
PARTIES/ATTORNEYS

Plaintiff	Autumn Glen Garden Society	Nicholas J. Wolfesen
Defendant	Isidro B. Chavez <i>aka Isidro Borrayo Chavez</i>	Pro Per

PROPOSED TENTATIVE

In an amended first complaint filed November 15, 2023, plaintiff Autumn Glen Garden Society (plaintiff) sued defendant Isidro B. Chavez (aka Isidro Borrayo Chavez) (defendant) for payment of dues and assessments, as well as common counts, associated with a condominium association. Defendant was in arrears for \$3,186.51. On May 1, 2024, after defendant failed to answer and failed to appear, the court entered a default judgment for damages of \$3,186.51, including \$1,180 in general damages, \$2,878.75 in attorney's fees, and costs of \$687.36, for total judgment of \$7,932.62. An abstract of judgment was issued on June 3, 2024, in that amount, and writs of execution in that amount were issued on July 11, 2024, and February 19, 2025.

On June 13, 2025, plaintiff filed a request for an order of sale of defendant's dwelling, pursuant to Code of Civil Procedure section 704.750, et seq (all further statutory references are to this Code). In plaintiff's verified application, plaintiff identifies the amount of the judgment - \$7,932.62, with interest accruing at 7 percent per day from May 1, 2024. Defendant's dwelling is located at 2201 Lily Lane, Santa Maria, 93455 (property), and plaintiff includes its legal description. Plaintiff indicates that on May 13, 2025, a notice of levy in the judgment amount was made by the Santa Barbara County Sheriff's Officer, sent to plaintiff's counsel. The application indicates that a court order for sale of the dwelling is required because defendant owns and resides at the property; that a homestead exemption has not been requested on the property; that a deed of trust in favor of Federal Savings Bank, in the original amount of \$292,019 was recorded on March 13, 2007, although a substitution of trustee (naming Regional Service Corporation as trustee) was recorded on November 7, 2011; and that an "Assignment of Deed of Trust" was recorded on December 17, 2018, assigning the deed of trust to Wilmington Saving Fund Society, FSB DBA Christiana Trust, with all interest, all liens, and any rights due, which is for the original \$292,019. The verified application also details the history of defendant's delinquent fees, including a notice of delinquent assessment for \$785.02 recorded on November 7, 2022, an abstract of judgment, as well as several court judgments entered against defendant (Case No. 17CV02921, 18CV06061, 18CV00788, 1313870, and (the present case) 23CV03667. Plaintiff contends the fair market value of the real property is between \$685,000 and \$730,000, and this amount "is sufficient to pay" plaintiff's judgment in full. A notice of hearing (including all documents associated with the application for order of sale of dwelling) was served on defendant by mail on June 26, 2025.

Accompanying the verified application are two declarations. The first declaration is from attorney Nicolas Wolfesen, plaintiff's attorney, which includes four exhibits, as follows:

- Exhibit A is the abstract of judgment issued in this matter on June 3, 2024.
- Exhibit B includes a document from California Title Association, which summarizes a number of records/transactions implicating the property, and includes copies of the following recorded documents: 1) the grant deed recorded on December 23, 2004; 2) a deed of trust, recorded March 13, 2007, with exhibits; 3) a substitution of trustee, recorded November 7, 2011; 4) an assignment of deed of trust, recorded on December 17, 2018; 5) a “Notice of Delinquent Assessment[,]” recorded on November 7, 2022; 6, 7, 8, and 9) “Abstracts of Judgment” obtained in *TD Bank USA, N.A. v. Chavez*, Case No. 17CV02921, for \$1,735.90; *Cavalry SPV I, LLC v. Chavez*, Case No. 18CV06061, for \$2,180; *Cavalry SPV I, LLC v. Chavez*, Case No. 18CV00788, for \$2,749.01; *Autumn Glen Garden Society v. Chavez*, Case No. 1313870, for \$27,961.07; 10) a “Notice of Levy” sent by the Santa Barbara County Sheriff to judgment creditor indicting a levy of \$36,805.34 on real property; 11) a Writ of Execution in Case No. 1313870, issued on January 5, 2021; and 12) an “Abstract of Judgment” in *Autumn Glen Garden Society v. Chavez*, Case No. 23CV03667 (in the present matter, for \$7,932.6).
- Exhibit C consists of the “Writ of Execution” obtained in Case No. 23CV03667 (this matter), issued on February 19, 2025, for the judgment amount due of \$7,972.62.
- Exhibit D consists of two documents. The first is the notice of levy sent by the Santa Barbara County Sheriff to plaintiff’s counsel (entitled “Notice to Judgment Creditor Request for Application for Order for Sale of Dwelling (CCP 704.750),” mailed on May 13, 2025, indicating that a levy on the real property (2021 Lily Lane, Santa Maria) has been performed “in accordance with your written instructions” (based on the judgment received in this case); and indicating that plaintiff has 20 days after service to obtain a judicial order for sale of the real property. The second document, also sent to the plaintiff judgment creditor by the Santa Barbara County Sheriff and mailed on May 13, 2025 is entitled “Request for Real Property Lienholder Information on Real Property to be Sold Not Subject to the Right of Redemption[,]” again involving the real property in this matter, and asks for “an addendum to your original letter of instruction by supplying us with a list of names and addresses of all persons having liens on the aforementioned real property which are on record with the County Recorder’s Office as to the date of levy. . . .”

The second declaration is from Paul Munoz, who is a real estate broker and was hired to prepare a “Broker’s Price Opinion” for the fair market value of 2021 Lily Lane, Santa Maria. He has been a licensed real estate broker for 20 years, and he estimates the fair market value of the real property is between \$685,000 and \$720,000 in an “as is” condition. Attached to Mr. Munoz’s declaration are listing details and a “Comparative Market Analysis” report.

The court need not detail the necessary requirements mandated under the relevant statutory scheme, and what determinations this court must make for purposes of the sale of the dwelling house at issue, because plaintiff’s application for issuance of an order of sale is untimely. (See, e.g., *Kahn v. Berman* (1988) 198 Cal.App.3d 1499, 1508 [explaining the court

must ultimately determine whether the dwelling is exempt from the homestead exemption, must determine the fair market value of the property and make an order for sale].) Exhibit D attached to Mr. Wolfson's declaration (as noted above) indicates that the notice of levy, triggering the judgment creditor's duty to file a request for an order of sale (the document titled "Notice of Judgment Creditor Request for Application for Order for Sale of Dwelling" pursuant to Code of Civil Procedure section 704.750) was mailed on May 13, 2025. The "Verified Application for Issuance for Order of Sale of Dwelling" was not filed with the court until June 13, 2025.

Section 704.750, subdivision (a) expressly provides in full as follows: "Promptly after a dwelling is levied upon (other than a dwelling described in subdivision (b) of Section 704.740^[1]), the levying officer shall serve notice on the judgment creditor that the levy has been made and that the property will be released unless the judgment creditor complies with the requirements of this section. Service shall be made personally or by mail. Within 20 days after service of the notice, the judgment creditor shall apply to the court for an order for sale of the dwelling and shall file a copy of the application with the levying officer. **If the judgment creditor does not file the copy of the application for an order for sale of the dwelling within the allowed time, the levying officer shall release the dwelling.**" (Emphasis added.) As observed in Ahart, California Practice Guide: Enforcing Judgments and Debt (The Rutter Group 2025), ¶ 6:762, "the property will be *released* (and a new levy will have to be made) if the judgment creditor fails to timely comply with both of these steps." (Italics in original.) And as further observed in *Meyer v. Sheh* (2022) 74 Cal.App.5th 830, 836, fn. 3, a creditor has only 20 calendar days² from the date of being served with notice of the levy on the debtor's dwelling (here by the Santa Barbara County Sheriff) to file an application for an order for sale of the dwelling (extended five calendar days for service by mail) (§§ 704.750, subd. (a), 684.120, subd. (b)(1)). (*Meyer v. Sheh* (2022) 74 Cal.App.5th 830, 836, fn. 3.)

Plaintiff creditor failed to comply with these strict timelines. It had 25 days from the notice of levy mailed on May 13, 2025 to seek a court order – meaning the application for a judicial order of sale had to be submitted no later than June 7, 2025; as June 7, 2025 was a Saturday, plaintiff had until Monday June 9, 2025, to file its request. Plaintiff waited until June 13, 2025. The Legislature has clearly prescribed the remedy for a judgment creditor's failure to comply with these strict timeframes – release of the levy, meaning (as noted in Ahart), the judgment creditor must seek a new levy and thereafter submit a new request for a judicial order.

¹ Section 704.740, subdivision (b) provides that "if the dwelling is personal property or is real property in which the judgment debtor has a leasehold estate with an unexpired term of less than two years at the time of levy: [¶] (1) A court order for sale is not required and procedures provided in this article related to the court order for sale do not apply. [¶] (2) An exemption claim shall be made and determined as provided in Article 2 (commencing with section 703.510)." The real property at issue at 2201 Lily Lane, Santa Maria is not personal property, and defendant's interest does not involve a leasehold. The timing provisions of section 704.750, subdivision (a) are applicable here.

² It is settled that in the absence of language specifying "court days," a statutory reference to "days" means "calendar days." (*Iverson v. Superior Court* (1985) 167 Cal.App.3d. 544, 548; see also *In re P.R.* (2010) 187 Cal.App.4th 1264, 1276.) The language in section 740.750, subdivision (a) uses the generic term "days," meaning "calendar days."

There is no margin for error. (8 Witkin, California Procedure (6th ed. 2025), Enforcement of Judgment, § 251 [“Promptly after the dwelling is levied on, the levying officer must serve notice, either personally or by mail, on the judgment creditor, to the effect that the levy has been made and the property will be released unless the creditor applies to the court for an order for sale and files a copy of the application with the levying officer within 20 days after service of the notice. **If the copy of the application is not timely filed, the levying officer must release the dwelling**” [emphasis added].)³

Accordingly, the court denies plaintiff’s request for an order of sale, and directs the dwelling be released from the levy. Plaintiff creditor will have to make another application for levy with the Santa Barbara County Sheriff, keeping in mind that thereafter it must strictly comply with the statutory timeliness after a notice of levy is provided. Plaintiff is directed to provide a proposed order for signature commensurate with the court’s conclusions.

³ *In re Marriage of Schenck* (1991) 238 Cal.App.3d 1474, 1481, cited Witkin on these points favorably when it concluded that pursuant to section 740.750, subdivision (a), “the levying officer must serve notice on the judgment creditor that the levy has been made and the property will be released from the levy unless the creditor applies to the court for an order of sale. . . .”