IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Plaintiff(*landlord)*v.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Defendant(s) (*tenant)* | Case No.:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_MOTION TO STAY ENFORCEMENT OF WRIT OF RESTITUTION AND FOR PAYMENT PLAN UNDER RCW 59.18.410(3)  |

Defendant moves the Court to stay the writ of restitution and order a payment plan under RCW 59.18.410(3):

I. Relief Requested

 I ask the Court to stay enforcement of the writ of restitution and allow me to continue living in my rental unit under the fair and just terms of the payment plan below because there is good cause based on the evidence below.

I also want the Court to (check all that apply):

[ ]  Order a fair and just payment plan according to these terms:

[ ]  Payment of total amount \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Consisting of

[ ]  Rent due \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ]  Court costs \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ]  Late fee \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ]  Attorneys’ fees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ]  Payment due under a deposit installment plan \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ]  Other \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ]  Payment of total by date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  First payment of \_\_\_\_\_\_\_\_\_\_\_\_due \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  2nd payment of \_\_\_\_\_\_\_\_\_\_\_\_ due \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  3rd payment of \_\_\_\_\_\_\_\_\_\_\_\_due \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  4th payment of \_\_\_\_\_\_\_\_\_\_\_\_ due \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  Additional payments: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AND/OR

[ ]  Stay enforcement of the writ of restitution as necessary (under RCW 59.18.410(3)(c)(iv)) to afford me an equal opportunity to comply with the terms of the payment plan by relying on an emergency rental assistance program. I am relying on an emergency rental assistance program provided by this government or nonprofit entity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AND/OR

[ ]  Find that I am low-income, limited resourced, or experiencing hardship (under RCW 59.18.410(3)(e)(i)) and am eligible for disbursement through the Landlord Mitigation Program established under RCW 43.31.605(1)(c).

II. Declaration

*(Check the factors that apply and write a description)*

[ ]  (i) Any non-payment or late payment of rent or failure to make a payment on a deposit installment plan was not willful or intentional because:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  (ii) Any non-payment or late payment of rent or failure to make a payment on a deposit installment plan was caused by exigent circumstances outside my control and not likely to recur, specifically: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  (iii) I am currently able to pay timely according to the payment plan because: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  (iv) I had a positive and timely payment history up until recently, specifically: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  (v) I am in substantial compliance with my rental agreement, specifically: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  (vi) An eviction would cause me great hardship because: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  (vii) I have shown good conduct related to other notices served within the last 6 months, specifically: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  I am currently low-income, limited-resourced or experiencing hardship. Specifically: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  I am relying on an emergency rental assistance program provided by this government or nonprofit entity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[ ]  I have attached an offer of proof of the emergency rental assistance from the government or nonprofit entity. (See attached document.)

I declare under penalty of perjury of the laws of the state of Washington that the forgoing is true and correct.

Signed at *(city and state):* Date:\_\_\_\_\_\_\_\_\_\_\_\_

*Defendant signs here Print name*

III. Evidence Relied Upon

This motion is based on Defendant’s declaration above and the filings and pleadings in this case, including documents attached to this motion.

IV. Argument

1. A tenant may move to stay the writ of restitution under RCW 59.18.410(3) at the show cause hearing or trial or at any time before execution of the writ.

Under RCW 59.18.410(3)(a), “the court, at the time of the show cause hearing or trial, or upon subsequent motion of the tenant but before the execution of the writ of restitution, may stay the writ of restitution upon good cause and on such terms that the court deems fair and just for both parties.”

Under RCW 59.18.410(3)(a), “the court shall consider evidence of the following factors” in making this decision: the tenant’s willful or intentional default or intentional failure to pay rent; whether non-payment of the rent was caused by exigent circumstances that were beyond the tenant’s control and that are not likely to recur; the tenant’s ability to timely pay the judgment; the tenant’s payment history; whether the tenant is otherwise in substantial compliance with the rental agreement; hardship on the tenant if evicted; and conduct related to other notices served within the last six months.

Under RCW 59.18.410(3)(c)(iv), the court shall stay the writ as necessary to afford a tenant an equal opportunity to comply with the terms of a payment plan if a tenant is relying on an emergency rental program provided by a government or nonprofit entity and provides an offer of proof.

Under recently amended RCW 59.18.283, a tenant may move to stay a

writ of execution if a tenant defaulted in payment owed under a deposit

installment plan. RCW 59.18.283 now includes the provision that “When, at the

commencement of the tenancy, the landlord has provided an installment

payment plan for nonrefundable fees or deposits for the security of the tenant's

obligations and the tenant defaults in payment, the landlord may treat the default

in payment as rent owing. Any rights the tenant and landlord have under this

chapter with respect to rent owing equally apply under this subsection.” RCW

59.18.283 (3).

Under RCW 59.18.410(3)(e)(i), the court shall issue a finding as to whether the tenant is low-income, limited resourced, or experiencing hardship to determine if the parties may be eligible for disbursement through the landlord mitigation program account established within RCW 43.31.605(1)(c).

A recently added provision to RCW 43.31.605, provides that unpaid

judgments resulting from the tenant's failure to comply with an installment

payment agreement are also eligible for reimbursement from the landlord

mitigation program. See RCW 43.31.605 (1)(c).

V. Conclusion

 For the reasons stated in this Motion, Defendant seeks an Order staying enforcement of the writ, restoring tenancy, and ordering a payment plan according to the terms above.

Signed at *(city and state):* Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

*Defendant signs here Print name*