

REAL PROPERTY LAW



presents

2024 Real Property Law Retreat

Residential Unlawful Detainer Basics

Saturday, March 9, 2024
11:30am - 12:30pm

Speakers: Rachael Callahan and Lawrence Mudgett

Conference Reference Materials

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Why am I here?

AB 1482 was signed into law by Governor Newsom on On October 8, 2019, and it is really confusing...



And now I want to know about “Just cause” evictions!

AB 1482

Rent
Control

Just Cause
Evictions

LEGISLATION

“This act shall be known, and may be cited, as the Tenant Protection Act of 2019”

Just Cause as required under AB 1482:

If applicable, evictions **must** be based on “just cause.” This means the owner must have a “just cause” for the eviction.

The bill, codified in Cal. Civ. Code §1946.2 divides “just cause” into two categories

- 1) at-fault evictions
- 2) no- fault evictions

Once the law is triggered you are required to provide a *permissible* reason for the eviction. Gone are the days of issuing a 30 or 60-day notice of termination of tenancy without cause.

Just Cause Eviction – Cal. Civ. Code §1946.2

When does it kick in?

(a) Notwithstanding any other law, after a tenant has continuously and lawfully **occupied** a residential real property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate tenancy. If any additional adult tenants are added to the lease before an existing tenant has continuously and lawfully occupied the residential real property for 24 months, then this subdivision shall only apply if either of the following are satisfied:

(1) All of the tenants have continuously and lawfully occupied the residential real property for 12 months or more.

(2) One or more tenants have continuously and lawfully occupied the residential real property for 24 months or more.

Just Cause Eviction – Cal. Civ. Code §1946.2

When does it kick in?

In other words....

As of January 1, 2020, the STATEWIDE “just cause” statute applies to renters who have resided in the unit for 12 months or more.

If an additional renter is added to the lease prior to an existing renter continuously residing in the unit for 24 months then the “just cause” provisions apply after ALL renters have continuously resided in the unit for 12 months or more (or at least one renter has continuously resided in the unit for 24 months or more).

COMPARE: Prior to AB1482, new lease, new tenancy - new occupant, new tenancy. This matters.

Just Cause Eviction – Cal. Civ. Code §1946.2

“at-fault” v. “no-fault”



“at-fault” just cause eviction: Causes are based on the actions or activities of the renter. Such actions must fall within the scope of the permissible reasons under the law.

“no-fault” just cause eviction: Causes are when the eviction is not based on the actions of the renter, but rather due to the owner’s actions or the owner’s compliance with a government entity.

Just Cause Eviction – Cal. Civ. Code §1946.2 (b)

“At-Fault” Just Cause

- Default in payment of rent;
- Breach of a material lease term, as defined by the law;
- Maintaining, committing, or permitting the maintenance or commission of a nuisance, as defined by the law;
- Committing waste, as defined by the law;
- Written lease terminated on or after January 1, 2020 and after a written request from the owner, the renter has refused to execute on a written extension or renewal of the lease based on similar lease terms;

Just Cause Eviction – Cal. Civ. Code §1946.2 (b)

“At-Fault” Just Cause

- Criminal activity by the renter on the property, including any common areas, or any criminal activity or criminal threat on or off the property that is directed at any owner or agent of the owner;
- Assigning or subletting in the premises in violation of the lease;
- Refusing the owner access to the unit as authorized under the law;
- Using the premises for unlawful purposes, as defined by the law;
- An employee (e.g. resident manager), agent or licensee’s failure to vacate after their termination;
- Failure to deliver possession of the unit following written notice to the owner of the renter’s intention to terminate the lease, which the owner has accepted in writing.



Just Cause Eviction – Cal. Civ. Code §1946.2

”no-fault” Just Cause

- Intent by the owner or owner-relative to occupy the unit. This includes the owner’s spouse, domestic partner, children, grandchildren, parents, or grandparents only.

NOTE: For leases entered into on or after July 1 2020, the owner would only be permitted to occupy the unit, if the renter agrees in writing to the lease termination or the lease includes a provision providing for lease termination based on owner or owner-relative occupancy;

- Withdrawal of the rental property from the rental market;

NOTE: Selling the property is not permissible “just cause.”

Just Cause Eviction – Cal. Civ. Code §1946.2

”no-fault” Just Cause

- Intent to demolish or substantially remodel the unit

NOTE: “substantially remodel” means the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, or asbestos, in accordance with applicable federal, state, and local laws, that cannot be reasonably accomplished in a safe manner with the tenant in place and that requires the tenant to vacate the residential real property for at least 30 days. Cosmetic improvements alone, including painting, decorating, and minor repairs, or other work that can be performed safely without having the residential real property vacated, do not qualify as substantial rehabilitation.

- Owner is complying with a local ordinance, court order, or other government entity resulting in the need to vacate the property.

Just Cause Eviction – Cal. Civ. Code §1946.2 ”no-fault” Just Cause

RELOCATION ASSISTANCE:

When the termination of a tenancy is based on a permissible “no-fault” just cause, the renter is entitled to relocation assistance OR a rent waiver. The owner may decide which one; however, there is no provision allowing the owner to elect part waiver and part payment.

NOTE: Failure to comply invalidates the notice.

Just Cause Eviction – Cal. Civ. Code §1946.2

”no-fault” Just Cause

OPTION 1:

Relocation assistance: Must be equal to one month of the renter’s rent in effect as of the date that the notice of termination of tenancy was issued. The relocation fee must be paid to the renter within 15 calendar days of the service of notice of termination of tenancy.

OPTION 2:

Rent waiver: Must be equal to one month of the renter’s rent in effect as of the date that the notice of termination of tenancy was issued.

Just Cause Eviction – Cal. Civ. Code §1946.2

”no-fault” Just Cause

NOTICE REQUIREMENT:

You notice of termination based on a permissible “no fault” just cause **MUST** include the renter’s right to relocation assistance or a rent waiver. Relocation assistance shall be provided within 15 calendar days of service of the notice to quit.

If you decide to issue a rent waiver, the notice **MUST** provide the amount of the rent waived and state that no rent is due for the last month the tenancy in that amount.

NOTE: Failure to comply invalidates the notice.

Not my fault.

Nope.

Does this “just cause” requirement even apply to me?

Cal. Civ. Code 1946. 2 (e) This section **shall not** apply to the following residential real properties:

- Transient and tourist hotel occupancy (as defined by law);
- Housing accommodations in a nonprofit hospital, religious facility, licensed residential care facility for the elderly, as defined by the law;
- Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school;
- Owner-Occupied housing accommodations in which the tenant shares a bathroom or kitchen facilities with the owner who maintains principal residence with the residential real property;

Does this “just cause” requirement even apply to me?

Cal. Civ. Code 1946. 2 (e) This section **shall not** apply to the following residential real properties:

- Owner-occupied duplex in which one of the units is the owner’s primary residence at the beginning of the tenancy and the owner continues in occupancy;
- New Construction –housing that was issued a certificate of occupancy within the previous 15 years. This means some of the housing previously exempt under Costa Hawkins will now be subject to the State’s rent control provisions.
- Single-family homes and condominiums if the owner is not a real estate investment trust, a corporation, or a limited liability company in which at least one member is a corporation.

Does this “just cause” requirement even apply to me?

Cal. Civ. Code 1946.2 (g):

(1) This section does not apply to the following residential real property:

(A) Residential real property subject to a local ordinance requiring just cause for termination of a residential tenancy adopted on or before September 1, 2019, in which case the local ordinance shall apply.

(B) Residential real property subject to a local ordinance requiring just cause for termination of a residential tenancy adopted or amended after September 1, 2019, that is more protective than this section, in which case the local ordinance shall apply. For purposes of this subparagraph, an ordinance is “more protective” if it meets all of the following criteria:

(i) The just cause for termination of a residential tenancy under the local ordinance is consistent with this section.

(ii) The ordinance further limits the reasons for termination of a residential tenancy, provides for higher relocation assistance amounts, or provides additional tenant protections that are not prohibited by any other provision of law.

(iii) The local government has made a binding finding within their local ordinance that the ordinance is more protective than the provisions of this section.

Does this “just cause” requirement even apply to me?

Cal. Civ. Code 1946.2 (g):

(2) A residential real property shall not be subject to both a local ordinance requiring just cause for termination of a residential tenancy and this section.

(3) A local ordinance adopted after September 1, 2019, that is less protective than this section shall not be enforced unless this section is repealed.

Property Subject to the Law

- You are required to provide the following notice, in no less than 12-point type:
- “California Law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all of the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.”
- For tenancies that started or were renewed on or after July 1, 2020, the above notice may be included as an addendum to the lease OR as a written notice signed by the renter, with a copy of the signed written notice provided to the renter.
- For tenancies that existed prior to July 1, 2020, the above notice MUST be provided as a written notice to the renter no later than **August 1, 2020** or as an addendum to the lease.

Property Exempt from the Law

If after all we learned today, you still think you are exempt, you **MUST** provide renters with written notice stating:

“This property is not subject to the rent limits imposed by Section 1947.12 of the Civil Code and is not subject to the just-cause requirements of Section 1946.2 of the Civil Code. This property meets the requirements of Sections 1947.12 (d) (5) and 1946.2 (e)(8) of the Civil Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation.”

This notice **MUST** be included in rental agreements that begin on or after July 1, 2020.

For tenancies that started prior to July 1, 2020, the rent agreement **MAY** but does not have to include the notice provision.

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2024 REAL PROPERTY LAW RETREAT



Residential Unlawful Detainer Basics
By: Lawrence A. Mudgett III, Esq. dba Safer Law

CASE STUDY OF A LITIGIOUS EVICTION



From Notice to Lockout and Everything In-between



NOTHING HEREIN IS
INTENDED AS LEGAL
ADVICE



This case study is intended to demonstrate the basics of an unlawful detainer action and is not to be used for any other purpose



NOTICE TO PAY RENT OR QUIT

THREE (3) BUSINESS DAY NOTICE TO PAY RENT OR QUIT Cal Code Civ Proc § 1161(2); San Diego Municipal Code 98.0701 et. seq.

TO: [REDACTED] AND ALL TENANTS, SUBTENANTS, UNKNOWN OCCUPANTS, AND OTHERS IN POSSESSION of the premises located at:

[REDACTED], San Diego County ("the Premises").

PLEASE TAKE NOTICE that within three (3) days after service of this notice upon you, excluding Saturdays, Sundays, and other judicial holidays, you are required to pay the rent now due and owing on the premises, or quit and deliver the possession of the premises. Total amount due and owing for the above specified period, is [REDACTED], representing the rent as follows:

[REDACTED] which came due [REDACTED]
[REDACTED] which came due [REDACTED]

****This notice does not demand payments that came due prior to April 1, 2022, however, any amounts you may owe prior to April 1, 2022, are not waived and the landlord/owner reserves the right to pursue those amounts in a separate action, as permitted by law.**

YOU ARE FURTHER NOTIFIED that within three (3) days after service of this Notice on you, excluding Saturdays, Sundays, and other judicial holidays, you must pay the amount of said rent in full, or quit said premises and deliver up possession of the same to the landlord/agent, or the landlord/owner may institute legal proceedings for an unlawful detainer against you to recover possession of said premises, to declare said lease or rental agreement forfeited and to recover rent and damages.

YOU ARE FURTHER NOTIFIED that by this Notice, if you fail to perform or otherwise comply, the landlord/owner elects to and does declare a forfeiture of your lease or rental agreement and may institute legal proceedings to obtain possession. Such proceedings could result in a judgment against you, which may include attorneys' fees and costs as allowed by law.

If you fail to fulfill the terms of your credit obligations, a negative credit report may be submitted to a credit reporting agency.

PAYMENTS: (to be made to owner/landlord as follows):

LANDLORD/OWNER: [REDACTED]

PERSON TO PAY: [REDACTED]

ADDRESS: [REDACTED]

TELEPHONE: [REDACTED]

A. Payments may be delivered in person. Be further advised that the usual business days and hours to make rent payments at said address are:

Monday through Friday between the hours of 9am and 5pm*;

Saturday between the hours of 8am and 8pm;

Sunday between the hours of _____ and _____.

*Please call before delivering payments in person as a professional courtesy.

B. Rent payments may be mailed to the above address. If payment is mailed, it will be determined that rent is received by Owner/Landlord on the date of mailing as postmarked. If postmarked after the 3 business day period then payment will not be accepted.

C. Rent payments may be made to this financial institution within five miles of the subject property (address): _____

Account No. _____ Routing No. _____

D. Rent may be paid as otherwise previously established

F. OTHER: _____

"California law limits the amount your rent can be increased. See California Civil Code section 1947.12 for more information. Local law also provides that a landlord shall provide a statement of cause in any notice to terminate a tenancy. In some circumstances, tenants who are seniors (62 years or older) or disabled may be entitled to additional tenant protections. See Chapter 9, Article 8, Division 7, of the San Diego Municipal Code for more information." In this case, your tenancy is being terminated for at fault just cause for a default in the payment of rent pursuant to San Diego Municipal Code 98.0704(a)(1).

"State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out."

"In the event your tenancy terminates pursuant to this Notice, you have the legal right to request an initial inspection of your unit and be present during the inspection. The purpose of this inspection is to allow you the opportunity to correct any deficiencies in the unit in order to avoid deduction from the security deposit. Malicious damage or destruction of the property may be subject to fines and/or imprisonment. See California Penal Code Section § 594."

COMPLAINT

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UD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: Lawrence A. Mudgett III, Esq. FIRM NAME: SAFER LAW STREET ADDRESS: 3245 University Ave #1265 CITY: San Diego TELEPHONE NO.: 619 794 0460 EMAIL ADDRESS: lawrence@saferlaw.com ATTORNEY FOR (name): Plaintiff	STATE BAR NUMBER: 252898 STATE: CA ZIP CODE: 92104 FAX NO.: 619 794 0470	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego Clerk of the Superior Court By Shiela Retez, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Central Division - Hall of Justice		
PLAINTIFF: [REDACTED] DEFENDANT: [REDACTED] <input checked="" type="checkbox"/> DOES 1 TO 10		
COMPLAINT—UNLAWFUL DETAINER* <input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT (Amendment Number): [REDACTED]		
Jurisdiction (check all that apply): <input checked="" type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000. <input checked="" 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.		

- PLAINTIFF (name each): [REDACTED]
alleges causes of action against DEFENDANT (name each): [REDACTED] DOES 1 to 10; All Unknown Occupants
- 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):
- a. The venue is the court named above because defendant named above is in possession of the premises located at (street address, apt. no., city, zip code, and county): [REDACTED]
b. The premises in 3a are (check one)
(1) within the city limits of (name of city): San Diego
(2) within the unincorporated area of (name of county):
c. The premises in 3a were constructed in (approximate year): 2015
- Plaintiff's interest in the premises is as owner other (specify):
- The true names and capacities of defendants sued as Does are unknown to plaintiff.

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

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UD-100

PLAINTIFF: [REDACTED] DEFENDANT: [REDACTED]	CASE NUMBER: [REDACTED]
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- a. On or about (date) [REDACTED] defendant (name each): [REDACTED]
(1) agreed to rent the premises as a month-to-month tenancy other tenancy (specify): [REDACTED]
(2) agreed to pay rent of [REDACTED] 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):
c. The defendants not named in item 6a are
(1) subtenants.
(2) assignees.
(3) Other (specify): All Unknown Occupants
d. The agreement was later changed as follows (specify): [REDACTED]
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)).
- The tenancy described in 6 (complete (a) or (b))
a. is not subject to the Tenant Protection Act of 2019 (Civil Code, § 1946.2). The specific subpart supporting why tenancy is exempt is (specify): CC 1946.2(g) - SDMC applies
b. is subject to the Tenant Protection Act of 2019.
- (Complete only if item 7b is checked. Check all applicable boxes.)
a. The tenancy was terminated for at-fault just cause (Civil Code, § 1946.2(b)(1)).
b. The tenancy was terminated for no-fault just cause (Civil Code, § 1946.2(b)(2)) and the plaintiff (check one)
(1) waived the payment of rent for the final month of the tenancy, before the rent came due, under section 1946.2(d)(2), in the amount of \$
(2) provided a direct payment of one month's rent under section 1946.2(d)(3), equaling \$
to (name each defendant and amount given to each):
c. Because defendant failed to vacate, plaintiff is seeking to recover the total amount in 8b as damages in this action.
- a. Defendant (name each) [REDACTED]
was served the following notice on the same date and in the same manner:
(1) 3-day notice to pay rent or quit (5) 3-day notice to perform covenants or quit
(not applicable if item 7b checked)
(2) 30-day notice to quit (6) 3-day notice to quit under Civil Code, § 1946.2(c)
(3) 60-day notice to quit (7) Other (specify):
(4) 3-day notice to quit

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UD-100

PLAINTIFF: [REDACTED] DEFENDANT: [REDACTED]	CASE NUMBER: [REDACTED]
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- b. (1) On (date) [REDACTED] the period stated in the notice checked in 9a 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. When Civil Code, § 1946.2(c), applies and two notices are required, provide copies of both.)
f. One or more defendants were served (1) with the prior required notice under Civil Code, § 1946.2(c), (2) with a different notice, (3) on a different date, or (4) in a different manner, as stated in Attachment 10c. (Check item 10c and attach a statement providing the information required by items 9a–e and 10 for each defendant and notice.)
- a. The notice in item 9a was served on the defendant named in item 9a as follows:
(1) By personally handing a copy to defendant on (date):
(2) By leaving a copy with (name or description): [REDACTED] at defendant's residence business AND mailing a copy to defendant at defendant's place of residence on (date): [REDACTED] because defendant cannot be found at defendant's residence or usual place of business.
(3) By posting a copy on the premises on (date) [REDACTED] AND mailing a copy to defendant at the premises on (date): [REDACTED]
(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): [REDACTED] 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 9f is stated in Attachment 10c.
d. Proof of service of the notice in item 9a is attached and labeled Exhibit 3.
- Plaintiff demands possession from each defendant because of expiration of a fixed-term lease.
- At the time the 3-day notice to pay rent or quit was served, the amount of rent due was [REDACTED].
- The fair rental value of the premises is [REDACTED] per day.
- 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 14.)
- A written agreement between the parties provides for attorney fees.
- 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):
San Diego Residential Tenant Protection Ordinance, SDMC 98.0701 et. seq., June 24, 2023

Plaintiff has met all applicable requirements of the ordinances.

- Other allegations are stated in Attachment 17.
- Plaintiff accepts the jurisdictional limit, if any, of the court.

COMPLAINT ((CONTINUED))

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PLAINTIFF: DEFENDANT:	[REDACTED]	CASE NUMBER:	[REDACTED]
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19. PLAINTIFF REQUESTS

- a. possession of the premises.
- b. costs incurred in this proceeding:
- c. past-due rent of [REDACTED]
- d. reasonable attorney fees.
- e. forfeiture of the agreement.
- f. damages in the amount of waived rent or relocation assistance as stated in item 8. \$
- g. damages at the rate stated in item 13 from date [REDACTED]
- h. statutory damages up to \$600 for the conduct alleged in item 14.
- i. other (specify):

20. Number of pages attached (specify):

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

21. (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.)
- a. Assistant's name:
 - b. Street address, city, and zip code:
 - c. Telephone no.:
 - d. County of registration:
 - e. Registration no.:
 - f. Expires on (date):

Date: [REDACTED]
Lawrence A. Mudgett III, Esq.
(TYPE OR PRINT NAME)

DocuSigned by:
Lawrence A. Mudgett III
2EA93B91AC2943E
(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: [REDACTED]
[REDACTED] PLAINTIFF
(TYPE OR PRINT NAME)

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CP10.5

NOTICE: EVERYONE WHO LIVES IN THIS RENTAL UNIT MAY BE EVICTED BY COURT ORDER. READ THIS FORM IF YOU LIVE HERE AND IF YOUR NAME IS NOT ON THE ATTACHED SUMMONS AND COMPLAINT.

- If you live here and you do not complete and submit this form, you may be evicted without further hearing by the court along with the persons named in the Summons and Complaint.
- You must file this form within 10 days of the date of service listed in the box on the right hand side of this form.
 - Exception: If you are a tenant being evicted after your landlord lost the property to foreclosure, the 10-day deadline does not apply to you and you may file this form at any time before judgment is entered.
- If you file this form, your claim will be determined in the eviction action against the persons named in the complaint.
- If you do not file this form, you may be evicted without further hearing.
- If you are a tenant being evicted due to foreclosure, you have additional rights and should seek legal advice immediately.

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address): TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name):	
NAME OF COURT: San Diego Superior Court STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Central Division - Hall of Justice	
Plaintiff: Defendant: [REDACTED]	
PREJUDGMENT CLAIM OF RIGHT TO POSSESSION	CASE NUMBER:
Complete this form only if ALL of these statements are true: 1. You are NOT named in the accompanying Summons and Complaint. 2. You occupied the subject premises on or before the date the unlawful detainer (eviction) complaint was filed. (The date is in the accompanying Summons and Complaint.) 3. You still occupy the subject premises.	(To be completed by the process server) DATE OF SERVICE: (Date that form is served or delivered, posted, and mailed by the officer or process server)

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

- My name is (specify):
- I reside at (street address, unit no., city and ZIP code):
- The address of "the premises" subject to this claim is (address):
- On (insert date):, the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (This date is in the accompanying Summons and Complaint.)
- I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
- I was at least 18 years of age on the date the complaint was filed (the date in item 4).
- I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).
- I was not named in the Summons and Complaint.
- I understand that if I make this claim of possession, I will be added as a defendant to the unlawful detainer (eviction) action.
- (Filing fee) I understand that I must go to the court and pay a filing fee of \$ or file with the court an "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file the form for waiver of court fees, I will not be entitled to make a claim of right to possession.

DocuSign Envelope ID: D1C679C0-E00C-47F6-AB21-E5244F4216A0

CP10.5

Plaintiff: Defendant:	[REDACTED]	CASE NUMBER:	[REDACTED]
--------------------------	------------	--------------	------------

- If my landlord lost this property to foreclosure, I understand that I can file this form at any time before judgment is entered, and that I have additional rights and should seek legal advice.
- I understand that I will have five days (excluding court holidays) to file a response to the Summons and Complaint after I file this Prejudgment Claim of Right to Possession form.

NOTICE: If you fail to file this claim, you may be evicted without further hearing.

13. Rental agreement. I have (check all that apply to you):

- a. an oral or written rental agreement with the landlord.
- b. an oral or written rental agreement with a person other than the landlord.
- c. an oral or written rental agreement with the former owner who lost the property to foreclosure.
- d. other (explain):

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

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

Date: _____
(TYPE OR PRINT NAME) (SIGNATURE OF CLAIMANT)

NOTICE: If you file this claim to possession, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

— NOTICE TO OCCUPANTS —

YOU MUST ACT AT ONCE if all the following are true:

- You are NOT named in the accompanying Summons and Complaint.
- You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed.
- You still occupy the premises.

You can complete and SUBMIT THIS CLAIM FORM WITHIN 10 DAYS from the date of service (on the form) at the court where the unlawful detainer (eviction) complaint was filed. If you are a tenant and your landlord lost the property you occupy through foreclosure, this 10-day deadline does not apply to you. You may file this form at any time before judgment is entered. You should seek legal advice immediately.

If you do not complete and submit this form (and pay a filing fee or file a fee waiver form if you cannot pay the fee), YOU WILL BE EVICTED.
After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to occupy the premises will be decided by the court. If you do not file this claim, you may be evicted without a hearing.

- ❖ Exhibit 2 - Notice was Omitted
- ❖ Exhibit 3 - Proof of Service was Omitted
- ❖ In addition to the Complaint and Prejudgment Claim provided, you may also file and serve: 1) the UD Summons (SUM-130), 2) Civil Case Cover Sheet (CM-010), 3) Mandatory Supplemental Allegations (UD-101), 4) Verification by Landlord Regarding Rental Assistance (UD-120), and 5) Imaging Notice generated by Clerk upon filing

SERVICE (ORDER TO SERVE BY POSTING)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): LAWRENCE A. MUDGETT III, ESQ. SBN# 252898 SAFER LAW 3245 UNIVERSITY AVE #1265 SAN DIEGO, CA 92104 TELEPHONE NO.: 619-794-0460 FAX NO.(Optional): 619-794-0470 E-MAIL ADDRESS (Optional): lawrence@saferlaw.com ATTORNEY FOR (Name): PLAINTIFF	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego Clerk of the Superior Court By Nora Lopez, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 PLAINTIFF(S) DEFENDANT(S)	CASE NUMBER
APPLICATION AND ORDER TO SERVE SUMMONS BY POSTING FOR UNLAWFUL DETAINEE	

- I am the plaintiff plaintiff's attorney other (specify): _____
 - I apply for an order pursuant to Code Civ. Proc. § 415.45 to permit service by posting of the summons and complaint on defendant(s). Specify name(s): _____
 - The complaint seeks possession of property location at: _____ The property is residential commercial.
 - The notice to quit, or pay rent or quit, was served by: personal service substituted service posting and mailing other (specify): _____
 - At least three attempts to serve in a manner specified in Code Civ. Proc., Article 3, (other than posting or publication) are required. List attempts to serve, if made by declarant, or attach declaration(s) of process server(s) stating attempts to locate and serve the defendants. If service not made, please explain.
- | DATE | TIME | REASON SERVICE COULD NOT BE MADE/REMARKS |
|------|------|--|
| 1. | | |
| 2. | | |
| 3. | | |
- Declaration(s) of process server stating attempts to locate and serve the defendant(s) is attached and incorporated into this application by reference
- Service has has not been attempted during regular business hours at the place(s) of employment of the defendant(s). If not, state reason: The place(s) of employment of the defendant(s) is not known. Other (specify): _____

[REDACTED]	CASE NUMBER [REDACTED]
------------	---------------------------

- Service has has not been attempted at the residence of the defendant(s). If not, state reasons:
 The place of residence of the defendant(s) is not known.
 Other (specify): _____
- Other: _____
- Did you pay a registered Unlawful Detainer Assistant (Bus. & Prof. Code §§ 6400-6415) to help you prepare this form? Yes No If yes, complete the following information:
 Name of Unlawful Detainer Assistant: _____ Telephone Number: () _____
 Address (mailing address, city and zip code): _____
 Registration #: _____ County of Registration: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 Date: _____
LAWRENCE A. MUDGETT III, ESQ. *Lawrence A. Mudgett III*
 Type or print name Signature

FINDINGS AND ORDER

- The defendant(s) named in the application cannot with reasonable diligence be served in any manner specified in Code Civ. Proc., Article 3.
- (a) A cause of action exists against the defendant(s) named in the application; and/or (b) defendant(s) named in the application has or claims an interest in real property in California that is subject to the jurisdiction of the court; and/or (c) the relief demanded in the complaint consists wholly or partially in excluding the defendant(s) from any interest in the property.

The defendant(s) named in the application may be served by posting a copy of the summons and complaint on the premises in a manner most likely to give actual notice to the defendant(s), and by immediately mailing, by certified mail, a copy of the summons and complaint to the defendant(s) at his/her last known address.

IT IS SO ORDERED.
 Date: _____

 Judge/Commissioner of the Superior Court

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): LAWRENCE A. MUDGETT III, ESQ. SBN: 252898 SAFER LAW 3245 UNIVERSITY AVE. #1265 SAN DIEGO, CA 92104. TELEPHONE NO.: (619) 794-0460 FAX NO. E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): PLAINTIFF	FOR COURT USE ONLY
SAN DIEGO COUNTY SUPERIOR COURT STREET ADDRESS: 330 WEST BROADWAY MAILING ADDRESS: CITY AND ZIP CODE: SAN DIEGO, CA 92101 BRANCH NAME: SAN DIEGO	CASE NUMBER: [REDACTED]
PLAINTIFF/PETITIONER: [REDACTED] DEFENDANT/RESPONDENT: [REDACTED]	Ref. No. or File No.:
DECLARATION OF DILIGENCE	

I, [REDACTED], declare: I am a Registered Process Server and was retained to serve process in the above-referenced matter on the following person or entity: [REDACTED] as follows:
 Documents:

SUMMONS (UNLAWFUL DETAINEE); COMPLAINT (UNLAWFUL DETAINEE); CIVIL CASE COVER SHEET; PREJUDGMENT CLAIM OF RIGHT TO POSSESSION; NOTICE THAT YOU HAVE BEEN SUED; NOTICE OF E-FILED REQUIREMENTS AND IMAGED DOCUMENTS; PLAINTIFF'S MANDATORY COVER SHEET AND SUPPLEMENTAL ALLEGATIONS UD; VERIFICATION BY LANDLORD REGARDING RENTAL ASSISTANCE

I attempted personal service on the following dates and times with the following results:

Date	Time	Location	Results
[REDACTED]	7:42 PM	Home	ATTEMPTED GIVEN RESIDENCE AND THERE IS NO ANSWER AT THE DOOR. QUIET HERE. NO ACTIVITY SEEN OR HEARD. - [REDACTED]
[REDACTED]	12:34 PM	Home	ATTEMPTED GIVEN RESIDENCE. THEY HAVE A PET FENCE IN FRONT, BUT I DON'T HEAR ANY DOGS BARKING. EVERY BLIND IS CLOSED TIGHTLY. I CANNOT SEE INSIDE. NO ANSWER AT THE DOOR AFTER KNOCKING SEVERAL TIMES. - [REDACTED]
[REDACTED]	7:02 AM	Home	ATTEMPTED GIVEN RESIDENCE. NO ANSWER AT THE DOOR. NO DOG. THE A/C IS RUNNING INSIDE THE HOME. ALL BLINDS REMAIN SHUT TIGHT. THERE ARE 2 VEHICLES IN THE DRIVEWAY. [REDACTED] AND A [REDACTED] I KNOCKED SEVERAL TIMES AND WAITED, NO ONE WILL COME TO THE DOOR. - [REDACTED]

Fee for Service: \$.00
 County: **SAN DIEGO**

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on _____

OPPOSITION TO MOTION TO QUASH SERVICE

1 Lawrence A. Mudgett III, Esq., SBN #252898
2 SAFER LAW
3 3245 University Ave #1265
4 San Diego, CA 92104
5 Telephone: (619) 794-0460
6 Facsimile: (619) 794-0470

7 Attorney for Plaintiff

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
9 CENTRAL DIVISION – HALL OF JUSTICE

10 [REDACTED]
11 Plaintiff,
12 vs.
13 [REDACTED]; DOES 1-10; and ALL
14 UNKNOWN OCCUPANTS
15 Defendants.

16 Case No.: [REDACTED]
17 **LIMITED CIVIL CASE**
18 **OPPOSITION TO MOTION TO QUASH**
19 **SERVICE OF SUMMONS**
20 **IMAGED FILE**
21 Hearing Date: [REDACTED]
22 Time: 9:00 AM
23 Dep't: 501
24 Case Filed: [REDACTED]
25 Trial Date: None Set

26 I. 27 OPPOSITION

28 Defendant [REDACTED] ("Defendant") Motion to Quash Service of Summons
("Motion") against Plaintiff [REDACTED]
[REDACTED] ("Plaintiff") must be denied as Defendant was lawfully served by posting
and certified mailing pursuant to Cal Code Civ Proc § 415.45 via registered process server. Request

OPPOSITION

1 for Judicial Notice #1 – Order to Post with Declaration of Diligence; Request for Judicial Notice 2 #2 – Proof of Service of Summons – [REDACTED]

3 The process server's return creates a rebuttable presumption that the facts stated in the return
4 are true. Cal Evidence Code § 647.

5 In this case, the proof of service indicates "By posting on [REDACTED] at 6:55 PM and by
6 mailing certified mail from San Marcos on [REDACTED] – Per CCP 415.45" and further attaches a copy
7 of the stamped certified mail receipt dated [REDACTED] which shows the \$6.66 fees paid for certified
8 mailing. **RJN #2.** See *Jayone Foods, Inc v Aekyung Indus. Co.* (2019) 31 Cal.App.5th 543, 553 –

9 "When a defendant moves to quash service of process [on
10 jurisdictional grounds], the plaintiff has the initial burden of
11 demonstrating facts justifying the exercise of jurisdiction. If the
12 plaintiff meets this initial burden, then the Defendant has the burden
13 to show the Court's exercise of jurisdiction would be unreasonable.

14 Defendant attempts to rebut the presumption of proper service by claiming in a self-serving
15 declaration that the summons and complaint were posted but never mailed without any further
16 explanation or corroborating evidence. **Motion to Quash, Page 2 ¶ 26, Page 3 ¶ 15.**

17 Defendant neither has any personal knowledge of the facts and circumstances surrounding
18 the process server's mailing from San Marcos, nor elaborates on the basis for his false claim under
19 penalty of perjury that the summons was not mailed. His unsupported argument has no merit.

20 II. 21 CONCLUSION

22 Accordingly, Defendant has failed to overcome the presumption that the facts stated in the
23 return are true and offers no evidence that the Court's exercise of jurisdiction would be unreasonable.
24 The Summons and Complaint were lawfully served, and this Court has personal jurisdiction over the
25 Defendant as a result. **RJN #1, 2.** Plaintiff respectfully requests that Defendant be given 5 days to
26 answer-only. Respectfully Submitted,

27 SAFER LAW

28 Date: [REDACTED]
Lawrence A Mudgett III, Attorney for Plaintiff

2 OPPOSITION

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: [REDACTED] TIME: 10:45:00 AM DEPT: [REDACTED]
JUDICIAL OFFICER PRESIDING: [REDACTED]
CLERK: [REDACTED]
REPORTER/ERM: 10:53:33
BAILIFF/COURT ATTENDANT:

CASE NO: [REDACTED] L CASE INIT.DATE: [REDACTED]
CASE TITLE: [REDACTED]
[IMAGED]
CASE CATEGORY: Civil - Limited CASE TYPE: Unlawful Detainer - Residential

EVENT TYPE: Motion to Quash (UD)
MOVING PARTY: [REDACTED]
CAUSAL DOCUMENT/DATE FILED: Motion to Quash Service of Summons, [REDACTED]

APPEARANCES

Lawrence A Mudgett, counsel, present for Plaintiff(s) via remote audio conference.
[REDACTED] Defendant, is not present.

The hearing is reassigned from Department [REDACTED] to Department [REDACTED].

Parties do not stipulate to a temporary judge.

MOTION TO QUASH SERVICE OF SUMMONS

The Court convenes with counsel as noted above. The Court notes non-appearance of Defendant.

The Court has reviewed the Defendant's moving papers and Plaintiff's opposition filed.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Defendant's Motion to Quash Service of Summons is **DENIED.**

The Defendant has 5 days to file an answer or responsive pleadings.

Plaintiff's counsel to give notice of ruling.

IT IS SO ORDERED.

DATE: [REDACTED] MINUTE ORDER
DEPT: [REDACTED]

Page 1
Calendar No.

TENANT FAILS TO RESPOND IN VIOLATION OF COURT ORDER AND CCP 1167.4 WHICH IS 5 DAYS PLUS MAILING IN EVICTIONS, YET DEFAULT KICKED

SUPERIOR COURT OF CALIFORNIA
SAN DIEGO
1100 Union St.
San Diego, CA 92101
(619) 450-7275

NOTICE TO FILING PARTY

[REDACTED]

We are unable to process the attached Request for Entry of Default (NOT ENTERED) for the reasons indicated below:

Request for Entry of Default is premature - you must allow 10 +5 days from mailing of the Notice of Ruling (Notice of Entry of Judgment or Order - ROA 24).

Returned via: E-File

Please enclose a self-addressed stamped envelope to expedite receipt of returned papers.

[REDACTED]

[REDACTED]

CCP 418.10 Requires 10 days in civil cases

CCP 1167.4 in UD's is 5 days plus Order said 5

CCP 1013 adds 2 days for overnight mail, not 5

DEFAULT UNKNOWNNS

CIV-100

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 252898</p> <p>NAME: Lawrence A. Mudgett III, Esq. FIRM NAME: SAFER LAW STREET ADDRESS: 3245 University Ave #1265 CITY: San Diego STATE: CA ZIP CODE: 92104 TELEPHONE NO.: 619 794 0460 FAX NO.: 619 794 0470 E-MAIL ADDRESS: lawrence@saferlaw.com ATTORNEY FOR (name): Plaintiff</p> <p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Central Division - Hall of Justice</p> <p>Plaintiff/Petitioner: [REDACTED] Defendant/Respondent: [REDACTED]</p> <p>REQUEST FOR <input checked="" type="checkbox"/> Entry of Default <input checked="" type="checkbox"/> Clerk's Judgment (Application) <input type="checkbox"/> Court Judgment</p> <p>Not for use in actions under the Fair Debt Buying Practices Act (Civ. Code, § 1788.50 et seq.); (see form CIV-105)</p>	<p>FOR COURT USE ONLY</p> <p>CASE NUMBER: [REDACTED]</p>
--	--

1. TO THE CLERK. On the complaint or cross-complaint filed

a. on (date): [REDACTED]

b. by (name): [REDACTED]

c. Enter default of defendant (names):
 [REDACTED] Unknown Occupants

d. I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant (names):

(Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)

e. Enter clerk's judgment

(1) for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)
 Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The Prejudgment Claim of Right to Possession was served in compliance with Code of Civil Procedure section 415.46.

(2) under Code of Civil Procedure section 585(a). (Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)

(3) for default previously entered on (date):

2. Judgment to be entered.

	Amount	Credits acknowledged	Balance
a. Demand of complaint	\$	\$	\$
b. Statement of damages*			
(1) Special	\$	\$	\$
(2) General	\$	\$	\$
c. Interest	\$	\$	\$
d. Costs (see reverse)	\$	\$	\$
e. Attorney fees	\$	\$	\$
f. TOTALS	\$	\$	\$

g. Daily damages were demanded in complaint at the rate of: \$ _____ per day beginning (date): _____
 (* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)

3. (Check if filed in an unlawful detainer case.) Legal document assistant or unlawful detainer assistant information is on the reverse (complete item 4).

Date: [REDACTED]

Lawrence A. Mudgett III, Esq.
 (TYPE OR PRINT NAME) (SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

FOR COURT USE ONLY (1) Default entered as requested on (date): _____
 (2) Default NOT entered as requested (state reason): _____
 Clerk, by _____, Deputy

THE DENIAL OF DEFAULT ALLOWS TENANT TO FILE AN EVEN MORE FRIVOLOUS DEMURRER WITHOUT SCHEDULING A HEARING

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 Defendant, [REDACTED]
5
6
7
8 SUPERIOR COURT STATE OF CALIFORNIA, COUNTY OF SAN DIEGO
9 CENTRAL DIVISION, LIMITED
10
11 [REDACTED] NO. [REDACTED]
12 Plaintiff, NOTICE OF DEMURRER AND DEMURRER
13 vs. TO COMPLAINT; MEMORANDUM OF
14 [REDACTED], DOES 1-10 Inclusive, POINTS AND AUTHORITIES
15 Defendant. DATE: [REDACTED]
16 TIME: [REDACTED]
17 DEPT: [REDACTED]
18 TO PLAINTIFF AND COUNSEL:
19 NOTICE IS HEREBY GIVEN that on [REDACTED] of
20 this Court [or whichever courtroom to which this matter is assigned], Defendant will and does
21 hereby demurrer to the Complaint on the grounds that it fails to state a cause of action for unlawful
22 detainer. This demurrer is based upon the following points and authorities, and the papers on file
23 herein. Defendant submits on the papers absent actual appearance, pursuant to California Rules of
24 Court, Rule 3.1304(c). Defendant does not stipulate to a commissioner or judge pro tem
25 participating in any portion of this action under California Constitution Art. 6 § 21.
26
27
28 DEMURRER

1 WHEREFORE, Defendant prays as follows:
2
3 1. That Plaintiff take nothing by this action;
4
5 2. For attorneys fees and court costs incurred in this action;
6
7
8 3. For such other and further relief as this Court shall deem proper.
9
10 [REDACTED]
11
12 MEMORANDUM OF POINTS AND AUTHORITIES
13 Introduction
14 Code of Civil Procedure § 1170 expressly authorizes an unlawful detainer defendant to file
15 a demurrer to the complaint in lieu of an answer.
16
17 1. The Complaint Fails to State a Cause of Action.
18 A demurrer is proper where the complaint fails to state a cause of action. Code of Civil
19 Procedure § 430.10(e).
20
21 The remedy of unlawful detainer is a summary proceeding and being purely statutory in
22 nature, it is essential that the party seeking relief bring himself clearly within the statute. *Superior*
23 *Motels, Inc. v. Rinn Motor Hotels, Inc.* (1987) 195 Cal. App 3d 1032; *WDT-Winchester v. Nilsson*
24 (1994) 27 Cal. App. 4th 516. As a statutory area of law, an unlawful detainer is subject to demurrer
25 where the complaint fails in any technical respect. *Kwok v. Bergren* (1982) 130 Cal. App. 3d 596,
26 599-600. It matters not that a Judicial Council Complaint form was used. As the Court held in
27 *People ex rel. Dept. of Transportation v. Superior Court* (1992) 5 Cal. App. 4th 1480, at 1484:
28 The Judicial Council pleading forms have simplified the art of pleading, and have made the task of
drafting much easier. Nevertheless, in some cases more is required than merely placing an "X" in
a box. (*Weil & Brown, supra*, at § 6:105, p. 6-24.) "A doption of Official Forms for the most common
civil actions has not changed the statutory requirement that the complaint contain 'facts constituting
the cause of action.' " (Id., at § 6:103, p. 6-23.5.) Thus, in order to be demurrer-proof, a form
DEMURRER

1 "complaint must contain whatever ultimate facts are essential to state a cause of action under
2 existing statutes or case law."
3
4 a. Failure to Allege Proper Service of Notice
5 Failure to comply with statutory notice requirements, which must be strictly followed,
6 cannot state a cause of action for unlawful detainer. *Kwok v. Bergren* (1982) 130 Cal. App.3d
7 596. Code of Civil Procedure § 1162 requires the notice to have been served by personal service
8 and only authorizes substituted service if personal service was attempted but unsuccessful or if
9 the person's location is unknown. Substituted service is not authorized unless that attempt at
10 personal service is first made. Failing to allege attempts at personal service, the Complaint fails to
11 state a cause of action for unlawful detainer. *The Bank of New York Mellon v. Preciado* (2014)
12 224 Cal. App. 4th Supp. 1, 6. Here, Plaintiff knows where Defendant is, so that excuse is not
13 available. Having failed to allege attempts at personal service, substituted service was not
14 authorized, and the complaint based upon such failure does not state a cause of action for
15 unlawful detainer.
16 b. Plaintiff failed to Allege Compliance with the Tenant Protection Act
17 Plaintiff failed to allege a section 3-day notice to quit in compliance with Civil Code
18 section 1946.2, the Tenant Protection Act, which requires the prior required notice to perform
19 covenants to be cured. Without alleging such a notice, Plaintiff fails to state a cause of action for
20 unlawful detainer. Plaintiff never gave a notice of exemption from the Tenant Protection Act and
21 the unit is not exempt. The unit was built in 1912 and no timely notice of exemption was given.
22 C. Plaintiff Does Not Have Standing
23 In addition, any action must be brought for the real party in interest, such that failing to
24 allege some connection with the property through ownership is a fatal flaw for which a demurrer
25 will be sustained. *Parker v. Bowron* (1953) 40 Cal.2d 344, 351; Code of Civil Procedure § 367.
26 Plaintiff's lack of standing, even if it has capacity to sue, is demurrable. *Friendly Village*
27 *Community Assn., Inc. v. Silva & Hill Constr. Co.* (1973) 31 Cal. App. 3d 220; *Gantman v.*
28 *United Pacific Ins. Co.* (1991) 232 Cal. App. 3d 1560. The ability to sue for the owner is not
DEMURRER

THE DEMURRER FILED WITHOUT A HEARING PROMPTS PLAINTIFF'S EX PARTE TO SET A HEARING

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Lawrence A. Mudgett III, Esq. SBN #252898 SAFER LAW, 3245 University Ave #1265, San Diego, CA 92104 TELEPHONE NO.: 619 794 0460 FAX NO. (Optional): 619 794 0470 EMAIL ADDRESS (Optional): lawrence@saferlaw.com ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101 <input checked="" type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123 <input type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> CENTRAL DIVISION, JUV. MINOR OFFENSE, 2901 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910	
PLAINTIFF(S)/PETITIONER(S) _____ DEFENDANT(S)/ RESPONDENT(S) _____	JUDGE/DEPT _____ CASE NUMBER _____
EX PARTE APPLICATION AND ORDER	

Hearing Date: _____ Time: 1:30 _____ a.m. p.m. Opposed Unopposed

1. Type of relief requested: 1) Strike improperly filed Demurrer with a false hearing date, or 2) Set Trial, or 3) Advance Hearing on improperly filed Demurrer
2. Reason(s) ex parte relief is necessary: Following the denial of his frivolous Motion to Quash Service after an Order to Post whereby Defendant failed to appear and non-stipulated to the Commissioner, Defendant filed a frivolous Demurrer without scheduling a hearing and provided a fake hearing date. After scheduling this ex parte, the Clerk set a hearing 50 days out. Plaintiff will suffer irreparable harm if delayed in prosecuting this Unlawful Detainer against Defendant who owes _____ in unpaid rent and utilities, and caused additional irreparable financial harm to Plaintiff
3. Name of opposing parties (or attorneys): _____
4. Was notice of the ex parte application given to the opposing parties? Yes No
5. **NOTICE GIVEN:** The opposing parties were notified of the relief request and that the ex parte application would be heard by the court on (date) _____, at (time) 1:30 _____ a.m. p.m., as indicated below:
 - a. Notice was given to the attorney for the plaintiff/petitioner defendant/respondent.
 - b. Notification occurred on (date): _____, at (time) 12:40 _____ a.m. p.m.
 - c. Manner of notification:
 - By telephone. Name of the person you spoke to: Voicemail
 - By letter mailed personally delivered on (date) _____, at (time) 1:00 _____ a.m. p.m.
 - By fax (specify fax number) _____, which I know to be the fax number of the person served.
 - Other manner of notification (specify): Email: _____
 - d. Response to notice: _____

SHORT TITLE _____	CASE NUMBER _____
<input type="checkbox"/> NOTICE NOT GIVEN: Notice of the application was not given for the reason(s) indicated below: <input type="checkbox"/> Notice of the ex parte application would frustrate the purpose of the order sought for the following reason(s): _____ _____	
<input type="checkbox"/> Applicant would suffer immediate and irreparable harm before the matter can be heard on notice. (explain in detail the nature of the immediate and irreparable harm): _____ _____	
<input type="checkbox"/> A reasonable and good faith effort to notify the opposing party was made but notification was unsuccessful. (describe in detail attempts made): _____ _____	

6. Have you appeared ex parte before for the same relief? Yes No. If yes, relief was granted denied
7. If required, have Points & Authorities been submitted? (Cal. Rules of Court, rule 3.1202) Yes No

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

Date: _____ Signature _____

ORDER

IT IS SO ORDERED.

The requested relief is DENIED GRANTED as follows: _____

Hearing is continued to _____ at _____ a.m. p.m. in dept. _____

Date: _____ Judge/Commissioner of the Superior Court

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL
MINUTE ORDER**

DATE: _____ TIME: 01:30:00 PM DEPT: _____

JUDICIAL OFFICER PRESIDING: _____
 CLERK: _____
 REPORTER/ERM: CD: 2:29:32
 BAILIFF/COURT ATTENDANT: _____

CASE NO: _____ CASE INIT. DATE: _____
 CASE TITLE: _____
[IMAGED]
 CASE CATEGORY: Civil - Limited CASE TYPE: Unlawful Detainer - Residential

EVENT TYPE: Ex Parte
MOVING PARTY: _____
CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other and Supporting Documents, _____

APPEARANCES
 Lawrence A Mudgett, counsel, present for Plaintiff(s) via remote video conference.
 _____ Defendant, is not present.

Ex-parte application for an order to advance Defendant's Demurrer hearing requested by Plaintiff.

Court hears from counsel.

The Ex parte request is **GRANTED**.

Demurrer/Motion to Strike (UD) is advanced pursuant to party's motion to _____ at 09:00AM in _____.

Attorney Mudgett waives notice and will give notice.

DEMURRER DENIED, DEFENDANT MUST ANSWER 3 MONTHS INTO THE
CASE AND DEMANDS 3 DAY JURY TRIAL

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: [REDACTED] TIME: 01:30:00 PM DEPT: [REDACTED]

JUDICIAL OFFICER PRESIDING: [REDACTED]
CLERK: [REDACTED]
REPORTER/ERM: CD: 2:29:32
BAILIFF/COURT ATTENDANT: [REDACTED]

CASE NO: [REDACTED] CASE INIT. DATE: [REDACTED]
CASE TITLE: [REDACTED]
[IMAGED]
CASE CATEGORY: Civil - Limited CASE TYPE: Unlawful Detainer - Residential

EVENT TYPE: Ex Parte
MOVING PARTY: [REDACTED]
CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other and Supporting Documents,
[REDACTED]

APPEARANCES
Lawrence A Mudgett, counsel, present for Plaintiff(s) via remote video conference.
[REDACTED] Defendant, is not present.

Ex-parte application for an order to advance Defendant's Demurrer hearing requested by Plaintiff.

Court hears from counsel.

The Ex parte request is **GRANTED**.

Demurrer/Motion to Strike (UD) is advanced pursuant to party's motion to [REDACTED] at 09:00AM in [REDACTED].

Attorney Mudgett waives notice and will give notice. [REDACTED]

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[REDACTED]

[REDACTED]

SUPERIOR COURT STATE OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION, LIMITED

[REDACTED]

NO. [REDACTED]
ANSWER AND DEMAND FOR JURY TRIAL [CCP § 1171]

Plaintiff,

vs.

[REDACTED], and DOES 1-10,

Defendant.

TO PLAINTIFF AND THEIR COUNSEL:

DEFENDANT [REDACTED] HEREBY SUBMITS THEIR ANSWER TO THE COMPLAINT AS FOLLOWS: Defendant denies the allegations in Complaint paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 15, 16,19, and 21.

DEFENDANT HEREBY DEMANDS A JURY TRIAL UNDER CCP 1171; 3 DAYS ESTIMATED.

MOTION FOR SUMMARY JUDGMENT GRANTED

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: [REDACTED] TIME: 10:26:00 AM DEPT: [REDACTED]

JUDICIAL OFFICER PRESIDING: [REDACTED]
CLERK: [REDACTED]
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

CASE NO: [REDACTED] CASE INIT. DATE: [REDACTED]
CASE TITLE: [REDACTED]
[IMAGED]
CASE CATEGORY: Civil - Limited CASE TYPE: Unlawful Detainer - Residential

APPEARANCES

The Court, having taken the above-entitled matter under submission on [REDACTED] and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows as attached hereto and as seen on ROA [REDACTED].

The Court finds judgment on the Complaint Demanding More than \$10,000 but less than \$25,000 for amount of: [REDACTED] damages, [REDACTED] pre judgment costs and [REDACTED] attorney fees. Possession of the premises is awarded. [REDACTED]

Rental/lease agreement forfeited.

Writ of Possession to issue forthwith as to [REDACTED].

Memorandum of Costs to be filed.

The Court directs attorney Mudgett to prepare the judgment.

IT IS SO ORDERED.

[REDACTED]

DATE: [REDACTED] MINUTE ORDER
DEPT: [REDACTED]

Page 1
Calendar No.

SAFER LAW
SAN DIEGO, CA 92104

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION - HALL OF JUSTICE

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[REDACTED]) Case No.: [REDACTED]
Plaintiff,)
vs.) UNLAWFUL DETAINER JUDGMENT
[REDACTED] DOES 1-10; and ALL) BY COURT AFTER MOTION FOR
UNKNOWN OCCUPANTS) SUMMARY JUDGMENT
Defendants.)

Judgment is entered after PLAINTIFF [REDACTED]
[REDACTED] ("Plaintiff") Motion for Summary Judgment. The Court
considered the evidence.
The Motion for Summary Judgment was heard on [REDACTED] at 1:30pm before the
Honorable [REDACTED]. The matter was taken under submission and Plaintiff's Motion for
Summary Judgment was GRANTED on [REDACTED].

JUDGMENT

1 Plaintiff was present and appeared through his attorney of record Lawrence A. Mudgett III.
2 Defendant [REDACTED] ("Defendant") appeared [REDACTED].
3 Judgment by Court is entered as follows:
4 Judgment is for Plaintiff [REDACTED] and
5 against Defendant [REDACTED].

6 Plaintiff is entitled to possession of the premises located at [REDACTED]
7 [REDACTED].
8
9 Judgment for possession applies to all occupants of the premises including tenants, subtenants
10 if any, and named claimants if any (Code Civ. Proc §§ 715.010, 1169, and 1174.3). All Unknown

11 Occupants were defaulted on [REDACTED]
12 Defendant [REDACTED] must pay Plaintiff [REDACTED]
13 [REDACTED] on the Complaint as follows:

- 14 1) Past due rent: [REDACTED]
- 15 2) Holdover damages: [REDACTED]
- 16 3) Total JUDGMENT: [REDACTED]

17 The rental agreement is canceled. The lease is forfeited.

18 Dated: _____

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23 _____
24 Judge of the Superior Court

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Saifortw.com
3245 University Ave #1205
San Diego, CA 92104
(619) 794-0400

2
JUDGMENT

WRIT ISSUED AND LOCKOUT SET 4 MONTHS FROM JUDGMENT OR 10 MONTHS FROM CASE INITIATION

EJ-130

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 252898 NAME: Lawrence A. Mudgett III, Esq. FIRM NAME: SAFER LAW STREET ADDRESS: 3245 University Ave #1265 CITY: San Diego STATE: CA ZIP CODE: 92104 TELEPHONE NO.: 619 794 0460 FAX NO.: 619 794 0470 EMAIL ADDRESS: lawrence@saferlaw.com ATTORNEY FOR (name): Plaintiff <input checked="" type="checkbox"/> ATTORNEY FOR <input checked="" type="checkbox"/> ORIGINAL JUDGMENT CREDITOR <input type="checkbox"/> ASSIGNEE OF RECORD	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Central Division - Hall of Justice	
PLAINTIFF/PETITIONER: [REDACTED] DEFENDANT/RESPONDENT: [REDACTED]	CASE NUMBER: [REDACTED]
WRIT OF <input type="checkbox"/> EXECUTION (Money Judgment) <input checked="" type="checkbox"/> POSSESSION OF <input type="checkbox"/> Personal Property <input checked="" type="checkbox"/> Real Property <input type="checkbox"/> SALE <input checked="" type="checkbox"/>	

1. To the Sheriff or Marshal of the County of: San Diego
You are directed to enforce the judgment described below with daily interest and your costs as provided by law.
2. To any registered process server: You are authorized to serve this writ only in accordance with CCP 699.080 or CCP 715.040.
3. (Name): [REDACTED]
is the original judgment creditor assignee of record whose address is shown on this form above the court's name.
4. Judgment debtor (name, type of legal entity if not a natural person, and last known address): [REDACTED]
9. Writ of Possession/Writ of Sale information on next page.
10. This writ is issued on a sister-state judgment.
For items 11-17, see form MC-012 and form MC-013-INFO.

11. Total judgment (as entered or renewed) \$	
12. Costs after judgment (CCP 685.090) \$	
13. Subtotal (add 11 and 12) \$	
14. Credits to principal (after credit to interest) \$	
15. Principal remaining due (subtract 14 from 13) \$	
16. Accrued interest remaining due per CCP 685.050(b) (not on GC 6103.5 fees) \$	
17. Fee for issuance of writ (per GC 70626(a)(1)) \$	
18. Total amount due (add 15, 16, and 17) \$	

5. Judgment entered on (date): (See type of judgment in item 22.)
6. Judgment renewed on (dates):
7. Notice of sale under this writ:
a. has not been requested.
b. has been requested (see next page).
8. Joint debtor information on next page.
19. Levying officer:
a. Add daily interest from date of writ (at the legal rate on 15) (not on GC 6103.5 fees) \$
b. Pay directly to court costs included in 11 and 17 (GC 6103.5, 68637; CCP 699.520(i)) \$
20. The amounts called for in items 11-19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.

Date: _____ Clerk, by _____ Deputy

NOTICE TO PERSON SERVED: SEE PAGE 3 FOR IMPORTANT INFORMATION.

Page 1 of 3

Form Approved for Optional Use
Judicial Council of California
EJ-130 (Rev. September 1, 2020)

Code of Civil Procedure, §§ 699.520, 712.010, 715.010
Government Code, § 6103.5
www.courts.ca.gov

EJ-130

Plaintiff/Petitioner: [REDACTED]	CASE NUMBER: [REDACTED]
Defendant/Respondent: [REDACTED]	

21. Additional judgment debtor(s) (name, type of legal entity if not a natural person, and last known address):
[REDACTED]
22. The judgment is for (check one):
a. wages owed.
b. child support or spousal support.
c. other. Possession of Real Property
23. Notice of sale has been requested by (name and address):
[REDACTED]
24. Joint debtor was declared bound by the judgment (CCP 989-994):
a. on (date): [REDACTED] b. name, type of legal entity if not a natural person, and last known address of joint debtor: [REDACTED]
c. Additional costs against certain joint debtors are itemized: below on Attachment 24c.
25. (Writ of Possession or Writ of Sale) Judgment was entered for the following:
a. Possession of real property: The complaint was filed on (date): [REDACTED] (Check (1) or (2). Check (3) if applicable. Complete (4) if (2) or (3) have been checked.)
(1) The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.
(2) The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.
(3) The unlawful detainer resulted from a foreclosure sale of a rental housing unit. (An occupant not named in the judgment may file a Claim of Right to Possession at any time up to and including the time the levying officer returns to effect eviction, regardless of whether a Prejudgment Claim of Right to Possession was served.) (See CCP 415.46 and 1174.3(a)(2).)
(4) If the unlawful detainer resulted from a foreclosure (item 25a(3)), or if the Prejudgment Claim of Right to Possession was not served in compliance with CCP 415.46 (item 25a(2)), answer the following:
(a) The daily rental value on the date the complaint was filed was \$
(b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify):

Item 25 continued on next page

WRIT OF EXECUTION

Page 2 of 3

EJ-130 (Rev. September 1, 2020)

EJ-130

Plaintiff/Petitioner: [REDACTED]	CASE NUMBER: [REDACTED]
Defendant/Respondent: [REDACTED]	

25. b. Possession of personal property.
 If delivery cannot be had, then for the value (itemize in 25e) specified in the judgment or supplemental order.
- c. Sale of personal property.
- d. Sale of real property.
- e. The property is described below on [REDACTED]

NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying Notice of Levy (form EJ-150).

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will demand that you turn over the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

EXCEPTION IF RENTAL HOUSING UNIT WAS FORECLOSED. If the residential property that you are renting was sold in a foreclosure, you have additional time before you must vacate the premises. If you have a lease for a fixed term, such as for a year, you may remain in the property until the term is up. If you have a periodic lease or tenancy, such as from month-to-month, you may remain in the property for 90 days after receiving a notice to quit. A blank form Claim of Right to Possession and Notice of Hearing (form CP10) accompanies this writ. You may claim your right to remain on the property by filling it out and giving it to the sheriff or levying officer.

EXCEPTION IF YOU WERE NOT SERVED WITH A FORM CALLED PREJUDGMENT CLAIM OF RIGHT TO POSSESSION. If you were not named in the judgment for possession and you occupied the premises on the date on which the unlawful detainer case was filed, you may object to the enforcement of the judgment against you. You must complete the form Claim of Right to Possession and Notice of Hearing (form CP10) and give it to the sheriff or levying officer. A blank form accompanies this writ. You have this right whether or not the property you are renting was sold in a foreclosure.

WRIT OF EXECUTION

Page 3 of 3

EJ-130 (Rev. September 1, 2020)