
PARTIES/ATTORNEYS

Petitioner	David Paredes	Captain Thomas Watson California Military Department, Legal Support Command
Respondent	Freedom Mortgage Corporation	

TENTATIVE RULING

For all the reasons discussed below, the matter must be continued for the following: (1) proof of service in the manner of a summons; (2) a supplement with facts that show why petitioner's ability to pay his financial obligation or liability to respondent (here, his mortgage company) has been materially affected by the most current period of military service. This means petitioner must provide monthly income and expenses, comparing pre-deployment income and expenses with post-deployment income (including both pay and allowances) and expenses.

Petitioner's counsel is directed to appear to address these issues and discuss a date for continuance of this petition.

David Paredes is a reservist of the United States military reserves. On July 15, 2025, he was ordered to report on August 6, 2025, for full-time active duty service as a member of Operation Spartan Shield for the next 338 days. His duty station is Camp Arifjan, Kuwait. He petitioned this court on October 7, 2025 for an order for deferral of payment of his home loan on property pursuant to Military and Veterans Code section 409.3, which provides:

“ A service member may, at any time during their most current period of military service or within six months thereafter, petition a court for relief in respect of any obligation or liability incurred by the service member before the effective date of the orders for their most current period of military service . . . ”

(Mil. & Vet. Code, § 409.3, subd. (a).)

The court found the proof of service was deficient and that a supplement was necessary to make the required finding that the servicemember's ability to comply with the terms of the mortgage has been materially affected by their military service. A subsequent petition was file on December 30, 2025. The deficiencies remain.

The petition shall be served at least 10 days before the hearing. The respondent shall file and serve a response to the petition at least five days before the hearing. (*Id.*, subd. (b).) The Notice of Hearing on the petition is a Judicial Council form. It similarly provides: “The petition must be served in the manner of a summons at least 10 days before the hearing set below.” (See also, Code Civ. Proc., § 410.50, subd. (a).) Absent such service, the court has no jurisdiction to make this order. Here, the notice was again served by US Mail. (Proof of Service filed December 22, 2025.) The court previously noted the deficiency with this manner of service. (See Proof of Service filed October 16, 2025.) Service by mail is insufficient unless there is also an acknowledgement of receipt. (See Code Civ. Proc., § 415.30.)

On the merits, if the court finds that the servicemember's ability to comply with the terms of the mortgage has been materially affected by their military service, it may grant a deferment of payments for the duration of the service period. During this deferment, penalties for nonpayment of principal or interest are prohibited, and interest cannot be charged or accumulated unless otherwise ordered by the court. Foreclosure or repossession of property on which payments have been deferred is also prohibited during the deferment period (Mil. & Vet. Code § 409.3.) Petitioner must show that his or her “ability [] comply with the terms of any such obligation or liability . . . has been materially affected by reason of their most current period of military service.” (Mil. & Vet. Code, § 409.3, subd. (c).) Although there are no cases considering what kind of showing is sufficient, the interpretation of the companion federal statute suggests that something more than conclusory statements is required. (See *Brooklyn Trust Co. v. Papa* (N.Y. Sup. Ct. 1941) 33 N.Y.S.2d 57; *Queens County Sav. Bank v. Thaler* (N.Y. Sup. Ct. 1943) 181 Misc. 229—where defendant, who was a first lieutenant in the dental corps and who received \$3,408 annually, failed to show his income prior to his induction and that his ability to pay interest on a mortgage had been materially affected thereby, defendant's application for an order pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, staying mortgagee from proceeding with foreclosure action, was denied.)

Here, petitioner states: “As a Sergeant First Class, I make less money than I previously made, particularly because I now have significant expenses that I have incurred due to my posting overseas. I normally could perform duties I now have to pay others to complete, which makes it difficult to pay the complete mortgage in question.” (Parades Decl., ¶ 7.) Petitioner has added a narrative; stated that his salary does not meet his expenses; listed his expenses in a serial fashion, such as total credit card balances, total for home repairs to date, etc. This is insufficient. To make the required finding, the court needs monthly income and expenses, comparing pre-deployment income and expenses with post-deployment income (including both pay and allowances) and expenses. Without this basic information, the court cannot grant the petition.

Petitioner's counsel is directed to appear at the hearing to address these issues and discuss a date for continuance of this request.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara.](#))