

1 Name: _____

2 Address: _____

3 _____

4 Tel: _____

5 Defendant IN PRO PER

6
7 SUPERIOR COURT OF CALIFORNIA

8 COUNTY OF LOS ANGELES

9
10 _____) CASE NO. _____

11 _____)

12 _____)

13 Plaintiff,

14 vs.

15 _____)

16 Defendant(s).

17) DATE:

18) TIME: _____

19) PLACE: _____

20 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

21 NOTICE IS HEREBY GIVEN that on _____ at _____ a.m./p.m. or as soon
22 thereafter as the matter may be heard, in Department ____ of this Court, located at
23 _____, the Defendant will move for an order of the Court:

- 24 1. Sealing the record of this unlawful detainer matter numbered _____;
- 25 2. Directing the clerk to restrict the “case summary” database information about this matter
- 26 from public view, and;
- 27 3. For such other and further relief as the Court deems just and equitable under the
- 28 circumstances.

1 The motion will be based on this Notice of Motion, on the Memorandum of Law, and on the
2 declaration of the Defendant , served and filed herewith, and on all records and proceedings heretofore
3 and hereinafter, and on such evidence and argument as may be presented at the hearing of the motion.

4 Date: _____

Respectfully submitted,

7 By: _____
8 Defendant IN PRO PER

MEMORANDUM OF LAW

I. PRELIMINARY STATEMENT

The Defendant herein moves for an order of this Court sealing the record of this unlawful detainer matter pursuant to California Rules of Court, Rule 2.550, and the California Code of Civil Procedure § 1161.2. For the reasons discussed more fully herein, the Court should grant the motion so as to effectuate the intent and overriding interests of both the state legislature and the residents of Los Angeles County in their recent amendments to old laws, and the passing of new laws, intended to address shortages of affordable housing and to curtail the blight of homelessness in Los Angeles County.

II. STATEMENT OF FACTS

This action was filed by the Plaintiff _____ on or about _____ for restitution of the apartment of which Defendant had possession (the “Premises”). [Include facts here about what happened in the case: was there a default judgment? A trial? A stipulation?]

[Include any facts here about how the eviction has made it hard for you to get a new place for example: I have been having trouble finding a place to live due to the eviction on my record. I have recently been rejected from several units due to the public nature of the judgment in this case. I am likely to continue to have a hard time finding a place to live and being unhoused in the short and long term if I am not able to improve my prospects by having the eviction record sealed.]

III. RULES

The California Code of Civil Procedure § 1161.2 governs access to court files in unlawful detainer proceedings. The Legislature amended this law in 2016 to state that “[t]his section shall not be construed to prohibit the court from issuing an order that bars access to the court record in an action filed under this chapter if the parties to the action so stipulate.” Cal Code Civ Proc §1161.2 (a)(2). The

1 Legislature's intent was a response to the "state's ongoing affordable housing crisis and is necessary to
2 prevent tenants from being inadvertently denied an opportunity to secure housing simply as a result of
3 being named in an unlawful detainer lawsuit." Stats. 2016, ch. 336 § 1(g) (A.B.2819), eff. Jan. 1, 2017.
4
5 The change was intended to ameliorate the impact of the then-governing law allowing more permissive
6 access to eviction records, which worsens the affordable housing shortage in the State of California.
7 Stats. 2016, ch. 336 (A.B.2819), § 1(e), eff. Jan. 1, 2017. In updating the law, the legislature expressly
8 balanced the public interests of open court records and the ability of tenants to secure housing in an
9 increasingly scarce market. Stats. 2016, ch. 336 (A.B.2819), § 1(a)-(g), eff. Jan. 1, 2017. This
10 amendment makes clear the Court has the authority to seal the record of an unlawful detainer action
11 pursuant to stipulation of the parties.
12

13 Alternatively, California Rules of Court 2.550 et seq. allows the court to order a record sealed
14 upon motion where the movant establishes that "1) there exists an overriding interest that overcomes
15 the right of public access to the record; 2) the overriding interest supports sealing the record; 3) a
16 substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
17 4) the proposed sealing is narrowly tailored; and 5) no less restrictive means exists to achieve the
18 overriding interest." C.R.C. 2.550(d).
19

20 **IV. ARGUMENT**

21 Even without a stipulation between the parties to this action agreeing to seal the record of the
22 proceedings, the Court should nevertheless grant the Defendant's application pursuant to C.R.C. 2.550
23 et seq, because an overriding interest can be established in both the legislative history behind the 2016
24 amendment to C.C.P. § 1161.2, and in the recent passing by a supermajority of Los Angeles County
25 voters of the "Measure H" ballot initiative for the express purpose of combating homelessness in this
26 county.
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1 1. Passage Of the “Measure H” Initiative Ballot By Supermajority Establishes The Public’s
2 Overriding Interest of Eliminating Homelessness in Los Angeles County.

3 In March of 2017, a supermajority of Los Angeles County voters passed “Measure H,” a ballot
4 initiative aimed at funding homeless services and prevention programs by increasing the county sales
5 tax by .25% for a period of 10 years. There are an estimated 58,936 homeless people in Los Angeles
6 County on a single given night. *Los Angeles Homeless Services Authority, 2019 Greater Los Angeles*
7 *Homeless Count* (June 4, 2019). That is a sixteen percent increase from 2018. *Id.* These sky-high
8 numbers of people experiencing homelessness, and the effects of this crisis on public welfare, led Los
9 Angeles County Residents *to approve an increase in their own taxes* to address the problem.
10

11 The passage of the Measure H ballot initiative by a supermajority of Los Angeles County
12 voters establishes that curtailing and preventing homelessness *is* an overriding interest to the public.
13 The bill’s historic passage expresses the public’s desire to prioritize combating the homelessness
14 epidemic in Los Angeles County over other substantial public interests, including lower sales taxes or,
15 arguably, the ability to access records related to unlawful detainer actions. As such, the Court should
16 find that combating homelessness in California, particularly in Los Angeles County, is the sort of
17 overriding interest contemplated by C.R.C. 2.550 et seq.
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20 2. The Overriding Interest of Preventing Homelessness Supports Sealing the Record of This
21 Eviction As it Will Remove a Legal Barrier to Housing for This Housing Insecure Individual.

22 This overriding interest of preventing and curtailing homelessness supports sealing the record
23 of this matter because sealing the record will remove a legal barrier to finding housing.

24 Among the collateral consequences of eviction are the reporting of these proceedings to a
25 consumer reporting agency. “A report containing negative information not only can make securing
26 replacement housing difficult, but also can adversely affect the tenant's ability to secure employment,
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1 insurance, or other business opportunities.” Tenant Stories: Obstacles and Challenges Facing Tenants
2 Today, 40 J. Marshall L. Rev. 407, 416 (2007).

3 If the Court orders record of this action sealed,I will have a greater chance of obtaining
4 affordable permanent housing, ending my current state of [homelessness, housing insecurity] and
5 moving society closer to achieving the goals of Measure H. However, without an order sealing the
6 record of this matter, I will likely be unable to secure permanent housing and will stay in a precarious
7 housing situation, at both great personal and public expense. As such, the Court should find that the
8 overriding interest of preventing and curtailing homelessness supports sealing the record of this
9 eviction.
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12 3. A Substantial Probability Exists That Failing To Seal The Record Will Prejudice The
13 Overriding Interest Of Preventing Homelessness In L.A. County Because Homeless
14 Individuals With Unsealed Eviction Records Have Substantial Problems Obtaining Housing.

15 The California State Legislature observed in amending C.C.P. § 1161.2 in 2016 that a scarcity
16 of adequate low cost housing exists in virtually every urban setting in California. Cal Code Civ Proc.
17 §1161.2(a)(2), Stats.2016, c. 336 § 1(d) (A.B.2819), eff. Jan. 1, 2017. As a result, landlords offering
18 more affordable housing options often experience significant interest from potential tenants, and
19 therefore “often choose not to rent to tenants who appear on [eviction] registries.” Stats.2016, c. 336 §
20 1(f) (A.B.2819), eff. Jan. 1, 2017. Even a casual search of Los Angeles County apartment listings
21 reveals that many landlords offering affordable housing will not consider renting to a potential tenant
22 with even a low credit score, let alone a recent history of eviction(s).
23

24 This bias is especially devastating to homeless individuals, most particularly that substantial
25 portion who became homeless when they were evicted from their most recent address of record.
26 Therefore, it appears that without intervention of some type, the housing market in Los Angeles
27 County left to its own devices will continue to function predominantly to perpetuate and exacerbate the
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homeless epidemic, so long as homeless individuals with past evictions continue to be identifiable to potential landlords. This outcome directly contravenes the overriding interest of curtailing and eliminating homelessness.

Regardless of the availability of temporary shelter, a homeless individual must ultimately subject herself to a search for permanent housing if she hopes to achieve stability. However, an eviction on a person's record all but guarantees continued homelessness. My situation is no different. If potential landlords continue to have access to the records at hand, I will likely continue to face insurmountable legal barriers to permanent housing; and the cycle of homelessness will continue, at both my expense and the expense of the public.

As such, failing to seal the record of this unlawful detainer action will prejudice the public's overriding interest of preventing and curtailing homelessness in Los Angeles County.

4. The Proposed Sealing Is Narrowly Tailored Because The Proposed Records To Be Sealed Are Only Those Which Would Cause A Legal Barrier To Obtaining Housing.

The proposed sealing is narrowly tailored in that I am seeking to seal only those records which, if public, would constitute a legal barrier to me finding permanent housing. Granting me relief will not broadly affect the practice or legality of reporting unlawful detainer actions to credit agencies and landlords. This sealing order, if issued, would affect only my file. The burden would remain on defendants to individually move the court for the relief herein sought.

As such, the Court should find that sealing the record of this matter is a narrowly tailored remedy suited to achieving the overriding interest considered by the legislature, and enshrined by the public with its passing of Measure H.

5. No Less Restrictive Means Currently Exist To Achieve The Overriding Interest Of Preventing and Curtailing Homelessness For Homeless Individuals With Prior Evictions

1 Sealing the record of this individual action is the least restrictive means for this Court to help
2 achieve the public's overriding interest of preventing and curtailing homelessness in Los Angeles
3 County by removing a barrier to permanent housing for a defendant who remains homeless largely as a
4 result of the eviction on her record.

5
6 The state legislature has, in the past, contemplated prohibiting a landlord from deciding against
7 renting to a potential tenant due to the tenant's prior eviction record. Cheryl M. Sheinkopf, *Balancing*
8 *Free Speech, Privacy and Open Government: Why Government Should Not Restrict the Truthful*
9 *Reporting of Public Record Information*, 44 UCLA L. Rev. 1567, 1608–1609 (1997). However, such
10 proposals exist no less in the abstract than they did in the 1990s, and are nowhere near actually
11 becoming law. The immediacy of the homeless epidemic demands a more direct and timely application
12 of a judicial remedy.

13
14 Additionally, the sealing order sought herein cannot be more narrowly tailored without
15 compromising the underlying purpose for seeking to seal the record: specifically so that future
16 potential landlords will not be discouraged from offering affordable housing to me because of a past
17 eviction. For example, if the Court were inclined to seal only the judgment of eviction in this matter,
18 and not the record as a whole, the simple fact that any record of the action is available to the public
19 would be sufficient for future potential landlords to infer that the landlord prevailed in this action.
20 After all, based on the operation of amended California Code of Civil Procedure § 1161.2(F),(G), had
21 the landlord not succeeded in evicting me, no record of the action would be available to the general
22 public whatsoever.

23
24 Practically speaking, an order of the Court sealing the record of an unlawful detainer
25 proceeding is also the most effective, least restrictive means of helping me access affordable housing
26 units currently in existence. Alternatively, if the government were to subsidize the building of new
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1 affordable housing, said housing would likely not be ready for many years to come, and might further
2 be an impractical expenditure given the scarcity of land and public resources. Considering that Los
3 Angeles County affordable housing continues to be scarce and few to no reasonable options exist to
4 create permanent housing in the short term to combat the homelessness epidemic, other more
5 immediate solutions for combating the homelessness epidemic must be adopted, such as the one I
6 move for herein.

8 Granting the relief herein sought would also not entirely prevent a potential landlord from
9 acquiring information about these prior evictions, as landlords can still inquire about prior landlords in
10 a rental application and contact those landlords directly for a reference on a potential tenant. Nothing
11 about the relief sought herein would prevent a prior landlord from providing a new potential landlord a
12 negative reference on their former tenant, including the details of the unlawful detainer proceeding. All
13 that granting the relief sought herein would do is prevent my automatic exclusion from housing
14 without any due diligence on the part of a landlord, besides conducting a simple name search in an
15 online, electronic database.

18 As such, the Court should find that there are no less restrictive means available in the instant
19 matter of achieving the overriding interest of preventing and curtailing homelessness in Los Angeles
20 County, than to order the record of this unlawful detainer matter sealed, and to direct the clerk to
21 restrict the “Case Summary” database from public view.

23 6. California Rule of Court 2.550 Applies to Unlawful Detainer Records.

24 California Rule of Court 2.550 contains an exception for records required to be kept
25 confidential by law. However, this exception should not be interpreted to encompass eviction records.
26 As a default, eviction records are unsealed following an entry of judgment for a plaintiff and the
27 passage of 60 days. C.C.P. § 1161.2(a)(1)(F). The statute lists other conditions under which a record
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1 may become public. Accordingly, such records are not “required to be kept confidential as a matter of
2 law” when enumerated conditions are met.

3 California Rule of Court 2.550’s extensive list of conditions under which a matter may be
4 unsealed contrasts with records required by law to be kept confidential. The Advisory Committee
5 comments to California Rule of Court includes examples such as records of family conciliation courts,
6 in forma pauperis applications, and search warrant affidavits sealed under *People v. Hobbs* (1994) 7
8 Cal. 4th 948. In each of these contexts, sealed records must be kept confidential, and in only limited
9 circumstances may be reviewed by a circumscribed audience. *See People v. Hobbs*, 7 Cal. 4th at 971
10 (allowing limited *in camera* review of sealed portions of warrant affidavits); Cal. Rule of Court 3.54
11 (allowing access to in forma pauperis applications only upon noticed motion and showing of good
12 cause); Cal. Family Code § 1818(b) (opening files to inspection by a party or party’s attorney upon
13 written authority of the court). In sharp contrast to the scheme allowing eviction records to
14 automatically become available to the public under certain conditions, these other rules and statutes do
15 not contemplate the publication of the information under any circumstances. This distinction compels
16 the conclusion that eviction records are not the sort contemplated in California Rule of Court 2.550’s
17 exception for “records that are required to be kept confidential by law.”

18 **WHEREFORE**, and for the foregoing reasons, I respectfully request that the Court order the
19 record of this unlawful detainer matter numbered [REDACTED] be sealed, that the clerk restrict the
20 “Case Summary” database information about this matter from public view, and for such other and
21 further relief as this honorable Court deems just and equitable under the circumstances.

22 Dated: _____

23 Respectfully Submitted,

24 _____
25 Defendant In Pro Per
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