

1 **JIAYI LIU**
2 Jamboree Business Centre
3 2691 Richter Avenue, Suite 115.
4 Irvine CA 92606
5 Defendant in Pro Per
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10
11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF ORANGE**

13 Olen Commercial Realty Corp., a Nevada)
14 corporation,)

15 Plaintiff,)

16 vs.)

17 JIAYI LIU, an individual; and DOES 1 to 10,)
18 inclusive,)

19 Defendants)
20)
21)
22)
23)
24)

Case No.: 30-2020-01160931-CL-UD-CJC

**DEFENDANT'S NOTICE OF
MOTION AND MOTION FOR
RECONSIDERATION OF
ORDER RE: UNLAWFUL
DETAINER (COMMERCIAL)
ORDER AGAINST JIAYI LIU,
MEMORANDUM OF POINTS
AND AUTHORITIES.**

**[C.C.P. § 1008]
TIME; 8:30 AM
DATE; November 27, 2020
DEPT; C61
JUDGE; Glenn Mondo**

25 **TO EACH PARTY AND ITS ATTORNEYS OF RECORD:**

26 PLEASE TAKE NOTICE that Defendant JIAYI LIU proceeding in Pro
27 Per shall and hereby do move the Court to reconsider its Order re: **UNLAWFUL**
28 **DETAINER (COMMERCIAL) ORDER AGAINST JIAYI LIU**, dated
October 21, 2020, ("Order"). This motion is made pursuant to C.C.P. § 1008,
new and different facts and circumstances, and is supported by the

1 accompanying Memorandum of Points and Authorities, and the Declaration of
2 JIAYI LIU in Support of Motion for Reconsideration, Defendant would state
3 hereon.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **INTRODUCTION**

6
7 On or about June 7, 2018, Defendant JIAYI LIU entered into a written lease agreement
8 with Plaintiff Olen Commercial Realty Corp, to rent the real property located at 2691 Richter
9 Avenue # 115, Irvine, 92606, (premises). The lease commenced on June 7, 2018 and under the
10 lease agreement there is a clause for annual rent adjustment as follows; beginning on July 1,
11 2019 through June 30, 2020 the minimum Monthly Base Rent shall be \$2,999.00 and beginning
12 on July 1, 2020 through June 30, 2021 the minimum Monthly Base Rent shall be \$3,089.55.
13 The Monthly Base Rent set forth above does not include monthly Common Area Operating
14 Expenses of \$474.32.

15 The defendant has been fulfilling her obligations under the lease agreement which
16 includes adequate payment of the rent until the breakout of COVID-19 in January 2020. The
17 COVID-19 pandemic has presented significant challenges to Defendant's business and
18 employees. Small Business Majority survey data found that up to 44% of businesses are at risk
19 of shutting down, including Defendant's Business. From February to April 2020, there was a
20 22% drop of active business owners nationwide according to data released through the Census
21 Current Population Survey. Minority-owned businesses are disproportionately impacted: the
22 number of active businesses owned by African-Americans dropped by 41%, Latinx by 32%,
23 Asians by 25%, and immigrants by 36%.¹ The impact of the COVID-19 was severe that
24 Governor Newsom of California had to signed three bills that will help support small
25 businesses to recover from the COVID-19 induced recession.²

26 On or about October, 2020, Plaintiff filed a complaint for unlawful detainer- commercial
27 against Defendant. Plaintiff alleged that Defendant was wrongfully in possession of the
28

¹ <https://www.gov.ca.gov/2020/09/09/governor-newsom-signs-bills-to-support-small-businesses-grappling-with-impact-of-covid-19-pandemic-bolster-economic-recovery/>

² *ibid*

1 premises. Before filing the said Complaint, defendant was not served with the mandatory three
2 (3) days notice to pay rent or quit.

3
4 The Defendant hereby states that the decisions granting Unlawful Detainer
5 (Commercial) Order against her were not in accordance to applicable laws and, therefore,
6 files this Motion for Reconsideration.

7
8 **ARGUMENT**

9 **1. THE COURT MUST CONSIDER FACTS NOT PREVIOUSLY**
10 **CONSIDERED THAT DIRECTLY AFFECTS THE COURT'S**
11 **RULING.**

12 A. Defendant Present A Previously Unconsidered Fact.

13 California Code of Civil Procedure § 1008 (a) governs a party's means to
14 seek reconsideration of a court order, under the prerequisite of presenting new
15 or different facts, circumstances, or law." C.C.P. § 1008 (a). The purpose of
16 C.C.P. § 1008 is "to restrict motions to reconsider to circumstances where a
17 party offers the court some fact or authority that was not previously considered
18 by it." *Gilberd v. ACT Transit* (1995) 32 Cal.App.4th 1494, 1500.

19
20 In this motion, defendant requests that this Court reconsider its Order in
21 light of Plaintiff not serving the defendant the mandatory three (3) days notice to pay
22 rent or quit.

23 *Failure to provide a legally sufficient notice is a complete defense to an unlawful*
24 *detainer.* " Unlawful detainer is a unique body of law and its procedures are entirely separate
25 from the procedures pertaining to civil actions generally." (*Losornio v. Motta* (1998) 67
26 Cal.App.4th 110, 115 [78 Cal.Rptr.2d 799].) " Sections 1159 through 1179a comprise what is
27 commonly known as the *Unlawful Detainer Act* ; the statutes are ' broad in scope and available
28 to both lessors and lessees who have suffered certain wrongs committed by the other.' " (*Palm*
Property Investments, LLC v. Yadegar (2011) 194 Cal.App.4th 1419, 1424 [123 Cal.Rptr.3d
816]; see *Losornio v. Motta, supra*, at p. 113 .).

1 Strict compliance with the statutory notice requirements is a prerequisite to filing an
2 unlawful detainer action. (Lamey v. Masciotra (1969) 273 Cal.App.2d 709, 713 [78 Cal.Rptr.
3 344].) “ Under California statutory law a tenant is entitled to a 3-day notice to pay rent or quit
4 which may be enforced by summary legal proceedings (Code Civ. Proc., § 1161) but this notice
5 is valid and enforceable only if the lessor strictly complies with the specifically described
6 notice conditions. (Code Civ. Proc., § 1162.)” (Ibid.) A copy of the notice of eviction must be
7 attached to the complaint. (Code Civ. Proc., § 1166, subd. (d)(1)(A).) A complaint, that does
8 not comply with the notice requirements, fails to state a cause of action for unlawful detainer
9 and the court lacks both personal and subject matter jurisdiction. (Kwok v. Bergren181
10 Cal.Rptr. 795].) in section 1161. That statute provides in pertinent part: “A tenant of real
11 property... is guilty of unlawful detainer. When he or she continues in possession... after a
12 neglect or failure to perform... conditions or covenants of the lease or agreement under which
13 the property is held... and three days’ notice, in writing, requiring the performance of such
14 conditions or covenants, or the possession of the property, shall have been served upon him or
15 her.... Within three days after the service of the notice, the tenant... may perform the conditions
16 or covenants of the lease... and thereby save the lease from forfeiture....” (§ 1161, subd. (3).
17 “Because of the summary nature of an unlawful detainer action, a notice is valid only if the
18 lessor strictly complies with the statutorily mandated notice requirements.” (Bevill v. Zoura
(1994) 27 Cal.App.4th 694, 697, citing Kwok v. Bergren (1982) 130 Cal.App.3d 596; see also
Parsons v. Superior Court, supra, 149 Cal.App.4th Supp. at p. 6.

19 The notice must comply with several requirements set forth in section 1161, subdivision
20 (3). The notice must identify the defaulted covenant. (Delta Imports, Inc. v. Municipal Court
21 (1983) 146 Cal.App.3d 1033, 1036; Feder v. Wreden Packing & Provision Co. (1928) 89
22 Cal.App. 665, 671.) The notice must also be phrased in the alternate when the covenant is
23 capable of being performed, viz. perform the covenant or quit the premises. (§ 1161, subd. (3);
24 Hinman v. Wagon (1959) 172 Cal.App.2d 24, 27.) That is to say, the notice must convey that
25 “in the event of the failure of the tenant to... perform the defaulted covenant, the [landlord] will
26 exercise his right under the law to regain possession of the premises.” (Hinman v. Wagon,
27 supra, at p. 28, citing Feder v. Wreden Packing & Provision Co., supra, at p. 671.) The notice
28 cannot be ambiguous in its phrasing, as it must “clearly, positively, and unequivocally disclose
the intention of the landlord to repossess the premises.” (Horton-Howard v. Payton (1919) 44
Cal.App. 108, 112, see also Delta Imports, Inc. v. Municipal Court, supra, at p. 1036.)

1 Also, in order to be legitimate, service of the three-day notice must “strictly comply”
2 with section 1162. (*Liebovich v. Shahrokhkhany (1997) 56 Cal.App.4th 511, 513.*) “Section
3 1162 provides three methods of serving these notices: (1) by personal delivery to the tenant
4 (personal service); or (2) if the tenant is absent from his residence and usual place of business,
5 by leaving a copy with a person of suitable age and discretion at either place, and sending a
6 copy through the mail to the tenant’s residence (substituted service); or (3) if a place of
7 residence and usual place of business cannot be ascertained or a person of suitable age or
8 discretion cannot be found there, then by affixing a copy in a conspicuous place on the property
9 and delivering a copy to a person residing there, if such a person can be found, and also sending
10 a copy through the mail addressed to the tenant at the place where the property is situated (post
11 and mail service). [Citations.]” (*Losorino v. Mata (1998) 67 Cal.App.4th 110, 113-114.*)

12 Herein Defendant was not served with the mandatory three (3) days notice to pay rent or
13 quit, which is the statutory notice requirements and is a prerequisite to filing an unlawful
14 detainer action. In Plaintiff’s complaint it asserts that defendant was served through substituted
15 service after attempting personal service, it left a copy of the Notice with or in the presence of
16 a person of suitable age and discretion on 8/10/2020.

17 This completely untrue and misleading, Defendant was not served and never received the
18 mandatory three (3) days notice to pay rent or quit, Plaintiff’s proof of service is insufficient
19 as it could not even Identify the person the notice was delivered to. Mere stating that it left a
20 copy of the Notice with or in the presence of a person of suitable age and discretion on
21 8/10/2020, is not enough.

22 It must show that the defendant had knowledge or acknowledged receipt of the said
23 notice. California law is clear: when service is challenged, the plaintiff must submit adequate
24 evidence of effective service stating precisely who received the service on behalf of the
25 defendant, who is the recipient to the defendant, and the place it was served and also it must be
26 mailed to the Defendant.

27 The service of a valid three-day notice is an element of an unlawful detainer action that
28 must be proven by the lessor at trial. (*Palm Property Investments, LLC v. Yadegar (2011) 194*
Cal.App.4th 1419, 1425.) “[P]roper service on the lessee of a valid three-day notice to pay
rent or quit is an essential prerequisite to a judgment declaring a lessor’s right to possession

1 under section 1161, subdivision 2. [Citations.] [Citation.] ‘A lessor must allege and prove
2 proper service of the requisite notice. [Citations.] Absent evidence the requisite notice was
3 properly served pursuant to section 1162, no judgment for possession can be obtained.
4 [Citations.] [Citation.]’ (*Ibid.*)

5 Therefore, Defendant request this court to reconsider its Judgement. The court has
6 broad discretion on its own motion to try issues in any order that will promote efficiency of
7 litigation. (*Buran Equipment Co. v. H. & C. Investment Co. (1983) 142 Cal.App.3d 338, 343;*
8 *Grappo v. Coventry Financial Corp. (1991) 235 Cal.App.3d 496, 503.*) Section 598 provides
9 in part that “the court may [at any time on its own motion] when... the economy and efficiency
10 of handling the litigation would be promoted thereby... make an order... that the trial of any
11 issue or any part thereof shall precede the trial of any other issue or any part thereof in the
12 case....” Similarly, section 1048, subdivision (b) provides in part that “the court, in furtherance
13 of convenience or to avoid prejudice, or when separate trials will be conducive to expedition
14 and economy, may order a separate trial of any cause of action,... or of any separate issue....”
15 Finally, Evidence Code section 320 provides that “except as otherwise provided by law, the
16 court in its discretion shall regulate the order of proof.” Under these provisions, the trial court
17 had ample authority to try the notice issue first. (*Buran Equipment Co. v. H. & C. Investment*
18 *Co., supra, at p. 343; Grappo v. Coventry Financial Corp., supra, at p. 503.*)

19 Here, the court failed to choose to try the issue of notice before any other presumably as
20 “[s]trict compliance with the specifically prescribed notice conditions is a prerequisite to
21 invoking the summary procedures of unlawful detainer.” (*Parsons v. Superior Court (2007)*
22 *149 Cal.App.4th Supp. 1, 6.*) The fairest reading of this court should be a statement that it would
23 handle the “legal threshold issue before it begin the trial,” is that it would try the issue of notice
24 first and if it was defective, the court would not have to address the merits of the unlawful
25 detainer claim.

26 **B. EVEN IF THE MANDATORY THREE-DAY NOTICE WAS SERVED TO THE**
27 **DEFENDANT, IT DOES NOT COMPLIED WITH THE EXECUTIVE ORDER N-28-20**
28 **ISSUED BY GOVERNOR GAVIN NEWSOM.**

1 Governor Gavin Newsom previously issued Executive Order N-28-20 authorizing local
2 governments to ban evictions for residential and commercial tenants based on nonpayment of
3 rent resulting from a loss of income related to COVID-19.

4 The Executive Order N-28-20 extends the notice period for nonpayment of rent from 3
5 to 15 days to provide the tenant with additional time to respond to the landlord's notice to pay
6 rent or quit.

7
8 Is this present case from the notice attached to Plaintiff's complaint, the notice to pay
9 rent was indicated three days instead of 15 days as provided by the Executive Order N-28-20
10 issued by Governor Gavin Newsom. Plaintiff issued the said notice within the era of COVID-
11 19.

12 The defendant has been fulfilling her obligations under the lease agreement which includes
13 adequate payment of the rent until the breakout of COVID-19 in January 2020. The COVID-
14 19 pandemic has presented significant challenges to Defendant's business and employees.
15 Small Business Majority survey data found that up to 44% of businesses are at risk of shutting
16 down, including Defendant's Business. From February to April 2020, there was a 22% drop of
17 active business owners nationwide according to data released through the Census Current
18 Population Survey. Minority-owned businesses are disproportionately impacted: the number
19 of active businesses owned by African-Americans dropped by 41%, Latinx by 32%, Asians by
20 25%, and immigrants by 36%.³ The impact of the COVID-19 was severe that Governor
21 Newsom of California had to signed three bills that will help support small businesses to
22 recover from the COVID-19 induced recession.⁴

23 In the light of the violation of the Executive Order N-28-20 issued by Governor Gavin
24 Newsom. Defendant hereby prays this honorable court to reconsider its order her.

25
26 **2. THE COURT HAS JURISDICTION TO REVOKE ITS PRIOR ORDER**

27 The Court has jurisdiction to correct its order sua sponte to conform to law and justice.
28 Code of Civil Procedure Section 128(a)(8) provides that "Every court shall have the power to

³ <https://www.gov.ca.gov/2020/09/09/governor-newsom-signs-bills-to-support-small-businesses-grappling-with-impact-of-covid-19-pandemic-bolster-economic-recovery/>

⁴ *ibid*

1 do all of the following: ... To amend and control its process and orders so as to make them
2 conform to law and justice." See Schachter v. Citigroup, Inc., 126 Cal. App. 4th 726, 739
3 (2005) (By enacting reconsideration statutes, the "Legislature did not, however, attempt to limit
4 the court's sua sponte authority.); see also LeFrancois v. Goel, 35 Cal. 4th 1094, 1108 (2005)
5 (the trial court may on its own motion reconsider one of its rulings). The Court should exercise
6 that power here to correct its error and revoke its prior ruling and grant the Motion.

7 As a separate basis for relief and as earlier stated in this motion, Defendant is seeking
8 correction of the error under Code of Civil Procedure Section 1008, which permits a party who
9 has made application for an order that has been refused in whole or part to make application to
10 the same judge or court that made the order, to reconsider the matter and modify, amend, or
11 revoke the prior order based upon "new or different facts, circumstances, or law." Id In
12 Monarch Healthcare v. Superior Court, 78 Cal. 4 App. 4th 1282 (2000), the trial court's sua
13 sponte injection of a new issue that was not briefed by the parties before the court's ruling
14 constitutes "different circumstances" under Section 1008. Monarch Healthcare, 8 Cal. App.
15 4th at 1286-87 ("[F]undamental principles of due process also call for those with an interest in
16 the matter to have notice and the opportunity to be heard, so that the ensuing order does not
17 issue like a 'bolt from the blue out of the trial judge's chambers.'" (quoting Campisi v. Super.
18 Court, 17 Cal. App. 4th 1833, 1839 (1993))). The defendant herein has met the "special or
19 different circumstances" prong of Section 1008, reconsideration should be granted, the Order
20 revoked and a new order entered granting this Motion.

21 **3. LIBERAL TREATMENT OF PRO SE PLEADINGS**

22 Additionally, because the defendant defends this case pro se, the Court must construe
23 her filings "liberally" and interpret them "to raise the strongest arguments that they suggest."
24 Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006); see also Ruotolo v.
25 I.R.S., 28 F.3d 6, 8 (2d Cir. 1994) (explaining that pro se litigants should be afforded "special
26 solicitude" because they are not represented by counsel).

27 Pro se pleadings generally are held to less stringent standards than those applied to
28 members of the Bar; in reviewing a pro se litigant's motion the court must read the motion less
stringently than it would an attorney's. See Hughes v. Rowe, 449 U.S. 5, 9-10 (1980) (per
curiam); Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (per curiam); Madyun v. Thompson,

1 657 F.2d 868, 876 (7th Cir. 1981).. See *Twyman v. Crisp*, 584 F.2d 352, 358 (10th Cir. 1978)
2 (per curiam); *Tarlton v. Henderson*, 467 F.2d 200, 201 (5th Cir. 1972) (per curiam). A rule
3 mandating that judges inform pro se litigants of their
4 obligations under Rule 56(e) is necessitated by a layman's inability to discern his obligations
5 from reading the rule, See Ross, 777 F.2d at 1219; *Lewis v. Faulkner*, 689 F.2d 100, 102 (7th
6 Cir. 1982); *Zeigler & Hermann*, supra note 4, at 202.⁵

7
8 Pro se litigants' labor under the disadvantage of being unable to read procedural rules
9 effectively,⁶ the necessity of judicial notification to pro se litigants is more apparent as the pro
10 se litigant is doubly handicapped by his inability to discern his obligations by his
11 misunderstanding of the consequences of the errors in his pleadings.

12
13 This court not granting Defendant's motion would lead to a miscarriage of justice as the
14 court is viewed with utmost respect and with an expectation that the court would do very fair
15 and equitable justice to the person coming before it or pleading for genuine redress of any
16 complaint of grievance. The court should always maintain a fair view that should not only do
17 fair justice but the justice should be pronounced in such a manner that a clear message should
18 be made to everyone that justice is made. The court is the most sanctified body to deliver justice
19 and has always maintained a very strict view regarding fairness in trial procedures and trial
20 fairness in time pass.

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27 ⁵ But see *Jacobsen v. Filler*, 790 F.2d 1362, 1366- 67 (9th Cir. 1986) (pro se litigant expected to recognize
28 summary judgment obligations without assistance from court). Some courts requiring federal judges to advise
pro se litigants of their obligations under Rule 56(e) derive the mandate from the Federal Rules of Civil
Procedure. See, e.g., Ross, 777 F.2d at 1219 ("a gloss on the federal rules"); Lewis, 689 F.2d at 101 ("fair
inference from the rules").

⁶ , See 1980 Aldisert Report, supra note 12, at 64 (pro se litigants not expected to understand rules).

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CONCLUSION

For all the foregoing reasons, Defendant respectfully request that reconsideration be granted and the Unlawful Detainer (Commercial) Order against her be vacated as a matter of law.

Dated: **October** _____ **2020**

Respectfully submitted;

JIAYI LIU

Jamboree Business Centre
2691 Richter Avenue, Suite 115.
Irvine CA 92606
Defendant in Pro Per

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this
October _____ **2020**, to all parties on the attached service list.

SERVICE LIST

Julie A. Ault (SBN 186914)
Leslie F. Vandale (SBN 238823)
7 Corporate Plaza
Newport Beach, CA 92660
Tel. (949) 719-7212
Email: Lvandale@olenproperties.com
Attorneys for Plaintiff, Olen Commercial Realty Corp.

SAMPLE

JIAYI LIU

Jamboree Business Centre
2691 Richter Avenue, Suite
115.
Irvine CA 92606
Defendant in Pro Per

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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

Olen Commercial Realty Corp., a Nevada)
corporation,)
Plaintiff,)
vs.)
JIAYI LIU, an individual; and DOES 1 to 10,)
inclusive,)
Defendants)

Case No.: 30-2020-01160931-CL-UD-CJC

**DECLARATION OF _____ IN
SUPPORT OF MOTION FOR
RECONSIDERATION**

**[C.C.P. § 1008]
TIME;
DATE;
DEPT;
JUDGE; Glenn Mondo**

DECLARATION OF _____

1
2 I, _____ declare:
3

- 4 1. I make this declaration of my own personal knowledge, except where
5 stated on information and belief, and if called to testify in Court on these
6 matters, I could do so competently.
- 7 2. I am a friend to the Defendant and I have personal knowledge of the
8 matters deposed to here except where otherwise stated to be based on
9 information and belief.
- 10 3. I have conducted a diligent search of the defendant's case and have
11 made appropriate inquiries of others to inform myself in order to make
12 this Declaration.
- 13 4. The defendant resides in the city of Irvine, in the State of California.
- 14 5. On or about June 7, 2018, Defendant JIAYI LIU entered into a
15 written lease agreement with Plaintiff Olen Commercial Realty Corp, to
16 rent the real property located at 2691 Richter Avenue # 115, Irvine,
17 92606.
- 18 6. The lease commenced on June 7, 2018 and under the lease
19 agreement there is a clause for annual rent adjustment as follows;
20 beginning on July 1, 2019 through June 30, 2020 the minimum Monthly
21 Base Rent shall be \$2,999.00 and beginning on July 1, 2020 through
22 June 30, 2021 the minimum Monthly Base Rent shall be \$3,089.55. The
23 Monthly Base Rent set forth above does not include monthly Common
24 Area Operating Expenses of \$474.32.
- 25 7. The defendant has been fulfilling her obligations under the lease
26 agreement which includes adequate payment of the rent until the
27
28

1 breakout of COVID-19 in January 2020. The COVID-19 pandemic has
2 presented significant challenges to Defendant's business and employees.

3
4 8. On or about October, 2020, Plaintiff filed a complaint for unlawful
5 detainer- commercial against Defendant. Plaintiff alleged that Defendant
6 was wrongfully in possession of the premises. Before filing the said
7 Complaint, defendant was not served with the mandatory three (3) days
8 notice to pay rent or quit.

9
10 9. On October 21, 2020, the court granted Plaintiff's prayers and order
11 defendant to pay \$17547.00 past due rent, \$6048.00 hold over damages,

12
13 10. The mandatory notice to pay rent or quit was not served to the
14 defendant.

15
16 11. In the plaintiff's complaint, the plaintiff attached the mandatory
17 notice which is substantially defective.

18
19 12. Defendant presently move this Court to reconsider its Order based on
20 the new fact and circumstance above.

21 I declare, under penalty of perjury, that the foregoing is true and
22 correct under the laws of the State of California and that this declaration
23 was executed on October _____, 2020, in Irvine, California.

24
25 -----
26 Insert the address of the declarant here
27
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SAMPLE