[YOUR NAME]

[Street Address]

[City, State, Zip]

[Phone Number (with area code)]

[Email]

In Pro Per [if unrepresented]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF [NAME OF COUNTY]**

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| [NAME OF LANDLORD/PLAINTIFF]  Plaintiff,  v.  [NAME OF TENANT(S)/DEFENDANT(S)],  Defendant. | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Case No.: [insert case number]  **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT’S USE OF THE CODE OF CIV. PRO. §§ 1161.3 AND 1174.27 AFFIRMATIVE DEFENSE**    **DATE: [date of hearing]**  **TIME: [time of hearing]**  **DEPT: [department number]**  Judge: [name of hearing judge]  Dept.: [department number]  Action Filed: [date]  Trial Date: [date or unassigned] |

1. **Introduction**

Defendant [TENANT’s NAME] must be allowed to utilize the unlawful detainer affirmative defense as codified in Code of Civil Procedure sections 1161.3 and 1174.27 (hereinafter “survivors’ affirmative defense”). The survivors’ affirmative defense was created to ensure there were “protections offered to domestic violence/staking victims . . . that protect them from being evicted from their housing based on crimes committed against them..” (Sen. Com. On Judiciary, Analysis of Sen. Bill No. 1017 (2021-2022 Reg. Sess.) as amended Mar. 31, 2019, p. 4.) The survivors’ affirmative defense is available to tenants being evicted based on an act of abuse or violence against a tenant, a tenant’s immediate family member, or a tenant’s household member “if the landlord has received documentation evidencing abuse or violence against the tenant, the tenant’s immediate family member, or the tenant’s household member.” (Code Civ. Proc., § 1161.3 subd. (b)(1).) This includes receiving documentation of abuse or violence in response to an unlawful detainer action being filed. Abuse or violence is domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse or crime that caused bodily injury, involved a deadly weapon or used force or threat of force (*Id*. at 1161.3 subd. (d).) Documentation evidencing abuse or violence is “any of the following:

1. A temporary restraining order, emergency protective order, or protective order lawfully issued within the last 180 days . . . that protects the tenant, the tenant’s immediate family member, or the tenant’s household member from abuse or violence.
2. A copy of a written report, written within the last 180 days, by a peace officer employed by a state or local law enforcement agency acting in his or her official capacity, stating that the tenant, the tenant’s immediate family member, or the tenant’s household member has filed a report alleging that they are a victim of abuse or violence.
3. Documentation from a qualified third party based on information received by that third party while acting in their professional capacity to indicate that the tenant, the tenant’s immediate family member, or the tenant’s household member is seeking assistance for physical or mental injuries or abuse resulting from an act of abuse or violence, which shall contain in substantially the same form [information as outlined in Code of Civil Procedure section 1161.3 subsection (a)(2)(C).]
4. Any other form of documentation or evidence that reasonably verifies that the abuse or violence occurred. (Code Civ. Proc., § 1161.3, subd. (a)(2).)

But for one exception explained below, if the tenant does not live with the person who perpetrated the abuse or violence against them and the landlord “terminat[es] a tenancy . . . based on acts of abuse or violence against the tenant . . . [and] has received documentation evidencing abuse or violence against the tenant,” “the [tenant] shall have a complete defense to the cause of action as to that cause of action[.]” (*Id*. at § 1161.3, subds. (b) & (d).) The exception to the complete defense occurs when the perpetrator of abuse or violence “threatened the physical safety of other tenants, guests, invitees, or licensees” and the tenant voluntarily allows the perpetrator on the premises after “the expiration of a three-day notice requiring the tenant not to voluntarily permit . . . [the] perpetrator of abuse or violence on the premises[.]”(*Id*. at § 1161.3, subds. (b)(2)(B).)

If the perpetrator of abuse or violence lives in the same dwelling unit as the tenant “the court shall determine whether there is documentation evidence abuse or violence against the tenant[.]” (*Id*. at § 1174.27, subds. (a) & (c).) “If the court determines that there is documentation evidencing abuse or violence against the tenant . . . and the court does not find the defendant raising the affirmative defense guilty of an unlawful detainer on any other grounds, . . . [t]he defendant raising the affirmative defense and any other occupant not found guilty of an unlawful detainer shall not be guilty of an unlawful detainer and shall not be named in any judgment in favor of the landlord.” (*Id*. at § 1174.27, subd. (e)-(e)(1).)

**Factual Background**

**[A sworn declaration of relevant facts should be submitted along with the memorandum. Documentation evidencing the abuse or violence and any other evidence should be attached to the declaration as exhibits. Examples of other evidence includes copies of emails or texts between you and your landlord where you talk about being a survivor or documents that show the actions your landlord is trying to evict you for were abuse against you, like emails or texts between you and the person who abused you.) Each fact asserted in this memorandum should have an accompanying citation to the declaration. The following is an example of how facts in the declaration can be referenced:**

1. I, [DEFENDANT/TENANT’S NAME] am a survivor of [domestic violence, sexual assault, stalking, human trafficking, elder or dependent adult abuse, a crime that caused bodily injury or death, crime that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument or a crime that included the use of force against the victim or a threat of force against the victim.].
2. On, [DATE] I asserted the affirmative defense for survivors [by checking the 3j box in the UD-105 Answer-Unlawful Detainer Form or state the other way you asserted the defense.]
3. On, [DATE] I gave my landlord [through their attorney] documentation evidencing abuse or violence against [me, my immediate family member, my household member].
4. **ARGUMENT**
   1. **Defendant Can Argue the Survivors’ Affirmative Defense Because Plaintiff Has Documentation Evidencing Abuse or Violence**

The statue’s text, legislative history and intent do not support a requirement that the landlord receive documentation evidencing abuse or violence before they file an unlawful detainer for a tenant to use the survivors’ affirmative defense. On [DATE] Defendant gave Plaintiff documentation evidencing abuse or violence and on [DATE] Defendant asserted their claim to the survivors’ eviction defense. Therefore, because Plaintiff received documentation evidencing abuse or violence against Defendant, the Court must consider the merits of Defendant’s survivors’ affirmative claim.

1. *Statutory Language Does Not Prohibit Tenants from Using the Survivors’ Affirmative Defense When their Landlord Receives Documentation Evidencing Abuse After Filing the Unlawful Detainer*

The Code of Civil Procedure section 1161.3 states if a landlord “terminate[s] a tenancy . . . based on an act of abuse or violence against a tenant . . . [and] has received documentation evidencing abuse or violence against the tenant,” the tenant has “an affirmative defense to a cause of action for unlawful detainer that is based on an act of abuse or violence against a tenant.” (*Id*. at § 1161.3, subds. (b)(1) & (d).) The Code of Civil Procedure does not require a tenant to give their landlord documentation evidencing abuse or violence before the landlord files an unlawful detainer in order to receive the survivors’ affirmative defense—and the trial court is not authorized to engraft a notice requirement into the statute. (*See Quintana v. Guijosa* (2003) 107 Cal.App.4th 1077, 1079 [trial court abused its discretion by denying domestic violence restraining order on a factor not enumerated by the Legislature].) Because Defendant gave Plaintiff documentation evidencing abuse or violence on [insert date], the Defendant complied with the documentation requirements outlined in the Code of Civil Procedure section 1161.3. (Citation to Declaration) As such, Defendant must be allowed to present the survivors’ affirmative defense to the Court.

*ii*. The *Legislature Intended for Tenants, Like Defendant, Who Provide Documentation Evidencing Abuse or Violence After an Unlawful Detainer is Filed to Have Access to the Survivors’ Affirmative Defense*

Legislative history shows tenants may provide their documentation evidencing abuse or violence after an unlawful detainer is filed and use the survivors’ affirmative defense. “If the statutory language is not clear, a court may resort to extrinsic sources, like legislative history.” (*North Ardmore Avenue, LLC v. County of Los Angeles* (2017) 3 Cal.5th 319, 328.)

The purpose of the documentation requirement in the survivors’ affirmative defense is to “make it difficult for tenants to try to invoke the special protections against eviction in circumstances in which no violence or abuse has actually taken place or where the tenant was in fact the perpetrator of what happened. In other words, they prevent bogus claims of victimization.” (Sen. Com. On Judiciary, Analysis of Sen. Bill No. 1017 (2021-2022 Reg. Sess.) as amended Mar. 31, 2022, p. 7.) Because the documentation requirement is for rooting out bogus claims and not for providing landlord’s advance notice that their tenants are survivors, when enacting 1161.3 the legislature specifically stated that the tenant would “most likely in his or her answer to the unlawful detainer [present the] evidence that he or she is a victim.” (Assemb. Comm. On Judiciary, Analysis of Sen. Bill No. 782 (2009-2010 Reg. Sess.) as amended June 10, 2010, p.4.) Therefore, legislative history clearly supports Defendant’s right to present their survivors’ affirmative defense to the Court.

*iii***.** *It Would Frustrate the Legislative Intent of the Survivors’ Affirmative Defense to Require Defendant to Give Plaintiff Documentation Evidencing Abuse Before Plaintiff Filed the Unlawful Detainer*

By allowing the Defendant to present their survivors’ affirmative defense, the Court would be upholding the legislature’s intent to provide survivors’ access to the survivors’ affirmative defense. The survivors’ affirmative defense became law to “protect [survivors] from being evicted from their housing based on crimes committed against them.” (Sen. Comm. on Judiciary, Analysis of Sen. Bill No. 782 (2009-2010 Reg. Sess.) as amended March 31, 2010, p.4.) The survivors’ affirmative defense is supposed to *“provide to survivors of abuse and violence is protection against being evicted on account of the very abuse or violence which they endured.”* (Sen. Com. On Judiciary, Analysis of Sen. Bill No. 1017 (2021-2022 Reg. Sess.) as amended Mar. 31, 2022, p.7.) Requiring tenants to give their landlord documentation of abuse or violence before an unlawful detainer is filed severely limits access to the survivors’ affirmative defense because survivors do not receive notice of their rights as survivors and are often reluctant to disclose abuse.

Unlike federal housing laws protecting survivors of abuse, California laws do not require landlords to notify their tenants of the housing protections for survivors of abuse when initiating or terminating a tenancy. (24 C.F.R. § 5.2005 (a) (2016).) As a result, many, if not most, tenants first learn of the survivors’ affirmative defense when completing their answer to the unlawful detainer complaint. Compounding the unlikelihood that survivors would provide their landlord documentation evidencing abuse or violence prior to filing their answer is survivors’ reluctance to disclose abuse. Survivors often do not disclose abuse or even keep evidence of the abuse, such as photographs or text messages, for myriad reasons including fear of the consequences (e.g., increased violence), shame, and child custody issues. (Boethius & Akerstrom, *Revealing Hidden Realities: Disclosing Domestic Abuse to Informal Others* (2020) 21 Nordic J. of Criminology 186, 186-187; see also Aiken & Murphy, *Evidence Issues in Domestic Violence Civil Cases* (2000) 34 Fam. L.Q. 43, 44.) Therefore, denying Defendant access to the survivors’ affirmative defense when [explain when/why they gave documentation evidencing abuse or violence] would be interpreting and applying the law contrary to its purpose.

1. **Conclusion**

For the reasons set forth above, [DEFENDANT/TENANT’s NAME] respectfully requests that this Court allow [DEFENDANT/TENANT’s NAME] to use the survivors’ affirmative defense in the upcoming unlawful detainer proceeding.

DATED:

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| --- | --- | --- |
|  | *[Defendant or Attorney signature]* |  |
|  | [Tenant or Attorney Name NAME]  In Pro Per |  |