

UNLAWFUL DETAINER

Ex Parte Application for Stay of Execution + Motion to Set Aside Judgment



Two-Part How to Guide

Self-Help Legal Access Centers

Santa Monica

1725 Main St.,
Room 210
Santa Monica, CA 90401

Inglewood

1 East Regent St.,
Room 107
Inglewood, CA 90301

Torrance

825 Maple Ave.,
Room 160
Torrance, CA 90503

Long Beach

275 Magnolia Ave.,
Room 3101
Long Beach, CA 90802

Mar. 2023

This guide is designed to help you fill out the forms yourself. It is not intended to provide legal advice or strategy as to how to complete the case. The information provided in this packet only presents options and examples. This is not a substitute for legal advice from an attorney.

Please type or print in black ink.

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I. General Information to Set Aside a UD Default Judgment

Once a default judgment has been entered, it may be difficult to set aside that judgment and halt an eviction. You may need to demonstrate that you were prevented from filing an answer or attending your trial for reasons that the court will accept. If the court grants your motion and signs that order, you may be potentially given another chance to properly file an Answer on your own behalf in the case.

ONCE THE SHERIFF LOCKS YOU OUT, IT MAY BE TOO LATE TO FILE THESE DOCUMENTS!

You may apply to have the eviction “stayed” and the default judgment set aside, but only BEFORE the sheriff executes the lock-out. The courts typically will only review motions if it retains the power to do so. Why? One reason is because new people may be living there already.

Filing an Ex Parte/Motion to Set Aside DOES NOT delay the Sheriff Lock-Out. Only an Order from the Court can stop the Sheriff Lock-Out. If you do not agree with this guide or have other questions, CONTACT a licensed attorney immediately for legal assistance!

What is a Default Judgment?

A default judgment (automatic loss) is a judgment entered against the other party usually because the other party failed to take some action required by law. To illustrate the concept, imagine a basketball game. The Landlord/Plaintiff is the Home Team, and the Tenant/Defendant is the Visiting Team. If the Visiting Team does not show up on time for the game, we would say that they have forfeited, and *lost by default.*

Why the Court Enters Default Judgments?

Usually, the Court enters a default and/or default judgment when defendants have:

- failed to file a written Answer to the complaint with the court on time, *or*
- failed to “appear” (present themselves) for their trial at the appointed date and time.

A. Failing to file a written Answer with the Court

- It is usually not sufficient grounds to say you did not know you had to file an answer
 - The Summons informs you that you have only five (5) court days to file a written Answer.
 - Also, the Court mails a 1-page courtesy notice telling you that an eviction lawsuit has been filed;

Most importantly, the Court may stay the eviction & set aside the default only when it finds that you have proven that, *through no fault of your own, you were prevented* from filing an answer for some very good reasons. Some examples are:

- you were not served with a copy of the Summons and Complaint; or
- if you have been served with a copy, you were nonetheless prevented from filing your Answer because of fraud, surprise, mistake, excusable neglect or inadvertence *beyond your control*;
- if you were hospitalized or bedridden and could not file a timely answer (you will need to establish this by your declaration and your hospitalization records or a doctor’s note);
- if the landlord’s actions (i.e. accepted your rent, etc.) led you to believe that you did not have to file an answer; (you will need to establish this by declarations and any documentary evidence)

B. Failing to attend your trial

- Failure to attend because you did not receive the Notice of Trial in the mail is difficult to prove.

The court internally schedules the trial dates after a party requests it and sends a two-page notice in the mail to the parties. Sometimes the tenant does not know about the trial date and misses it. At that time, the Court will automatically find for the Plaintiff/Landlord and enter a default judgment against the tenant/defendant.

- If you received the notice but were unable to attend because of an unexpected hospitalization or illness (you will need to establish this by hospital or doctor records in addition to your declaration.)
- If you got into an accident on the way to court;
- If you did not get the Notice in the mail because it was incorrectly addressed, other people have access to your mail, or the post office lost it;

II. What you will need if you did not file a written Answer with the Court on time:

Get copies of these following documents:

- Summons and Complaint*—including its Exhibits (attached documents – Notice, Lease/rental agreement, proof of service of the notice);
- Request for Entry of Default*—including a request for either a Clerk’s Judgment (for possession only) or for a Court’s Judgment (includes a judgment for money).
- Proof of Service of Summons*—there may be multiple Proofs of Service of Summons. Obtain them all including for “All Unknown Occupants.”
- Civil Case Summary* – the court index/summary of action or documents in the file.

Once you have those documents:

- Review first the Proof of Service of Summons, where you will find the date and time and in what manner the Plaintiff’s “process server” declares they served you, either personally to you or by other means.
- If the Proof of Service of Summons states that you were served by posting and subsequent mailing, the file must also have and you will also need to obtain a copy of another document called
 - Application and Order to Serve Summons by Posting for Unlawful Detainer* which has been signed by a judge.

How You may Refute the Proof of Service of Summons:

- Courts give a *presumption of validity* to a Proof of Service of Summons.
 - You will need to convince the Court that you were not properly served in the manner set forth in the Proofs of Service of Summons.
 - To do so, you will need to *refute* the declaration of the person who has declared under penalty of perjury that you were properly served.
- Review the proof of service information: who the process server says they served, where, and on what date and time. If they state they served you personally, is it true? Look at where, and what date and time?
 - To refute the Proof of Service of Summons, you may need some documentary proof that you could not have been served as stated on the Proof of Service of Summons. Such evidence

might be that you were at work or out of town on the date & time the process server claims they served you or you were not present at the location stated.

- To prove it, you may need to include in your Ex Parte Application copies of your airplane ticket, your workplace timesheet, or other receipts that can show where you were at the time you were allegedly served the Summons and Complaint.

Preparing for your Ex Parte (Emergency) Court Date if no Answer was filed:

- The Ex Parte Application
- The Motion to Set Aside Default Judgment
- Proposed Answer
- Fee Waiver (Separate Packet - How To & Forms)

III. When You Filed Your Answer, but Failed to “Appear” for Your Trial

Get copies of these following documents:

- Summons and Complaint*—including its Exhibits (attached documents)
- Proof of Service of the Summons/Complaint* – the filing that shows who served the lawsuit against you and when, how, where etc.
- Notice of Trial* – the letter that the court sends with your trial date on it.
- Case Summary* – the court index/summary of action or documents in the file Evictions are considered “summary proceedings,” on an accelerated timeline.
- The law requires the Court to calendar an eviction trial within 21 days of the date that either party files the Request for Trial.
- The Court then mails a “Notice of Trial” to both parties, and a copy of that Notice and the Court Clerk’s Certificate of Mailing will be in the Court’s file.
- The law also has a presumption that *if something is mailed by regular mail, the addressee is presumed to have received it*. Therefore, you will have to overcome this presumption with evidence that you did not receive it.

What you may need to do:

- First check the court file
 - Where did the Court Clerk send the Notice of Trial?
 - Determine to whom and to what address the Court mailed the Notice of Trial.
 - If it was not mailed to you or to the address you put on your Answer, that may be evidence that you did not receive it due to the Court’s own error.
 - You could include a copy of the Notice of Trial and the Court Clerk’s Certificate of Mailing with your Ex Parte Application for Stay and your Motion to Set Aside the Default. You could indicate in your declaration that the Clerk sent the Notice of Trial to the wrong address.
 - **Was the Notice of Trial Returned to the Court?**
 - Ask the Court Clerk to print a “Case Summary” or “Case History.”
 - If the Notice of Trial did not reach you because it was returned to the Court, this may also evidence you did not receive it.

- Request a photocopy of the Notice of Trial and the envelope in which it was returned to the Court and include these photocopies with your Ex Parte Application for Stay and your Motion to Set Aside the Default.
- **When the Notice of Trial was properly mailed and was not returned to the Court.**
 - In these situations it is more difficult to overcome the presumption that you received the Notice of Trial.
 - The Court will look to evidence that someone else had the ability to intercept your mail. For example, if you do not have a secure mailbox, that may be evidence that someone else took the mail.
 - You will need photographs of your mailbox, or the location to which your mail is delivered to show the Court. Or any other evidence that shows why you would not get the trial date notice in the mail

Preparing for your Ex Parte (Emergency) Court Date if an Answer was filed but you missed the Court date:

- The Ex Parte Application
- The Motion to Set Aside Default Judgment

What to Expect at the hearing:

You will be required to present a copy of all your documents to the landlord/landlord's attorney at the Ex Parte Hearing. You may want to speak with the landlord about any negotiations about your case. The landlord is not required to negotiate with you at this stage, but may do so in order to come up with an agreement/settlement that makes sense before going in front of the Judge.

The Landlord or its attorney will be present. They will likely argue aggressively that the case is over and that you should not be allowed to "reopen" your case for a second chance. You must refute/counter the claims clearly and concisely. Just because you file these forms does not automatically entitle you to reopen your case.

The Outcomes to the hearing:

If you are successful at the Ex Parte Hearing, the court will likely accept your proposed Answer (if you did not file one already) that you filed and set a new trial date in which to return to have your day in court. The Lock Out should be "stayed" or postponed until after the new trial date. Be prepared to state your case at that new trial date with the necessary evidence, photos, testimony etc.

Also, if you are successful, the Court will give you an Order to Quash or cancel the Sheriff lock out of your home. You should not leave the Courtroom until you receive a signed Order from the Court cancelling the lock out to show the Sheriff just in case the Court cannot recall them in time. The Sheriffs may already be on the way to your home.

If the Judge does not grant your Motion, the Sheriff lock out will proceed as scheduled. Remember the Sheriff must serve a **FIVE (5) Day Vacate Notice before they return to escort or "Lock"** you out of your home. Remember that upon occasion, these notices are removed by the landlord's agents, neighbors and other vandals to hamper your ability to know when your lock out is.

If you are locked out, your landlord is required to keep your possessions in storage for you to pick up for a short period of time. The landlord may charge you for the storage of these possessions, but if you do not pick up your things within the timeframe under the law, the landlord may keep, sell, or discard all of your possessions left in the home after the lock out. Therefore, it is usually a good idea to transfer most of your valuables to storage or a friend/relative's home for safekeeping.

STEPS TO PREPARING & FILING YOUR EX PARTE APPLICATION FOR STAY OF EXECUTION OF THE JUDGMENT

1. Choose a court date and time. Write this information in your Stay papers where it says to do so. See the table below for the days and times different Courts allow you to see a Judge for a Stay of Execution. **The times change constantly. Make sure the filing/hearing times are still valid/correct.**

2. Give required prior telephone notice of the Court hearing date and time to the opposing party.

You **must** call the Landlord/Plaintiff's attorney by **10:00 a.m. the Court day** before you file your papers in Court. (You may give notice to the landlord directly only if he or she is not represented by an attorney.) For example, if you want to go to Court on Monday at 1:30 p.m., you must give prior notice the preceding Friday by 10:00 a.m. (You may give less notice **only if** you have a good reason. When you give the notice you must state all of the following:

- your name,
- the case name and number,
- the date and time you will go to Court,
- the name and address of the court and the department or room number,
- that you are asking the court for an "Ex Parte Application for a Stay of Execution of the Judgment and an Order Shortening Time for Service and Hearing on a Motion to Set Aside the Judgment.

On the next two pages you will find the forms

- "Unlawful Detainer Ex Parte Application Schedules and Locations" that gives the locations, days and times to schedule your Ex Parte Application for Stay **EACH COURT HAS DIFFERENT HEARING & FILING TIMES** and
- "Ex-Parte Notice in an Unlawful Detainer Case" Script that you can use as a guide on how to give proper Ex Parte notice.

If you unable to reach the person, you can leave a voicemail message for him/her or a message with someone else at that person's home or office. After giving notice, write down: the date and time you called, if you left a message and who you left a message with, and if you spoke to someone, his/her name and what he/she said to you.

3. Prepare Your Ex Parte Application for Stay of Execution of the Judgment

Attached to this packet is a How-to Guide on how to fill out the required forms. Do not fill in that guide. We have also given you blank versions of the forms for you to fill out.

4. Prepare a Motion to Set Aside the Judgment (A separate packet of forms).

This Motion asks the Court to "re-open" your case, but this Motion on its own may take almost 3 weeks to be held in Court. As most people only have a few days, this "Ex-Parte" Application seeks an immediate hearing and requires a phone call to the other side before 10 am the court day before the hearing.

4. Make 2 copies of all the Stay papers. You will also need to fill out your Motion to Set Aside Papers and follow the instructions in that packet. If you did not file an ANSWER, you will also need to a “proposed” answer to file with your papers. Take all the originals you filled out and copies to file at the Clerk’s office on the Court date for your Ex Parte Application for Stay Hearing.

5. You may have to pay a filing fee, unless you qualify for a fee waiver. You may also have to file an Answer to the Unlawful Detainer Complaint if you have not already done so. Ask for that How To packet and Forms packet for the Unlawful Detainer Answer.

UNLAWFUL DETAINER EX PARTE APPLICATION - SCHEDULES AND LOCATIONS

<u>Courthouse</u>	<u>Filing Information</u>	<u>Hearing/Courtroom Information</u>
Antelope Valley (Lancaster)	<ul style="list-style-type: none"> File Ex Parte before 8:15 am on the day of the hearing File in Clerk's Office, Room 1000, 1st Floor 	<ul style="list-style-type: none"> Ex Parte hearings are held in Dept. A22, Room 4001, 4th Floor at 8:30 a.m. Address: 42011 4th Street West, Lancaster, CA 93534
Chatsworth	<ul style="list-style-type: none"> File Ex Parte before 8:15 am on the day of the hearing File in Clerk's Office, Room 1200, 1st Floor 	<ul style="list-style-type: none"> Ex Parte hearings are held in Dept. F44, Room 1800, 1st Floor at 8:30 am. Address: 9425 Penfield Ave., Chatsworth 91311
Compton	<ul style="list-style-type: none"> File Ex Parte before 8:15 am the day of the hearing File in Clerk's Office, Room 902, 9th Floor 	<ul style="list-style-type: none"> Ex Parte hearings are held in Dept. 7, Room 504, 5th Floor at 8:30 am Address: 200 W. Compton Blvd., Compton, CA 90220
Inglewood	<ul style="list-style-type: none"> File Ex Parte before 11:00 am of the day of the hearing File in Clerk's Office, Room 630, 6th Floor 	<ul style="list-style-type: none"> Ex Parte hearings are held in Dept. 1, Room 200, 2nd Floor at 1:30pm Address: One Regent Street, Inglewood, CA 90301
Long Beach	<ul style="list-style-type: none"> File Ex Parte before 8:15 am of the day of the hearing File in Clerk's Office, Room 1401, 1st floor 	<ul style="list-style-type: none"> Ex Parte hearings are held in Dept. S13, Room 3500, 3rd Floor at 8:30 am Address: 275 Magnolia Avenue, Long Beach, CA 90802
Norwalk	<ul style="list-style-type: none"> File Ex Parte before 8:15 am on the day of the hearing File in Clerk's Office Room 101, 1st Floor 	<ul style="list-style-type: none"> Ex Parte hearings are held in Dept. W, Room 603, 6th Floor at 8:30 am Address: 12720 Norwalk Boulevard, Norwalk, CA 90650
Pasadena	<ul style="list-style-type: none"> File Ex Parte before 11:00 am on the day of the hearing File in the Clerk's Office Room 102, 1st Floor 	<ul style="list-style-type: none"> Ex Parte hearings are held in Dept. R on the 2nd Floor at 1:30 pm Address: 300 E. Walnut Avenue, Pasadena, CA 91101
Santa Monica	<ul style="list-style-type: none"> File Ex Parte before 8:15 am on the day of the hearing File in the Clerk's Office, Room 102, 1st Floor 	<ul style="list-style-type: none"> Ex Parte hearings are held in Dept. S, Room 218, 2nd Floor at 8:30 am Address: 1725 Main Street, Santa Monica, CA 90401
Stanley Mosk (Downtown) (Central Courthouse)	<ul style="list-style-type: none"> File Ex Parte before 8:30 am on the day of the hearing File in Room 102, 1st Floor 	<ul style="list-style-type: none"> Ex Parte hearings are held in your assigned court room at 1:30 pm Address: 111 N. Hill St./110 N. Grand Avenue Los Angeles, CA 90012.
Van Nuys	<ul style="list-style-type: none"> File Ex Parte before 11:00 am on the day of the hearing File in Clerk's Office, Room 107, 1st Floor. 	<ul style="list-style-type: none"> Ex Parte hearings are held in Dept. H, Room 630 6th Floor at 1:30 PM Address: 6230 Sylmar Avenue, Van Nuys, CA 91401
West Covina	<ul style="list-style-type: none"> File by 8:30 am on the day of the hearing. File in Clerk's Office, Room 107, 1st Floor 	<ul style="list-style-type: none"> Ex Parte are held in Dept. 2, 1st Floor at 11:00am Address: 1427 West. Covina Parkway, West Covina, Ca. 91790

The Ex Parte Application and Motion are filed the morning of your Ex Parte Hearing. **You must file with the clerk by the time listed & be on time to the courtroom for your emergency hearing. Each courthouse in the county has different rules for Ex Parte filings/hearings.**

Ex-Parte Notice in an Unlawful Detainer Case

Important: You must give prior Ex Parte (or Emergency) notice of going to court to the landlord's attorney (or the landlord if the landlord does not have an attorney) **by 10:00 a.m. the business/court day before you go court.** If you get transferred to voicemail, you must leave the below on the message.

Script/What to Say: "I NEED TO GIVE EX PARTE NOTICE"

"Hello, my name is: _____ (Your Name)

I am calling to give "Ex Parte" notice that on (date) _____ at (time) _____ am / pm

I am going into Department _____ of the Courthouse located at (street address, city, state, zip code)

_____ to file an

EX PARTE APPLICATION FOR A STAY PENDING A HEARING ON A MOTION TO SET ASIDE THE JUDGMENT AND FOR AN ORDER SHORTENING TIME FOR SERVICE OF THE MOTION TO SET ASIDE IN THE CASE OF

(name of plaintiff) _____ versus

(name of defendant) _____,

Case Number _____.

I can be reached at phone number _____."

Please get the following important information:

1. Date and time you called to give notice: _____
2. Name and title of the person you spoke with: _____
3. Ask if the Plaintiff or Plaintiff's attorney will appear in court on this matter? _____
4. Anything else the person told you or did: _____

IMPORTANT Filing Instructions: You must have all the documents filed by the time stated above in the "Filing Information" column. You must be on time to your hearing and provide the landlord (or the attorney for the landlord) a copy of the documents. **If you are late for filing or the hearing, the court MAY NOT hear your motion**

UNLAWFUL DETAINER EX PARTE APPLICATION FOR STAY (Part 1 of 2)



How to Guide

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Sept. 2021

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1 PRINT YOUR NAME

2 PRINT YOUR ADDRESS

3 PRINT YOUR PHONE NUMBER

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5 _____
6 Defendant in Pro Per

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 PRINT THE NAME OF THE PERSON
11 OR COMPANY SUING _____,

12 Plaintiff(s),

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15 vs.

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17 PRINT THE DEFENDANT(S) NAME _____,

18 Defendant(s)

19 **Case No.:** PRINT THE CASE NUMBER

20 **EX PARTE APPLICATION FOR ORDER**
21 **STAYING EXECUTION OF THE**
22 **JUDGMENT UNTIL A HEARING ON**
23 **DEFENDANT'S MOTION TO SET ASIDE**
24 **JUDGMENT (DEFAULT AND WRIT,**
25 **ALSO, IF ANY) AND AN ORDER**
26 **SHORTENING TIME FOR HEARING**
27 **AND SERVICE OF THE MOTION TO**
28 **SET ASIDE; MEMORANDUM OF**
POINTS AND AUTHORITIES AND
DECLARATION IN SUPPORT THEREOF

ASSIGNED JUDGE: PRINT THE JUDGE'S NAME

DEPARTMENT: PRINT THE DEPARTMENT

HEARING DATE: DATE YOU HAVE NOTICED THE HEARING

TIME: TIME OF THE HEARING

22 TO PLAINTIFF, AND TO PLAINTIFF'S COUNSEL OF RECORD, IF ANY,

23 Defendant(s) PRINT YOUR NAME, request(s) an Order Staying

24 Execution of the Judgment until a hearing on his/her Motion to Set Aside the Default, Vacate the
25 Judgment, and Recall the Writ of Execution, if any, and an Order Shortening Time for Service of
26 and Hearing on the Motion to Set Aside. This Application is made on the ground that without a
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stay, Defendant(s) will suffer irreparable harm by being evicted and Defendant’s Motion to Set
Aside will be moot.

This Ex Parte Application is based on Defendant’s Declaration of Ex Parte Notice,
Memorandum of Points and Authorities, Supporting Declaration(s) and upon all papers on file in
this action.

Dated: PRINT THE DATE

Signed by: SING YOUR NAME
Defendant(s) without Attorney
PRINT YOUR NAME
Print Name

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 A court of general jurisdiction has a statutory as well as an inherent duty and power to
3 control its own processes and orders so as to make them conform to justice, including the

4 granting of a stay of execution. Every Court shall have power to make them conform to law confirmed in *Revolution*

5 Every Court shall have power to make them conform to law confirmed in *Revolution*

6 make them conform to law confirmed in *Revolution*

7 *Eyewear, Inc. v. Aspex Eye* 749, wherein the court stated

8 that "The district court has enlarged its docket, which includes

9 the authority to order a stay pending the outcome of reexamination proceedings." *Id at 9.*

10 Here, the court has authority to grant a stay to enable Defendant(s) sufficient time to

11 present and argue the underlying Motion to Set Aside the Default, Vacate the Judgment, and

12 Recall the Writ of Execution. If the stay is not granted, Defendant(s) will be locked out without

13 an opportunity to present the motion. As the attached Motion shows, Defendant should have the

14 right to have this eviction case heard on its merits. Therefore, the stay should be granted.

15 Dated: PRINT THE DATE

16 Signed by: SIGN YOUR NAME

17 Defendant(s) without Attorney

18 PRINT YOUR NAME

19 Print Name

20 ////

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DECLARATION OF EX PARTE NOTICE

I, PRINT YOUR NAME, DECLARE as follows:

1. I am over the age 18 years, and I have personal knowledge of the facts stated in this declaration. If called to testify thereto, I could and would do so truthfully.
2. I gave the following notice of this Ex Parte Application for a Stay of Execution of

Judgment Pending a Motion to Set Aside the Default:

“My name is: PRINT YOUR NAME

I am calling to give notice that I am going to the _____ Court on
 ___ / ___ at ___: ___ a.m. / p.m. in Department ___ of the Los Angeles Superior
 Court, located at _____

PRINT THE COURTHOUSE WHERE YOUR CASE IS FILED, THE DATE, TIME, DEPARTMENT NUMBER, AND FULL ADDRESS OF THE COURTHOUSE

_____ to request an Ex Parte Application for a Stay of Execution of the Judgment Pending a
 Motion to Set Aside and an Order Shortening Time for Hearing and Service of a
 Motion to Set Aside in the Case of PLAINTIFF'S NAME

vs. DEFENDANT(S) NAME, Case Number: PRINT CASE NUMBER.

I can be reached at this telephone number: PRINT YOUR PHONE NUMBER

3. I gave this ex parte notice in the manner set forth on the following page:

////

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<p>NOTE: You will not likely be able to appear before the Court on your motion unless you first give telephone notice to the plaintiff or their attorney if the plaintiff is represented.</p> <p>Rules require that you call by no later than 10:00 am on THE COURT DATE BEFORE YOUR COURT DATE.</p> <p>You may be allowed to call later than 10:00 am the day before your hearing only in emergencies beyond your control. If that happens check box "d" and state your reasons. THE COURT MAY NOT GRANT THIS.</p> <p>State when you called and who you spoke with to give the proper notice on the next page.</p>

Noted: you should only mark A or B, not both.

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A. I gave the

notice by telephone and you spoke with the plaintiff's attorney, a person at the plaintiff's attorney's office, or the plaintiff. Fill in the corresponding information.

_____ on this date and time: ___/___/___ at ___:___
a.m. /p.m. to
_____ the Plaintiff

_____ a person at the Plaintiff's attorney's office, or
_____ the Plaintiff (the landlord without an attorney)
That person's name and telephone number are: _____
_____. When I gave the notice he/she responded:
"_____"

B. I gave the

notice by leaving a voicemail by leaving a voicemail message on this date and time: ___/___/___ p.m. because no one answered the call or my call was directed to _____ person I called is _____ Plaintiff's attorney or _____ the Plaintiff (the landlord without an attorney) named _____ at _____ () - _____.

C. I gave the notice by 10:00 a.m. on the day before the hearing date for the stay as required by CA

D. This is an e

notice on or after the court day before the notice is reasonable cause: _____ CT. 3.1203(b) when

I have personally seen the Sheriff's Notice to Vacate and I will be locked out on ___/___/____. I could not give the notice any earlier because: _____

Other _____

I could not give the notice any earlier because: _____

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed this date ____/____/____ in the City of Print the city you are in, California.

Signed By: Sing your name
Defendant(s) without Attorney

Print your name
Print Name

**DECLARATION OF DEFENDANT IN SUPPORT OF EX PARTE APPLICATION FOR
A STAY OF EXECUTION OF JUDGMENT PENDING MOTION TO SET ASIDE
HEARING AND ORDER SHORTENING TIME FOR SERVICE/HEARING THEREON**

I, PRINT YOUR NAME DECLARE AS FOLLOWS:

1. I am the Defendant in this action. I am over the age 18 years, and I have personal knowledge of the facts stated in this declaration. If called to testify thereto, I could and would do so truthfully.

2. A Default/Default Judgment was ordered by the Court on: PRINT THE DATE DEFAULT WAS ORDERED.
The Sheriff is scheduled to evict me on: PRINT THE DATE THE SHERIFF IS SCHEDULED TO EVICT YOU. IF YOU HAVE NOT RECEIVED A NOTICE TO VACATE, THEN LEAVE BLANK.

I am requesting that the Court grant this Application for a Stay so that I am not evicted before this Court can hear my Motion to Set Aside.

3. The Default/Default Judgment should not have been granted. I did not:

- file an CHECK THE BOX THAT APPLIES. Answer and Complaint; and/or
- attend the trial in this case; because:

EXPLAIN HERE WHY YOU DIDN'T FILE YOUR ANSWER OR GO TO YOUR COURT TRIAL.

REVIEW THE PROOF OF SERVICE OF SUMMONS TO SEE WHEN PLAINTIFF CLAIMED TO HAVE SERVED YOU. IT MAY NOT BE ENOUGH TO JUST STATE YOU WEREN'T SERVED.

IF YOU CAN PROVE THAT YOU WEREN'T SERVED BECAUSE YOU WERE SOMEWHERE ELSE DURING THE TIME PLAINTIFF CLAIMED TO HAVE SERVED YOU: YOU MAY SHOW PROOF, EX: PLANE TICKETS OR YOUR WORK TIMESHEET.

IF YOU MISSED YOUR TRIAL BECAUSE YOU DID NOT GET YOUR NOTICE OF TRIAL, YOU MAY NEED TO SHOW THAT IT WAS SOMEHOW PREVENTED FROM REACHING YOU. EX: IT WAS RETURNED TO THE COURT CLERK AS UNDELIVERABLE.

IF YOU SUSPECT SOMEONE STOLE YOUR MAIL, YOU MAY HAVE TO SHOW THAT YOUR MAILBOX WAS UNSECURED.

1 4. If this Stay is granted, I believe I can win both my Motion to Set Aside and trial

2 because

IF YOU STILL NEED TO FILE AN ANSWER, CHECK THIS BOX AND PREPARE AND ATTACH THAT ANSWER TO YOUR MOTION

3 See my Proposed Answer filed with this Application.

4 5. I understand that I may be required to pay the rent for each day the stay is in effect.

5 6. I ask the Court to enter an order shortening time for service and hearing on my
6 Motion to Set Aside to resolve this issue quickly to avoid any prejudice to Plaintiff if
7 the Stay is granted.

8 7. If the Stay of Execution is not granted before and until my Motion is heard, I will
9 suffer harm because: _____

10 _____
11 HERE IS WHERE YOU TELL THE COURT THE HARDSHIP YOU
12 WILL SUFFER IF THE COURT DOESN'T GRANT YOUR MOTION.

13 _____
14 IF YOU WERE NOT PROPERLY SERVED THE SUMMONS AND
15 COMPLAINT OR NEVER RECEIVED NOTICE OF TRIAL, YOU
16 MAY HAVE BEEN DEPRIVED DUE PROCESS OF LAW.

17 _____
18 YOU MAY ALSO WRITE THAT YOU WOULD HAVE NO PLACE
19 TO GO OR WILL BE HOMELESS.
20 _____

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct to the best of my knowledge. Executed on this date of

23 PRINT THE DATE

24 PRINT THE CITY WHERE

25 YOU SIGNED THIS PAPER, California

26 Signed by: SIGN YOUR NAME
27 Defendant(s) without an Attorney

28 PRINT YOUR NAME

Printed Name

1 PRINT YOUR NAME

2 PRINT YOUR ADDRESS

3 PRINT YOUR PHONE NUMBER

4
5 Defendant in Pro Per

6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**

9
10 PRINT PLAINTIFF'S NAME AS
SHOWN ON THE COMPLAINT

11 _____,
12 Plaintiff(s),

13
14 vs.

15
16 PRINT THE DEFENDANT(S) NAME
AS SHOWN ON THE COMPLAINT

17 _____,
18 Defendant(s)

19) **Case No.:** PRINT THE CASE NUMBER

) **[PROPOSED] ORDER ON EX PARTE**
) **APPLICATION FOR ORDER STAYING**
) **EXECUTION OF THE JUDGMENT**
) **UNTIL A HEARING ON DEFENDANT'S**
) **MOTION TO SET ASIDE AND FOR AN**
) **ORDER SHORTENING TIME FOR**
) **HEARING AND SERVICE OF THE**
) **MOTION TO SET ASIDE**

) **ASSIGNED JUDGE:** JUDGE'S NAME

) **DEPARTMENT:** DEPARTMENT YOUR CASE IS IN

) **HEARING DATE:** DATE OF HEARING

) **TIME:** TIME OF HEARING

20 After consideration of Defendant's Ex Parte Application, all other pleadings and papers,
21 and oral argument, if any, in this case, and upon good cause appearing, the Court orders:

22 Defendant's Ex Parte Application for Order Staying Execution of the Judgment and
23 Order Shortening Time for Hearing on Defendant's Motion to Set Aside is
24 granted. Execution of the Judgment is stayed, including the following date:

25 _____/_____/_____

26 LEAVE THIS AREA BLANK.
27 THIS IS FOR THE JUDGE TO FILL IN.

28 The Defendant's Motion to Set Aside is calendared for hearing before this Court on
_____/_____/_____.

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Defendant is ordered to serve the Stay Application and Order and the Motion to Set Aside by mail or by personal service to Plaintiff or his/her attorney of record by:

____/____/____.

LEAVE THIS AREA BLANK.

THIS IS FOR THE JUDGE TO FILL IN.

Any Opposition by _____ s to be served to Defendant by

mail or by per

Other: _____

Dated: _____

Commissioner/Judge of the Superior Court

UNLAWFUL DETAINER MOTION TO SET ASIDE DEFAULT JUDGMENT (Part 2 of 2)



How to Guide Self-Help Legal Access Centers

Santa Monica

1725 Main St.,
Room 210
Santa Monica, CA 90401

Inglewood

1 East Regent St.,
Room 107
Inglewood, CA 90301

Torrance

825 Maple Ave.,
Room 160
Torrance, CA 90503

Long Beach

275 Magnolia Ave.,
Room 3101
Long Beach, CA 90802

Sept. 2021

This guide is designed to help you fill out the forms yourself. It is not intended to provide legal advice or strategy as to how to complete the case. The information provided in this packet only presents options and examples. This is not a substitute for professional legal advice from an attorney.

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PRINT YOUR NAME

PRINT YOUR ADDRESS

PRINT YOUR PHONE NUMBER

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PRINT THE PLAINTIFF'S NAME
AS SHOWN ON THE COMPLAINT

Plaintiff(s),

vs.

PRINT THE DEFENDANT(S)
NAME AS SHOWN ON THE
COMPLAINT

Defendant(s).

Case No.: PRINT THE CASE NUMBER

NOTICE OF MOTION AND MOTION TO
SET ASIDE THE JUDGMENT AND ANY
DEFAULT, AND TO QUASH ANY WRIT
OF POSSESSION/EXECUTION. [CCP
§§ 473(b), 473.5, 473(d), 128(a)(8), 86(b)(3)-
(if a limited civil case)].

ASSIGNED JUDGE:

DEPARTMENT:

HEARING DATE:

TIME:

PRINT DEPARTMENT

DATE OF HEARING

TIME OF HEARING

TO PLAINTIFF AND PLAINTIFF'S ATTORNEY OF RECORD, IF ANY:

NOTICE IS HEREBY GIVEN THAT on MONTH/DAY / 20 YEAR at TIME : am / pm , in
PRINT DEPT.
NUMBER
Dept. of the above-mentioned Court, located at, PRINT THE COURT ADDRESS,

California, Defendant will and hereby does move the Court to set aside the Judgment entered in
this case, as well as any Default, and to quash any Writ of Possession and/or Execution.

//

CHECK ALL THAT APPLY BELOW:

This Court should grant the relief requested based upon the following grounds and legal authority because the Judgment and any Default was/were:

- entered due to Defendant's surprise, mistake, excusable neglect or inadvertence.
[CCP §473(b)]; and/or,
- entered due to Defendant's failure to file a responsive pleading or answer to the lawsuit in time to respond.
[CCP §473(b)]; and/or,
- void since the legal papers were not served on Defendant at all or were improperly served. [CCP §473(d)]; and/or,
- void since they were based (in whole or in part) on external fraud or mistake.
[CCP §§ 128(a)(8), CCP 86(b)(3) (in limited civil cases)]
- invalid/void, therefore any Writ of Possession/Execution used to enforce the Judgment was improperly issued. [CCP §§ 128(a)(8), 86(b)(3) (in limited civil cases)]

CHECK ALL OF THE BOXES THAT APPLY TO THE REASON YOU DID NOT RESPOND OR DID NOT SHOW UP TO THE HEARING

This motion is based on this Notice of Motion and the Motion to Set Aside Judgment, the Memorandum of Points and Authorities, the Defendant's Declaration, the pleadings and papers on file and upon such other matters presented to the court at the hearing.

Date: PRINT THE DATE

Signed by: SIGN YOUR NAME
Defendant without Attorney

PRINT YOUR NAME
Print Name

1 PRINT YOUR NAME

2 PRINT YOUR ADDRESS

3 PRINT YOUR PHONE NUMBER

4 Defendant in Pro Per

5
6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**

9 PRINT THE PLAINTIFF'S NAME
10 AS SHOWN ON THE
11 COMPLAINT

12 Plaintiff(s),

13 vs.

14 PRINT THE DEFENDANT(S) NAME
15 AS SHOWN ON THE COMPLAINT

16 Defendant(s).

Case No.: PRINT THE CASE NUMBER

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO SET ASIDE THE
JUDGMENT AND ANY DEFAULT, AND
TO QUASH ANY WRIT OF
POSSESSION/EXECUTION. [CCP
§§ 473(b), 473.5, 473(d), 128(a)(8), and
86(b)(3)-(if a limited civil case)].

17 ASSIGNED JUDGE: PRINT THE JUDGES NAME

DEPARTMENT: PRINT THE DEPT. #

18 HEARING DATE: PRINT THE DATE OF THE HEARING

19 TIME: PRINT THE TIME OF THE HEARING

20 **I. THE COURT MAY SET ASIDE A JUDGMENT PURSUANT TO CCP § 473(b)**
21 **WHEN ENTERED AGAINST A DEFENDANT DUE TO HIS/HER MISTAKE,**
22 **INADVERTENCE, SURPRISE OR EXCUSABLE NEGLIGENCE**

23 California's Code of Civil Procedure § 473(b) states:

24 The court
25 judge
26 inadver
27 shall be
28 CCP § 473
policy of permittin

**THIS SECTION EXPLAINS THE
LEGAL AUTHORITY FOR THE
JUDGE TO CONSIDER AND
GRANT YOUR MOTION.
YOU NEED TO DATE AND SIGN
BELOW.**

. from a
mistake,
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months.
d to carry out the
) 167

1 Cal.App.4th 681, 695 quoting *McCormick v. Board of Supervisors* (1988) 198 Cal.App.3d. 352
2 (internal citations and quotations omitted). Absent prejudice to the Plaintiff and diligence by the
3 Defendant, only “very slight” evidence is needed to set aside a default. *Id.* The standard is if
4 the act or omission is one that a reasonably prudent person would commit under the same
5 circumstances. *See Transit Ads, Inc. v. Tanner Motor Livery, Ltd.* (1969) 270 Cal.App.2d 275,
6 279. Fraud by a third party, physical incapacity or death in the family can cause excusable
7 neglect. *See Shapiro v. Clark* (2008) 164 Cal.App.4th 1128; *see also Gamet v. Blanchard* (2001)
8 91 Cal.App.4th 1276 and *Sullivan v. Sullivan* (1967) 246 Cal.App.2d 301.

10 **II. THE COURT'S JUDGMENT UNDER CALIFORNIA ACTUAL NOTICE**

THIS SECTION EXPLAINS THE LEGAL AUTHORITY FOR THE JUDGE TO CONSIDER AND GRANT YOUR MOTION. YOU NEED TO DATE AND SIGN BELOW.

JUDGMENT RESULT IN

14 (a) When a party in time to defend an action to set aside the default . . . earlier of: (i) two years after the date of the written notice that the default or default judgment has been entered.

17 (b) A notice of motion to set aside a default . . . shall be accompanied by an affidavit showing . . . that the party's lack of actual notice . . . was not caused by his or her avoidance of service or inexcusable neglect.

20 Cal. Civ. Proc. § 473.5. The purpose of this law is to allow cases to be decided by trials on
21 their merits. *Id.* The Defendant has not received “actual notice” unless he/she has personally
22 received or personally viewed the Summons and Complaint by one of the service methods
23 specified under Code of Civil Procedure sections 415.10 et. seq. *See Tunis v. Barrow* (1986)
24 184 Cal.App.3d 1069, 1077.

26 //
27 //
28 //

1 **III. THE COURT MUST SET ASIDE A JUDGMENT PURSUANT TO CCP § 473(d)**
2 **AND THE COURT'S EQUITABLE POWERS UNDER CCP § § 128(a)(8) and**
3 **86(b)(3) WHEN IT IS VOID FOR LACK OF JURISDICTION.**

4 If legal papers are not served in strict compliance with Code of Civil Procedure sections
5 415.10 et. seq., a judgment is void as the Court lacks jurisdiction. *See Ellard v. Conway* (2001)

6 94 Cal.App.4th 1228, 1239. On judgment roll at
7 **THIS SECTION EXPLAINS THE**
8 **LEGAL AUTHORITY FOR THE**
9 **JUDGE TO CONSIDER AND**
10 **GRANT YOUR MOTION.**

11 *Lorenz* (1957) 42 two year limit sp
12 but is void for lack of jurisdiction. *Rogers v. Silverman* (1987) 210 Cal.App.3d 1114, 1121-1122.

13 **YOU NEED TO DATE AND SIGN**
14 **BELOW.**

15 **IV. THE COURT MAY SET ASIDE A JUDGMENT AT ANYTIME USING ITS**
16 **EQUITABLE POWERS UNDER CCP § § 128(a)(8), 86(b)(3) WHEN A**
17 **JUDGMENT IS ENTERED BASED ON EXTRINSIC FRAUD AND/OR**
18 **MISTAKE, AND, IN LIMITED CIVIL CASES, INADVERTENCE AND/OR**
19 **EXCUSABLE NEGLECT**

20 The Court has inherent equitable powers to set aside a judgment obtained by extrinsic
21 fraud and/or mistake to ensure its orders conform to justice. *See Cal. Civ. Proc. §§ 128(a)(8). In*
22 *limited civil cases, the Court may also consider inadvertence and excusable neglect. See Cal.*
23 *Civ. Proc. §§ 86(b)(3). Such fraud and/or mistake includes most external circumstances*
24 *depriving a party of a fair trial, such as the other party filing a false proof of service. In re*
25 *Marriage of Park* (1980) 27 Cal.3d 337, 342; *see also Sullivan, supra*, 256 Cal.App.2d 304.

26 In default cases, there is a 3-part test for relief; whether there is/was: 1) a meritorious
27 case--do the facts, if proven, create a possible different result (not required if not required if
28 improper or lack of service); 2) a valid reason for not defending the original case; and, 3)
diligence (ordinary care in the situation) used in requesting to set aside the default once

1 discovered. *Rappleyea v. Campbell* (1994) 8 Cal.4th 975; *see also Shapiro v. Clark* (2008) 164
2 Cal.App.4th 1128, 1144; *see also McCreadie v. Arques* (1967) 248 Cal.App.2d 39, 46. The
3 Court also considers any possible prejudice that could result from the set aside. *Munoz v. Lopez*,
4 (1969) 275 Cal.App.2d 178, 183.

5 **V. CONCLUSION**

6
7 The Court should set aside the default and judgment and quash any writ of possession
8 and/or execution in the interest of due process and fairness. Defendant should be able to
9 properly defend the case and have it decided by a trial on its merits.
10

11 Date: PRINT THE DATE

Signed by: SIGN YOUR NAME

Defendant without Attorney

PRINT YOUR NAME

Print Name

1 PRINT YOUR NAME

2 PRINT YOUR ADDRESS

3 PRINT YOUR PHONE NUMBER

4 Defendant in Pro Per

5
6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**

9
10 PRINT THE PLAINTIFF'S NAME
11 AS SHOWN ON THE
12 COMPLAINT

13 Plaintiff(s),

14 vs.

15 PRINT THE DEFENDANT(S) NAME
16 AS SHOWN ON THE COMPLAINT

17 Defendant(s).

Case No.: PRINT THE CASE NUMBER

DECLARATION OF DEFENDANT

PRINT YOUR NAME

**IN SUPPORT OF MOTION TO SET
ASIDE THE JUDGMENT AND ANY
DEFAULT, AND TO QUASH ANY WRIT
OF POSSESSION/EXECUTION. [CCP
§§ 473(b), 473(d), 473.5, 128(a)(8), and
86b(3)-(if a limited civil case)].**

ASSIGNED JUDGE: PRINT THE JUDGE'S NAME

DEPARTMENT: PRINT THE DEPT. #

HEARING DATE: PRINT THE DATE OF YOUR HEARING

TIME: PRINT THE TIME OF YOUR HEARING

21 I, PRINT YOUR NAME declare as follows:

22 I am the defendant in the above-entitled action.

23 2. I did not answer the Summons and Complaint and/or did not go to the trial because:

24 **CHECK ANY STATEMENTS BELOW THAT APPLY:**

- 25 I did not receive the Summons and Complaint in this case at all or did not receive
- 26 **CHECK EACH BOX THAT EXPLAINS WHY**
- 27 **YOU DID NOT FILE AN ANSWER AND/OR GO** _____
- 28 **TO THE TRIAL. THEN WRITE THE DETAILS** _____
- OF WHAT HAPPENED.**

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I did not receive a Notice of the Trial from the Court: _____ time:

REVIEW THE PROOF OF SERVICE OF SUMMONS TO SEE WHEN PLAINTIFF CLAIMED TO HAVE SERVED YOU. IT MAY NOT BE ENOUGH TO JUST STATE YOU WEREN'T SERVED.

IF YOU CAN PROVE THAT YOU WEREN'T SERVED BECAUSE YOU WERE SOMEWHERE ELSE DURING THE TIME PLAINTIFF CLAIMED TO HAVE SERVED YOU: YOU COULD EXPECT TO SHOW PROOF, EX: PLANE TICKETS OR YOUR WORK TIMESHEET.

The court clerk may have made a mistake. If you missed your trial because you did not get your notice of trial, you may need to show that it was somehow prevented from reaching you. EX: IT WAS RETURNED TO THE COURT CLERK AS UNDELIVERABLE. se

IF YOU SUSPECT SOMEONE STOLE YOUR MAIL, YOU MAY HAVE TO SHOW THAT YOUR MAILBOX WAS UNSECURED.

I did not receive a Notice of the Trial from the Court: _____

I was very sick/hospitalized which prevented me from filing my answer or going to court: _____

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Other: _____

3. I did not avoid service of the legal papers or do anything else that interfered with notice of the Summons and Complaint that was meant for me.

PRINT THE DATE YOU FOUND OUT
THERE WAS A DEFAULT AGAINST
YOU

4. I discovered there was a default/judgment against me on: _____

When I found out, I filed this Motion to Set Aside within a reasonable time and within the statutory period, if applicable.

5. If this Motion is granted, I believe I can win the case at trial.

6. If the Court does not grant this motion, it would be unfair and cause me harm because:

HERE IS WHERE YOU TELL THE COURT THE HARDSHIP YOU WILL SUFFER IF THE COURT DOESN'T GRANT YOUR MOTION.

IF YOU WERE NOT PROPERLY SERVED THE SUMMONS AND COMPLAINT OR NEVER RECEIVED NOTICE OF TRIAL, YOU MAY HAVE BEEN DEPRIVED DUE PROCESS OF LAW.

YOU MAY ALSO WRITE THAT YOU WOULD HAVE NO PLACE TO GO OR WILL BE HOMELESS.

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7. If this is an eviction case, I request the Court give me additional time to find new housing so that I will not be homeless.

I declare under penalty under the laws of the State of California, that the foregoing is true and correct. Executed at: PRINT THE CITY YOU WERE IN WHEN YOU SIGNED THIS DOCUMENT, California on date: PRINT THE DATE.

Signed by: SIGN YOUR NAME
Defendant without Attorney

PRINT YOUR NAME
Printed Name

1 PRINT YOUR NAME

2 PRINT YOUR ADDRESS

3 PRINT YOUR PHONE NUMBER

4
5 Defendant in Pro Per

6
7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 PRINT THE PLAINTIFF'S NAME AS
11 SHOWN ON THE COMPLAINT

Case No.: PRINT THE CASE NUMBER

12 **[PROPOSED] ORDER**

13 vs. Plaintiff(s),

ASSIGNED JUDGE: PRINT THE JUDGE'S NAME

DEPARTMENT: PRINT THE DEPT. #

14 PRINT THE DEFENDANT(S) NAME AS
15 SHOWN ON THE COMPLAINT

HEARING DATE: PRINT THE DAY OF THE HEARING

TIME: PRINT THE TIME OF THE HEARING

16 Defendant(s).
17
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19
20 After consideration of Defendant's motion, all other pleadings and papers, and any oral
21 argument in this case, and **LEAVE THIS AREA BLANK.** Court orders Defendant's Motion to
22 Set Aside be granted. **THIS IS FOR THE JUDGE TO FILL IN.** All as any Default, is set aside.
23 The Court also orders that the Motion issued is recalled and
24 quashed.

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Defendant's Proposed Answer is deemed filed as of this date.

Defendant is ordered to file a proposed answer within _____ days from the date of this Order.

Other: _____

LEAVE THIS AREA BLANK.

THIS IS FOR THE JUDGE TO FILL IN.

It is so Ordered.

Date: _____

JUDGE OF THE SUPERIOR COURT