

1 **TANIA BATACHE**
2 PO Box 1849
3 Los Angeles, CA 90001
4 Telephone: (310) 821-0337

5 **Defendant in Pro Per.**

6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**

9
10 ROQUE SANTI, an individual; MAFALDA
11 FONTANA, an individual,

12 **Plaintiffs,**

13
14 **vs.**

15 TANIA BATACHE an individual; All
16 Unknown Occupants, Tenants, and
17 Subtenants; DOES 1 through 10, inclusive,

18 **Defendant.**

CASE NO.:

Date Action Filed:

Assigned for All Purposes to
Hon.
DEPT.

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR
RECLASSIFICATION TO AN
UNLIMITED CIVIL CASE**

Date:
Time:
Dept.:
Res ID.:

Trial Date:

22
23 **NOTICE OF MOTION FOR RECLASSIFICATION TO AN UNLIMITED CIVIL CASE**

24 PLEASE TAKE NOTICE THAT on _____, 2021 at _____. or as
25 soon thereafter as the matter may be heard in Department _____ of the above-
26 entitled court, located at _____, defendant will move the Court for a
27 motion for demurrer order.

1 This motion is based upon this notice of motion and motion, the declarations of
2 _____ as well as the complete records contained in the court's file in this
3 matter, and such further evidence, whether documentary or oral, as may be presented at
4 the time of the noticed hearing.

5
6 Dated; February _____ 2021.

7
8 **TANIA BATAACHE**
9 PO Box 1849
10 Los Angeles, CA 90001
11 Telephone: (310) 821-0337

12 **Defendant in Pro Per.**
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2 **MEMORANDUM AND POINTS OF AUTHORITIES**

3
4 **1. INTRODUCTION**

5
6 Plaintiffs are husband and wife and are residents of the state of Maryland. Plaintiffs are not
7 even the legal owners of the real property located at 41 Clubhouse Avenue, Lower Unit, Venice CA
8 90291 (“Subject Property”). Plaintiffs brought this action for unlawful detainer against Defendant when
9 in fact they are not the legal owners of the property.

10 Plaintiffs claimed they obtained ownership of the Subject Property after a noticed and conducted
11 non-judicial foreclosure that occurred on or about June 20, 2019. Furthermore, Plaintiffs never
12 perfected their title to the Subject Property as reflected in a duly recorded Trustee’s Deed Upon Sale.

13
14
15 **2. ARGUMENT**

16 **A. LEGAL STANDARD FOR A MOTION FOR DEMURRER**

17 A Complaint is subject to demurrer where it fails to State Facts sufficient to constitute a cause of
18 action a demurrer is appropriate where a Plaintiff does not state facts sufficient to constitute a cause of
19 action, either because the complaint itself is incomplete or because it discloses a defense that would
20 bar recovery. Cal. Code Civ. P. § 430.10(e); see also Khoury v. Maly’s of Cal., 14 Cal. App. 4th 612,
21 615 (1993); Guardian North Bay, Inc. v. Superior Court, 94 Cal. App. 4th 963, 971-72 (2001);
22 McKenney v. Purepac Pharm. Co., 167 Cal. App. 4th 72, 77 (2008). Specifically, the plaintiff “must
23 set forth factual allegations that sufficiently state all required elements of [a] cause of action . . . and,
24 [a]llegations must be factual and specific, not vague or conclusory.” Rakestraw v. Cal. Physicians’
25 Serv., 81 Cal. App. 4th 39, 43 (2000). While the facts of the complaint are taken as true, the Court need
26 not assume the truth of “contentions, deductions or conclusions of law.” Aubry v. Tri-City Hospital
27 Dist., 2 Cal. 4th 962, 967 (1992).

1 “Where written documents are the foundation of an action and are attached to the complaint and
2 incorporated therein by reference, they become a part of the complaint and may be considered on
3 demurrer.” *Qualcomm, Inc. v. Certain Underwriters at Lloyd’s, London*, 161 Cal. 6 App. 4th 184, 191
4 (2008) (citation omitted) (internal quotation marks omitted).

5
6 **B. THIS COURT LACK JURISDICTION TO ENTERTAIN THIS MATTER AS**
7 **PLAINTIFF FAILED TO PROPERLY SERVE THE MANDATORY THREE (3) DAYS**
8 **NOTICE TO QUIT TO DEFENDANT**

9 Plaintiff failed to serve the mandatory three (3) days notice to pay rent or quit to the
10 defendant, therefore this complaint must be dismissed.

11
12 *Failure to provide a legally sufficient notice is a complete defense to an unlawful detainer.* “
13 Unlawful detainer is a unique body of law and its procedures are entirely separate from the procedures
14 pertaining to civil actions generally.” (*Losornio v. Motta* (1998) 67 Cal.App.4th 110, 115 [78
15 Cal.Rptr.2d 799].) “Sections 1159 through 1179a comprise what is commonly known as the *Unlawful*
16 *Detainer Act*; the statutes are ‘broad in scope and available to both lessors and lessees who have
17 suffered certain wrongs committed by the other.’” (*Palm Property Investments, LLC v. Yadegar* (2011)
18 194 Cal.App.4th 1419, 1424 [123 Cal.Rptr.3d 816]; see *Losornio v. Motta, supra*, at p. 113 .).

19 Strict compliance with the statutory notice requirements is a prerequisite to filing an unlawful
20 detainer action. (*Lamey v. Masciotra* (1969) 273 Cal.App.2d 709, 713 [78 Cal.Rptr. 344].) “Under
21 California statutory law a tenant is entitled to a 3-day notice to pay rent or quit which may be enforced
22 by summary legal proceedings (Code Civ. Proc., § 1161) but this notice is valid and enforceable only
23 if the lessor strictly complies with the specifically described notice conditions. (Code Civ. Proc., §
24 1162.)” (Ibid.) A copy of the notice of eviction must be attached to the complaint. (Code Civ. Proc., §
25 1166, subd. (d)(1)(A).) A complaint, that does not comply with the notice requirements, fails to state a
26 cause of action for unlawful detainer and the court lacks both personal and subject matter jurisdiction.
27 (*Kwok v. Bergren* 181 Cal.Rptr. 795].) in section 1161. That statute provides in pertinent part: “A tenant
28 of real property... is guilty of unlawful detainer. When he or she continues in possession... after a
neglect or failure to perform... conditions or covenants of the lease or agreement under which the

1 property is held... and three days' notice, in writing, requiring the performance of such conditions or
2 covenants, or the possession of the property, shall have been served upon him or her.... Within three
3 days after the service of the notice, the tenant... may perform the conditions or covenants of the lease...
4 and thereby save the lease from forfeiture....” (§ 1161, subd. (3). “Because of the summary nature of
5 an unlawful detainer action, a notice is valid only if the lessor strictly complies with the statutorily
6 mandated notice requirements.” (*Bevill v. Zoura (1994) 27 Cal.App.4th 694, 697, citing Kwok v.*
7 *Bergren (1982) 130 Cal.App.3d 596; see also Parsons v. Superior Court, supra, 149 Cal.App.4th Supp.*
8 *at p. 6.*

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

21 Also, in order to be legitimate, service of the three-day notice must “strictly comply” with
22 section 1162. (*Liebovich v. Shahrokhkhany (1997) 56 Cal.App.4th 511, 513.*) “Section 1162 provides
23 three methods of serving these notices: (1) by personal delivery to the tenant (personal service); or (2)
24 if the tenant is absent from his residence and usual place of business, by leaving a copy with a person
25 of suitable age and discretion at either place, and sending a copy through the mail to the tenant’s
26 residence (substituted service); or (3) if a place of residence and usual place of business cannot be
27 ascertained or a person of suitable age or discretion cannot be found there, then by affixing a copy in a
28 conspicuous place on the property and delivering a copy to a person residing there, if such a person can
be found, and also sending a copy through the mail addressed to the tenant at the place where the

1 property is situated (post and mail service). [Citations.]” (*Losorino v. Mata (1998) 67 Cal.App.4th 110,*
2 *113-114.*)

3 Herein Defendant was not served with the mandatory three (3) days notice to pay rent or quit,
4 which is the statutory notice requirements and is a prerequisite to filing an unlawful detainer action. In
5 Plaintiff’s complaint asserts that defendant was served by a process server, this is completely untrue
6 and misleading, Defendant was not served and never received the mandatory three (3) days notice to
7 pay rent or quit, Plaintiff’s proof of service is insufficient as it could not even Identify the person the
8 notice was delivered to. Mere stating that it left a copy of the Notice with or in the presence of a person
9 of suitable age and discretion is not enough.

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

14 The three-day notice does not contain the information required by Code of Civil Procedure §
15 1161[c](3) as it fails to describe with specificity the particular conditions or covenants alleged to have
16 been violated, thus it is fatally defective and will not support an unlawful detainer action. The complaint
17 fails to allege that the purported three (3) days notice was served in accordance with the provisions of
18 Civil Code §§ 1946, 1946.1 which requires the notice by served by certified or registered mail or by
19 one of the methods specified in Code of Civil Procedure §1162 and as a result Defendant did not receive
20 said notice, thus the complaint on its face fails to state a cause of action in unlawful detainer

21
22 The service of a valid three-day notice is an element of an unlawful detainer action that must be
23 proven by the lessor at trial. (*Palm Property Investments, LLC v. Yadegar (2011) 194 Cal.App.4th*
24 *1419, 1425.*) “[P]roper service on the lessee of a valid three-day notice to pay rent or quit is an essential
25 prerequisite to a judgment declaring a lessor’s right to possession under section 1161, subdivision 2.
26 [Citations.] [Citation.] ‘A lessor must allege and prove proper service of the requisite notice.
27 [Citations.] Absent evidence the requisite notice was properly served pursuant to section 1162, no
28 judgment for possession can be obtained. [Citations.] [Citation.]” (*Ibid.*)

1
2 The California Code and California Code of Civil Procedure govern the circumstances under
3 which an Unlawful Detainer action may be filed. Statutory notice requirements for Unlawful Detainer
4 are strictly construed. C.C.P. § 1161, C.C.P. § 1442. One who seeks the summary remedy of unlawful
5 detainer, which involves, a “forfeiture” of the tenant’s right to possession, must strictly comply with
6 the terms of the requirements. (*Horton-Howard v. Payton* (1919) 44 Cal 108, 112 [186 P 167]).

7 The rule of liberal construction of pleadings provided by C.C.P. §452 is inapplicable in
8 unlawful detainer actions. Because Unlawful Detainer is an action seeking forfeiture and is a summary
9 proceeding in which the Defendant’s normal procedural rights are limited, the Courts strictly construe
10 the statutory procedures that regulate Unlawful Detainers and require strict compliance with all
11 statutory requirements. California Civil Code §1442; See also *Kwok v. Bergren* (1982) 130 Cal.App.3d
12 596, 599; *Briggs v. Electronic Memories & Magnetic* (1975) 53 Cal. App.3d 900, 905; *Liebovich v.*
13 *Shahrokhkany* (1997) 56 Cal.App.4th 511, 513. Stating correct amount due on the three-day notice is
14 a prerequisite to an action in unlawful detainer.

15
16 **C. THE COURT LACKS JURISDICTION OVER DEFENDANT BECAUSE PLAINTIFFS**
17 **SUMMONS AND AMENDED COMPLAINT FAILS TO STATE A CAUSE OF ACTION FOR**
18 **UNLAWFUL DETAINER.**

19 C.C.P. § 1166, sets forth the requirements for the Unlawful Detainer complaint.
20 To establish a cause of action for Unlawful Detainer, Plaintiff must plead in the Complaint
21 and prove the following elements:

- 22 • That Plaintiff has a possessory interest in the premises;
 - 23 • The existence of a landlord-tenant relationship between the Plaintiff and the Defendant;
 - 24 • Service of a proper notice to quit;
 - 25 • Expiration of the notice to quit, and non-compliance with the notice by the tenant.
- 26 (C.C.P. §1166)

27 As discussed above, Plaintiffs have failed to establish these elements in the
28

1 Complaint, due to the serious defects with the service of the notice to quit and a possessory interest in
2 the premises that would make him a successor at interest to the lease agreement. The Deed Upon Sale
3 recording of a correction is not a valid recording because the notarized signatures and plaintiffs names
4 identified on the substitution of the trustee do not match plaintiffs who brought the unlawful detainer
5 Action, but a pseudo name notarized by the trustee.

6 Plaintiffs cannot meet their burden of establishing a prima facie case for Unlawful Detainer,
7 therefore they cannot state a cause of action and this Summons and Amended Complaint should be
8 dismissed without leave to amend.

9
10 Also Plaintiffs, never received a lift of stay from the current chapter 13 case 2:20-bk-16753 and
11 that there is stay in place and the in rem-relief expired on 07-03-2020 under 11 U.S.C. § 362(d) and
12 the only lift of stay they were granted was for Manhattan Beach property on 10/13/2021 for which they
13 filed a request for lift of stay which is now on appeal and since Defendant is in possession they would
14 have need to file a request for lift of stay under 11 U.S.C. § 362(d) for the 41 clubhouse Ave, Venice
15 CA 90291 property as well.

16 **D. PLAINTIFF FAILED TO ADHERE TO THE UNLAWFUL DETAINER AND**
17 **FORECLOSURE SALES PROCEDURES PROVIDED BY §31.94**

18
19 The purchaser of leased property at a deed of trust foreclosure sale may bring an unlawful detainer
20 action against a tenant who is occupying the property. See CCP §1161a; Vella v Hudgins (1977) 20
21 C3d 251, 255, 142 CR 414 (CCP §1161a extends summary eviction proceedings beyond conventional
22 landlord-tenant relationship to include certain purchasers of property). The plaintiff-purchaser need
23 prove only that the sale was in compliance with CC §2924 and that he or she has thereafter duly
24 perfected title. Stephens, Partain & Cunningham v Hollis (1987) 196 CA3d 948, 952, 242 CR 251. A
25 recital in the trustee's deed that all the requirements of CC §§2924–2924.5 have been met is prima
26 facie evidence of compliance. CC §2924(c).

1 *Additional notice.* The trustee or authorized agent must also post and mail by first class, at least 20 days
2 before the sale of residential real property (nonjudicial foreclosure), an additional notice to the
3 occupants concurrently with the mailing of the notice of trustee sale if the billing address for the note
4 is different from the property address. CC §2924.8(a)(1), (e). The additional notice must include
5 statements that (1) the new owner may give the tenant a new lease or rental agreement or provide a 90-
6 day eviction notice, and (2) the tenant may have a right to stay longer than 90 days. If the tenant has a
7 fixed-term lease, the new owner must honor the lease unless the owner will occupy the property as a
8 primary residence or under other limited circumstances. CC §2924.8(a)(1); see CC §2924.8(a)(2)
9 (operative March 16, 2013, or 60 days after internet posting). The additional notice must also state that
10 some cities have a “just cause for eviction” law, under which all rights and obligations under the lease
11 or tenancy continue after foreclosure. CC §2924.8(a)(1).

12 *Notice from purchaser.* The purchaser must give a tenant, who was not the former owner, notice
13 that is equivalent to the term of the lease (e.g., weekly, monthly), but not exceeding 30 days. CCP
14 §1161a(c). If the occupant was the former owner, the purchaser may initiate the unlawful detainer with
15 a 3-day notice to quit. CCP §1161a(b)(3). Notwithstanding CCP §1161a, a tenant or subtenant in
16 possession of a rental housing unit under a month-to-month lease or periodic tenancy when the property
17 is sold in foreclosure must be given a written 90-day notice to quit. This requirement does not apply,
18 however, if any party to the note remains in the property as a tenant, subtenant, or occupant. CCP
19 §1161b(a), (d), (f). The federal “Protecting Tenants at Foreclosure Act of 2009” (Pub L 111-22, §§701–
20 704, 123 Stat 1632) provides similar protections to bona fides tenants. 12 USC §5220; see FDIC
21 Financial Institution Letter 56-2009 (when bona fide lease survives foreclosure). In this present case,
22 none of the required notice was issued to the defendant.
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1 **E. LIBERAL TREATMENT OF PRO SE PLEADINGS**

2 Additionally, because the defendant defends this case pro se, the Court must construe her filings
3 “liberally” and interpret them “to raise the strongest arguments that they suggest.” *Triestman v. Fed.*
4 *Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006); see also *Ruotolo v. I.R.S.*, 28 F.3d 6, 8 (2d Cir.
5 *1994*) (explaining that pro se litigants should be afforded “special solicitude” because they are not
6 represented by counsel).

7 Pro se pleadings generally are held to less stringent standards than those applied to members of
8 the Bar; in reviewing a pro se litigant's motion the court must read the motion less stringently than it
9 would an attorney's. See *Hughes v. Rowe*, 449 U.S. 5, 9-10 (1980) (*per curiam*); *Haines v. Kerner*, 404
10 *U.S. 519, 520-21* (1972) (*per curiam*); *Madyun v. Thompson*, 657 F.2d 868, 876 (7th Cir. 1981).. See
11 *Twyman v. Crisp*, 584 F.2d 352, 358 (10th Cir. 1978) (*per curiam*); *Tarlton v. Henderson*, 467 F.2d
12 *200, 201* (5th Cir. 1972) (*per curiam*). A rule mandating that judges inform pro se litigants of their
13 obligations under Rule 56(e) is necessitated by a layman's inability to discern his obligations from
14 reading the rule, See Ross, *777 F.2d at 1219*; *Lewis v. Faulkner*, 689 F.2d 100, 102 (7th Cir. 1982);
15 *Zeigler & Hermann, supra note 4, at 202*.¹

16 Pro se litigants’ labor under the disadvantage of being unable to read procedural rules
17 effectively,² the necessity of judicial notification to pro se litigants is more apparent as the pro se litigant
18 is doubly handicapped by his inability to discern his obligations by his misunderstanding of the
19 consequences of the errors in his pleadings.

20 This court not granting Defendant’s motion would lead to a miscarriage of justice as the court
21 is viewed with utmost respect and with an expectation that the court would do very fair and equitable
22 justice to the person coming before it or pleading for genuine redress of any complaint of grievance.
23 The court should always maintain a fair view that should not only do fair justice but the justice should
24

25 ¹ But see *Jacobsen v. Filler*, 790 F.2d 1362, 1366- 67 (9th Cir. 1986) (pro se litigant expected to recognize summary
26 judgment obligations without assistance from court). Some courts requiring federal judges to advise pro se litigants of
27 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”).

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

1 be pronounced in such a manner that a clear message should be made to everyone that justice is made.
2 The court is the most sanctified body to deliver justice and has always maintained a very strict view
3 regarding fairness in trial procedures and trail fairness in time pass.
4

5
6 **CONCLUSION**

7
8 Defendant has demonstrated that there are significant legal deficiencies in this case: the
9 Complaint fails to state a cause of action for Unlawful Detainer because the three-day notice upon
10 which this case is premised is fatally defective and was improperly served, and the Plaintiff has failed
11 to establish a possessory interest in the premises. For the foregoing reasons Defendant is entitled to an
12 order granting this Motion and an order dismissing this action without leave to amend.
13

14 **Dated; February _____, 2021.**

15 Respectively Submitted by;

16
17 _____
18 **TANIA BATACHE**
19 41 Clubhouse Avenue
20 Venice, CA 90291
21 Telephone: (310) 821-0337

22 **Defendant in Pro Per.**
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CERTIFICATE OF SERVICE

This statement is to certify that, **February** _____ **2021**, a copy of the foregoing has been e-mailed to all parties who have agreed to accept service electronically:

SERVICE LIST

Timothy M. Ryan, Bar No. 178059
Tadeusz McMahon, Bar No. 304699
THE RYAN FIRM
A Professional Corporation
2603 Main St, Suite 1225
Irvine, CA 92614
Telephone (949) 263-1800;
Fax (949) 872-2211

SAMPLES

TANIA BATACHE
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
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Defendant.

CASE NO.:

Date Action Filed:

Assigned for All Purposes to
Hon.
DEPT.

DECLARATION

Date:

Time:

Dept.:

Res ID.:

Trial Date:

DECLARATION OF _____

I, _____ declare:

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 a friend to the Defendant 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 the defendant's case and have made appropriate inquiries of others to inform myself in order to make this Declaration.
4. The defendant resides in the city of Venice, in the State of California.
5. Plaintiffs are husband and wife and are residents of the state of Maryland. Plaintiffs are not even the legal owners of the real property located at 41 Clubhouse Avenue, Lower Unit, Venice CA 90291 ("Subject Property"). Plaintiffs brought this action for unlawful detainer against Defendant when in fact they are not the legal owners of the property.
6. Plaintiffs claimed they obtained ownership of the Subject Property after a noticed and conducted non-judicial foreclosure that occurred on or about June 20, 2019. Furthermore, Plaintiffs never perfected their title to the Subject Property as reflected in a duly recorded Trustee's Deed Upon Sale.
7. However, Plaintiffs' complaint is defective on the ground that;
 - I. This court lack jurisdiction to entertain this matter as plaintiff failed to properly serve the mandatory three (3) days notice to quit to defendant.
 - II. The court lacks jurisdiction over defendants because plaintiff's summons and amended complaint fails to state a cause of action for unlawful detainer
 - III. Plaintiff failed to adhere to the unlawful detainer and foreclosure sales procedures provided by §31.94.
 - IV. The court needs to consider the liberal treatment of pro se pleadings

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 February _____, 2021, in _____ California.

Insert the address of the declarant here

SAMPLES