

Samples

Motion

IMPORTANT: RED boxes and arrows are instructions, and are not part of your completed document. Text that appears in BLUE is text you will change to fit your case.
NOTE: Portions underlined in red only apply in unlimited cases and will not appear in the limited template.

1 DOUG DEFENDANT
2 11 ANY ST #22
3 SACRAMENTO, CA 95814
4 916-123-9876
5 Defendant, In Pro Per
6

7 COURT OF CALIFORNIA COUNTY OF SACRAMENTO

8 PAUL SAMPLE, Case No.: 34-2015-00012345
9 Plaintiff, Your case number
10 vs. The name of the person giving the declaration.
11 DOUG DEFENDANT, Set your date, time and department for the motion. Be sure to read the detailed instructions (Step 1.2) on choosing a date.
12 Defendant, Date: April 6, 2016
Time: 9:30 a.m.
Dept: 47
Judge: Hon Kevin R. Cult
13 Date Action Filed: August 1, 2015
Mandatory Settlement: April 20, 2016
Trial Date: May 3, 2016
14 This motion is to the other party. Enter their party designation and name, and "his" "her" or "its" as appropriate.
15

16 To plaintiff, PAUL SAMPLE, and to his attorney(s) of record:

17 NOTICE IS HEREBY GIVEN that on April 6, 2016, at 9:30 a.m., or as soon thereafter as the matter
18 may be heard, in Department 47 of this court, located at 720 Ninth Street, Sacramento, defendant,
19 DOUG DEFENDANT, will, and hereby does, move for an order continuing the trial date heretofore
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MOTION TO CONTINUE

Motion to Continue Trial (Page 1 of 6)



1 set for May 3, 2016 and mandatory settlement conference heretofore set for April 20, 2016,
 2 reopening discovery until 30 days prior to the new trial date, and referring this matter back to the case
 3 management program for trial setting. The motion will be made on the grounds that the defendant's
 4 attorney has left the case, and substantial discovery remains to be completed, and the defendant is
 5 unable to adequately prepare this case for trial either through new counsel or as a self-represented
 6 party in the time remaining.

7 The motion will be based on this notice of motion, on the declaration(s) of Doug Defendant, and the
 8 supporting memorandum served and filed herewith, on the records and file herein, and on such
 9 evidence as may be presented at the hearing of the motion.

10 Pursuant to Local Rule 1.06 (A) the court will make a tentative ruling on the merits of this matter by
 11 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the
 12 department may be downloaded off the court's website. If the party does not have online access, they
 13 may call the dedicated phone number for the department as referenced in the local telephone
 14 directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and
 15 receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court
 16 day before the hearing, no hearing will be held.

17 Dated: March 8, 2016 By: _____
 18 DOUG DEFENDANT
 19 Defendant, In Pro Per

20 This paragraph is required in Sacramento for UNLIMITED cases
 21 heard in Dept. 47. It is not applicable to limited cases.
 22 Other courts have different requirements; check your local rules.

23

2
MOTION TO CONTINUE

If you are asking that discovery stay open until 30 days before the new trial date, be sure to include the language requesting it, otherwise remove it.

Describe the grounds for your motion, including the specific circumstances of your case that are causing you to ask for a continuance. Keep in mind that the grounds for the motion should be one of the reasons specified in California Rules of Court, Rule 3.1332 (c).

Use the name of the person(s) making the declaration(s) supporting the motion.

Change this to your name and party designation in the case.

Motion to Continue Trial (page 2 of 6)



A Memorandum of Points and Authorities presents the legal argument that explains to the court why it can, and should, grant your motion. Make sure it starts on a new page. It may also be a separate document, but must then have a full caption including all of the information shown on lines 1 to 19 of the first page of this sample motion.

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Memorandum of Points and Authorities in Support of Motion to Continue

I. BACKGROUND

It is often useful to have a background section that provides a brief explanation of the case and a summary of the motion.

... that was loaned by the plaintiff to a defendant. The plaintiff
... attorneys loaned. The defendant was initially represented by
counsel; however counsel substituted out on February 12, 2016.

Defendant, who has never represented himself in any other case, has been seeking replacement counsel diligently during this last month, and has yet to find an attorney who is both willing to handle his case and able to prepare the case for trial by the current trial date set. Additionally, discovery remains to be completed in this lawsuit. This is the first request for continuance made by the defendant.

Describe the basis for your motion in this heading.

II. LEGAL ARGUMENT

GOOD CAUSE EXISTS FOR CONTINUANCE IN THAT DEFENDANT'S COUNSEL HAS LEFT THE CASE, AND DEFENDANT IS SEEKING NEW COUNSEL, AND SUCH NEW COUNSEL WILL BE UNABLE TO ADEQUATELY PROSECUTE THIS MATTER AT TRIAL WITHOUT A CONTINUANCE.

A. Good Cause. A court may grant a continuance before or during trial on an affirmative showing of good cause and Rules of Ct., Rule 3.1332(c)

The following points are relatively general. You may insert additional explanation after each point, as demonstrated after points B and C. There may be additional or different arguments based on the specifics of your case, depending on your specific circumstances.

B. Significant, Unanticipated Change in Case Status Constitutes Good Cause for Continuance. The circumstances that may indicate good cause for a continuance include a significant, unanticipated change in the status of the case as a result of which the case is not ready for trial (Cal. Rules of Ct., Rule 3.1332(c)(7)). Counsel originally represented the defendant. Unfortunately, as the case progressed, the defendant and his attorney developed differences that did



3 allow the attorney to adequately represent the defendant's interests in court. Defendant's attorney
4 substituted out of this case on February 12, 2016, after requesting that the defendant sign a
5 substitution of attorney form:
6

7 **C. Continuance Sought as Soon as Reasonably Practical.** A party seeking a continuance of
8 the date set for trial, whether contested or uncontested or stipulated to by the parties, must make the
9 motion or application as soon as reasonably practical once the necessity for the continuance is
10 discovered (Cal. Rules of Ct., Rule 3.1332(b)).

11 The defendant has been diligently seeking replacement counsel during the last month;
12 however, the process has been hampered by a combination of factors. The attorneys the defendant has
13 been able to reach are either too busy, on vacation, do not handle this type of case, or are priced
14 outside of the defendant's ability to pay. Because of these reasons, he has been unable to find a
15 replacement attorney. Additionally, at this point, were the defendant to find an attorney willing to
16 take his case, he has been informed that it is extremely unlikely that any attorney would be able to
17 have this case prepared for trial by the current mandatory settlement conference and trial dates.
18 Furthermore, the defendant, upon reviewing the records sent to him by his former attorney, believes
19 additional discovery is necessary to properly present this case for trial.

20 **D. Opportunity for Full Presentation.** A continuance should be granted if failure to allow
21 the continuance would probably or possibly prejudice the party seeking the continuance by depriving
22 that party of the opportunity to fully and fairly present his/her/its case (Cadle Co. v. WorldWide
23 Hospitality Furniture (2006) 144 Cal. App. 4th 504, 513-515, 50 Cal. Rptr. 3d 480; In re Dolly A.
(1986) 177 Cal. App. 3d 195, 199, 201, 222 Cal. Rptr. 741; Cohen v. Herbert (1960) 186 Cal. App.
2d 488, 494, 8 Cal. Rptr. 922).

24 Dated: March 8, 2016 By _____
25 DOUG DEFENDANT
26 Defendant, In Pro Per

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Start the declaration on its own page.

DECLARATION OF DOUG DEFENDANT

1 I, DOUG DEFENDANT, am the Defendant in this matter, and I declare the following in
 2 support of my motion for continuance.

Name and party designation of person making this declaration.

3 On May 12, 2016, I was represented by counsel in this case. My attorney insisted that I
 4 sign a substitution of attorney form in this case, and demanded that I sign a substitution of attorney form. That form is
 5 attached as Exhibit "A."

6 I have never been a plaintiff or defendant in a lawsuit before, and am in the process of finding
 7 replacement counsel. If I am unable to find a replacement attorney, I will not
 8 represent myself.

The contents of the declaration will depend entirely on the specific facts of the case. Remember that you are explaining your circumstances to a judge who likely knows nothing about what is going on in your case. Be clear and concise.

9 During the last month, I have contacted numerous attorneys' offices,
 10 but no attorney that is both willing and able to handle my lawsuit. Additionally,
 11 in my former attorney's file for this case, there appears to be a substantial amount of
 12 information necessary to bring this case to trial, as the financial records of the plaintiff(s)
 13 are critical in proving the money loaned by the plaintiff, and the intent of the parties.

The declaration must be declared under penalty of perjury. If it is not, the court cannot consider it as evidence in your motion.

14 It will be at least several more months until this matter may be prepared for trial, and the
 15 timing will depend on how quickly I am able to find a replacement attorney to
 16 represent myself. For this reason, I ask that the existing trial date and case be
 17 vacated, my case be referred back to the Case Management Program for settlement
 18 that discovery remain open until 30 days before the next trial date that is set.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing
 20 is true and correct.

21 Dated: March 8, 2016

Use the date the declaration is signed.

22 By: _____
 23 DOUG DEFENDANT
 Defendant, In Pro Per

Name and party designation of the person making the declaration.

5
MOTION TO CONTINUE

Motion to Continue Trial (page 5 of 6)



MC-050

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Allen Attorney 987 Oak Lane Sacramento, CA 95814 TELEPHONE NO.: 916-555-9876 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Doug Defendant	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 9th St. MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, CA 95814 BRANCH NAME: Gordon D. Schaber Courthouse	
CASE NAME: Plaintiff v. Defendant	
SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)	CASE NUMBER: 34-2015-00012345

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): **Doug Defendant** makes the following substitution:

1. **Former legal representative** Party represented self Attorney (name): **Allen Attorney**

2. **New legal representative** Party is representing self* Attorney

a. Name: b. State Bar No. (if applicable):

c. Address (number, street, city, ZIP, and law firm name, if applicable):
11 Any St. #22, Sacramento CA 95814

d. Telephone No. (include area code): **916-123-9876**

3. The party making this substitution is a plaintiff defendant petitioner respondent other (specify):

***NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- Guardian
- Conservator
- Trustee
- Personal Representative
- Probate fiduciary
- Corporation
- Guardian ad litem
- Unincorporated association

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

NOTICE TO PARTIES WITHOUT ATTORNEYS

A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution.

Date: **Feb. 11, 2016**

Doug Defendant

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY)

5. I consent to this substitution.

Date: **Feb. 10, 2016**

Allen Attorney

(TYPE OR PRINT NAME)



(SIGNATURE OF FORMER ATTORNEY)

6. I consent to this substitution.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF NEW ATTORNEY)

(See reverse for proof of service by mail)

Page 1 of 2

Form Adopted For Mandatory Use
Judicial Council of California
MC-050 [Rev. January 1, 2009]

SUBSTITUTION OF ATTORNEY—CIVIL
(Without Court Order)

Code of Civil Procedure, §§ 284(1), 285;
Cal. Rules of Court, rule 3.1362
www.courtinfo.ca.gov

Exhibit A

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6

MOTION TO CONTINUE

Motion to Continue Trial (page 6 of 6)

