

1 Jorge Lara

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3 **Defendant in Pro Per.**

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5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
6 **COUNTY OF SAN DIEGO**

7  
8 Robinwood Plaza Apartments LLP

9 Plaintiffs,

10 vs.

11 Jorge Lara

12 Defendant.

Case No.:37-2022-00013098-CL-UD-CTL

Complaint Filed: April 07, 2022

Trial Date: May 24, 2022

13 **DEFENDANT’S EX PARTE MOTION**  
14 **TO CONTINUE TRIAL DATE AND**  
15 **MEMORANDUM OF POINTS AND**  
16 **AUTHORITIES IN SUPPORT**  
17 **THEREOF;**

18 Date:

19 Time:

20 Dept.: 501

21 Res ID.:

22  
23 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

24 PLEASE TAKE NOTICE THAT on \_\_\_\_\_, 2022 at \_\_\_\_\_. or as soon thereafter  
25 as the matter may be heard in Department 501 of the above-entitled court, located at  
26 \_\_\_\_\_, Defendant, Jorge Lara will move the Court for an order continuing the trial  
27 in this case from May 24, 2022 to June 24, 2022, or for 31 days. The motion is made on the grounds

1 that Defendant, Jorge Lara has no counsel to represent him in the above Title action. And two of his  
2 key witnesses will not be available for the trial date.

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4 However, to effectively defend this causes of action, Defendant Jorge Lara intends to hire an  
5 attorney to represent him, although it has not been finalized.

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8 Dated; **May** \_\_\_\_\_ 2022.

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10 \_\_\_\_\_  
11 Jorge Lara

12 **Defendant in Pro Per.**  
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4 **MEMORANDUM AND POINTS OF AUTHORITIES**  
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7 **1. INTRODUCTION**

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9 Defendant Jorge Lara brings this motion for an order continuing the recommencement of the  
10 trial, currently scheduled for May 24, 2022, to June 24, 2022. Jorge Lara has been proceeding with this  
11 action in Pro Per; thus, he intends to hire an attorney to represent him to defend this matter effectively.

12 Defendant Jorge Lara is a Pro Se; he lacks the knowledge of the rules and procedures of this  
13 Court while the Plaintiff is being represented by a certified attorney, duly authorized to practice law in  
14 California. Defendant Jorge Lara is overwhelmed by the trial date as the trial date is very close; he has  
15 roughly 5 days to prepare for this trial. Also, two of Jorge Lara's key witnesses will not be available  
16 for the trial date. Therefore, Jorge Lara already has found himself at a distinct disadvantage in this case,  
17 and the unavailability of a trial counsel would land a severe blow.

18 Defendant Jorge Lara has been working diligently in generating physical evidence to support his  
19 defense. This motion is not being made for the purpose of delay but is made based upon current  
20 unforeseen circumstances and the need for time to prepare for the hearing effectively.

21  
22 Defendant Jorge Lara has not been guilty of negligence or bad faith. Still, he has been acting  
23 diligently to respond timely to motions, prepare for trial, and provide this Court with the most complete  
24 and accurate factual record possible to resolve these vital claims.  
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27

1 Defendant Jorge Lara’s interests will be harmed if this motion is denied as this motion is timely  
2 filed. The reasons for the request are unforeseeable and not the result of dilatory practices, and the  
3 Plaintiff would not suffer prejudice or inconvenience.

4 From all of the foregoing, it is respectfully submitted that Defendant Jorge Lara reasonably  
5 requires additional time for the hearing. Specifically, he seeks a continuance of the currently scheduled  
6 hearing date to June 24, 2022.

### 7 ARGUMENTS

#### 8 **A. GOOD CAUSE EXISTS TO VACATE THE TRIAL DATE AND GRANT A** 9 **CONTINUANCE.**

10 This court is empowered, under California law, to proscribe a shorter notice period than the  
11 generally required 21 days. (Code of Civil Procedure, §1005(b).) Further, California Rules of Court,  
12 Rule 317 provides, as follows:  
13

14 (b) [Order Shortening Time] The court, on its own motion, or on application for an order  
15 shortening time supported by a declaration showing good cause, may prescribe shorter times  
16 for the filing and service of papers in the time specified in the Code of Civil Procedure Section  
17 1005.  
18

19 Here, good cause exists, the fast-approaching current trial date of May 24, 2022, and  
20 unavailability of Defendant, Jorge Lara counsel.  
21

22 California Rules of Court, Rule 3.1332 sets forth a non-exclusive list of factors to be  
23 considered by the court in determining whether or not to grant a trial continuance. The court may  
24 grant a continuance only on an affirmative showing of good cause requiring the continuance. (Rule  
25 3.1332, subd. (c) and (d).) Examples of good cause include, but are not limited to: (1) the  
26 unavailability of a party or trial counsel because of death, illness or other excusable circumstances,  
27 (2) a party’s excused inability to obtain testimony, documents, or other material evidence despite

28 - 4 -

**DEFENDANT’S EX PARTE MOTION TO CONTINUE TRIAL DATE AND  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

1 diligent efforts, and (3) a significant, unanticipated change in the status of the case as a result of  
2 which the case is not ready for trial. (Id.)

3  
4 Rule 3.1332(d) states, in part:

5 In ruling on a motion or application for continuance, the court must consider all the facts and  
6 circumstances that are relevant to the determination. These may include the following factors:

7 a.) The proximity of the trial date;

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9 b.) Whether there was any previous continuance, extension of time, or delay of trial due to  
10 any party;

11  
12 c.) The length of the continuance requested;

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14 d.) The availability of alternative means to address the problem that gave rise to the motion or  
15 application for a continuance;

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17 e.) The prejudice that parties or witnesses will suffer as a result of the continuance;

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19 f.) If the case is entitled to a preferential trial setting, the reasons for that status and whether  
20 the need for a continuance outweighs the need to avoid delay;

21  
22 g.) The court's calendar and the impact of granting a continuance on other pending trials; h.)  
23 Whether trial counsel is engaged in another trial;

24  
25 i.) Whether all parties have stipulated to a continuance;

26  
27 j.) Whether the interests of justice are best served by a continuance, by the trial of the matter  
28 or by imposing conditions on the continuance; and,

1 k.) Any other fact or circumstance relevant to the fair determination of the motion or  
2 application.

3 (California Rules of Court, Rule 3.1332(d).)

4 These various factors are addressed, as follows:

5  
6 a.) The current trial date is May 24, 2021 (Exhibit B);

7  
8 b.) There has been no previous trial continuance in this matter for this phase;

9  
10 c.) The length of the continuance requested will allow Defendant to familiarize himself with  
11 the facts of the case as he now proceeds in Pro Per or alternatively gives more time to hire an  
12 attorney to represent him in this action.

13  
14 d.) There are no alternative means to address the above-stated issues. As two of Jorge  
15 Lara's key witnesses will not be available for the trial date.

16  
17 e.) The parties or witnesses will not suffer prejudice as a result of the continuance. To the  
18 contrary, other parties will similarly benefit from this brief continuance.

19  
20 f.) There is no basis for trial preference in this matter;

21  
22 g.) In the interest of justice and equity, the Court should be able to grant a four-week  
23 continuance in light of the long-reaching history of this case. Defendant Jorge Lara is  
24 willing to accommodate the Court's schedule in any way possible.

25  
26 h.) Defendant, Jorge Lara has no counsel in the above Title action. And if the motion for  
27 continuance is granted, he will use the opportunity to hire an attorney that will represent him

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2 i.) It is believed that all parties have stipulated to a continuance,

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4 j.) The interests of justice are best served by a continuance of this matter. In order for all  
5 parties to have a full and fair trial, the attorney that is most familiar with the intricacies of this  
6 highly technical and complicated case are crucial to ensuring a fair outcome; and,

7 In *Taylor v. Bell* (1971) 21 Cal. App. 3d 1002, 1007, the court noted that trial judges have a  
8 great deal of leeway in granting continuances. The court stated:

9  
10 The factors which influence the granting or denying of a continuance in any  
11 particular case are so varied that the trial judge must necessarily exercise a broad  
12 discretion. On an appeal from a judgment (the order itself being non-appealable) it is  
13 particularly impossible to show reversible error in granting of a continuance.

14 (See also, *Hartford Accident & Indemnity Co. v. Gropman* (1984), 163 Cal. App. 3d Supp. 33,  
15 41.)

16  
17 On the other hand, courts must exercise discretion as to all interests involved in determining  
18 whether to grant a continuance, as a refusal may have the practical effect of denying the applicant a  
19 fair hearing. (In *re Marriage of Hoffmeister* (1984) 161 Cal. App. 3d 1163, 1169- 1171 (holding that  
20 the proximity in time between the submission of an amended financial statement, submitted in an  
21 spousal support case, prevented appellant from adequately preparing for the hearing; the appellate  
22 court reversed the trial court's refusal to grant a continuance of trial concluding that it deprived  
23 appellant of a fair hearing).) A continuance should be granted if failure to allow the continuance  
24 would probably or possibly prejudice the party seeking the continuance by depriving that party of the  
25 opportunity to fully and fairly present his case. (In *re Dolly A.* (1986) 177 Cal. App. 3d 195, 201  
26 (emphasis added).)

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5 **B. UNAVAILABILITY OF TRIAL COUNSEL**

6 In the present case, good cause for the continuance exists based on a number of the factors set forth  
7 in Rule 3.1332. This is the first trial continuance requested by Defendant Jorge Lara in this matter.  
8 Given the unavailability of Defendant Jorge Lara's trial counsel, it will be impossible to coordinate  
9 and complete the necessary trial preparation, or even if Defendant Jorge Lara proceeds in Pro Per.

10  
11 Similarly, case law recognizes unavailability of trial counsel. In *Oliveros v. County of Los Angeles*  
12 (2004) 120 Cal. App. 4th 1389 ("Oliveros"), the appellate court held that the trial court abused its  
13 discretion in denying a party's motion for a three-week continuance due to a scheduling conflict where  
14 counsel advised the court that he would be in trial, in another matter, on the same trial date.

15  
16 The trial was continued a few times due to scheduling conflicts. (Id.) The court was also made  
17 aware of trial conflicts ". . . but stated that [the other case] had priority because it was filed first." (Id.)  
18 Unfortunately, counsel was unable to get the other trial continued. (Id. at 1393.) Consequently, counsel  
19 requested a continuance in the Oliveros case and the judge "said that he was not inclined to grant the  
20 continuance and suggested that another lawyer in Mr. Peterson's office try Oliveros." (Id.) Counsel that  
21 requested the continuance, Mr. Peterson, explained that "[a]ll but one] of his firm's other senior trial  
22 attorneys were in trial; the remaining attorney was on vacation in Europe. None of the firm's other  
23 lawyers had experience trying cases of the complexity of Oliveros." More importantly, no one other  
24 than Mr. Peterson had prepared to try the case. Therefore, Mr. Peterson suggested that it would be  
25 unfair to the client 'to ask [new counsel] to suddenly step into a case cold." (Id. at 1393.)

26 Experience of counsel was a factor that influenced the Court of Appeal's decision to reverse the  
27 trial court's refusal to grant a continuance. There, the court observed that defendant chose Mr. Peterson



1 "because of his exceptional skill as a trial lawyer . . . [and the client] invested significant resources  
2 preparing to try the case and that it could not prepare any other attorney to try the case on such short  
3 notice . . . 'It is a severe prejudice to us in the enormity of the damages that can be assessed in this case  
4 to send us into court without the attorney that we put before this court.'" (Id. at 1394.)

5  
6 Importantly, the Court of Appeal noted that, though a "motion for continuance is addressed to the  
7 sound discretion of the trial court . . . '[t]he trial judge must exercise his discretion with due regard to  
8 all interests involved, and the refusal of a continuance which has the practical effect of denying the  
9 applicant a fair hearing is reversible error.'" (Id. at 1395 quoting *In re Marriage of Hoffmeister* (1984)  
10 161 Cal. App. 3d 1163, 1169; compare to *Agnew v. Parks* (1963) 219 Cal. App. 2d 696 (court denied  
11 plaintiff's request for continuance when counsel failed to promptly request continuance upon  
12 ascertaining the need for one due to scheduling conflicts); see also *Mahoney v. Southland Mental*  
13 *Health Associates Medical Group* (1990) 223 Cal. App. 3d 167, 172 (court denied oral motion because  
14 counsel failed to submit written declaration and requested continuance was based "in part by the  
15 departure of one of the partners" which occurred four months prior to request for continuance).)

16  
17 More importantly, the court "must look beyond the limited facts which cause a litigant to request  
18 a last-minute continuance and consider the degree of diligence in his or her efforts to bring the case to  
19 trial, including participating in earlier court hearings, conducting discovery, and preparing for trial."  
20 (Id. at 1396 citing *Link v. Cater* (1998) 60 Cal. App. 4th 1315 at 1324- 1325.) Essentially, the court  
21 should have conducted a balancing test to weigh the court's need to move the case along and the  
22 prejudicial effect of continuing without the lead trial attorney who is familiar with the case.

23  
24 In this instant case, Defendant Jorge Lara is a Pro Se litigant unfamiliar with the Court's rules  
25 and procedures. At the same time, the Plaintiff is represented by a qualified attorney who is lawfully  
26 permitted to practice law in California. Defendant Jorge Lara is overwhelmed by the looming trial date;  
27 he only has around 5 days to prepare for the hearing. Furthermore, two of Jorge Lara's crucial witnesses  
28 will be unavailable for the trial. As a result, Jorge Lara is already at a significant disadvantage in this  
case, and the lack of a trial lawyer would be a major setback.

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4 **C. LIBERAL TREATMENT OF PRO SE PLEADINGS**

5 Additionally, because Defendant brings this case pro se, the Court must construe his filings  
6 “liberally” and interpret them “to raise the strongest arguments that they suggest.” Pro se pleadings,  
7 “however inartfully pleaded,” must be held to “less stringent standards than formal pleadings drafted  
8 by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520–521 (1972), the court can reasonably read pleadings  
9 to state a valid claim on which the litigant could prevail, it should do so despite failure to cite proper  
10 legal authority, confusion of legal theories, poor syntax and sentence construction, or the litigant's  
11 unfamiliarity with pleading requirements. *Boag v. MacDougall*, 454 U.S. 364 (1982).

12 In a section 1983 action,<sup>1</sup> the court must liberally construe the pro se litigant's pleadings and  
13 “apply the applicable law, irrespective of whether a pro se litigant has mentioned it by name.” the [pro  
14 se] plaintiffs are entitled to relief if their complaint sufficiently alleges deprivation of any right secured  
15 by the Constitution.”)

16 Pro se litigants’ labor under the disadvantage of being unable to read procedural rules effectively,<sup>2</sup>  
17 the necessity of judicial notification to pro se litigants is more apparent as the pro se litigant is doubly  
18 handicapped by his inability to discern his obligations by his misunderstanding of the consequences of  
19 the errors in his pleadings. Because Defendant is a pro se litigant, this Court may consider facts and  
20 make inferences where it is appropriate.

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<sup>1</sup> Even though Plaintiff does not specifically mention 42 U.S.C. § 1983, which is the Civil Rights Act, in the Complaint, it  
25 is clear to this Court that Plaintiff is seeking to vindicate his federal Constitutional rights. However, because Plaintiff does  
26 not have a cause of action directly under the Constitution of the United States, nor does he identify another source of a  
27 federal right alleged to have been violated or another basis for federal jurisdiction, a liberal reading of the Complaint  
28 requires the Court to construe the Complaint as one invoking the Court's federal question jurisdiction pursuant to 42  
U.S.C. § 1983.

<sup>2</sup>, See 1980 Aldisert Report, supra note 12, at 64 (pro se litigants not expected to understand rules).

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**CONCLUSION**

The factors enumerated above weigh in favor of granting the requested continuance of the trial date pursuant to Rules 3.1332 and 3.1335. Therefore, good cause exists to grant the requested continuance and schedule a trial of this matter to June 24, 2022.

**Dated; May\_\_\_\_, 2022.**

Respectively Submitted by;

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**Jorge Lara**  
**Defendant in Pro Per.**

**CERTIFICATE OF SERVICE**

This statement is to certify that, **May \_\_\_\_\_ 2022**, a copy of the foregoing has been e-mailed to all parties who have agreed to accept service electronically:

**SERVICE LIST**

**Racheal Callahan ESQ**  
Callahan Firm APC  
10509, San Diego Mission Road, Suite A  
San Diego CA 92108  
Tel; (619) 299-1761

Attorney for Plaintiff.

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Jorge Lara  
**Defendant in Pro Per.**

**SAMPLE**

Jorge Lara

**Defendant in Pro Per.**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

Robinwood Plaza Apartments LLP

Plaintiffs,

vs.

Jorge Lara

Defendant.

Case No.:37-2022-00013098-CL-UD-CTL

Complaint Filed: April 07, 2022

Trial Date: May 24, 2022

**DECLARATION IN SUPPORT OF  
DEFENDANT ANDREA LIN'S EX  
PARTE MOTION TO CONTINUE  
TRIAL DATE AND MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF;**

**DECLARATION OF JORGE LARA;**

I, Jorge Lara Declare that:

1. I make this declaration of my own personal knowledge, except where stated on information and belief, and if called to testify in Court on these matters, I could do so competently.

2. I am the Defendant of this action and I have personal knowledge of the matters deposed to here except where otherwise stated to be based on information and belief.
3. I have conducted a diligent search of my case and have made appropriate inquiries of others to inform myself in order to make this Declaration.
4. I reside in the city of \_\_\_\_\_, in the State of California.
5. I bring this motion for an order continuing the recommencement of the trial, currently scheduled for May 24, 2022, to June 24, 2022.
6. I am Pro Se; I lack the knowledge of the rules and procedures of this Court while the Plaintiff is being represented by a certified attorney, duly authorized to practice law in California.
7. I am overwhelmed by the trial date as the trial date is very close; I have roughly 5 days to prepare for this trial. Also, two of my key witnesses will not be available for the trial date.
8. Therefore, I have found myself at a distinct disadvantage in this case, and the unavailability of a trial counsel would land a severe blow.
9. However, I intend to hire an attorney to represent me to defend this matter effectively.
10. I have been working diligently in generating physical evidence to support my defense. This motion is not being made for the purpose of delay but is made based upon current unforeseen circumstances and the need for time to prepare for the hearing effectively.
11. I have not been guilty of negligence or bad faith. Still, I have been acting diligently to respond timely to motions, prepare for trial, and provide this Court with the most complete and accurate factual record possible to resolve these vital claims.
12. My interests will be harmed if this motion is denied as this motion is timely filed. The reasons for the request are unforeseeable and not the result of dilatory practices, and the Plaintiff would not suffer prejudice or inconvenience.

I declare, under penalty of perjury, that the foregoing is true and correct under the laws of the State of California and that this declaration was executed on March \_\_\_\_\_, 2022, in \_\_\_\_\_ California.

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Insert the address of the declarant here

SAMPLE