

1 [Your Name]
2 [Your Street Address]
3 [Your City, State, ZIP Code]
4 [Telephone Number]

5 In Propria Persona

8 **Superior Court of California,**
9 **County of Fresno**

10) **Case Number:** [Your Case Number]
11)
12 [Your Name])
13 **Petitioner**) **EX PARTE APPLICATION TO**
14 **vs.**) **MODIFY A MUTUAL STAY-AWAY**
15) **AGREEMENT; DECLARATION IN**
16 [Opposing Party's Name]) **SUPPORT THEREOF; POINTS AND**
17 **Respondent**) **AUTHORITIES**
) **CCP §§ 527, 527.6; Rules of**
) **Court 3.1200 et seq.**
) **Date:** [Leave Blank]
) **Time:** [Leave Blank]
) **Dept:** [Department Number]

18
19 Petitioner, [Your Name], hereby
20 applies to the Court for an ex parte order to modify the Mutual
21 Stay-Away Agreement dated [Date of Mutual Stay-Away Agreement] to
22 prevent irreparable harm to me from Respondent, [Opposing
23 Party's Name], in accordance with Code of
24 Civil Procedure Sections 527, 527.6.

Check the box
that applies

25 I have not made any previous ex parte applications to the
26 Court in this matter; or
27 I have made previous ex parte application(s) to the Court
28 in this matter and the Court took the following action(s):

EX PARTE APPLICATION TO MODIFY A MUTUAL STAY-AWAY AGREEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[If you made previous ex parte applications to the court, list them here. Also explain what actions, if any, the Court took on previous applications.]

This Application is based upon the supporting Declaration, the attached Points and Authorities, and upon all the papers and records on file herein.

Dated: [Date you signed this page]

[Your PRINTED name]

[Your SIGNATURE]

Printed Name

Signature of Petitioner

1 **DECLARATION IN SUPPORT OF APPLICATION AND NOTICE**

2 I, [Your Name] _____, declare:

3 I am the Petitioner in the above-referenced matter, and
4 this declaration is in support of my application to modify the
5 Mutual Stay-Away Agreement dated [Date of Mutual Stay-Away Agreement] _____ in the
6 matter here.

7 Prior to [Date of Mutual Stay-Away Agreement] _____, Defendant/Respondent
8 harassed me in the following manner: [List incidences of Harassment by
9 the Opposing Party that resulted in your requesting the modification.]
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____.

19 I filed a Request for Civil Harassment Restraining Orders
20 with the Court on [Date you filed Request for TRO/RO] _____. The parties
21 entered into a Mutual Stay-Away Agreement on [Date of Mutual Stay-Away Agreement] _____.

22 After [Date of Mutual Stay-Away Agreement] _____, Respondent has
23 continued to harass me in the following manner: [List incidences
24 of Harassment that you believe violate the Mutual Stay-Away Agreement. If you need more
25 room, you can continue on the next page.]
26 _____
27 _____
28 _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In order to avoid irreparable harm to me, I request that the Mutual Stay-Away Agreement dated [Date of Mutual Stay-Away Agreement] be modified in accordance with Code of Civil Procedure Sections 527, 527.6, an order enjoining Respondent from harassing Petitioner be issued and remain in effect until a hearing may be held on the Request for Civil Harassment Restraining Orders, and such other relief as may be deemed just and proper by the Court.

NOTICE REQUIREMENT, RULE 3.1204

I notified the Respondent of this Ex Parte Application for Modification of Mutual Stay-Away Agreement by _____ (telephone, fax, in person) on _____, 20__ at _____ a.m./p.m. and advised him/her of my intent to request a hearing. The Respondent indicated he/she WILL WILL NOT appear to oppose this application; or **If you did notify the Opposing Party, check if he/she will or will not appear at ex parte hearing.**

I attempted in good faith to inform the Respondent but was unable to do, such attempt(s) made in the following manner:
[Detail your attempt(s) to tell the Opposing Party about the time, date, and place of the hearing on this Ex Parte Application. If you need more room, you can continue on the next page.]

Check one of these boxes and complete as required.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

_____.

I will serve Respondent with this ex parte application at the first reasonable opportunity.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

Dated: [Date you sign this page] _____

[Your PRINTED Name] _____

[Your SIGNATURE] _____

Printed Name

Signature of Petitioner

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 AN INJUNCTION AND TEMPORARY RESTRAINING ORDER SHOULD BE
3 ISSUED BECAUSE PETITIONER HAS SUFFERED HARASSMENT BY RESPONDENT
4 AS SET FORTH IN PETITIONER'S DECLARATION AND GREAT/IRREPARABLE
5 HARM WOULD RESULT TO HIM/HER IF A TEMPORARY RESTRAINING ORDER
6 WAS NOT ISSUED BECAUSE [Explain the HARM you believe will result if the harassment
7 by the Opposing Party continues.]
8
9

10 **A. TRO and Injunction Available for Harassment.** A person
11 who has suffered harassment, as the term is defined in Code of
12 Civil Procedure Section 527.6(b), may seek a temporary
13 restraining order and an order after hearing prohibiting
14 harassment as provided in this section (Code Civ. Proc. §
15 527.6(a)).

16 **B. Harassment Defined.** "Harassment", for purposes of Code
17 of Civil Procedure Section 527.6, is unlawful violence, a
18 credible threat of violence, or a knowing and willful course of
19 conduct directed at a specific person that seriously alarms,
20 annoys, or harasses the person, and that serves no legitimate
21 purpose. The course of conduct must be that which would cause a
22 reasonable person to suffer substantial emotional distress, and
23 must actually cause substantial emotional distress to the
24 petitioner (Code Civ. Proc. § 527.6(b)(3); Brekke v. Wills
25 (2005) 125 Cal. App. 4th 1400, 1412-1414, 23 Cal. Rptr. 3d 609).

26 **C. Credible Threat of Violence Defined.** "Credible threat of
27 violence" ", for purposes of Code of Civil Procedure Section
28 527.6, is a knowing and willful statement or course of conduct

1 that would place a reasonable person in fear for his or her
2 safety or the safety of his or her immediate family, and that
3 serves no legitimate purpose (Code Civ. Proc. § 527.6(b)(2)).

4 **D. Temporary Restraining Order.** A temporary restraining
5 order may be issued with or without notice, based on a
6 declaration that, to the satisfaction of the court, shows
7 reasonable proof of harassment of the petitioner by the
8 respondent, and that great or irreparable harm would result to
9 the petitioner (Code Civ. Proc. § 527.6(d); see Code Civ. Proc.
10 § 2015.5 (use of declaration in lieu of affidavit)).

11 **E. Inclusion of Family and/or Household Members Residing**
12 **with the Petitioner.** In the Court's discretion, and on a showing
13 of good cause, a temporary restraining order or injunction
14 issued under Code of Civil Procedure Section 527.6 may include
15 other named family or household members (Code Civ. Proc. §
16 527.6(c)).

17 **F. Filing and Presentation of the Ex Parte Application.**
18 Notwithstanding the failure of an applicant to comply with the
19 requirements of Rule 3.1203 (Time of Notice to Other Parties),
20 the clerk must not reject an ex parte application for filing and
21 must promptly present the application to the appropriate
22 judicial officer for consideration (Rule 3.1205).

Court-stamped copies of the documents listed on Lines 9-10 must be served on the Opposing Party by someone over the age of 18 that is NOT a party to this case. For reference, the person that serves these documents is called a "Server".

PROOF OF PERSONAL SERVICE

I declare that I am a citizen of the United States of America and a resident of Fresno County, California. I am over the age of eighteen years and not a party to the within entitled action. My business address is: [Server's complete street address]

I personally served the within:

EX PARTE MOTION TO MODIFY MUTUAL STAY-AWAY AGREEMENT;
DECLARATION IN SUPPORT THEREOF; POINTS AND AUTHORITIES

on the parties in said action, by personally delivering to and leaving with the following persons in the County of Fresno, State of California, on the date set opposite their respective names, a true copy thereof to-wit:

[Opposing Party #1] [Complete address where Opposing Party #1 was served and the Date]

(Name) (Address) (Date)

[Opposing Party #2, if any] [Complete address where Opposing Party #2 was served and the Date]

(Name) (Address) (Date)

[Opposing Party #3, if any] [Complete address where Opposing Party #3 was served and the Date]

(Name) (Address) (Date)

I declare under penalty of perjury that the foregoing is true and correct. Executed on [Month, Day of Signature below] [Complete for Year], 20_____, at [City/Location where signed], California.

[Server's PRINTED Name]

[Server's SIGNATURE]

Printed Name

Signature of Declarant

EX PARTE APPLICATION TO MODIFY A MUTUAL STAY-AWAY AGREEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[Your Name]

[Your Street Address]

[Your City, State, ZIP Code]

[Your Telephone Number]

In Propria Persona

Superior Court of California,
County of Fresno

_____) Case Number: [Your Case Number]
[Your Name])
Petitioner) ORDER ON EX PARTE
vs.) APPLICATION TO MODIFY A
[Name of Opposing Party]) MUTUAL STAY-AWAY AGREEMENT
Respondent)
_____)

Good cause appearing:

IT IS ORDERED the Ex Parte Application to Modify a Mutual Stay-Away Agreement is hereby: Leave the rest blank for the Court to complete

GRANTED as follows: _____

Dated: _____

JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

This Application is based upon the supporting Declaration,
the attached Points and Authorities, and upon all the papers and
records on file herein.

Dated: _____

Printed Name

Signature of Petitioner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION IN SUPPORT OF APPLICATION AND NOTICE

I, _____, declare:

I am the Petitioner in the above-referenced matter, and this declaration is in support of my application to modify the Mutual Stay-Away Agreement dated _____ in the matter here.

Prior to _____, Defendant/Respondent harassed me in the following manner: _____

_____.

I filed a Request for Civil Harassment Restraining Orders with the Court on _____. The parties entered into a Mutual Stay-Away Agreement on _____.

After _____, Respondent has continued to harass me in the following manner: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In order to avoid irreparable harm to me, I request that the Mutual Stay-Away Agreement dated _____ be modified in accordance with Code of Civil Procedure Sections 527, 527.6, an order enjoining Respondent from harassing Petitioner be issued and remain in effect until a hearing may be held on the Request for Civil Harassment Restraining Orders, and such other relief as may be deemed just and proper by the Court.

NOTICE REQUIREMENT, RULE 3.1204

I notified the Respondent of this Ex Parte Application for Modification of Mutual Stay-Away Agreement by _____ (telephone, fax, in person) on _____, 20__ at _____ a.m./p.m. and advised him/her of my intent to request a hearing. The Respondent indicated he/she WILL WILL NOT appear to oppose this application; or

I attempted in good faith to inform the Respondent but was unable to do, such attempt(s) made in the following manner:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I will serve Respondent with this ex parte application at the first reasonable opportunity.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

Dated: _____

Printed Name

Signature of Petitioner

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 AN INJUNCTION AND TEMPORARY RESTRAINING ORDER SHOULD BE
3 ISSUED BECAUSE PETITIONER HAS SUFFERED HARASSMENT BY RESPONDENT
4 AS SET FORTH IN PETITIONER'S DECLARATION AND GREAT/IRREPARABLE
5 HARM WOULD RESULT TO HIM/HER IF A TEMPORARY RESTRAINING ORDER
6 WAS NOT ISSUED BECAUSE _____
7 _____
8 _____
9 _____.

10 **A. TRO and Injunction Available for Harassment.** A person
11 who has suffered harassment, as the term is defined in Code of
12 Civil Procedure Section 527.6(b), may seek a temporary
13 restraining order and an order after hearing prohibiting
14 harassment as provided in this section (Code Civ. Proc. §
15 527.6(a)).

16 **B. Harassment Defined.** "Harassment", for purposes of Code
17 of Civil Procedure Section 527.6, is unlawful violence, a
18 credible threat of violence, or a knowing and willful course of
19 conduct directed at a specific person that seriously alarms,
20 annoys, or harasses the person, and that serves no legitimate
21 purpose. The course of conduct must be that which would cause a
22 reasonable person to suffer substantial emotional distress, and
23 must actually cause substantial emotional distress to the
24 petitioner (Code Civ. Proc. § 527.6(b)(3); Brekke v. Wills
25 (2005) 125 Cal. App. 4th 1400, 1412-1414, 23 Cal. Rptr. 3d 609).

26 **C. Credible Threat of Violence Defined.** "Credible threat of
27 violence" ", for purposes of Code of Civil Procedure Section
28 527.6, is a knowing and willful statement or course of conduct

1 that would place a reasonable person in fear for his or her
2 safety or the safety of his or her immediate family, and that
3 serves no legitimate purpose (Code Civ. Proc. § 527.6(b)(2)).

4 **D. Temporary Restraining Order.** A temporary restraining
5 order may be issued with or without notice, based on a
6 declaration that, to the satisfaction of the court, shows
7 reasonable proof of harassment of the petitioner by the
8 respondent, and that great or irreparable harm would result to
9 the petitioner (Code Civ. Proc. § 527.6(d); see Code Civ. Proc.
10 § 2015.5 (use of declaration in lieu of affidavit)).

11 **E. Inclusion of Family and/or Household Members Residing**
12 **with the Petitioner.** In the Court's discretion, and on a showing
13 of good cause, a temporary restraining order or injunction
14 issued under Code of Civil Procedure Section 527.6 may include
15 other named family or household members (Code Civ. Proc. §
16 527.6(c)).

17 **F. Filing and Presentation of the Ex Parte Application.**
18 Notwithstanding the failure of an applicant to comply with the
19 requirements of Rule 3.1203 (Time of Notice to Other Parties),
20 the clerk must not reject an ex parte application for filing and
21 must promptly present the application to the appropriate
22 judicial officer for consideration (Rule 3.1205).

1 **PROOF OF PERSONAL SERVICE**

2 I declare that I am a citizen of the United States of
3 America and a resident of Fresno County, California. I am over
4 the age of eighteen years and not a party to the within entitled
5 action. My business address is: _____

6 _____.

7 I personally served the within:

8
9 EX PARTE MOTION TO MODIFY MUTUAL STAY-AWAY AGREEMENT;
10 DECLARATION IN SUPPORT THEREOF; POINTS AND AUTHORITIES

11
12 on the parties in said action, by personally delivering to
13 and leaving with the following persons in the County of Fresno,
14 State of California, on the date set opposite their respective
15 names, a true copy thereof to-wit:

16 _____		
17 (Name)	(Address)	(Date)
18 _____		
19 (Name)	(Address)	(Date)
20 _____		
21 (Name)	(Address)	(Date)

22
23 I declare under penalty of perjury that the foregoing is
24 true and correct. Executed on _____, 20_____, at
25 _____, California.

26
27 _____
28 Printed Name Signature of Declarant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In Propria Persona

**Superior Court of California,
County of Fresno**

)	Case Number: _____
)	
Petitioner)	ORDER ON EX PARTE APPLICATION TO MODIFY A MUTUAL STAY-AWAY AGREEMENT
vs.)	
)	
Respondent)	

Good cause appearing:

IT IS ORDERED the Ex Parte Application to Modify a Mutual Stay-Away Agreement is hereby:

GRANTED as follows: _____

Dated: _____

JUDGE OF THE SUPERIOR COURT

To the Person in 2 :

The court has granted the temporary orders checked as granted below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to \$1,000, or both.

5 Personal Conduct Orders

Not Requested Denied Until the Hearing Granted as Follows:

- a. You must **not** do the following things to the person named in 1
 - and to the other protected persons listed in 3:
 - (1) Harass, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, abuse, destroy personal property of, or disturb the peace of the person.
 - (2) Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.
 - (3) Take any action to obtain the person's address or location. If this item (3) is not checked, the court has found good cause not to make this order.
 - (4) Other (*specify*):
 - Other personal conduct orders are attached at the end of this Order on Attachment 5a(4).

- b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order. However, you may have your papers served by mail on the person in 1.

6 Stay-Away Order

Not Requested Denied Until the Hearing Granted as Follows:

- a. You must stay at least _____ yards away from (*check all that apply*):
 - (1) The person in 1
 - (2) Each person in 3
 - (3) The home of the person in 1
 - (4) The job or workplace of the person in 1
 - (5) The school of the person in 1
 - (6) The school of the children of the person in 1
 - (7) The place of child care of the children of the person in 1
 - (8) The vehicle of the person in 1
 - (9) Other (*specify*):

- b. This stay-away order does not prevent you from going to or from your home or place of employment.

7 No Guns or Other Firearms and Ammunition

- a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.
- b. You must:
 - (1) Sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.

This is a Court Order.



11 No Fee to Serve (Notify) Restrained Person **Ordered** **Not Ordered**

The sheriff or marshal will serve this Order without charge because:

- a. The Order is based on unlawful violence, a credible threat of violence, or stalking.
- b. The person in **1** is entitled to a fee waiver.

12 Number of pages attached to this Order, if any: _____

Date: _____

*Judicial Officer***Warnings and Notices to the Restrained Person in **2******You Cannot Have Guns or Firearms**

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control as stated in item **7** above. The court will require you to prove that you did so.

Notice Regarding Nonappearance at Hearing and Service of Order

If you have been personally served with this Temporary Restraining Order and form CH-109, *Notice of Court Hearing*, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this Temporary Restraining Order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the address in item **2**.

If this address is not correct or you wish to verify that the Temporary Restraining Order was converted into a restraining order at the hearing without substantive change, or to find out the duration of the order, contact the clerk of the court.

After You Have Been Served With a Restraining Order

- Obey all the orders.
- Read form CH-120-INFO, *How Can I Respond to a Request for Civil Harassment Restraining Orders?*, to learn how to respond to this Order.
- If you want to respond, fill out form CH-120, *Response to Request for Civil Harassment Restraining Orders*, and file it with the court clerk. You do not have to pay any fee to file your response if the Request claims that you inflicted or threatened violence against or stalked the person in **1**.
- You must have form CH-120 served by mail on the person in **1** or that person's attorney. You cannot do this yourself. The person who does the mailing should complete and sign form CH-250, *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served, signed by you and other persons who have personal knowledge of the facts. You may use form MC-030, *Declaration*, for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at www.courts.ca.gov/forms. If you do not know how to prepare a declaration, you should see a lawyer.

This is a Court Order.

- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make restraining orders against you that last for up to five years. Tell the judge why you disagree with the orders requested.

Instructions for Law Enforcement

Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Orders System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

Start Date and End Date of Orders

This order *starts* on the date next to the judge's signature on page 4. The order *ends* on the expiration date in item ④ on page 1.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the Proof of Service or confirms that the Proof of Service is on file; or
- The restrained person was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.



Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued, the orders must be enforced according to the following priorities (see Pen. Code, § 136.2; Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *EPO*: If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No Contact Order*: If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order*: If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order*: If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

(Clerk will fill out this part.)

Clerk's Certificate
[seal]

—Clerk's Certificate—

I certify that this *Temporary Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

