

PROPOSED TENTATIVE

On July 24, 2025, plaintiff Neighbor to Neighbor Homes, LLC (plaintiff), filed an unlawful detainer complaint against defendant Lilia H. Ortiz. Defendant Silvia Aragon Altamirano was added as a defendant pursuant to Code of Civil Procedure section 1174.25, subdivision (b). Both defendants answered. The court granted plaintiff's summary judgment motion on February 17, 2026 as to defendant Lilia Ortiz and on May 5, 2026 as to defendant Silvia Altamirano. Judgment was entered on February 17, 2026 and May 7, 2026, respectively. Notice of entry of judgment against both defendants was made on June 26, 2026. The property at issue is located at 333 Jullien Drive, Santa Maria CA 93454 (real property). A notice of appeal was filed on June 22, 2026.¹ On June 24, 2026, defendant Silvia Altamirano filed a motion to stay execution of the writ of possession pursuant to Code of Civil Procedure section 917.4 pending appeal, set for hearing on September 15, 2026. Defendant Altamirano also filed a request for an ex parte hearing, asking for an order shortening time on the motion for stay pending appeal and for a request for an interim stay. The court denied the ex parte request to shorten time (and apparently the interim stay) on June 29, 2026, and confirmed the hearing date for the present motion to be September 15, 2026. On July 17, 2026, plaintiff secured a writ of possession for the real property as to both defendants Lilia Ortiz and Silvia Altamirano. A "Return on Writ of Possession" was filed with the court by Santa Barbara County Sheriff Bill Brown, indicating that the writ of possession had been executed on July 9, 2026, by "placing the plaintiff in quiet and peaceful possession of the premises" on that date. According to the Sheriff's representative: "I returned said writ satisfied as to the plaintiff's possession only and with accrued costs of \$180." The return was executed on July 10, 2026 by the Sheriff Brown's authorized agent. Plaintiff filed opposition to the stay pending appeal on August 14, 2026. No reply has been filed as of this writing.

Initially, the court observes that defendant Altamirano's reliance on Code of Civil Procedure² section 917.4 as the basis for a stay pending appeal is misplaced. In the unlawful detainer context, section 1176, subdivision (a), rather than section 917.4, governs such a request. (See, e.g., *Selma Auto Mall II v. Appellate Department* (1996) 44 Cal.App.4th 1672, 1681, disapproved on another point in *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 660 [section 1176(a) rather than section 917.4 governs the propriety of the bonding requirements in the unlawful detainer context].)³ Pursuant to section 1176, subdivision (a), "an appeal taken by the defendant [i.e., the tenant] shall not automatically stay proceedings upon the judgment. Petition for stay of the judgment pending appeal shall first be directed to the judge

¹ The appeal was made to the Appellate Division of the Santa Barbara County Superior Court. (*Neighbor to Neighbor Homes, LLC v. Silvia Aragon Altamirano*, Case No. 25CV04625-APP.)

² All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

³ As noted more specifically by the *Selma Auto Mall II* court, "Section 1178 states that the general Code of Civil Procedure sections governing stays of enforcement in civil appeals [which include section 917.4] apply to appeal in unlawful detainer proceedings, except insofar as they are inconsistent with the unlawful detainer provisions [which includes section 1176]. Section 1176(a), the statute addressing stays of enforcement pending appeal in unlawful detainer actions, is inconsistent with the general provision, section 917.4, which addresses judgments directing delivery of real property. [Fn. omitted.] Section 917.4 provides that the judgment will ordinarily be stayed as a matter of right by furnishing bond, where section 1176(a) requires the appellant to show the trial judge that a stay is appropriate. Thus, section 1176(a) rather than section 917.4 governs the propriety of the bonding condition imposed. . . ." (*Selma Auto Mall II*, *supra*, at p. 1681.)

before whom it was rendered. *Stay of judgment shall be granted when the court finds that the moving party will suffer extreme hardship in the absence of a stay and that the nonmoving party will not be irreparably injured by its issuance.* If the stay is denied by the trial court, the defendant may file for an extraordinary writ with the appropriate appeals court. If the trial court or appellate court stays enforcement of the judgment, the court may condition the stay on whatever conditions the court deems just, but in any case it shall order the payment of the reasonable monthly rental value to the court monthly in advance as rent would otherwise become due as a condition of issuing the stay of enforcement. . . .” (Emphasis added.) In *Mehr v. Superior Court* (1983) 129 Cal.App.3d 1044, the court found extreme hardship was suffered by the tenant and no irreparable injury would be suffered by the landlord for purposes of a stay when the plaintiffs had initiated a separate lawsuit challenging title; absent a stay pending appeal, the plaintiffs and their three children would suffer irreparable injury because they would be evicted from a home lived in for 15 years. Further, a substantial legal issue was raised about the consolidation between the unlawful detainer and civil lawsuit. Prejudice to the landlord “would be minimal since he never intended to live in the property,” he had “been paid the rental value awarded in the judgment,” and plaintiffs were willing to continue to pay rent. (*Id.* at p. 1048.) By contrast, a stay is properly denied when the evidence showed that if plaintiff continued in possession, the injury to defendant would be irreparable and continuous. (*Candeias v. Superior Court in and for Merced County* (1920) 49 Cal.App. 580,583.)

Defendant has failed to identify, let alone brief, the appropriate standards under section 1176. Specifically, defendant has failed to address whether he will suffer *extreme hardship*, believing all he needed to present is a bond of reasonable value. That, as noted, is not the standard. (See, e.g., *St Clair v. Joos* (1924) 66 Cal.App.398, 403 [under section 1176, subd. (a), “the mere filing of an undertaking would not effectual a stay of execution”].) Additionally, plaintiff claims perfunctorily that if he is removed before the appeal is determined, such removal will cause “immediate and substantial harm.” Only perfunctory generalities are advanced – there is no evidence offered in support. Overlooked by plaintiff is the fact that when a landlord has secured a writ of possession before the tenant’s rights have been exhausted, the landlord assumes the risk that it will be subject to the full accounting and restitution if the judgment granting the writ of possession is reversed on appeal. Indeed, when a judgment is reversed on appeal, the appealing party is generally entitled to restitution for all rights and property lost by reason of the erroneous judgment, and these principles apply to unlawful detainer actions. (*Alonso v. Herrera* (2025) 117 Cal.App.5th Supp. 12 , ____ [340 Cal.Rptr.3d 135, 144.]) As a practical matter, in most unlawful detainer cases that are reversed on appeal, courts are not apt to reinstate the tenant’s right to possession of the premises when a significant amount of time has gone by during the pendency of the appeal, particularly if the lessor has already leased or sold the property. (*Ibid.*) At the same time, defendant does not automatically waive the ability to regain possession if the judgment on appeal is reversed. (*Shapell Socal Rental Properties, LLC v. Chico’s FAS, Inc.* (2022) 85 Cal.App.5th 198, 211 [restitution may include restoring an evicted tenant to possession of the leased premises].) Possession (irrespective of any stay) remains a potential remedy. More to the point, defendant has failed to address (and certainly has not shown) that monetary damages would be inadequate to fully compensate him for any erroneous unlawful detainer judgment if there is a reversal. (*Munoz v. MacMillan* (2011) 195 Cal.App.4th 648, 658 [for all practical purposes the only appropriate remedy for vacating tenants who prevail on appeal, but who failed to secure a stay, may be a monetary award sufficient to compensate the tenant for the property

rights not restored].) Given these briefing and evidentiary deficiencies, defendant has failed to show a stay of execution of the writ of possession associated with the unlawful detainer judgment on appeal is warranted or appropriate under section 1176, subdivision (a).

The court also denies the motion for stay pending appeal for a more fundamental reason. The writ of possession has been executed and was returned to the court by the Santa Barbara County Sheriff as wholly satisfied. (§ 712.050 [a return of a writ of possession is governed by § 699.560 [governing writs of execution].) While the judgment is not satisfied and the appeal therefore is not moot,⁴ actual possession of the property at this time is no longer an issue as the writ of possession has been fully executed by the Santa Barbara County Sheriff – that is, the Sheriff has fully restored the property to plaintiff via the writ of possession. A stay under these circumstances would be an idle act (and thus moot). (See, e.g., *Conniff v. Superior Court of Cal. In and for Alameda County* (1928) 90 Cal.App. 169, 175 [writ is not fully executed unless defendant and his property are fully removed from the premises].) While it is true that possession of premises cannot be given unless personal property is moved from the premises (*Lee Chuck v. Quan Wo Chong Co.* (1889) 81 Cal. 222, 229; see also *Shemanski v. Sair* (1954) 124 Cal.App.2d Supp. 885, ___ [268 P.S. 576, 577] [same]), there is no suggestion from the return (or any other evidence before the court) that personal property remains on the real property. All indications are the writ was fully executed, rendering defendant's request moot. (*Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557 [actual controversies may be rendered moot by events occurring after the notice of appeal was filed]; see also *Mihans v. Municipal Court* (1970) 7 Cal.App.3d 479, 483, fn. 2 [a writ of possession in an unlawful detainer action is moot when the tenants "have abandoned the premises and that [the landlord] has regained possession of the premises"].) Accordingly, there is nothing to stay.

For these reasons, the court denies defendant's request to stay the writ of possession pending appeal.

⁴ Defendant in opposition reaches too far with this argument. It claims that the judgment has been satisfied, and thus, the court loses jurisdiction. Not so. If the Appellate Division reverses and remands to the trial court to determine the appropriate remedy for defendant(s), it may well be appropriate to award restitution (which potentially includes repossession and/or monetary compensation) to defendants. The more focused point for our immediate purposes, therefore, is this – if the writ of possession has been executed, returned, and thus satisfied, a stay of that writ becomes an idle act.