



July 17, 2023

Honorable Judge Smiley, Presiding Judge
csmiley@alameda.court.ca.gov; Dept1@alameda.courts.ca.gov
René C. Davidson Courthouse
1225 Fallon Street
Oakland, California 94612

Chad Finke, Executive Court Officer
cfinke@alameda.courts.ca.gov
René C. Davidson Courthouse
1225 Fallon Street
Oakland, California 94612

Sheriff Yesenia Sanchez
TransitionReportComments@acgov.org
1401 Lakeside Drive
Oakland, California 94612

RE: Request to Exercise Discretion in Slowing Evictions to Allow the Filing of Meritorious Applications for Stay of Execution and Motions to Set Aside Judgment

Dear Honorable Judge Smiley, Presiding Judge; Chad Finke, Executive Court Officer; and Sheriff Yesenia Sanchez:

Alameda County finds itself at a historic moment in the eviction and housing crisis. As we emerge from the fog of an unprecedented global pandemic that disproportionately impacted the health and employment of low-income tenants, eviction moratoria in our municipal jurisdictions have begun to expire and evictions are being filed at an alarming rate. The Court, Sheriff's office, and the landlord-tenant bar is jointly tasked with processing this unprecedented onslaught of eviction cases. The oaths and ethical obligations of our professions will require that we uphold the letter of the law in each taxing instance.¹ It is inevitable that each of us will make errors that will result in the unlawful eviction of the most vulnerable in our communities: low-income families, the elderly, and persons with disabilities. Many of these tenants have learning, seeing, or mental disabilities that will prevent them from understanding notices. There will be a few unscrupulous landlords that

¹ See generally, Cal. R. Ct. Canon 3(B)(7); 3(C)(2)

will try to take advantage of the strain on the courts to fraudulently evict tenants. The Code of Civil Procedure and justice require that we provide tenants a meaningful opportunity to stop an eviction based on a judgment “taken against [them] through [their] mistake, inadvertence, surprise, or excusable neglect.”²

We write as your partners in ensuring justice to request that you exercise discretion in issuing and executing writs of execution to ensure tenants with unjust evictions will have sufficient time to seek stays of execution and set aside erroneous judgments. **Specifically, we ask that the Court not issue a writ of execution sooner than 14 days after judgment has entered and that the Sheriff’s office not post a Notice to Vacate sooner than 21 days after receiving a writ of restitution from the Court. These requests are within your discretion.** ³ Unless this discretion is exercised, tenants will not have sufficient time to stay and set aside and vacate judgments obtained through their mistake, inadvertence, surprise, or excusable neglect. While the unlawful detainer process is designed to be efficient, courts have recognized this efficiency should not come at a cost to justice.⁴

I. Post-Moratoria Eviction Surge Has Overwhelmed the Court, Creating a Unique Risk of Erroneous Judgments

Alameda County’s eviction moratorium expired on April 29, 2023, resulting in an immediate surge in the number of eviction cases filed in court⁵. In April 2023 there were 63 eviction cases filed. In May 2023, 573 evictions were filed in Alameda County Court—a substantial increase over the average 300-400 evictions filed per month pre-pandemic.⁶ The number of new eviction filings surged to approximately 800 during the month of June. These almost 1,400 evictions filed in May and June are only the tip of the iceberg—even greater numbers of evictions await us with the expiration of the Oakland, Berkeley, and San Leandro eviction moratoria in the coming weeks. In addition to processing these new eviction filings as the moratoria lift, the court will be required to process a backlog of pre-pandemic cases that had been paused by the moratoria. Already, Judge Kolakowski reports signing roughly twelve eviction posting order each day.

This surge of eviction filings is already taxing the clerk’s office and Department 511 beyond capacity. The vast majority of tenants struggle to obtain representation in time to prepare an answer to their lawsuit within the five-day answer window, and file physical paper copies of their answer with the Court clerk’s

² California Code of Civil Procedure § 473(b)

³ See California Code of Civil Procedure § 712.010 and California Code of Civil Procedure § 715.010(b)(2)

⁴ See, *Abstract Inv. Co. v. Hutchinson* (1962) 204 Cal.App.2d 242, 249 “Certainly the interest in preserving the summary nature of an action cannot outweigh the interest of doing substantial justice. To hold the preservation of the summary proceeding of paramount importance would be analogous to the “tail wagging the dog.” ; *S.P. Growers Assn. v. Rodriguez* (1976) 17 Cal.3d 719, 724 (recognizing instances in which public policy outweighs summary nature of unlawful detainer)

⁵ <https://oaklandside.org/2023/05/24/evictions-cases-are-rising-fast-after-end-of-alameda-county-moratorium/>

⁶ *Id.*

office. In our experience, and from reports from Department 511, physical documents filed with the clerk's office can take weeks before they are visible in the Court's own electronic case management system. In several instances our attorneys have filed items on short turnarounds and subsequently have appeared at hearings before the filings had even been processed and accepted.

These conditions create a unique risk of erroneous default judgments. A clerk or judge who processes an electronic request for entry of default may not be aware of a responsive pleading that was previously filed in physical form because of delays in processing. A clerk in this situation would reasonably, though erroneously, enter default against a tenant. We have already seen such cases working through the system. We also recently learned that some tenants recently did not receive notice of their trial dates, where their failure to appear would almost certainly result in a default. Other tenants are wrongfully being denied jury trials based on the court's inability to timely process the applications in time to re-notice the hearings as jury trials instead of bench trials. As evictions are filed at even more staggering rates in the coming weeks, the system overwhelm will make these types of errors more likely and more difficult to catch and correct.

Moreover, tenants in pre-moratoria eviction cases who have received countless notices continuing their trials over the last three years may reasonably misunderstand the latest notice of trial date—which will in fact proceed—as just another continued notice of hearing. Our office is currently preparing a motion to set aside a default judgment in such a case.

Even in instances where there is no court or clerical mistake, local ordinances passed during the moratoria have changed permissible grounds for evictions, added eviction notice requirements, and increased landlord's pleading requirements. These changes to the law have rendered defective what used to be standard lawful eviction notices. The landlord-tenant bar will be litigating cases involving these new pleading requirements for the first time in the coming weeks. Even in instances where judgement may have otherwise properly entered against a defendant, a defective eviction notice will render such judgment void for lack of subject matter jurisdiction.⁷

The surge of eviction filings and resulting system overwhelm creates conditions that make erroneous judgements more likely. Just as concerning is that these same conditions makes timely correcting such judgments nearly impossible, as described below.

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⁷ California Code of Civil Procedure § 473(d)

II. Court's Delayed Processing of Applications for Stays of Execution, Combined with Sheriff's Expedient Execution of Writs of Restitution Will Deny Tenants a Meaningful Opportunity To Obtain Meritorious Set Asides of their Judgements

The court clerks' delays in uploading physically filed documents, combined with the Sheriff's speedy execution of writs is denying tenants a meaningful opportunity to correct erroneous judgements before they are evicted.

The earliest a tenant can learn of a default judgment entered against them is upon receipt of the mailed notice of entry of default judgment—typically a few days after its entry. However, it is much more common that a tenant will first learn of a default judgement when the sheriff posts a Notice to Vacate on their door. In order to contest the judgment in time to avoid eviction, a tenant must race to get in front of a judge before the sheriff can execute the writ of execution. This usually requires that the tenant request, by ex parte application, that the court stay the writ of execution for up to 40 days.⁸ During this time, the tenant must also prepare, file, have heard, and win a motion to set aside the default judgement and to recall and quash the writ of possession.

Under normal circumstances, coordinating the preparation, filing and calendaring of an ex parte application for a stay and a motion to set aside in time to prevent an eviction is complicated. Given the current conditions, it is nearly impossible to do so before the sheriff carries out the eviction.

Even if a tenant is somehow able to timely secure a stay, in order to stop the eviction, they must still file and win a motion to set aside within forty days of the stay being granted. The current demands on Department 511's motion calendar from post moratoria cases are such that timely securing a hearing for a motion would be very unlikely. On June 15th, attorneys from the East Bay Community Law Center attempted to obtain a reservation for a motion hearing in July. Only two timeslots were available for hearings during the entire month of July. Neither date would have complied with the Code of Civil Procedures requirement that motions be scheduled with 16 court days' notice.⁹

III. Clerk's Office At All Court Houses Should Freely Provide Court Documents to Tenants

Compounding the challenges stated above, several tenants seeking services from our offices have reported difficulties even obtaining copies of court documents from the clerk's office that are essential for the preparation of motions to set aside their judgment. Tenants seeking copies of their court documents at the Hayward Hall of Justice have been told by clerks in Hayward to obtain them from the clerk's office at the Rene C. Davidson Courthouse. Upon arriving at Rene C. Davidson, these same tenants were told by that clerk's office that they do not provide court documents. An attorney from our office was told during a recent phone call with a

⁸ California Code of Civil Procedure § 918

⁹ California Code of Civil Procedure § 1005

clerk at the Rene C. Davidson that only the George E. McDonald Hall of Justice in Alameda provides court records to tenants. This courthouse is particularly inaccessible for low-income and disabled tenants because there is no nearby BART station.

We respectfully request that the clerk's office at all of the Alameda County Superior Court courthouses freely provide court documents to tenants in eviction cases. Many of these tenants are seeking these documents from the court because they were never properly served by their landlord. Even proper service by posting and mailing carries a risk that the tenant does not in fact receive the court documents. Without copies of these documents, tenants are unable to challenge the service or correct an erroneous judgment. Tenants are also unable to secure representation from our office, as we cannot know whether they have meritorious motions without reviewing their case records. If defaulted tenants cannot quickly obtain copies of their documents from the court, they will be unable to obtain them at all, and will be evicted from their home without due process of law.

IV. Delaying The Issuance of Writs of Execution and the Posting of Sherriff's Notices to Vacate Will Provide Time for Tenants to Stay Evictions and Set Aside Erroneous Judgments.

Overcoming the challenges presented by the numerous eviction filings is possible and within your discretion. We ask that the Court not issue a writ of execution sooner than 14 days after judgment has entered and that the Sheriff's office not post a Notice to Vacate sooner than 21 days from the date of receiving the court's writ. Given the extraordinary volumes of cases these two measures should mitigate the barriers to tenants' ability to obtain post-judgment relief.

Sincerely,

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