

#### 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 13<sup>th</sup> Street, Modesto, and on the following Websites:

**Stanislaus County Superior Court** 

- <a href="http://www.stanct.org/courts/index.html">http://www.stanct.org/courts/index.html</a>
   Local forms
- <a href="http://www.stanct.org/courts/forms/index.html">http://www.stanct.org/courts/forms/index.html</a>
   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

<u>Superior Court Self-Help Center</u>, 800 11<sup>th</sup> 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.

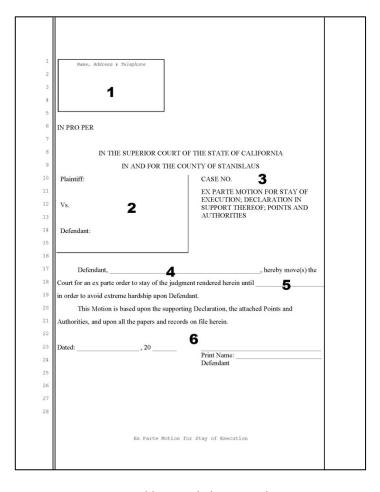
**NOTE:** The granting of this motion is not automatic and will be up to the Judge to decide. If you are not prepared to **deposit rent with the court for each day you request for the extension of time to move out** your request may be denied. You can only ask for up to 40 days from the date of Entry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

1. <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
	I, declare:
	I am the defendant in the above-referenced matter, and this declaration is in support of
m	y/our application for a stay of execution of the judgment entered on in
th	e matter here.
	I have lived at the subject premises for The following people reside
wi	ith 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
fri	ends or relatives in the area with whom I can stay while I continue my search for alternate
hc	ousing.
	The writ of restitution was posted by the Sheriff on or about
Si	nce I have not found other housing as yet and do not have friends or relatives with whom I can
re	side, I will have no place to go if I am evicted on14 I must have time to
re	locate 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
th	at the judgment entered in this case on
	16
	Because I do not have the resources to find immediate temporary housing and it would
w	ork a severe hardship to be evicted because
	•
	17
-	
-	

#### 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.

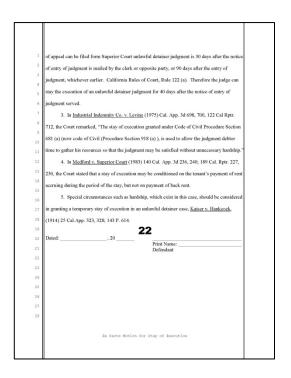
- 7. Write in your name.
- 8. Write in the date the Judgment was entered.
- 9. Write the length of time you have lived at the residence.
- 10. Write in who else resides there with you. (Example: My two children or My boyfriend, etc.)
- 11. Write in from what source you earn your monthly income. (Example: 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.

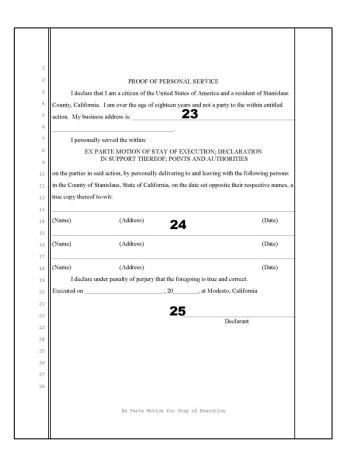


## **Ex Parte Stay of Execution** Page 4

#### 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.

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

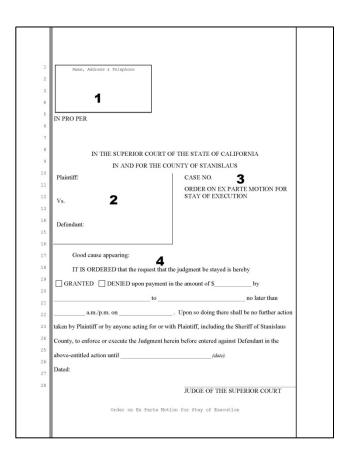


#### Directions

- 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.

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.

- 23. Write in the name and address of the plaintiff or plaintiff's attorney where the documents are to be delivered.
- 24. 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.
- 25. 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.

1	Name, Address & Telephone			
2				
3				
4				
5				
7	IN PRO PER			
8	IN THE CUREDION COURT OF	F THE STATE OF CALIFORNIA		
9		UNTY OF STANISLAUS		
10	Plaintiff:	CASE NO.		
	Plainuii:			
11	Vs.	EX PARTE MOTION FOR STAY OF 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 judgment rendered herein until			
19	in order to avoid extreme hardship upon Defendant.			
20	This Motion is based upon the supporting Declaration, the attached Points and			
21	Authorities, and upon all the papers and records on file herein.			
22				
23	Dated:, 20			
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 4	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	
11	friends or relatives in the area with whom I can stay while I continue my search for alternate	
13	housing.	
14		
15	The writ of restitution was posted by the Sheriff on or about	
16	Since I have not found other housing as yet and do not have friends or relatives with whom I can	
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		

1			
2			
3			
5	For these reasons, I submit that in order to avoid extreme hardship; this Court should		
6	grant a stay of execution until		
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, fax, in person) on,		
.0	200 at a.m./p.m. and advised of my intent to request a hearing.		
.1	The plaintiff/plaintiff's attorney's office responded by saying:		
L2			
L3	and did/did not indicate any opposition to this motion.		
.4	I declare under penalty of perjury under the laws of the State of California that the		
.5	foregoing is true and correct.		
L6	Dated:, 20		
L7	Print Name: Defendant		
-8			
L9	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		
24	consent of the adverse party for a period of up to 40 days. Code of Civil Procedure Section 918		
25	(b). California Residential Landlord Tenant Practice, California Continuing Education of the Bar		
26	(1986), § 7.208, p. 674. This 40 day figure is derived from the provision that the court may stay		
27 28	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		
	Ex Parte Motion for Stay of Execution		

Ex Parte Motion for Stay of Execution

	PROOF OF PERSO	NAL SERVICE		
	I declare that I am a citizen of the United States of America and a resident of Stanislaus		s	
$\  \mathbf{c} \ $	County, California. I am over the age of eighteen	years and not a party to the within entitled		
a	ction. My business address is:			
	·			
	I personally served the within:			
	EX PARTE MOTION OF STAY OF EXECUTION; DECLARATION IN SUPPORT THEREOF; POINTS AND AUTHORITIES			
O:	on the parties in said action, by personally delivering to and leaving with the following persons			
ir	in the County of Stanislaus, State of California, on the date set opposite their respective names, a			
tr	rue copy thereof to-wit:			
_				
(1	Name) (Address)	(Date)		
_				
(1	Name) (Address)	(Date)		
_				
(1	Name) (Address)	(Date)		
	I declare under penalty of perjury that the fe	oregoing is true and correct.		
E	executed on, 20	, at Modesto, California		
		Declarant		
$\Pi$				

1	Name, Address & Telephone				
2					
3	3				
4	4				
5	5   NA DEC DED				
6	6 IN PRO PER				
7	7				
8	8 IN THE GUIDEDIOD COURT OF THE CT ATE OF CALLES	NDNH A			
9	9	IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA			
10	IN AND FOR THE COUNTY OF STANISLAUS				
11	Plaintiff: CASE NO.				
12	ORDER ON EX PART STAY OF EXECUTIO				
13	Vs.				
14	14				
15	Defendant:				
16					
17					
18	IT IS ORDERED the Ex Parte Motion for Stay of Execution is herel	by			
19	GRANTED DENIED upon payment in the amount of \$	by			
20	20	no later than			
21					
22	22 a.m./p.m. on Upon so doing there shall	be no further action			
23	23 taken by Plaintiff or by anyone acting for or with Plaintiff, including the Sh	eriff of Stanislaus			
24	County, to enforce or execute the Judgment herein entered against Defendar	nt in the above-			
25	entitled action until (date).				
26	26				
27	27 Dated:				
28	JUDGE OF THE SUPP	ERIOR COURT			

Order on Ex Parte Motion for Stay of Execution