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Superior Court of California
County of Fresno
By: A. Sepeda, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO, CENTRAL DIVISION

CITY OF FRESNO,

Plaintiff,

v.

ART A. TERZIAN, and DOES 1 through 100,
inclusive,

Defendants.

Case No. 24CECG02985

[Assigned for All Purposes to the Hon. Kristi Culver Kapetan, Dept. 502]

[Assessor Parcel Number 451-071-35]

APPLICATION FOR WRIT OF ASSISTANCE

(Filed concurrently with the Proposed Writ of Assistance, Declaration of Michael R. Linden, and Declaration of Barbie Barnes)

Date: February 24, 2026
Time: 3:30 p.m.
Dept.: 502
The Hon. Kristi Culver Kapetan

Action Filed: 7/12/2024
Trial Date: 3/9/2026

Plaintiff CITY OF FRESNO (“Plaintiff” or “City”) hereby submits the following Memorandum of Points and Authorities in support of its petition for a Writ of Assistance to execute and enforce this Court’s March 25, 2025 Order for Prejudgment Possession authorizing removal and storage of personal property and business inventory.

1 **I. INTRODUCTION**

2 The instant action relates to the City’s plan to construct the Blackstone McKinley BNSF
3 (Burlington Northern-Santa Fe) Grade Separation Project (the “Project”). The Project requires the
4 acquisition of several properties, including the property at 1780 East McKinley Avenue, Fresno,
5 California, more particularly described as Assessor’s Parcel Number (“APN”) 451-071-35 (the
6 “Subject Property”), owned by Defendant Art Terzian (“Defendant”). The City has already obtained
7 prejudgment possession of the Subject Property, through a previously noticed motion and court
8 order (“Order” or “Order of Possession”). The Subject Property contains Defendant’s business
9 inventory, a substantial amount of ceramic tile. The City has offered Defendant a relocation benefit
10 through a Relocation Assistance Program (“RAP”) to move this material, but Defendant has refused
11 to assign the funds to the moving company. As such, a specialized Writ of Assistance is necessary
12 to authorize the City to move the business inventory and other personal property at its own expense,
13 and to provide clarity for possible law enforcement Assistance.

14 Plaintiff City of Fresno (“City”) respectfully requests that this Court issue a Writ of
15 Assistance to enforce the Court’s Order for Prejudgment Possession, issued March 25, 2025, and to
16 authorize the Sheriff to (1) deliver immediate possession of the Subject Property to the City, and (2)
17 supervise the removal, transport, and secure storage by professional movers of Defendant Art
18 Terzian’s and Defendant Tony Terzian’s personal property and business inventory. City further
19 requests that this Court expressly order that in the event that Defendant does not execute an
20 assignment of funds from the Relocation Assistance Program (“RAP”) to Olympic Moving and
21 Storage for the moving and storage of his personal property on the site of the Subject Property,
22 including Defendant’s business inventory for A&T Ceramic Tiles, the City is authorized, in addition
23 to taking possession of the Subject Property, to move and store Defendant’s personal property at the
24 Subject Property, at its own expense, for a period of 12 months; after which period, should
25 Defendant abandon his personal property, the City is authorized to dispose of it as authorized by
26 law.

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1 Despite years of notice, extensive relocation assistance, and lawful orders of this Court,
2 Defendant continues to obstruct the City’s ability to take possession and proceed with the
3 Blackstone–McKinley BNSF Grade Separation Project (“Project”), a critical public-safety
4 infrastructure project designed to eliminate two of Fresno’s highest-risk rail crossings. Defendant’s
5 refusal to remove hundreds of pallets of ceramic tile and related business materials and refusal to
6 execute required relocation payment documentation leaves the Subject Property unusable by the
7 City and directly impedes the Project.

8 Although the City satisfied all statutory prerequisites to possession, Defendant has refused
9 to vacate the property and has obstructed lawful relocation Defendant’s conduct improperly
10 frustrates the Court’s possession order. California law provides clear authority for this Court to
11 enforce its possession order through a Writ of Assistance. The City has met every statutory
12 requirement, deposited probable compensation, served all required notices, and attempted
13 repeatedly to facilitate a non-coercive, cooperative relocation. Defendant has responded with
14 continued noncompliance, demands that the City “buy out” his business, refusal to sign relocation
15 benefit assignments, and unwillingness to vacate. The City has no adequate remedy absent issuance
16 of a Writ.

17 A Writ is now necessary to compel obedience to the Court’s possession order, ensure the
18 safe removal of inventory through licensed professionals, and allow the City to proceed with its
19 time-sensitive public project.

20 **II. FACTUAL AND PROCEDURAL BACKGROUND**

21 **A. The City Has Lawfully Obtained Prejudgment Possession**

22 On March 25, 2025, following full briefing and hearing, this Court granted the City’s Motion
23 for Prejudgment Possession, finding that Defendant’s hardships could be addressed monetarily and
24 that the City met all statutory prerequisites. Notice of Entry of Order was served, establishing the
25 City’s right to possession under Code of Civil Procedure (“CCP”) §§1255.410–1255.450.

26 The City deposited \$2,259,500 in probable compensation into the State Condemnation
27 Fund—funds that Defendant has never attempted to withdraw.

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1 Upon issuing the Order of Possession, this Court found that “there is an overriding need for
2 [the City] to possess the property in order to complete” the Project and that “substantial harm,” such
3 as “loss of funding for the [Project]” would be suffered by the City if the project is delayed, as it is
4 “scheduled to begin construction in the Spring of 2026.” (Order of Possession, ¶ 10.) Whereas, any
5 of “[D]efendant’s hardships may be remedied by monetary relief.” (Order of Possession, ¶ 11.) As
6 such, the Tentative Ruling was adopted as the Order of Possession on April 3, 2024. (Order of
7 Possession, ¶ 12.)

8 **B. Defendant Refused to Vacate and Has Obstructed the Relocation Process**

9 As set forth in greater detail in the Declarations of Barbie Barnes, Michael Lindon, and
10 Carrie Raven filed concurrently herewith¹: over a two-year period, the City and its relocation
11 consultant, Project Manager Barbie Barnes of Universal Field Services (UFS), provided repeated
12 notices, meetings, explanations of relocation benefits, walkthroughs, multiple extensions of
13 deadlines, bids from licensed movers. In May 2025, the City, with Defendant’s consent, performed
14 a walk-through of the entire site with prospective moving company representatives so movers could
15 prepare bids for moving and storing all personal property. At that time, Defendant was advised that
16 he could assign RAP funds directly to the moving/storage company so that the RAP funds can pay
17 the moving company directly and there would be no money out of his pocket. At the time, he agreed
18 to that plan.

19 Since that time, over six months has lapsed and Defendants have done nothing to formulate
20 an alternative plan to remove the business inventory from the Subject Property to a place of their
21 choosing and, at the same time, Defendant Art Terzian has refused to sign an assignment of RAP

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23 ¹ See Declaration of Barbie Barnes (“Barnes Decl.”), ¶¶1-19, Ex. A (RAP Correspondence
24 Timeline) filed concurrently herewith; See Declaration of Carrie A. Raven (“Raven Decl.”) ¶¶1-4,
25 Ex. A (Correspondence from Plaintiff’s Counsel to Defense Counsel, dated November 13, 2025),
26 filed concurrently herewith; See also Declaration of Michael Lindon (“Lindon Decl.”) ¶¶1-11, Ex.A
27 (Email exchanges between Plaintiff’s Counsel and Defense Counsel), filed concurrently herewith.)

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1 funds in the amount of \$807,500 to the professional moving/storage company to be hired by the
2 City.

3 Defendants have:

- 4 • Refused to relocate unless the City “buys out” his business for millions of dollars beyond
5 appraised value;
- 6 • Refused to sign the assignment of RAP funds to the mover- which is necessary for payment
7 under the Relocation Assistance Program;
- 8 • Refused to remove business inventory and other personal property, which fills the warehouse
9 with hundreds of pallets of ceramic tile and other miscellaneous items;
- 10 • Refused to vacate despite possession orders and multiple written demands.

11 Defendants counsel has expressly stated that Defendant Terzian will not cooperate because
12 he wants access to the inventory in storage after removal. Such access is not permitted by the storage
13 facility’s rules so as to ensure the inventory is secure, no chain-of-custody issues arise, and to
14 prevent Defendant Terzian from operating his business from the storage facility.

15 **C. Professional Movers Require Approximately Two Months to Remove**
16 **the Inventory**

17 The City’s movers advised, and the Barnes Declaration confirms, that due to the magnitude
18 and weight of the inventory, a two-month removal, packing, transportation, and storage period is
19 required. Sheriff supervision is necessary to ensure access, maintain the peace, and prevent
20 interference by Defendant or others.

21 **D. Defendant’s Obstruction Harms a Critical Public-Safety Infrastructure**
22 **Project**

23 The Project for which the Subject Property is being acquired is now entering a critical phase.
24 The City’s construction schedule cannot absorb additional delays without risking significant impacts
25 to funding, contracts, and the schedule for completion of the public improvements. The City must
26 therefore proceed under the authority granted by the Court and applicable eminent domain and
27 relocation laws. Defendants’ refusal to vacate delays impede the Project designed to:

- 28 • Eliminate two of Fresno’s highest-risk rail crossings;

- Reduce collisions between trains and vehicles/pedestrians;
- Improve emergency-response times;
- Remove chronic congestion and queuing across tracks;
- Provide safety benefits for Fresno City College students and the surrounding community.

This is precisely the type of public purpose for which eminent domain and prejudgment possession exist.

III. LEGAL STANDARD

A. Courts Possess Inherent Authority to Enforce Their Orders Through Writs of Assistance

Code of Civil Procedure §128(a)(4) grants courts broad power to compel obedience to their judgments and orders. The Writ of Assistance is a long-recognized equitable tool used to enforce orders for possession of real property.

Courts possess inherent authority to enforce their orders and to issue all writs necessary to give effect to judgments. (*Witkin v. Superior Court* (2002) 99 Cal.App.4th 346, 352; *Gonzales v. Superior Court* (1935) 3 Cal.2d 260, 263.) A writ of assistance is a recognized and appropriate mechanism to place a party in possession of property where another refuses to comply with a lawful order. (*Imperial Water Co. v. Imperial Irrigation Dist.* (1923) 62 Cal.App. 286, 291.)

Where an occupant refuses to yield possession, the court may order removal of persons and property interfering with enforcement. (*Schubert v. Bates* (1947) 30 Cal.2d 785, 789; *McCauley v. Weller* (1859) 12 Cal. 500, 520.) The Court's authority includes issuing ancillary orders reasonably necessary to ensure its judgment is not rendered ineffectual. Courts routinely issue writs to enforce possession after a party refuses to comply voluntarily. (*People v. Davis* (1956) 147 Cal.App.2d 535, 538.) When a litigant defies a lawful possession order, the court may issue a writ without further evidentiary showing.

B. The Eminent Domain Law Expressly Allows Enforcement of Prejudgment Possession

1 The City’s right to prejudgment possession arises under CCP §§1255.410–1255.450, which
2 allows the condemnor to take possession after depositing probable compensation. Once the statutory
3 conditions are met—and the Court has already determined they have been—possession is
4 enforceable against the property and any occupants. CCP §1255.460.

5 **C. CCP §§712.010 and 713.010 Authorize Writs to Enforce a Right to**
6 **Possession**

7 Even outside eminent domain, CCP §712.010 authorizes writs to enforce a right to
8 possession of real property. CCP §713.010 provides that the writ may direct the levying officer to
9 deliver possession and take necessary actions to execute the Court’s order.

10 **D. When Inventory Removal Is Needed, Courts May Authorize Sheriff-**
11 **Supervised Movers**

12 California courts uphold writs authorizing:

- 13 • Entry onto the premises,
- 14 • Removal of occupants,
- 15 • Removal of inventory or personal property,
- 16 • Delivery of possession to the condemnor,
- 17 • Supervision by law enforcement when resistance is expected.

18 Where, as here, business inventory prevents the City from using the Subject Property for a
19 public project, and the owner refuses to remove it, courts permit professional movers to carry out
20 removal under Sheriff supervision.

21 **E. Defendant Has No Legal Right to Withhold Cooperation or Condition**
22 **Compliance on Business Concessions**

23 Defendant’s refusal to vacate unless the City purchases his business, grants inventory access,
24 or guarantees relocation to a new site is legally untenable. Goodwill claims and reestablishment
25 expenses are addressed separately under Code of Civil Procedure §1263.510 and Government Code
26 §7260 et seq. Defendant cannot leverage possession to extract settlement terms or delay the City’s
27 lawful Project.

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1 **F. Defendant's Refusal to Execute RAP Assignment Documents Does Not**
2 **Delay or Condition the City's Right to Possession**

3 Once the statutory requirements for prejudgment possession are met, the condemning agency
4 is entitled to exclusive physical possession of the property. (*City of Stockton v. Marina Towers LLC*
5 (2009) 171 Cal.App.4th 93, 103.) A condemnee may not impose conditions, administrative hurdles,
6 or refusals to cooperate as a means of delaying possession.

7 Here, Defendant's refusal to execute relocation payment documentation required for
8 payment of the moving contractor constitutes obstruction of relocation administration, not a lawful
9 basis to delay enforcement. Courts have made clear that condemnees may not use delay tactics to
10 interfere with access to property or to increase leverage in an eminent domain proceeding.
11 (*Redevelopment Agency v. Gilmore* (1974) 38 Cal.App.3d 560, 566.) Private inconvenience or
12 business disruption does not override the condemnor's statutory right to possession or the public's
13 interest in timely completion of public projects. (*City of Los Angeles v. Ricards* (1973) 10 Cal.3d
14 385, 391.)

15 **IV. ARGUMENT**

16 **A. A Writ of Assistance Is Necessary to Enforce the Court's Order and**
17 **Deliver Immediate Possession**

18 The Court granted prejudgment possession over eight months ago. Defendant's failure to
19 comply, combined with his ongoing interference and refusal to remove inventory, leaves the City
20 without the ability to proceed on schedule which jeopardizes funding. A writ is the only procedural
21 tool capable of enforcing the Court's order and compelling Defendant's compliance.

22 **B. Sheriff Supervision Is Required Because Defendant Has Demonstrated**
23 **Ongoing Resistance**

24 The City has presented ample evidence of:

- 25 • Refusal to sign mover assignments;
26 • Demands for non-statutory concessions;
27 • Assertions that he will operate the business indefinitely from the Subject Property;
28 • Statements that he will resist removal of inventory;

- 1 • Attempts to negotiate access to inventory after storage.

2 These circumstances justify a Sheriff-assisted enforcement mechanism.

3 **C. The Two-Month Duration of Inventory Removal Necessitates a**
4 **Continuous Enforcement Writ**

5 Professional movers estimate two months to complete removal. Intermittent enforcement is
6 impractical. A writ authorizing Sheriff oversight throughout the duration is appropriate and
7 supported by the record and should be at the discretion of the Sheriff and his/her designee. A sheriff
8 may execute court orders through deputies or assisting peace officers acting under the sheriff's
9 authority. (*People v. Bolton* (1943) 23 Cal.2d 138, 144; *Pennington v. Smith* (1924) 68 Cal.App.
10 401, 406.) Given the scale of the commercial inventory and the duration of the removal process, use
11 of assisting peace officers is reasonable and necessary to ensure safety and uninterrupted
12 enforcement.

13 **D. The Public Interest Strongly Favors Issuance of the Writ**

14 Eminent domain actions serve essential public purposes, and courts must ensure that such
15 actions proceed without obstruction. (*City of Oakland v. Superior Court* (1975) 45 Cal.App.3d 740,
16 748.) Public infrastructure projects may not be delayed indefinitely by private resistance. (*City of*
17 *Los Angeles v. Pomeroy* (1899) 124 Cal. 597, 639.)

18 The Project addresses:

- 19 • Documented crash history;
20 • Emergency-response delays;
21 • Pedestrian and student safety;
22 • Regional economic mobility;
23 • Elimination of high-risk rail crossings.

24 Continued delay harms the public, increases costs, and jeopardizes construction schedules.
25 The balance of equities overwhelmingly favors enforcement.

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1 **V. CONCLUSION**

2 The City has complied with all statutory prerequisites, obtained a lawful order of possession,
3 attempted every reasonable accommodation, and faces ongoing obstruction that cannot be resolved
4 through lesser means. A Writ of Assistance is necessary to:

- 5 1. Deliver immediate possession to the City;
- 6 2. Remove and store Defendant's personal property through professional movers—even if
7 Defendant refuses to assign RAP benefits to the professional moving/storage company;
- 8 3. Ensure safety and compliance during a two-month removal operation;
- 9 4. Protect the integrity of the Court's prior order;
- 10 5. Allow a critical public-safety infrastructure project to proceed.

11 For these reasons, the City respectfully requests that the Court grant the Application for Writ
12 of Assistance in its entirety.

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14 DATED: December 31, 2025

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18 By: Carrie A. Raven

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

On **December 31, 2025**, I served true copies of the following document(s) described as **APPLICATION FOR WRIT OF ASSISTANCE** on the interested parties in this action as follows:

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Aleshire & Wynder, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

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

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Karla Chacon

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SERVICE LIST
City of Fresno v. Art A. Terzian, et al.
Fresno County Superior Court Case No. 24CECG02985

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Pleadings mailed in 9/2025 returned as undeliverable with
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