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REQUESTING A TEMPORARY RESTRAINING ORDER (CIVIL CASE)

Ask the Court to Immediately Prohibit an Action

This Guide includes instructions and sample forms. Links to download the fillable forms are at the end of this Guide. Additional copies of this Guide can be accessed at www.saclaw.org/tro-guide.

Important: If you need protection from abuse, DO NOT USE this guide. Domestic violence, civil harassment, workplace harassment, elder abuse, and dependent adult abuse have special forms.

BACKGROUND

A *temporary restraining order* (“TRO”) is an emergency (“*ex parte*”) court order prohibiting (“*enjoining*”) an action until a full hearing can be held for a longer-lasting *preliminary injunction*. A TRO is only used when there is a threat that irreparable harm will occur too soon to be prevented by a standard motion for injunction, which takes at least three weeks. When you request a TRO, you will simultaneously request an *order to show cause* (“OSC”) scheduling a follow-up hearing for the preliminary injunction, which can last until the case is resolved.

Before requesting a TRO, you must start a lawsuit regarding the underlying problem or conflict, so unless you have already sued the party you want enjoined, the first step is to file a *Complaint* in court. This guide does not go into detail about drafting the initial complaint, since it will need to fit your particular circumstances.

This Guide covers *ex parte* applications for a temporary restraining order in civil cases. For information on other types of *ex parte* applications, see our guide on “[Ex Parte Applications](#)” (www.saclaw.org/ex-parte-guide). If your situation is not an emergency, you will probably need to file a motion for preliminary injunction. For more on that, see our guide on “[Requesting a Preliminary Injunction by Noticed Motion](#)” (www.saclaw.org/preliminary-inj-guide).

Warning: This is a complicated procedure with several steps, and you will be expected to follow all the same rules as a lawyer would. You will need to do extensive research and writing—we simply provide the format. You will probably have to go to court and speak in front of the judge, the other side, and an audience. If you cannot or prefer not to do these tasks, you will need to hire an attorney.

Disclaimer: This Guide is intended as general information only. Your case may have factors requiring different procedures or forms. The information and instructions are provided for use in the Sacramento County Superior Court. Please keep in mind that each court may have different requirements. If you need further assistance consult a lawyer.

You may also need....

These Step by Step guides may also be helpful when requesting a Temporary Restraining Order:

- [Filing a New Civil Case](#)
- [Ask the Court for a Preliminary Injunction](#)
- [Fee Waiver Guide](#)

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STEP-BY-STEP INSTRUCTIONS

Step 1: Research and Write Your Complaint and Accompanying Papers

Skip to Step 2 if you have already started the lawsuit.

Write the Complaint. You need to sue the person or people whose actions threaten to violate your rights. There are a wide variety of possible causes of action that might apply in specific cases. You will find a list of resources at the end of this Guide which you can use to research the appropriate causes of action. For information on researching and writing a complaint, see our Guide "[Filing a New Civil Lawsuit](#)" on our website at www.saclaw.org/filing-new-civil-case.

Include one cause of action for an injunction against the party or parties to be enjoined (prohibited from acting). You can download a [Complaint including cause of action for injunctive relief](#) from our website (www.saclaw.org/complaint-injunctive-relief).

You will also need to fill out the standard Judicial Council forms [Summons](#) (SUM-100) and [Civil Case Cover Sheet](#) (CM-010). In Sacramento, you must include [Alternative Dispute Resolution Information Package](#) (CV-E-100) and, in unlimited cases, [Stipulation and Order to Mediation - Unlimited Civil](#) (CV-E-179) and [Program Case Notice -Unlimited Civil Case](#) (CV-E-143U).

If you want a *permanent injunction* at the end of the case, you *must* file an *unlimited civil case* even if you are not requesting \$25,000 or more in damages. A judge in a limited civil case can only issue TROs and preliminary injunction, not permanent injunctions. [Cal. Code of Civil Procedure § 86\(a\)\(8\)](#).

If you already filed a limited case, you must amend your complaint if you want a permanent injunction.

Steps 2, 3, and 4 can be done in whatever order is convenient as long as all three are finished and your paperwork is filed (Step 6) before 10 a.m. the day before your hearing.

Step 2: Research and Write Your TRO Application and Related Papers

The Complaint gets the case started. However, you must file an Ex Parte Application for a TRO and Order to Show Cause (OSC) to request that the court take immediate action.

The application consists of several parts. Samples are at the end of this Guide.

- **Ex Parte Application for Issuance of Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction.** This is a **brief** statement of when and where the hearing will be, what you are requesting (the TRO and OSC), and the basis for your request.
- **Memorandum of Points and Authorities.** The *Memorandum of Points and Authorities* explains the legal basis of the motion. In general, injunctive relief and temporary restraining

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orders are governed by [CCP §§ 525 et seq.](#) The grounds for a temporary restraining order are defined in [CCP § 527](#). You need to explain why your case fits these requirements.

- **Declaration.** The *Declaration* is your sworn statement. (You can also submit declarations from other people, if needed.) This is your evidence of why you need the TRO. It should state all the facts necessary for the judge to find in your favor. Attach any Exhibits that you wish the judge to consider. Depending on the circumstances of your case, your *Declaration* may be short or long, as long as it establishes to the judge's satisfaction that the TRO is necessary.
- **[Proposed] Order.** Along with your Application, you will need to submit a Proposed Order for the judge to sign.

Declaration Tips

Your *Declaration* should be consistent with the facts set forth in your Complaint, but is typically told in the first-person, since it is the statement of the person signing the declaration. Unlike the Complaint, which may contain facts for several causes of action, the Declaration supporting a request for a TRO should focus on the specific facts that the court must consider in deciding whether to grant a TRO. You will sign it under penalty of perjury. Each separate fact should be explained in a numbered paragraph, so that you can easily refer to that fact in other documents.

The *Declaration* is the most important part of the application, as the Declaration(s) and exhibits are likely the only thing the court will consider in deciding whether to grant your request. Because there is no right to oral argument in an ex parte hearing, you cannot count on arguing before the judge to fill in any missing details. Temporary restraining orders are granted only in circumstances where the applicant shows that he or she will suffer great or irreparable injury too soon to be stopped by a standard motion, so be sure to include the facts relevant for the court to determine this.

It is possible to have more than one supporting *Declaration*. If your Declaration contains statements that someone other than you or the opposing party made, you should obtain a Declaration from the person who made those statements to avoid problems with "hearsay." Chapter 16 of Nolo's book *Represent Yourself in Court*, listed as a resource at the end of this Guide, has a good, plain-English description of the evidence rules regarding hearsay. If obtaining a Declaration from the person who made the statements is not possible, you will need to research whether there is an exception to the hearsay rule that will allow the court to consider your evidence.

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Attaching Exhibits

Documents and photos can be attached to a Declaration as exhibits. In the Declaration, identify the document with language such as:

I am the registered owner of a 2002 Toyota Corolla, license plate number 3TXS596, Vehicle Identification Number (VIN) 7842084092307 ("the Vehicle"). A true and correct copy of the registration certificate is attached as Exhibit "A."

Photocopy the registration and write "Exhibit A" on the bottom of the first page. If an exhibit is longer than one page, number each page. If you have other documents to submit, use the same "true and correct" language to attach them as Exhibits B, C, and so forth. A number of rules of evidence govern whether the court may consider a document, typically requiring the declarant to set up a sufficient "foundation" for it to be considered within the declaration. Chapter 15 of *Represent Yourself in Court*, on exhibits, has a good explanation of what is necessary to establish to allow the court to consider different types of evidence.

Important: Sacramento County Superior Court requires each of the *Exhibits* in one of your sets of copies be separated by a rigid sheet of card stock with a tab identifying the letter of the exhibit on the bottom. Exhibits for the original and other copies should be separated by a blank piece of pleading paper with their exhibit letter or number (for instance, "Exhibit A") typed or written on the bottom of the page.

Note: The Law Library sells card stock with tabs at the Circulation Desk.



Step 3: Reserve Your Hearing Date by 10 a.m. the Day Before

You choose the date for your hearing, as long as you have time to notify the other party and file your paperwork by 10 a.m. the day before. The time of your hearing depends on your case number.

Ex parte applications are heard at the following places and times:

<p>Odd numbered cases: Dept. 53 (813 6th St., Sacramento, CA 95814) Monday through Friday at 9:00 a.m. 916-874-7858</p>	<p>Even numbered cases: Dept. 54 (813 6th St., Sacramento, CA 95814) Monday through Friday at 1:30 p.m. 916-874-7848</p>
-------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------

When you reserve your hearing date, also ask the court clerk to have the case file delivered to the department in time for the hearing.

If you have already started your case, you have been assigned a Law and Motion department (53 or 54, based on your case number). Call your department to reserve the hearing date. The deadline to do this is 10 a.m. the day before you want to have the hearing. Office hours are between 8:30 a.m. and 4:00 p.m. daily.

If you will be filing the lawsuit at the same time as the application, you can reserve the date with the clerk at the filing window (in Step 6) instead of calling. Ask the clerk to send the file to the department.

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Step 4: Notify Other Part(ies) and File Decl. Re Notice by 10 a.m. the Day Before

The party asking for a TRO should notify all other attorneys or self-represented parties of the hearing, typically by telephone, as early as possible—and no later than 10 a.m. the court day before the hearing. There is an exception if giving them notice would cause them to take a harmful action. Then fill out and file a *Declaration regarding Notice* (“*Decl. re: Notice*”), stating:

- Who you spoke with and how and when you contacted that person;
- That you notified this person of your ex parte application, including the date and time of the hearing, as well as the nature of the hearing;
- Whether the attorney or party stated they opposed or did not oppose your request; and
- Whether the attorney or party plans on attending the hearing.

Or, if giving them notice should not be required, explain why.

File the *Decl. re: Notice* with your assigned department no later than 10 a.m. the day before the hearing. If you do not, the judge will almost certainly deny your application. You can download a form for the *Decl. re: Notice* from the link at the end of this Guide.

Step 5: Make Required Copies and Assemble Documents for Filing

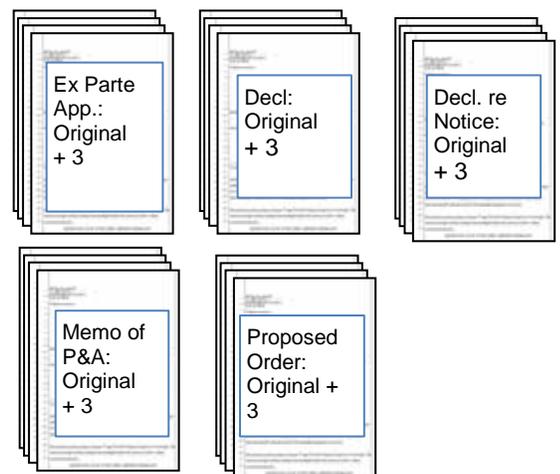
Make **three copies** of your *Ex Parte Application* and all related papers. Staple each of the copies, but leave the original unstapled for ease of scanning.

If you are also filing a Summons, Complaint, and Civil Case Cover Sheet, make two copies of each. Staple the copies, but leave the original unstapled for ease of scanning.

The Sacramento Superior Court requires documents to be filed in a very specific way. For each document, they want an original and copies in a stack.

For this Ex Parte Application, you will hand the clerk four stacks of original + 3 copies: a stack of your “Ex Parte Application,” a stack of your “Declaration,” a stack of your “Memorandum of Points and Authorities,” and a stack of your “[Proposed] Order.” When you file your “Declaration re: Notice,” do the same thing.

If you are also filing the Complaint, Summons, and Civil Case Cover Sheet, you will hand the clerk three stacks of original plus two copies: a stack of your “Complaint,” a stack of your “Summons,” and a stack of your “Civil Case Cover Sheet.”



Remember, if any document has exhibits, then one of the copies (not the original) needs the exhibit tabs from **Step 2**.

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Step 6: File all Paperwork by 10 a.m. the Day Before and Pay the Filing Fee

Take all of your papers (including the Summons, Complaint, and Civil Case Cover Sheet, if you haven't yet filed them) to the Hall of Justice building, 813 Sixth St., Sacramento, CA 95814.

File them in Room 212. The clerk will assign a case number (if needed), and reserve a hearing time in either Department 53 (odd-numbered cases) or Department 54 (even-numbered cases).

There will be a filing fee. If you are filing the Complaint at the same time as the TRO, the filing fee for an unlimited civil case is currently \$435. You can check the current Sacramento County filing fees at www.saccourt.ca.gov/indexes/fees-forms.aspx. The filing fee for an ex parte application is \$60, but if you are filing your Application at the same time as the Complaint, it will be waived.

If you qualify, you can request a fee waiver. For more information, see our [Fee Waiver Guide](#) (www.saclaw.org/fee-waiver-guide).

Step 7: Attend the Hearing

Be sure to arrive early.

In Sacramento, the judge will typically consider the matter in chambers, based on the papers you have turned in, and may simply notify you of the decision while you wait.

If the judge has additional questions, he or she may ask you to come in to chambers to answer questions.

The judge will usually either:

- Grant the TRO and issue the order to show cause (OSC) on the preliminary injunction;
- Deny the TRO, but issue the OSC;
- Deny the TRO and deny the request for OSC hearing. If this is the case, the judge may give you leave (permission) to file a noticed motion for a preliminary injunction. In any case, you can continue with the underlying case.

Department 53 and 54 are now located in the Hall of Justice building at 813 Sixth St. (Sixth and H).

If an OSC is issued, the order will indicate the date, time, and place for the preliminary injunction OSC hearing, and may contain instructions to you regarding service.

Step 8: Serve TRO/OSC and Other Required Papers

Unless all of the attorneys and/or self-represented parties were present and received the orders directly from the court at the hearing, you must have someone over the age of 18—**NOT YOU**—serve each with copies of any orders issued by the judge.

Within five days of the date the TRO was granted, or two days prior to the OSC hearing, whichever is earlier, you must serve the following:

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- The TRO and/or the OSC (which are usually combined in the same Order): the parties must be served personally unless they or their attorney were at the hearing.
- The points and authorities used for the ex parte application.
- The supporting declarations used for the ex parte application.
- You may also add new declarations describing events since the TRO was issued, or providing additional support for the OSC hearing. File these in court as well as serving them.

In addition,

- The Summons and Complaint and related papers must be served personally (if they have not yet been served).

The person who is serving the papers for you must complete a proof of service form, typically, either a [Proof of Personal Service \(POS-020\)](#) or a [Proof of Service by First Class Mail \(POS-030\)](#). For more information on these Proofs of Service, see our Guides on [Personal Service \(www.saclaw.org/personal-service\)](#) and [Service by Mail \(www.saclaw.org/mail-service\)](#). If they are also serving the Summons and Complaint, use [Proof of Service of Summons \(POS-010\)](#).

File the signed proof(s) of service with the court, then take a file-stamped copy of the proof(s) of service to your assigned department at least 24 hours before the OSC hearing.

NEXT STEPS

The TRO is usually only good for a short time. In most cases, the judge will schedule the OSC hearing within a maximum 22 days; on the hearing date, the TRO expires and is hopefully replaced by a preliminary injunction, which lasts until the case is resolved.

Once you have served all of the paperwork required in Step 8, the steps for an OSC for preliminary injunction are similar to a standard motion for preliminary injunction. See our Guide "[Ask the Court for a Preliminary Injunction](#)" (www.saclaw.org/prelim-inj-guide).

FOR MORE INFORMATION

On the Web:

Ex Parte Motions: "Law and Motion Departments"
Sacramento County Superior Court
www.saccourt.ca.gov/civil/motions-hearings-exparte.aspx#law-motion

At the Law Library:

California Forms of Pleading and Practice [KFC 1010 .A65 C3](#) (Ready Reference)
Chapter 303, "Injunctions," has in-depth information on temporary restraining orders and injunctions. Other chapters have sample complaints for various causes of action which you may use to write your

Undertakings (Bonds)

The judge may require you to post a bond to compensate the defendant if it turns out you were not entitled to a restraining order after all. You can get this from a bail bondsman, who will require a deposit of up to 100% of the total amount ordered by the judge.

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complaint (Step 1).

Electronic Access: On the Law Library's computers, using Lexis Advance.

Win Your Lawsuit [KFC 968 .D86](#) (Self Help)

This book does not cover restraining orders, but it can help you draft underlying complaints (Step 1).

Electronic Access: From any computer (Library or home) via the Legal Information Reference Center.

Instructions are available on our website at www.saclaw.org/nolo-ebooks.

Represent Yourself in Court [KF 8841 .B47](#) (Self Help)

This book contains information on preparing for and conducting hearings. Chapter 16 has a good, plain-English description of the evidence rules, including hearsay.

Electronic Access: From any computer (Library or home) via the Legal Information Reference Center.

Instructions are available on our website at www.saclaw.org/nolo-ebooks.

California Causes of Action [KFC 1003 .C35](#)

This book describes many common causes of action. Ask at the Circulation Desk for the CD-ROM containing sample complaints that you can easily download and customize.

IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR IF YOU NEED HELP FINDING OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN.

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ATTACHMENTS: FORMS AND INSTRUCTIONS

There are no Judicial Council forms for this procedure. Instead, the relevant documents must be typed on 28-line pleading paper. Customizable templates may be downloaded from these links:

- *Ex Parte Application for Temporary Restraining Order and Order To Show Cause re: Preliminary Injunction*
www.saclaw.org/sbs-tro-application.rtf
- *Declaration in Support of Ex Parte Application for Temporary Restraining Order and Order To Show Cause re: Preliminary Injunction*
www.saclaw.org/sbs-tro-declaration.rtf
- *Memorandum in Support of Temporary Restraining Order and Order To Show Cause re: Preliminary Injunction*
www.saclaw.org/sbs-tro-memo.rtf
- *[Proposed] Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction*
www.saclaw.org/sbs-tro-order.rtf
- *Declaration Regarding Notice*
www.saclaw.org/sbs-tro-decl-re-notice.rtf

Sample filled-in forms with instructions follow at the end of this Guide.

1 PAUL SAMPLE
2 345 Oak St.
3 Sacramento, CA 95814
4 916-555-1212

Print or type your name, address and phone number as shown on the left. Below that, indicate whether you are a plaintiff or defendant, followed by the words *In Pro Per*, which simply indicates that you are representing yourself.

5 PAUL SAMPLE, IN PRO PER

6 The name of the court goes on line 8 of the first page. In the caption, identify the plaintiff
7 and defendant, replacing PAUL SAMPLE with the name of the Plaintiff and DOUG
8 DEFENDANT with the name of the Defendant.

9 FOR THE COUNTY OF SACRAMENTO

11 Use your case
12 number here

13 PAUL SAMPLE,

14 Plaintiff,

15 vs.

16 DOUG DEFENDANT and DOES 1-10,

18 Defendants

) Case No.: 34-2013-0012345

) EX PARTE APPLICATION FOR
) TEMPORARY RESTRAINING ORDER
) AND ORDER TO SHOW CAUSE RE
) PRELIMINARY INJUNCTION

) Date: July 10, 2013

) Time: 9:00 am

) Location: Dept. 53

) Date Action Filed: July 1, 2013

) Trial Date: Not Yet Set

Use the date, time, and department that you have reserved for your hearing.

22 Plaintiff Paul Sample applies for a temporary restraining order and for issuance of an order to
23 show causer requiring defendant(s) to show cause why a preliminary injunction should not issue
24 pending trial in this action, enjoining defendant(s) and their employees, agents, and persons acting
25 with them, or on their behalf, from cutting down, destroying, killing, or in any other way harming the
26 maple tree growing between the plaintiff 'sand defendant's property

Precisely specify actions to be restrained.

State the basis of your application

1 This application is made pursuant to the provisions of Code of Civil Procedure section 527 on the
2 ground that the defendant intends to cut down the 25 foot maple tree between the houses of the
3 plaintiff and defendant , while it is disputed whether the tree falls onto the plaintiff or defendant's
4 property. A survey in 2012 shows the tree falling on the plaintiff's property. The defendant disputes
5 the finding of this survey. If a temporary restraining order is not issued, the defendant will cut this
6 tree down prior to the time this could be heard by noticed motion. Given the age and irreplaceable
7 nature of the tree, the plaintiff would suffer irreparable harm if the defendant is not restrained.
8

9 This application is based upon the memorandum in support and declaration set forth below,
10 the verified complaint in this action, and the accompanying declaration of notice.
11

12 DATED: July 10, 2013

13
14
15 Date and sign application

Paul Sample

PAUL SAMPLE

In Pro Per

1 PAUL SAMPLE
2 345 Oak St.
3 Sacramento, CA 95814
4 916-555-1212

Print or type your name, address and phone number as shown on the left. Below that, indicate whether you are a plaintiff or defendant, followed by the words *In Pro Per*, which simply indicates that you are representing yourself.

5 PAUL SAMPLE, IN PRO PER

The name of the court goes on line 8 of the first page. In the caption, identify the plaintiff and defendant, replacing PAUL SAMPLE with the name of the Plaintiff and DOUG DEFENDANT with the name of the Defendant.

6
7
8 FOR THE COUNTY OF SACRAMENTO

9
10
11
12 PAUL SAMPLE,

Use your case number here

) Case No.: 34-2013-0012345

13 Plaintiff,

Be sure to use the name of the person giving the declaration here.

) DECLARATION OF PAUL SAMPLE IN
) SUPPORT OF EX PARTE APPLICATION
) FOR TEMPORARY RESTRAINING ORDER
) AND ORDER TO SHOW CAUSE RE
) PRELIMINARY INJUNCTION

14 vs.

15 DOUG DEFENDANT and DOES 1-10,

) Date: July 10, 2013
) Time: 9:00 am
) Location: Dept. 53

Use the date, time, and department that you have reserved for your hearing.

16 Defendants

) Date Action Filed: July 1, 2013

17
18
19
20 Type your name

) Trial Date: Not Yet Set

21
22 I, Paul Sample, declare:

23
24 1. I am the plaintiff in this action, and I have personal knowledge of each fact stated in this
25 declaration.

State capacity of declarant, typically plaintiff or defendant.

Be sure to include a footer with the name of the document and page numbers.

State essential facts to support application for temporary restraining order

2. I and the defendant are neighbors. I reside at 345 Oak St, Sacramento, and the defendant resides at 347 Oak St.

3. Between our houses is a grass lawn, with a 25 ft. maple tree in the middle. This tree is approximately 60 years old and adds about \$20,000 to my property value, In addition, its shade reduces my Summer electricity bill by approximately 10%.

4. On July 2, 2013, I went outside and saw my neighbor preparing to cut down the maple tree with a chainsaw. I immediately demanded that he stop, and he refused. I only stopped him by stepping between him and the tree.

5. Since then, I or one of my family members have stayed with the tree at all times to prevent the defendant from cutting the tree down. The defendant has threatened to cut the tree down the moment we leave the tree alone.

6. Based upon a 2012 survey I had done to determine the property line to place a fence in the back yard, I believe that the trunk of the tree falls completely on my side of the property line. The defendant, on the other hand, insists that the tree is on his side of property line.

7. The tree is irreplaceable due to its size and age, so the loss of this tree from my property would cause irreparable harm. The loss of shade from this tree would continue to cause ongoing harm for decades.

8. While the harm to me would be great, the harm in stopping the defendant temporarily would be very small. The tree itself is far enough from the defendant's house that it does not threaten any sort of property damage, nor is there any harm that would occur to the defendant if the tree were allowed to remain until the property line may be determined. The defendant has previously stated that the only reason he wishes to cut down the tree is because it obstructs his view of a nearby park, and because he "hates raking the leaves" during the Fall.

1 9. I am asking that the court temporarily restrain the defendant from taking any act that would
2 harm this maple tree, and asking that an order to show cause for issuance of a preliminary injunction
3 be scheduled, to prevent harm to the tree pending the outcome of this lawsuit.
4

5
6 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
7 and correct.

8
9 Declarant dates and signs
declaration

July 8, 2013

Paul Sample

1 PAUL SAMPLE
2 345 Oak St.
3 Sacramento, CA 95814
4 916-555-1212

Print or type your name, address and phone number as shown on the left. Below that, indicate whether you are a plaintiff or defendant, followed by the words *In Pro Per*, which simply indicates that you are representing yourself.

5 PAUL SAMPLE, IN PRO PER

The name of the court goes on line 8 of the first page. In the caption, identify the plaintiff and defendant, replacing PAUL SAMPLE with the name of the Plaintiff and DOUG DEFENDANT with the name of the Defendant.

6
7
8 FOR THE COUNTY OF SACRAMENTO

9
10
11 PAUL SAMPLE,

Use your case number here

) Case No.: 24-2013-0012345

12 Plaintiff,

13 vs.

14 DOUG DEFENDANT and DOES 1-10,

15 Defendants

) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF EX
) PARTE APPLICATION FOR TEMPORARY
) RESTRAINING ORDER AND ORDER TO
) SHOW CAUSE RE PRELIMINARY
) INJUNCTION
) (Code Civ. Proc. §§ 525 et seq.; Cal. Rules of
) Court, rule 3.1150 and Cal. Rules of Court,
) rules 3.1200 to 3.1207)

16
17
18) Date: July 10, 2013

19) Time: 9:00 am

20) Location: Dept. 53

Use the date, time, and department that you have reserved for your hearing.

21) Date Action Filed: July 1, 2013

22) Trial Date: Not Yet Set

23 I.

24 INTRODUCTION

25 This lawsuit involves a dispute between two neighbors, the plaintiff and the defendant. The
26 plaintiff resides at 345 Oak St., Sacramento while the defendant resides at 123 Main St.
27 The plaintiff's house has a maple tree, approximately 25 tall, and the defendant's
28 house is a maple tree, approximately 25 tall, and be

BRIEFLY explain the facts of the case and what has happened so far in court (date complaint filed, etc.)

Be sure to include a footer with the name of the document and page numbers.

1 sixty years of age. On July 1, 2013, the plaintiff discovered the defendant about to cut down the
2 maple tree with a chainsaw. The plaintiff demanded the defendant stop, but the defendant has
3 refused. In response, the plaintiff, or one of his family members has remained with the tree 24 hours a
4 day to prevent it from being cut down. The plaintiff contends that the tree is on his property, whereas
5 the defendant has alleged it is on his.
6

7 The tree is at least 50 years old, and effectively irreplaceable. The tree itself adds
8 approximately \$20,000 to the property value to the plaintiff's land, and provides a substantial amount
9 of shade for the house, reducing energy costs by about 10% during the Summer. The plaintiff is now
10 seeking a temporary restraining order to prevent the defendant from cutting down this tree pending an
11 order to show cause for a preliminary injunction.
12

13 The plaintiff's Complaint is being filed with this application for a temporary restraining order.

14 **II.**

15 **A TEMPORARY RESTRAINING ORDER MAY ISSUE WHERE GREAT AND**
16 **IRREPARABLE INJURY WILL RESULT TO THE APPLICANT UNLESS THE**
17 **OFFENDING CONDUCT IS IMMEDIATELY RESTRAINED**
18

19 A TRO may issue when "[i]t appears from the facts shown by affidavit or by the verified
20 complaint that great or irreparable injury will result to the applicant before the matter can be heard on
21 notice..." (Code Civ. Proc. § 527(c)(1).) The Court should grant the TRO where the likelihood is that
22 the plaintiff will prevail on the merits at trial, and where the interim harm to the plaintiff without the
23 TRO outweighs the likely harm to the defendant if the order is issued. *Church of Christ in Hollywood*
24 *v. Superior Court*, 99 Cal. App. 4th 1244, 1251 (2d Dist. 2002).
25

26 The granting or denial of a temporary restraining order is discretionary with the trial judge
27 and amounts to a mere preliminary or interlocutory order to keep the subject of the litigation in status
28

1 Plaintiff requests a full hearing on a Preliminary Injunction for the same reasons and under the
2 same authorities as set forth in support of the TRO, and requests that an Order to Show Cause be
3 issued along with the TRO to afford Defendant the opportunity to show why he/she/it should not be
4 restrained and enjoined in the same manner for the remainder of this litigation.

Specify
nature of
defendant.

5 A Preliminary Injunction is proper in the following circumstances:

6
7 "(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and
8 such relief, or any part thereof, consists in restraining the commission or continuance of the act
9 complained of, either for a limited period or perpetually.

10
11 (2) When it appears by the complaint or affidavits that the commission or continuance of
12 some act during the litigation would produce waste, or great or irreparable injury, to a party to the
13 action.

14
15 (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is
16 about to do, or is procuring or suffering to be done, some act in violation of the rights of another
17 party to the action respecting the subject of the action, and tending to render the judgment ineffectual.

18 (4) When pecuniary compensation would not afford adequate relief.

19
20 (5) Where it would be extremely difficult to ascertain the amount of compensation which
21 would afford adequate relief.

22 (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.

23 (7) Where the obligation arises from a trust."

24 Code Civ. Proc. § 526(a).

25 As with a Temporary Restraining Order, when granting a preliminary injunction the Court
26 weighs two interrelated factors; the likelihood the moving party will prevail on the merits, and the
27 relative interim harm to the parties from the issuance or nonissuance of the injunction. *Whyte v.*
28

1 Schlage Lock Co., 101 Cal. App. 4th 1443, 1449 (4th Dist. 2002). As shown in the Declaration(s)
2 submitted herewith, and as will be shown at the hearing on a preliminary injunction, sufficient
3 grounds exist for both the TRO and a preliminary injunction.

4
5 **IV.**

6 **EX PARTE RELIEF IS PERMITTED UNDER THESE CIRCUMSTANCES AND**
7 **PLAINTIFF HAS COMPLIED WITH CALIFORNIA RULES OF COURT**

8 **A. Showing Required For Ex Parte Relief:**

9 "An applicant [for an ex parte application] must make an affirmative factual showing in a

Precisely specify actions to
be restrained, and the
reason the actions would
hurt your position.

ing competent testimony based on personal knowledge of irreparable harm,
for any other statutory basis for granting relief ex parte." Cal. Rules of Court, rule

13 3.1202(c).

Name of person making
factual declaration(s)

14 As shown by the attached Declaration of **Paul Sample**, there is an imminent and present
15 danger of irreparable harm/immediate danger or other statutory basis for granting relief ex parte, in
16 that **allowing the tree that is the subject of this lawsuit to be cut down would cause a loss of a tree**
17 **over a half-century old, meaning that the plaintiff could not be made whole until a new tree could be**
18 **grown, resulting in damage for at least the next half-century.**

20 **B. Document and Notice Requirements For Ex Parte Application For TRO and OSC:**

21 An ex parte application must be accompanied by a declaration showing that no later than
22 10:00 a.m. the court day before the ex parte appearance, the applicant informed the opposing party
23 when and where the application would be made; or was unable to do so despite a good-faith effort; or
24 should not be required to inform the opposing party. Cal. Rules of Court, rule 3.1201. The person
25 giving notice must: specify the nature of the relief to be requested and the date, time, and place for
26

1 the presentation of the application; and attempt to determine whether the opposing party will appear
2 to oppose the application. Cal. Rules of Court, rule 3.1204(a).

3 As stated in [Paul Sample's Declaration -- Notice upon Ex Parte Application, Re: Advance](#)
4 [Notification in Support of Temporary Restraining Order and Order to Show Cause Re Preliminary](#)
5 [Injunction](#), submitted herewith, Plaintiff duly advised the opposing party [or opposing party's counsel](#)
6 [at 9:30 a.m. on July 9, 2013](#), by means of [telephone](#) of the date, time, place and nature of this Ex
7 Parte Application. [Counsel for](#) defendant has asserted that [he/she will/will not](#) oppose the instant
8 Application.

10 V.

11 CONCLUSION

12 For all of the foregoing reasons and supporting facts and authorities, Plaintiff respectfully
13 requests that the Court issue a Temporary Restraining Order, and set an Order to Show Cause hearing
14 for Preliminary Injunction.

15 Respectfully submitted,

16 DATED: [July 10, 2013](#)

17
18
19 *Paul Sample*
20 PAUL SAMPLE
21 In Pro Per

22 Date and sign memorandum of
23 points and authorities

24 Describes the results of
25 your efforts to notify the
26 other parities

1 PAUL SAMPLE
2 345 Oak St.
3 Sacramento, CA 95814
4 916-555-1212

Print or type your name, address and phone number as shown on the left. Below that, indicate whether you are a plaintiff or defendant, followed by the words *In Pro Per*, which simply indicates that you are representing yourself.

5 PAUL SAMPLE, IN PRO PER

7 The name of the court goes on line 8 of the first page. In the caption, identify the plaintiff and defendant, replacing PAUL SAMPLE with the name of the Plaintiff and DOUG DEFENDANT with the name of the Defendant.

10 FOR THE COUNTY OF SACRAMENTO

12 Use your case number here

13 PAUL SAMPLE,

14 Plaintiff,

15 vs.

16 DOUG DEFENDANT and DOES 1-10,

19 Defendants

) Case No.: 34-2013-0012345

) [PROPOSED] TEMPORARY
) RESTRAINING ORDER AND ORDER TO
) SHOW CAUSE RE PRELIMINARY
) INJUNCTION

) Date: July 10, 2013
) Time: 2:00 pm
) Location: Dept. 53
) Judge: David I. Brown
) Date Action Filed: July 1, 2013
)
) Trial Date: Not Yet Set

Set your date, time and department for the application. Be sure to read the instructions (Step 4) on choosing a date.

23 On reading the complaint of plaintiff on file in the above-entitled action and the accompanying
24 declaration(s), it appears to the satisfaction of the court that this is a proper case for granting an order
25 to show cause for a preliminary injunction and a temporary restraining order,
26 temporary restraining order prayed for be granted, great or irreparable injury
27 before the matter can be heard on notice.

Be sure to include a footer with the name of the document and page numbers.

1 IT IS ORDERED that, pending the hearing and determination of the order to show cause, the
2 above-named defendants, and each of them, and their officers, agents, employees, representatives,
3 and all persons acting in concert or participating with them, are restrained and enjoined from
4 engaging in or performing, directly or indirectly, any and all of the following acts: **cutting down or**
5 **harming in any way the maple tree that rests between the two houses located at 745 Oak St. and 747**
6 **Oak St. in Sacramento, California.**

Fill in the department, but leave the date and time blank.

8 IT IS FURTHER ORDERED that the above-named defendants, and each of them, appear in
9 Department _____ of this court, located at 813 6th Street, Sacramento, California
10 on _____ (date), at _____ (time), or as soon thereafter as

11 the matter may be heard, then and there to show cause, if any they have, why the
12 servants, employees, and representatives, and all persons acting in concert or participating with them,
13 should not be enjoined and restrained during the pendency of this action from engaging in,
14 committing, or performing, directly or indirectly, any and all of the following acts: **cutting down or**
15 **harming in any way the maple tree that rests between the two houses located at 745 Oak St. and 747**
16 **Oak St. in Sacramento, California.**

Precisely specify actions to be restrained.

19 IT IS FURTHER ORDERED that:

20 a. Plaintiff shall serve this order to show cause on defendants in the following time and manner:

21 _____

Leave the rest blank for the judge to complete.

22 b. Proof of service must be delivered to the court hearing the OSC on:

23 _____

24 c. The parties shall adhere to the following briefing schedule:

25 _____

26 _____

27 _____

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IT IS FURTHER ORDERED that copies of the complaint, declaration(s), and this order to show cause and temporary restraining order be served the parties against whom this order is made not later than _____ (date).

Dated: _____.

Judge of the Superior Court

1 PAUL SAMPLE
2 345 Oak St.
3 Sacramento, CA 95814
4 916-555-1212

Print or type your name, address and phone number as shown on the left. Below that, indicate whether you are a plaintiff or defendant, followed by the words *In Pro Per*, which simply indicates that you are representing yourself.

5 PAUL SAMPLE, IN PRO PER

The name of the court goes on line 8 of the first page. In the caption, identify the plaintiff and defendant, replacing PAUL SAMPLE with the name of the Plaintiff and DOUG DEFENDANT with the name of the Defendant.

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7
8 FOR THE COUNTY OF SACRAMENTO

9
10
11 Use your case
12 number here

13 PAUL SAMPLE,

) Case No.: 34-2013-0012345

14 Plaintiff,

) List date, time,
) location, etc.
) of the ex parte
) hearing

) DECLARATION -- NOTICE UPON EX
) PARTE APPLICATION

15 vs.

) Date: July 10, 2013

16 DOUG DEFENDANT and DOES 1-10,

) Time: 2:00 pm

) Location: Dept. 53

) Judge: David I. Brown

) Date Action Filed: July 1, 2013

17 Defendants

) Trial Date: Not Yet Set

18
19
20
21 I, Paul Sample, declare:

State name and capacity of
declarant

22 1. I am the plaintiff in this action, and I have personal knowledge of each fact stated in this
23 declaration.

24 ///

You must attempt to give notice to each party in the case, or explain why notice should not be required (if notifying the party would defeat the purpose of the TRO).

25 ///

26 ///

27 ///

28 ///

Fill in information about opposing party

1 2. The name, address and telephone number of the defendant Don Defendant, as known to me,
2 is 789 Apple Way, Sacramento CA 95814, 916-555-9898.

3 3. I am informed and believe that defendant Don Defendant is is not represented by an
4 attorney. If s/he is, the attorney's name, address, and telephone number, as known to me, is: 654 Pine
5 St. Suite C, Sacramento CA 95814, 916-555-7676.

Fill in information about opposing attorney.

Use this version of Paragraphs 4-7 if you DID give notice to the other party, and erase version below.

Name of person you notified

8 4. Pursuant to California Rule of Court 5.151(e), I have informed Don Defendant of this ex
9 parte request by:

- Telephone call on August 12, 2013 at 9 a.m.
- OR** In Person on August 12, 2013 at 9 a.m.
- Other: On August 12, 2013, at 9 a.m. I faxed the papers including the Ex Parte Application

Describe how you notified the person, for example, fax including fax number, with date and time. Erase the other options.

14 for Continuance and Proposed Order to Don Defendant at the fax number (916) 555-9876. I received
15 a fax confirmation that the fax was transmitted completely.

List location, date and time of the ex parte hearing.

Name of person you notified

17 5. I told Don Defendant that I would be bringing this ex parte request in Department 53 of the
18 813 6th Street Courthouse on August 13, 2013 at 2:00 p.m. regarding my request for a Temporary
19 Restraining Order and Order to Show Cause re Preliminary Injunction.

Specify order requested.

21 6. I do do not expect an opposition to my request from the party.

22 7. I received the following response to above notice: Defendant Don Defendant stated that he
23 plans to appear and oppose the Temporary Restraining Order and Order to Show Cause.

Describe the response, for example, that the other party intends to oppose or appear.

Use this version of Paragraph 4 if you DID NOT give notice to the other party. Erase 4-7, above.

27 4. I have not given notice of this application for ex parte orders for the following reason(s):
28

- 1 Giving notice would frustrate the purpose of the order (explain below):
- 2 **OR** I will suffer immediate and irreparable injury if notice is given (explain below):
- 3
- 4 I was unable to give notice after making the following attempts (explain below):

5 Explanation:

6 Explain why giving notice would frustrate the purpose of
7 the order or cause immediate and irreparable injury, or
8 why you were unable to contact the other party.

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

11 Date: July 10, 2013

12 Type your name, and date and
13 sign the Declaration re Notice.

14 *Paul Sample*
15 PAUL SAMPLE