

1 **RANDALL F. KOENIG, ESQ., SBN 097658**  
2 **WILFRED A. LLAURADO, ESQ., SBN 198714**  
3 **KIM L. T. DAWLEY, ESQ., SBN 204110**  
4 **KOENIG JACOBSEN LLP**  
16300 Bake Parkway  
Irvine, California 92618  
(949) 756-0700 • (949) 756-2370 (facsimile)

5 Attorneys for Plaintiffs  
6 **ROBERT LINDGREN AND ELIZABETH LINDGREN**

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

**OCT 23 2008**

ALAN CARLSON, Clerk of the Court

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

10 ROBERT LINDGREN and ELIZABETH  
11 LINDGREN,

12 Plaintiffs,

13 vs.

14 SHARON LOGAN, and DOES 1 through 20,  
inclusive,

15 Defendants.

CASE NO. 30-2008-00093421-CL-UD-CJC  
Assigned to Judge Selim S. Franklin  
Department: C48

**EX PARTE APPLICATION TO HAVE  
JUDGMENT FOR POSSESSION  
ENTERED AND WRIT OF EXECUTION  
FOR POSSESSION ISSUED;  
DECLARATION OF KIM L. T. DAWLEY**

**DATE: October 23, 2008**  
**TIME: 2:00 p.m.**  
**DEPT.: C-48**

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19 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

20 **PLEASE TAKE NOTICE** that on October 23, 2008 at 2:00 p.m. in Department C48 of the  
21 above-referenced court located at 700 Civic Center Drive West, Santa Ana, California, Plaintiffs  
22 ROBERT LINDGREN and ELIZABETH LINDGREN will apply ex parte to have the Judgment for  
23 Possession entered and a Writ of Execution for Possession issued forthwith.

24 This Application is brought pursuant to California *Rules of Court*, Rule 3.1202(c)) and is  
25 made upon the grounds that Defendant SHARON LOGAN has failed to timely comply with the term  
26 set forth in the Stipulated Judgment and is therefore in breach of the Stipulated Judgment. Plaintiffs  
27 shall therefore be entitled to have Judgment for Possession entered and a Writ of Execution for  
28 Possession issued forthwith on ex parte application to the court as specified and agreed to by all

1 parties in the Stipulated Judgment.

2 Although Plaintiffs provided Defendant numerous opportunities to comply with the terms of  
3 the Stipulated Judgment, Defendant has repeatedly failed to comply, made false representations and  
4 promises, and has threatened to make things difficult for Plaintiffs. Based upon Defendant's history  
5 of false representations and promises, there is a great likelihood that Defendant will not vacate the  
6 premises by the agreed date of October 31, 2008. Thus, Plaintiffs will suffer irreparable harm if the  
7 Judgment for Possession and Writ of Execution for Possession is not issued forthwith to ensure that  
8 Defendant is no longer in unlawful possession of the Premises.

9 Notice of this ex parte hearing was properly and timely given to all parties as set forth in the  
10 Declaration of Kim L. T. Dawley.

11 This Application is based upon this notice, Declaration of Kim L. T. Dawley, the  
12 Memorandum of Points and Authorities filed herewith, all pleadings, documents, records on file  
13 herewith, and on all such oral and documentary evidence as may be presented at the time of this  
14 Application.

15  
16 Dated: October 23, 2008

**KOENIG JACOBSEN LLP**

17  
18 By:   
19 RANDALL F. KOENIG  
20 WILFRED A. LLURADO  
21 KIM L. T. DAWLEY  
22 Attorneys for Plaintiffs  
23 ROBERT LINDGREN and ELIZABETH  
24 LINDGREN  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. SUMMARY OF ARGUMENT**

3 Pursuant to the Stipulated Judgment which was executed by Plaintiffs and Defendant and filed  
4 with the court on October 10, 2008, Plaintiffs shall be entitled to have Judgment for Possession  
5 entered and a Writ of Execution for Possession issued forthwith on ex parte application to the court if  
6 Defendant fails to timely comply with the term set forth in the Stipulated Judgment. To date,  
7 Defendant has failed to make a partial payment of \$10,000.00 which, pursuant to the Stipulated  
8 Judgment, was due by October 13, 2008. Defendant is therefore in breach of the Stipulated  
9 Judgment. Although Plaintiffs provided Defendant numerous opportunities to comply with the terms  
10 of the Stipulated Judgment, Defendant has repeatedly failed to comply, made false representations  
11 and promises, and has threatened to make things difficult for Plaintiffs. Based upon Defendant's  
12 history of false representations and promises, there is a great likelihood that Defendant will not vacate  
13 the premises by the agreed date of October 31, 2008. Thus, Plaintiffs will suffer irreparable harm if  
14 the Judgment for Possession and Writ of Execution for Possession is not issued forthwith to ensure  
15 that Defendant is no longer in unlawful possession of the Premises.

16 **2. SUMMARY OF FACTS AND PROCEDURAL BACKGROUND**

17 This matter arises out of Defendant's unlawful detainer of the premises located at 6908-6912  
18 Warner Avenue, in the City of Huntington Beach ("Premises").

19 On or about August 19, 2008, Plaintiffs filed a Verified Complaint for Unlawful Detainer  
20 against Defendant for unpaid rent on the Premises in the total amount of \$17,199.00, the reasonable  
21 rental value of the Premises is the sum of \$191.10 per day, interest, attorney's fees and costs.

22 On or about August 28, 2008, Defendant filed an Answer to Plaintiffs' Complaint.

23 On or about September 23, 2008, Plaintiffs filed a Request to Set Case for Trial, and trial was  
24 subsequently set for October 10, 2008.

25 On October 8, 2008, Defendant contacted Plaintiffs' counsel and sought to resolve this matter  
26 without a trial. Although Defendant owes Plaintiffs a total sum of \$38,891.10 in unpaid rent, rental  
27 value, interest, attorney's fees and costs, Plaintiffs agreed to dismiss this matter on a number of  
28 conditions, most importantly, that Defendant pay Plaintiffs \$19,500.00 and vacate the Premises by

1 October 31, 2008. Accordingly, the parties entered into a Stipulated Judgment, which was filed with  
2 the court on October 10, 2008.

3 The Stipulated Judgment specifies that Plaintiffs shall be entitled to have Judgment for  
4 Possession entered and a Writ of Execution for Possession issued forthwith on an ex parte application  
5 if Defendant fails to timely comply with the terms set forth in the Stipulated Judgment. To date,  
6 Defendant has failed to make a partial payment of \$10,000.00 which was due on October 13, 2008 (a  
7 term set forth in the Stipulated Judgment) and is therefore in breach of the Stipulated Judgment.  
8 Hence, Plaintiffs is bringing the subject ex parte application to have Judgment for Possession entered  
9 and a Writ of Execution for Possession issued forthwith.

10 **3. PROPER NOTICE OF THE EX PARTE WAS GIVEN TO DEFENDANT.**

11 “An ex parte application must be accompanied by a declaration regarding notice stating: (1)  
12 The notice given, including the date, time, manner, and name of the party informed, the relief sought,  
13 any response, and whether opposition is expected and that, within the applicable time under rule  
14 3.1203, the applicant informed the opposing party where and when the application would be made;  
15 (2) That the applicant in good faith attempted to inform the opposing party but was unable to do so,  
16 specifying the efforts made to inform the opposing party. . . .” (California *Rules of Court*, Rule  
17 3.1204(b)) As set forth in the Declaration of Kim L. T. Dawley, proper notice of the ex parte  
18 application was given to Defendant.

19 **4. GOOD CAUSE EXISTS FOR ENTERING JUDGMENT FOR POSSESSION AND**  
20 **ISSUING A WRIT FOR EXECUTION OF POSSESSION EX PARTE SINCE**  
21 **DEFENDANT HAS NOT COMPLIED WITH THE TERM SET FORTH IN THE**  
22 **STIPULATED JUDGMENT.**

23 “An applicant must make an affirmative factual showing in a declaration containing  
24 competent testimony based on personal knowledge of irreparable harm, immediate danger, or any  
25 other statutory basis for granting relief ex parte.” (California *Rules of Court*, Rule 3.1202(c))

26 Pursuant to the Stipulated Judgment, Defendant was required to make a partial payment of  
27 \$10,000.00 by October 13, 2008. Defendant failed to make the required payment by that date.  
28 Subsequently, Plaintiffs’ counsel had numerous discussions with Defendant wherein Defendant

1 falsely promised to deliver the payment on a number of different dates, but failed each time to show  
2 up or call. Defendant has threatened a number of times that if Plaintiff sought to have the Judgment  
3 for Possession and Judgment for Money entered, she will not make any payments to Plaintiffs, will  
4 rip out all of the upgrades in the Premises and not leave it in a good condition, and will not return the  
5 keys of the Premises to Plaintiffs and therefore force Plaintiffs to incur costs to change the locks.

6 It is apparent that Defendant will not pay the initial payment of \$10,000.00 or any of the  
7 stipulated amount. Defendant has repeatedly made false representations and promises to Plaintiffs  
8 and is clearly not making any good faith effort to comply with the Stipulated Judgment. Defendant  
9 has failed to make any rent payments since May of 2008 and continues to be in unlawful possession  
10 of the Premises. Based upon Defendant's history of false representation and promises, there is a great  
11 likelihood that Defendant will not vacate the Premises by the agreed date of October 31, 2008.  
12 Plaintiffs continue to suffer damages each day Defendant continues to be in unlawful possession of  
13 the Premises. Thus, Plaintiffs will suffer irreparable harm if the Judgment for Possession and Writ of  
14 Execution for Possession is not issued forthwith.

15 Defendant has failed to timely comply with the term of the Stipulated Judgment, and pursuant  
16 to the Stipulated Judgment, Plaintiffs are entitled to have the Judgment for Possession entered and a  
17 Writ of Execution for Possession issued forthwith pursuant to this ex parte application. Accordingly,  
18 the Judgment for Possession should be entered and a Writ of Execution for Possession should be  
19 issued forthwith.

20 **5. CONCLUSION.**

21 Based upon the foregoing good cause, Plaintiffs respectfully request that the Judgment for  
22 Possession be entered and a Writ of Execution for Possession be issued forthwith.

23 Dated: October 23, 2008

**KOENIG JACOBSEN LLP**

24  
25 By: 

26 RANDALL J. KOENIG  
27 WILFRED A. LLaurado  
28 KIM L. T. DAWLEY  
Attorneys for Plaintiffs  
ROBERT LINDGREN and ELIZABETH  
LINDGREN

1  
2 **DECLARATION OF KIM L. T. DAWLEY**

3 I, Kim L. T. Dawley, declare as follows:

4 1. I am an attorney at law duly authorized to practice law before all the courts of the  
5 State of California, and I am an associate partner in the law firm Koenig Jacobsen LLP, attorneys for  
6 Plaintiffs ROBERT LINDGREN and ELIZABETH LINDGREN ("Plaintiffs") in this action. I am  
7 completely familiar with the files, pleadings and facts in this case and if called upon as a witness I  
8 could and would competently testify to the following facts based upon my own personal knowledge  
9 or information and belief.

10 2. This matter arises out of Defendant's unlawful detainer of the premises located at  
11 6908-6912 Warner Avenue, in the City of Huntington Beach ("Premises").

12 3. On or about August 19, 2008, Plaintiffs filed a Verified Complaint for Unlawful  
13 Detainer against Defendant for unpaid rent on the Premises in the total amount of \$17,199.00, the  
14 reasonable rental value of the Premises is the sum of \$191.10 per day, interest, attorney's fees and  
15 costs.

16 4. On or about August 28, 2008, Defendant filed an Answer to Plaintiffs' Complaint.

17 5. On or about September 23, 2008, Plaintiffs filed a Request to Set Case for Trial, and  
18 trial was subsequently set for October 10, 2008.

19 6. On October 8, 2008, Defendant contacted me and sought to resolve this matter without  
20 a trial. Although Defendant owes Plaintiffs a total sum of \$38,891.10 in unpaid rent, rental value,  
21 interest, attorney's fees and costs, Plaintiffs agreed to dismiss this matter on a number of conditions,  
22 most importantly, that Defendant pay Plaintiffs \$19,500.00 and vacate the Premises by October 31,  
23 2008. Accordingly, the parties entered into a Stipulated Judgment, which was filed with the court on  
24 October 10, 2008.

25 7. Pursuant to the Stipulated Judgment, Defendant was required to make a partial  
26 payment of \$10,000.00 by October 13, 2008. Defendant failed to make the required payment by that  
27 date. Subsequently, I had numerous discussions with Defendant wherein Defendant falsely promised  
28 to deliver the payment on a number of different dates, but failed each time to show up or call.

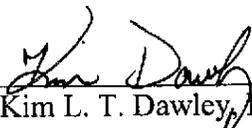
1 Defendant has threatened a number of times that if Plaintiff sought to have the Judgment for  
2 Possession and Judgment for Money entered, she will not make any payments to Plaintiffs, will rip  
3 out all of the upgrades in the Premises and not leave it in a good condition, and will not return the  
4 keys of the Premises to Plaintiffs and therefore force Plaintiffs to incur costs to change the locks.

5 8. It is apparent that Defendant will not pay the initial payment of \$10,000.00 or any of  
6 the stipulated amount. Defendant has repeatedly made false representations and promises to  
7 Plaintiffs and is clearly not making any good faith effort to comply with the Stipulated Judgment.  
8 Defendant has failed to make any rent payments since May of 2008 and continues to be in unlawful  
9 possession of the Premises. Based upon Defendant's history of false representation and promises,  
10 there is a great likelihood that Defendant will not vacate the Premises by the agreed date of October  
11 31, 2008. Plaintiffs continue to suffer damages each day Defendant continues to be in unlawful  
12 possession of the Premises. Thus, Plaintiffs will suffer irreparable harm if the Judgment for  
13 Possession and Writ of Execution for Possession is not issued forthwith.

14 9. Defendant has failed to timely comply with the term of the Stipulated Judgment, and  
15 pursuant to the Stipulated Judgment, Plaintiffs are entitled to have the Judgment for Possession  
16 entered and a Writ of Execution for Possession issued forthwith pursuant to this ex parte application.  
17 Accordingly, the Judgment for Possession should be entered and a Writ of Execution for Possession  
18 should be issued forthwith.

19 10. On Wednesday, October 22, 2008, at approximately 9:45 a.m., I called and left a  
20 message for Defendant Sharon Logan at ((714) 768-4969, stating that I would be appearing ex parte  
21 on October 23, 2008 in Department C48 of this Court to have the Judgment for Possession entered  
22 and a Writ of Execution for Possession issued forthwith. I also faxed a letter to Defendant Sharon  
23 Logan notifying her of Plaintiffs' ex parte application. A true and correct copy of the letter to  
24 Defendant and facsimile transmission confirmation is attached hereto as Exhibit "A."

25 I declare under penalty of perjury under the laws of the State of California that the foregoing  
26 is true and correct and this declaration was executed on October 23, 2008, at Irvine, California.

27  
28   
Kim L. T. Dawley, Declarant

EXHIBIT

A

# KOENIG JACOBSEN LLP

ATTORNEYS AT LAW

RANDALL F. KOENIG  
GARY L. JACOBSEN  
GREG R. WARNAGIERIS  
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October 22, 2008

**VIA FACSIMILE ONLY**

Sharon Logan  
401 Atlanta Avenue, #34  
Huntington Beach, California 92648

Sharon Logan  
6908-6912 Warner Avenue  
Huntington Beach, CA 92647

**Re: *Robert and Elizabeth Lindgren v. Sharon Logan***  
**Our Client: Robert and Elizabeth Lindgren**

Dear Ms. Logan:

This letter is a follow up to my telephone message to you today at approximately 9:45 a.m., wherein I advised you that on **Thursday, October 23, 2008, at 2:00 p.m., in Department C-48 of the Orange County Superior Court located at 700 Civic Center Drive West, Santa Ana, California 92701**, my office will appear ex parte to have the Judgment for Possession entered and a Writ of Execution for possession issued forthwith. Please advise if you will be opposing the application.

As you know, pursuant to the Stipulated Judgment which was signed by you and filed with the court on October 10, 2008, you were required to make a partial payment of \$10,000.00 by October 13, 2008, which you have failed to do. To date, you have failed to pay any amount despite our repeated notice to you of your noncompliance and despite the numerous opportunities we have given you to comply. If you deliver a cashier's check in the amount of \$10,000 and made payable to "Koenig Jacobsen LLP Trust Account" to our office by 4:00 p.m. today, we will take the ex parte hearing off calendar. Otherwise, the hearing will remain on calendar.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

KOENIG JACOBSEN LLP



KIM L. T. DAWLEY

KTD/

\*\*\*\*\*  
 \*\*\* TX REPORT \*\*\*  
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## KOENIG JACOBSEN LLP

### FACSIMILE TRANSMITTAL

TO:

NAME	LOCATION	FAX NUMBER
Sharon Logan		(714) 374-6836

CASE NAME	Robert and Elizabeth Lindgren v. Sharon Logan
KJ FILE NO.	1951-50035
SENT BY	Kim T. Dawley, Esq.
DATE:	October 22, 2008

Total pages including cover sheet:   2  

If you do not receive all pages, please call Sender IMMEDIATELY at:

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COMMENTS: