the plaintiff/plaintiff's attorney. I
notified the plai	ntiff/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 plai	ntiff/plaintiff's attorney's office responded by saying:
and did/did not	indicate any opposition to this motion.
I declare	e under penalty of perjury under the laws of the State of California that the
foregoing is true	e and correct.
Dated:	, 20
	Print Name: Defendant
	MEMORANDUM OF POINTS AND AUTHORITIES
1. The J	Sudge of the Court may stay the execution of a judgment or order. Code of Civil
Procedure Section	on 918 (a).
2. In sit	uations where justice requires a stay of execution, the Court may do without the
onsent of the a	dverse party for a period of up to 40 days. Code of Civil Procedure Section 918
b). California F	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
xecution for a	period which extends for 10 days beyond the last date on which a notice of
ppeal could be	filed. Code of Civil Procedure Section 918 (b). The last date on which a notice
	Ex Parte Motion for Stay of Execution

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

- 3. In <u>Industrial Indemnity Co. v. Levine</u> (1975) Cal. App. 3d 698, 700, 122 Cal Rptr. 712, the Court remarked, "The stay of execution granted under Code of Civil Procedure Section 681 (a) (now code of Civil (Procedure Section 918 (a)), is used to allow the judgment debtor time to gather his resources so that the judgment may be satisfied without unnecessary hardship."
- 4. In Medford v. Superior Court (1983) 140 Cal. App. 3d 236, 240; 189 Cal. Rptr. 227, 230, the Court stated that a stay of execution may be conditioned on the tenant's payment of rent accruing during the period of the stay, but not on payment of back rent.
- 5. Special circumstances such as hardship, which exist in this case, should be considered in granting a temporary stay of execution in an unlawful detainer case, <u>Kaiser v. Hankcock</u>, (1914) 25 Cal.App. 323, 328; 143 P. 614.

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 p	earty to the within entitled
5	action. My business address is:	
6	·	
7	I personally served the within:	
8 9	EX PARTE MOTION OF STAY OF EXECUTION; IN SUPPORT THEREOF; POINTS AND AUT	
10	on the parties in said action, by personally delivering to and leaving	g with the following persons
11	in the County of Stanislaus, State of California, on the date set oppo	osite 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	
20	Executed on, 20, at Mod	esto, California
21		
22		Declarant
23		
24		
25		
26		
27		
28		

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1	Name, Address & Telephone	
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3		
4		
5	IN PRO PER	
6		
7		
8	IN THE SUPERIOR COURT OF	THE STATE OF CALIFORNIA
9	IN AND FOR THE COU	NTY OF STANISLAUS
10	Plaintiff:	CASE NO.
11		ORDER ON EX PARTE MOTION FOR STAY OF EXECUTION
12	Vs.	STAT OF EXECUTION
13		
14	Defendant:	
16		
17	Good cause appearing:	
18		G. CF
19	IT IS ORDERED the Ex Parte Motion for	Stay of Execution is hereby
20	GRANTED DENIED upon payment in t	he amount of \$ by
21	to	no later than
22	a.m./p.m. on	Upon so doing there shall be no further action
23	taken by Plaintiff or by anyone acting for or with	Plaintiff, including the Sheriff of Stanislaus
24	County, to enforce or execute the Judgment herei	
25		-
26	entitled action until	(date).
27	Dated:	
28		
		JUDGE OF THE SUPERIOR COURT

Order on Ex Parte Motion for Stay of Execution

