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NO. 69204-6

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2016 FEB 11 PM 3:00  
STATE OF WASHINGTON  
COURT OF APPEALS, DIVISION 1

**THE COURT OF APPEALS, DIVISION 1  
OF THE STATE OF WASHINGTON**

---

WESLEY SCHLEPP, Appellant

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, ON BEHALF OF THE  
HOLDERS OF THE WAMU MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-  
AR4, Its successors and/or assigns.

Respondent

---

**APPELLANT'S OPENING BRIEF**

---

WESLEY SCHLEPP  
12212 N.E. 62<sup>nd</sup> St.  
Kirkland, WA 98033  
(425) 523-503-3134

**I. ASSIGNMENT OF ERROR AND ISSUES  
PERTAINING TO ASSIGNMENT OF ERROR**

**A. ASSIGNMENT OF ERROR**

The trial court erred when it issued an order denying Appellant/Defendant WESLEY SCHLEPP'S *EX PARTE* Motion – Re Violation of Rule 52(b) and Motion to Void Writ of Restitution. The Commissioner ruled that the restitution lacked basis. The Order and supporting documents are attached hereto as Exhibit "A."

*(Assignment of Error 1)*

The trial court erred when it denied Appellant/Defendant Wesley Schlepp ("Appellant/Defendant SCHLEPP") the right to exercise his due process of the law. As a result of the Court not allowing him to exercise his right to defend the subject action, he has lost everything. It wasn't until a Notice of Restitution was taped to his door that he realized that an Unlawful Detainer action had been filed and fully adjudicated against him.

He was never served with an Unlawful Detainer, notice regarding court/hearing dates, a Request or Application or Order to Show Cause for the Writ; he was completely omitted from this action. Documents were filed and

everything was done without his knowledge because he was never served.

(Assignment of Error No. 2)

**STATEMENT OF CASE**

On January 7, 2015 attorneys for Respondent/Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR SECURITIZED TRUST WAMU MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR4 (“Respondent/Plaintiff DEUTSCHE”); filed its motion for Judgment restoring the possession of the real property located at 2804 E. Lake Sammamish Pkwy NE, Sammamish, WA 98074 (“the Subject Property”).

**ARGUMENT**

Appellant/Defendant SCHLEPP was unaware of this filing because he had never been served with a Request for Judgment, nor a Writ of Restitution. He only became aware of this when the King County Sheriff posted a Writ of Restitution on his door on August 4, 2014. An entire case was adjudicated without him being informed or noticed.

Appellant/Defendant SCHLEPP claimed this was plain error. It affected his rights, and clearly circumvented the legal process. There is absolutely no proof that he was served any documentation notifying of any action; especially that the Motion for Writ of Restitution would be heard by the court. There is no proof of service/certificate of service or affidavit, stating that Appellant/Defendant was ever served with the Motion filed on January 7, 2015, nor was he notified of the subject Writ, signed on January 20, 2015.

Further, Respondent/Plaintiff DEUTSCHE has made a \$3,000.00 settlement offer relating to the foreclosure and eviction and pending appeal; which is totally unacceptable. They are fully aware that they denied Appellant/Respondent SCHLEPP's his right to due process; they are fully aware that they wrongfully foreclosed on the property; they know the Unlawful Detainer was fully adjudicated without Respondent/Plaintiff DEUTSCHE serving Appellant/Respondent SCHLEPP. The settlement offer is an insult.

**RELIEF REQUESTED**

Appellant/Defendant SCHLEPP requests, under the circumstances that the subject holding by the trial court be reversed; the Writ vacated and that the subject property be restored to him and that Appellant/Defendant SCHLEPP be given full access to the Subject Property immediately and that he may live in the subject property until this matter is properly adjudicated in the Courts. That he be granted \$200,000.00 in damages; which occurred as a direct result of injustice perpetrated upon him and as a direct result of the forcible lockout. All of his personal property, which included antique cars and furniture were all taken or destroyed, or stolen. He also requests reimbursement of fees incurred in filing and prosecuting this appeal; and for reimbursement for housing as a result of this forcible eviction.

Dated: 2-10-15 By:   
WESLEY SCHLEPP  
Appellant/Defendant in Pro Per

**EXHIBIT A**  
**(ORDER AND SUPPORTING DOCUMENTS)**

**CERTIFICATE OF SERVICE**

I certify that on 10 day of February, 2016, I served a copy of the foregoing OPENING BRIEF by the method indicated below on the following:

Julia A. Phillips Pite Duncan, LLP 9311 S.E. 36 <sup>th</sup> St., Ste 100 Mercer Island, WA 98040 (858) 750-7600	<input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Process Server <input type="checkbox"/> Federal Express
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Dated: February 10 2016

BY: W.A. Aklepp

RECEIVED  
FEB 11 2016  
10:01 AM

**FILED**  
KING COUNTY, WASHINGTON  
FEB 13 2015  
**SUPERIOR COURT CLERK**

**RECEIVED**  
KING COUNTY, WASHINGTON  
FEB 13 2015  
DEPARTMENT OF  
JUDICIAL ADMINISTRATION

**Superior Court of Washington  
King County**

Deutsche Bank National Trust Company  
Petitioner/Plaintiff  
vs/and  
Wesley Schlepp  
Defendant/Respondent

No. 14 2 10510 0 SEA  
MINUTE ORDER

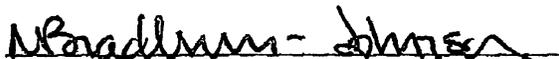
**The court having reviewed a motion for order, hereby DENIES the entry because:**

**Other:**

Defendant's Ex parte Motion—Re Violation of Rule 52(b) and Motion to Void Writ of Restitution lacks a basis. Ms. Phillips representing the Plaintiff appeared by telephone.

**IT IS HEREBY ORDERED** that the request is denied.

Dated this \_\_\_\_\_ day of 2/13, 2015.

  
\_\_\_\_\_  
Judge/Commissioner

Friday, February 13, 2015  
Page 1 of 1

MINUTE ORDER - ORDYMT - 12/10

**FILED**  
**KING COUNTY, WASHINGTON**  
FEB 13 2015

**SUPERIOR COURT CLERK**

**RECEIVED**  
**KING COUNTY, WASHINGTON**

FEB 13 2015

**DEPARTMENT OF**  
**JUDICIAL ADMINISTRATION**

1 Wesley Schlepp  
2 2804 E., Lake Sammamish Pkwy NE.  
3 Sammamish, WA 98074

4 Defendant *In Pro Per*

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7  
8 **IN THE SUPERIOR COURT OF WASHINGTON**  
9 **COUNTY OF KING - SEATTLE**

10  
11 DEUTSCHE BANK NATIONAL TRUST  
12 COMPANY, AS TRUSTEE, ON BEHALF OF  
13 THE HOLDERS OF THE WAMU MORTGAGE  
14 PASS-THROUGH CERTIFICATES, SERIES  
15 2006-AR4, Its successors and/or assigns,

16 Plaintiff

17 v.

18 WESLEY SCHLEPP, et al.

Case No. 14-2-10510-0 SEA

**EX PARTE MOTION – RE VIOLATION  
OF RULE 52(b); and MOTION TO VOID  
WRIT OF RESTITUTION**

19  
20 **COMES NOW**, Defendant WESLEY SCHLEPP (“Defendant”) hereby submits his **EX**  
21 **PARTE MOTION – RE VIOLATION OF RULE 52(b); and MOTION TO VOID WRIT OF**  
22 **RESTITUTION.**

- 23 1. On January 7, 2015, attorneys for Plaintiff DEUTSCHE BANK NATIONAL TRUST  
24 COMPANY, AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE WAMU  
25 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-AR4 (“Deutsche  
26 Bank”); filed its motion for a Judgment restoring the possession of the real property  
27

1 located at 2804 E. Lake Sammamish Pkwy NE., Sammamish, WA 98074 ("the subject  
2 property"). Defendant is unaware and has not been served with the Motion or the Writ of  
3 Restitution. Defendant has a copy of Writ as a result of the Sheriff Dept., posting it on  
4 the door of the subject property, which is Defendant's place of residence.  
5

- 6 2. Defendant hereby asserts that the this is plain error; it affects Defendants rights, and  
7 clearly circumvents his due process. There is absolutely no proof that Defendant was  
8 notified that this Writ would be heard by the court. There is no proof/certificate of  
9 service nor an affidavit, stating that Defendant was ever served with the Motion filed on  
10 January 7, 2015; nor was he notified of that the subject Writ, signed on January 20, 2015  
11 would be heard. (Writ of Restitution, dated January 20, 2015, attached as Exhibit A).  
12

13 This violation voids the Writ pursuant to Rule 52(b). Rule 52(b) reads as follows:

14 Among the mechanisms meant to correct errors in the U.S. criminal justice system  
15 is Rule 52(b) of the Federal Rules of Criminal Procedure, which states that "[a]  
16 plain error that affects substantial rights may be considered even though it was not  
17 brought to the court's attention." Over the years, the Supreme Court has  
18 attempted to clarify the scope of this exception to the general rule that a defendant  
19 must bring an error to the trial court's attention in order for a court of appeals to  
20 correct it. In *United States v. Olano*, the Court disaggregated the individual  
21 components of Rule 52(b) and added another factor, establishing a four-part test.  
22 A federal appeals court can choose to correct a forfeited error if (1) there is in fact  
23 an error; (2) the error is plain; (3) the error affects substantial rights; and (4) the  
24 error "seriously affects the fairness, integrity or public reputation of judicial  
25 proceedings. "Later, in *Johnson v. United States*, the Court held that even if a  
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1 trial court's decision was clearly correct at the time it was made, there can be plain  
2 error if a change in the law has made the decision clearly incorrect by the time of  
3 appeal.<sup>5</sup> Still, at least one question of timing remained unanswered: whether an  
4 error could be plain if circuit law was unsettled at the time of trial. Last Term, in  
5 *Henderson v. United States*, the Supreme Court held that for the purposes ...  
6

7  
8 **JUDICIAL NOTICE**

9  
10 Cross-Complainants moves this Honorable Court to take Mandatory Judicial Notice under the  
11 Federal Rules of Civil Procedure Rule 201 (d) of the following:  
12

13 a. The United States Supreme Court, in *Haines v Kerner* 404 U.S. 519 (1972), said that  
14 all litigants defending themselves must be afforded the opportunity to present their  
15 evidence and that the Court should look to the substance of the complaint rather than the  
16 form.

17  
18 b. In *Platsky v CIA*, 953 F.2d 26 (2nd Cir. 1991), the Circuit Court of Appeals allowed  
19 that the District Court should have explained to the litigant proceeding without a lawyer,  
20 the correct form to the Cross-Complainants so that he could have amended his pleadings  
21 accordingly. Cross-Complainants respectfully reserves the right to amend. A pro se  
22 Cross-Complainants's pleadings and filings are liberally construed and are held to a less  
23 stringent standard than documents drafted by attorneys. *Erickson v. Pardus*, 551 U.S. 89,  
24 94 (2007); *Hamilton v. Brown*, 630 F.3d 889, 893 (9th Cir. 2011). In evaluating a pro se  
25 Cross-Complainants's "compliance with the technical rules of civil procedure, we treat  
26 him with great leniency." *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986).  
27

1 **CONCLUSION**

2 As a result of the violation of Rule 52(b); Defendant hereby requests that this Honorable  
3 Court immediately voids the Writ of Restitution, signed by the Court on January 20, 2014  
4 regarding the above referenced matter.  
5

6  
7 Dated: February 13, 2015

8 By: Wes Schlep  
9 WESLEY SCHLEPP  
10 Defendant in Pro Per  
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**EXHIBIT "A"**

EVICITION DATE  
ANY TIME AFTER 11:59 PM

*FEB 17, 2015*  
IF YOU HAVE ANY QUESTIONS AS TO  
PROCEDURES FOLLOWED BY THE  
SHERIFF IN EXECUTING THIS COURT  
ORDER, CALL BEFORE 7:30 AM

BY DET. ROGER JUVET 206-255-8586  
KING COUNTY SHERIFF'S OFFICE

RECEIVED  
FEB 17 2015  
CLERK OF SUPERIOR COURT  
COUNTY OF KING

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING - SEATTLE

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE, ON BEHALF  
OF THE HOLDERS OF THE WAMU  
MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2006-AR4, its  
successors and/or assigns,

Plaintiff,

v.

WESLEY SCHLEPP, AND JOHN AND  
JANE DOE, UNKNOWN OCCUPANTS OF  
THE PREMISES,

Defendant(s).

Case No. 14-2-10510-6 SEA

WRIT OF RESTITUTION

To: The Sheriff of King County  
STATE OF WASHINGTON  
COUNTY OF KING

WHEREAS, on JAN 07 2015, 20\_\_, on the motion of the attorney for Deutsche  
Bank National Trust Company, as trustee, on behalf of the holders of the WaMu Mortgage Pass-  
Through Certificates, Series 2006-AR4 (hereinafter referred to as plaintiff), the Honorable  
~~PAUL G. V. VELAZQUEZ~~, one of the Judges/Court Commissioners of this Court, signed  
Judgment, restoring the possession of the below-described real property (hereinafter referred to as  
"subject property") to the plaintiff in the manner provided by law:

LOT 1, KING COUNTY SHORT PLAT NO S90S0422 RECORDED  
UNDER RECORDING NUMBER 9606179002 BEING A  
PORTION OF THAT PORTION OF GOVERNMENT LOT 3.

WRIT OF RESTITUTION  
Page 1

File: Dastoon, LLP  
9311 S 24<sup>th</sup> Street, Ste 100  
Mercer Island, WA 98340  
(206) 250-7600

EX PARTE M

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AND WHEREAS this Writ of Restitution shall expire twenty days from the date of issuance,  
Now, therefore, you, the said Sheriff, are hereby commanded to deliver possession of the subject  
property to the plaintiff, and to make return of this writ twenty (20) days from its issuance. If you are  
not able to return the Writ within twenty (20) days, the return on the Writ shall be automatically  
extended a second twenty (20) day period. You, the said Sheriff, may break and enter the subject  
property if necessary to effect this Writ. Said Sheriff shall carry out the Writ without a bond or need  
for indemnity as provided in RCW 59.18.390.

DATED this \_\_\_\_\_ day of JAN 7 9 2015, 20\_\_\_\_.

CARLOS Y. VELATEGUI  
Superior Court Judge

BARBARA MINER.  
Clerk of the Superior Court-  
For King County, Washington

By: A. GALLARDO  
Deputy Clerk



DATED this 26th day of December, 2014.

PITE DUNCAN, LLP

/s/ Julia A. Phillips  
JULIA A. PHILLIPS  
WSBA No. 32735  
CASPER J. RANKIN  
WSBA No. 45644  
Attorneys for Plaintiff

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**PROOF OF SERVICE**

I \_\_\_\_\_, do hereby declare that I am over 18 years of age and not a party to this action.

My business/home address is: \_\_\_\_\_

On February 13, 2015, I served the following documents:  
**EX PARTE MOTION – RE VIOLATION OF RULE 52(b); and MOTION TO VOID WRIT OF RESTITUTION**

I served the documents on the following persons:

Pite Duncan, LLP  
9311 S.E. 36<sup>th</sup> St., Ste 100  
Mercer Island, WA 98040  
(858) 750-7600

**The above-referenced document was served via U.S. Mail.** I enclosed the document in a sealed envelope addressed to the persons listed above; by depositing a sealed envelope with the US Postal Service, with postal fully prepaid.

I declare under penalty of perjury under the laws of the State of <sup>WASHINGTON</sup>~~California~~ that the foregoing is true and correct.

Date: \_\_\_\_\_

By: \_\_\_\_\_

**SHERIFF**  
**KING COUNTY**

**WARNING**

ALL PERSONS ARE NOTIFIED THAT THE PREMISES  
LOCATED AT:

*2804 E. LAKE SHANNON H. Hwy. NE  
Shannon Hill 98074*

WILL BE THE SUBJECT OF AN EVICTION CARRIED OUT BY  
OFFICERS OF THE KING COUNTY SHERIFF'S OFFICE ON  
OR AFTER THE DATE OF:

*FEB 17, 2015*

Any person remaining on these premises after the above date will  
be physically removed by Superior Court order. Detectives have no  
authority to extend eviction date beyond the one posted above.

Any person who interferes with or obstructs Sheriff's officers in  
the performance of their duties will be arrested.

All possessions and property may be placed on the street or public  
right of way regardless of weather conditions.

Animals found on these premises will be taken to the local animal  
control shelter.

You must vacate these premises at once!

No further warning or notice will be given.

Detective: *WASSILIOS MACK (142711)*

Phone: 206-423-7470

**EVICTON DATE**

ANY TIME AFTER 11:59 PM

*FEB 17 2015*  
IF YOU HAVE ANY QUESTIONS AS TO  
PROCEDURES FOLLOWED BY THE  
SHERIFF IN EXECUTING THIS COURT  
ORDER, CALL BEFORE 7:30AM

BY DET. ROGER JUVET 206-255-9596  
KING COUNTY SHERIFF'S OFFICE

RECEIVED  
COURT

1579-3 110:45

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING - SEATTLE

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE, ON BEHALF  
OF THE HOLDERS OF THE WAMU  
MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2006-AR4, its  
successors and/or assigns,

Plaintiff,

v.

WESLEY SCHLEPP, AND JOHN AND  
JANE DOE, UNKNOWN OCCUPANTS OF  
THE PREMISES,

Defendant(s).

Case No. 14-2-10510-0 SEA

WRIT OF RESTITUTION

To: The Sheriff of King County  
STATE OF WASHINGTON  
COUNTY OF KING

WHEREAS, on JAN 07 2015, 20  , on the motion of the attorney for Deutsche

Bank National Trust Company, as trustee, on behalf of the holders of the WaMu Mortgage Pass-  
Through Certificates, Series 2006-AR4 (hereinafter referred to as plaintiff), the Honorable

~~DAVID Y. VELAZQUEZ~~, one of the Judges/Court Commissioners of this Court, signed

Judgment, restoring the possession of the below-described real property (hereinafter referred to as  
"subject property") to the plaintiff in the manner provided by law:

LOT 1, KING COUNTY SHORT PLAT NO S90S0422 RECORDED  
UNDER RECORDING NUMBER 9606179002 BEING A  
PORTION OF THAT PORTION OF GOVERNMENT LOT 3,

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SECTION 20, TOWNSHIP 25 NORTH, RANGE 6 EAST W.M., IN  
KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:  
BEGINNING AT THE SOUTHEAST CORNER OF SAID  
GOVERNMENT LOT 3 THENCE NORTH 0°10'00" EAST 336.65  
FEET; THENCE SOUTH 77°29'40" WEST 1,101.33 FEET MORE  
OF LESS TO THE NORTHEASTERLY LINE OF THE  
ISSAQUAH-REDMOND ROAD THENCE SOUTH 27°34'00"  
EAST 120.00 FEET, MORE OF LESS, TO THE SOUTH LINE OF  
SAID GOVERNMENT LOT 3; THENCE NORTH 89° 32' 09"  
EAST 1,018.76 FEET, MORE OR LESS, TO THE TRUE POINT OF  
BEGINNING TOGETHER WITH AN UNDIVIDED INTEREST IN  
TRACT X OF SAID SHORT PLAT; AND TOGETHER WITH AN  
EASEMENT FOR INGRESS AND EGRESS RECORDED UNDER  
KING COUNTY RECORDING NUMBER 9011300643, OVER  
THE FIRST 100 FEET FROM EAST LAKE SAMMAMISH  
PARKWAY, ALONG THE NORTH LINE AS DESCRIBED.

and commonly known as 2804 E. Lake Sammamish Pkwy NE., Sammamish, WA 98074.

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1 AND WHEREAS this Writ of Restitution shall expire twenty days from the date of issuance,  
2 Now, therefore, you, the said Sheriff, are hereby commanded to deliver possession of the subject  
3 property to the plaintiff, and to make return of this writ twenty (20) days from its issuance. If you are  
4 not able to return the Writ within twenty (20) days, the return on the Writ shall be automatically  
5 extended a second twenty (20) day period. You, the said Sheriff, may break and enter the subject  
6 property if necessary to effect this Writ. Said Sheriff shall carry out the Writ without a bond or need  
7 for indemnity as provided in RCW 59.18.390.

8 DATED this \_\_\_\_\_ day of ~~1999~~ **2015**, 20\_\_\_\_\_.

9 **CARLOS Y. VELATEGUI**  
10 Superior Court Judge

11 **BARBARA MINER**  
12 Clerk of the Superior Court  
13 For King County, Washington

14 By: **A. GALLARDO**  
15 Deputy Clerk

16 DATED this 26th day of December, 2014.

17 PITE DUNCAN, LLP

18 /s/ Julia A. Phillips  
19 JULIA A. PHILLIPS  
20 WSBA No. 32735  
21 CASPER J. RANKIN  
22 WSBA No. 45644  
23 Attorneys for Plaintiff



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RECEIVED  
15 FEB - 3 AM 10:45  
CLERK OF COURT, SEATTLE

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING - SEATTLE

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE, ON BEHALF  
OF THE HOLDERS OF THE WAMU  
MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2006-AR4, its  
successors and/or assigns,

Case No. 14-2-10510-0 SEA  
REQUEST FOR STORAGE OF  
PERSONAL PROPERTY

Plaintiff,  
Vs.

WESLEY SCHLEPP, AND JOHN AND  
JANE DOE, UNKNOWN OCCUPANTS OF  
THE PREMISES,  
Defendant.

We hereby request the landlord to store our personal property. We understand that we are responsible for the actual or reasonable costs of moving and storing the property, whichever is less. If we fail to pay these costs, the landlord may sell or dispose of the property pursuant to and within the time frame permitted under RCW 59.18.312(3).

Any notice of sale required under RCW 59.18.312(3) must be sent to the tenants at the following address: 2804 E. Lake Sammamish Pkwy NE., Sammamish, WA 98074

**IF NO ADDRESS IS PROVIDED, NOTICE OF SALE WILL BE SENT TO THE LAST KNOWN ADDRESS OF THE TENANT(S)**

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Tenant- Print Name \_\_\_\_\_

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Tenant-Print Name \_\_\_\_\_

Tenant-Print Name \_\_\_\_\_

Tenant-Print Name \_\_\_\_\_

Tenant-Print Name \_\_\_\_\_

This Notice may be delivered or mailed to the landlord or the landlord's representative at the following address:

4375 Jutland Drive #200  
San Diego, CA 92117

This Notice may also be served by facsimile to the landlord or the landlord's representative at:

619-590-1385

**IMPORTANT**

**IF YOU WANT YOUR LANDLORD TO STORE YOUR PERSONAL PROPERTY, THIS WRITTEN REQUEST MUST BE RECEIVED BY THE LANDLORD NO LATER THAN THREE(3) DAYS AFTER THE SHERIFF SERVED THE WRIT OF RESTITUTION. YOU SHOULD RETAIN PROOF OF SERVICE.**