



**Rent Stabilization Board  
Legal Unit**

November 8, 2023

The Honorable Charles Smiley  
Department 1  
Rene C. Davidson Courthouse  
1225 Fallon Street  
Oakland, CA 94612

VIA FIRST CLASS US MAIL AND EMAIL AT [dept1@alameda.courts.ca.gov](mailto:dept1@alameda.courts.ca.gov)

**Re: Alameda County Unlawful Detainer Calendar**

Dear Honorable Presiding Judge Smiley:

The Berkeley Rent Stabilization Board (“Board”) is the independent public agency charged with the implementation and enforcement of the Berkeley Rent Stabilization Ordinance (“Ordinance”). The voters of Berkeley enacted the Ordinance in part to protect tenants from arbitrary, discriminatory, or retaliatory evictions in order to help maintain the diversity of the Berkeley community. Given this mandate, the Board has grave concerns regarding the Court’s current Unlawful Detainer calendar. Through courtroom observation and conversations with attorneys currently defending tenants, the Board has learned that the Court has been calendaring over 100 unlawful detainer proceedings per week. Although the Board recognizes the recently expired local eviction moratoria has necessarily caused an increase in unlawful detainer filings, the sheer volume of cases on calendar deprives unrepresented litigants, who are overwhelmingly tenants, of a fair and meaningful opportunity to be heard. The Board understands that local legal aid providers have written to the Court to request that the Court set a 50-case cap per week on the number of cases set for trial. The Board supports this request.

Under the Court’s current calendaring practice, tenants are not guaranteed a good faith opportunity to settle their matters nor proper or predictable notice of any rescheduled matters. Our understanding is that if a case does settle at the Mandatory Settlement Conference, the Court will schedule a trial for the next day. However, because many Plaintiffs have more matters on calendar than they can realistically staff, many tenants travel to the courtroom, wait for the duration of the settlement conference calendar, and are unable to meet with the Plaintiff or their attorney to engage in any settlement negotiation. The Court’s calendaring practice requires these

tenants appear again the next day for a court trial. Because more cases are set for trial than the Court can reasonably hear, the Court is likely to continue these tenants' matters multiple times.

With each continuance, the tenant must travel to court to appear for another day because the tenant bears the full risk of any non-appearance. Should a Plaintiff fail to appear at any of the subsequent court dates, the Court will likely continue the Plaintiff's matter or, at worst, dismiss the matter without prejudice. Should a tenant fail to appear, the Court will likely allow the Plaintiff to proceed via prove-up. Throughout this process, the Court is unlikely to consistently send out written notices of continuances, and the parties are unlikely to timely receive any notices sent out by mail, given the short timeframes.

Compounding these issues is the Court's decision to hear all unlawful detainer matters at the Hayward Hall of Justice. As the Board expressed to the Court when the Court first transferred all unlawful matters to Hayward in 2016, the Hayward Courthouse is much less accessible to Berkeley's poor, disabled, and elderly tenants than other courthouses. The Hayward Court house is farther from BART and does not have the same frequency of bus transportation that Oakland or Berkeley do. In short, poor people have a far more difficult time accessing justice given the way unlawful detainer cases are currently heard.

The Due Process Clause of the California and United States Constitutions provides all litigants "the right to be heard at a meaningful time and in a meaningful manner." (*Gresher v. Anderson* (2005) 127 Cal.App.4th 88, 108). Due process requires that the procedures of a given matter "be tailored, in light of the decision to be made, to the capacities and circumstances of those who are to be heard, to [ensure] that they are given a meaningful opportunity to present their case." (*Mathews v. Eldridge* (1976) 424 U.S. 319, 348-49). Although unlawful detainer complaints may be summary proceedings, the requirements of due process still attach to these matters. With the volume of the current unlawful detainer calendar, the Board has serious doubts the Court can maintain minimum standards of due process. Specifically, a tenant is deprived of a meaningful opportunity to engage in settlement discussion that the Court mandates if the calendar is simply too large for all the parties to meet. Similarly, a tenant is deprived of the right to be heard at a meaningful time if their court date is continuously postponed and rescheduled with extremely short notice.

The 50-case cap proposed by the legal aid providers addresses these concerns. The cap is within the providers' capacity, allowing unrepresented tenants to engage counsel. If both parties to an unlawful detainer have representation, the probability that the matter settles or is resolved by a dispositive motion increases. In turn, this frees up the Court's time to adjudicate the matters which will not settle, ensuring a more timely, predictable, and equitable process. During a time when more and more families, low-income, and elderly tenants experience unprecedented housing insecurity, we strongly believe that interests of justice, the articulated purpose of the

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Rent Ordinance, and due process principles mandate that the Court cut back on the current UD calendar to allow more tenants to meaningfully participate in these important cases.

Thank you for your consideration. I would be happy to discuss these issues further if the Court would find that helpful.

Very truly yours,

A handwritten signature in cursive script that reads "Matt Brown".

Matt Brown,  
General Counsel