Motion for Mandatory Dismissal – Failure to Bring to Trial within Five Years

California Code of Civil Procedure (CCP) §§ 583.310-583.360 (http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CCP&division=&title=8.&part=2.&chapter=1.5.&article=3.) set time periods in which a plaintiff must bring an action to trial. The law creates these time limits to ensure that cases are brought to trial before evidence is lost or destroyed, and while witness memories are still reliable. Additionally, requiring cases to be brought to trial within a set time period ensures that cases do not drag on, leaving issues undecided indefinitely.

Under CCP § 583.310 (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=583.310.), an action must be brought to trial within five years after it is commenced against the defendant. An action "commences" on the date the original complaint is filed with the court against the defendant. If other defendants are later added, those actions will have a different date of commencement.

Templates and Forms

- Motion for Mandatory Dismissal Template (DOCX) (https://saclaw.org/wp-content/uploads/2026/02/sbs-motion-for-mandatory-dismissal-motion.docx)

An action is "brought to trial" when the jury is sworn in a jury trial, or when the first witness is sworn in a non-jury trial. If parties stipulate to arbitration, the arbitration proceedings must begin within the five year period.

This five year period is "tolled" or paused in some situations. Examples include periods after settlement is reached or judgment is entered; periods when it is "impossible, impractical or futile" to bring the action to trial (CCP § 583.340(c) (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=583.340.); while the trial court's jurisdiction is suspended, such as when a case is on appeal, or during the time between the death of a defendant and the appointment of a personal representative; during a court-ordered

stay of proceedings; or during contractual or judicial arbitration or mediation.

If the action is not brought to trial within five years, dismissal is mandatory on the motion of any party or on the court's own motion. The court makes no determination as to the merits of the case or on the evidence. The dismissal is based solely on a failure to move the case to trial in five years. The court must order a dismissal without prejudice, which allows the plaintiff to re-file the case, if it is still within the statute of limitations period. For more information, see our guide "Statutes of Limitation (https://www.saclaw.org/resource_library/statutes-of-limitations/)."

Extension of Time

If it becomes clear that trial cannot commence within five years, the parties to the case may stipulate to extend the time to commence trial either in writing or by an oral agreement made in open court.

Step by Step Instructions

1 Reserve Your Hearing Date and Determine Deadlines for Filing and Serving

This information is for Sacramento. If your case is in a different county, do not follow these instructions. Instead, call the clerk or visit the court website in your county to find the correct information.

Determine the department and time of the motion

In Sacramento, most motions are heard in the "Civil Home Court" department assigned to the case, which will be either department 8C, 8D, 16C, or 16D. Check your case file online (https://prod-portal-sacramento-ca.journaltech.com/public-portal/) to find which department your case is assigned to.

Effective April 13, 2026: Department 25 changed Department 8D; Department 28 changed to Department 8C; Department 53 changed to Department 16D; and Department 54 changed to Department 16C of the Tani G. Cantil-Sakauye Courthouse

(500 G Street). If your case was filed before that date, **its assigned department has changed**, so check before scheduling a hearing..

More information about Civil Home Court department transition (https://saclaw.org/resource_library/new-civil-home-court-system-in-sacramento/)

Reserve the date for the hearing

In the Civil Home Departments, you must reserve a court date through the court's online reservation system. For other departments, contact the department clerk to determine the procedure.

To use the online system, go to the Sacramento Court Public Portal (https://prod-portal-sacramento-ca.journaltech.com/public-portal/) and choose "Reservation System (CRS)." You must have a free account on the system to use it.

Before you log on or call, figure out if there are any days you will *not* be available during the next couple of months. For instance, you don't want to pick a date when you know you will be out of town.

You must choose a date far enough in the future that you can both ***file*** and ***serve*** your motion on time. Scheduling it four weeks in advance generally gives a comfortable margin for most types of motions. Usually, the first available date will be further away than that.

Determine the legal deadline to file the motion in court

Tip: File the motion as soon as possible. Your reservation is not final until the motion has been filed and any fees paid.

The last legal day to file with the court is at least sixteen *court* (business) days prior to the motion date (CCP § 1005 (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1005.)). "Court days" are Monday through Friday, excluding court holidays. To determine whether a particular filing date will meet this deadline, start counting backwards on the day before your hearing until you reach the sixteenth court day. (CCP § 12c (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12c.&lawCode=CCP))

For example, suppose your reservation is for Monday, June 18. You would start counting backward using the previous court day, Friday, June 15, as day one, as shown in the calendar below. Skip weekends and court holidays (there is one court holiday in this example, which is Memorial Day, May 28). The sixteenth court day before the hearing would be May 24, which would be the last day that the motion could be filed.



Make a note on your calendar to file the motion by this date. Do not miss this deadline. The court will cancel the hearing and you will have to start over.

Determine the legal deadline to serve the motion on the other parties or their attorney

You must have all other attorneys (or self-represented parties) served with a copy of the motion, then have the server fill out a Proof of Service which you file along with the motion. This means that someone over the age of 18 who is not a party in the case must either mail or personally deliver a copy of the motion and related documents to them. There is a strict deadline to do this (earlier is always fine).

Personal service: 16 ***court*** days before the hearing, the same as the minimum filing deadline. The server can fill out Proof of Personal Service—Civil (POS-020 (https://www.courts.ca.gov/documents/pos020.pdf)).

Service by mail: 16 court days before hearing PLUS five ***calendar*** days before the hearing (more if the mailing address is outside California). (CCP § 1005 (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1005.)). The server can fill out Proof of Service by First-Class Mail—Civil. (https://www.courts.ca.gov/documents/pos030.pdf)

"Calendar days" include weekends and holidays, but if the final day lands on a weekend or holiday, it is pushed back to the previous court day. On the example calendar above, the final day for mail service falls on Saturday, May 19, so the actual service deadline is May 18.

Make a note on your calendar to have the motion served by mail before the deadline. If you miss the mail deadline, you can still have the motion served by personal service up until 16 court days before the hearing. If you miss that deadline, you will have to cancel your court date and start over.

2 Prepare the Motion

There is no pre-printed form for this motion. You will need to customize a motion on "pleading paper." A template is at the top of this Guide. Instructions and a sample motion are at the end of this Guide.

Parts of a Motion

A motion to compel responses to interrogatories or requests for production is made through a **motion**. A motion is a request to the judge to issue an order of some sort.

A written motion consists of four parts (the Notice of Motion and Motion are combined):

- Notice of Motion and Motion;
- Points and Authorities; and
- Declaration

In addition, you can include a Proposed Order, ready for the judge to sign. In Sacramento, he Sacramento County Superior Court typically issues minute orders in response to motions in the Civil Home Departments, and does not require a formal order to be submitted.

The Notice of Motion lets the opposing party know when and where the motion is scheduled to be heard, while the Motion lets the court and the opposing party know what is being requested. The Points and Authorities explains to the court and the opposing party the legal basis of the motion, while the Declaration provides evidence, sworn under penalty of perjury (https://www.saclaw.org/glossary/perjury/), supporting the motion.

In the sample and templates, the four parts listed above have been combined into a single document.

In Sacramento, the Notice of Motion and Motion **must** end with the paragraph from Local Rule 1.06 (A) (https://www.saccourt.ca.gov/general-information/local-rules-standing-orders) informing the parties of the tentative ruling system. That language is included in the templates and the sample at the end of this Guide.

Modify the Template Motion

There is no Judicial Council form for this procedure. Instead, the relevant documents must be typed on 28-line pleading paper. A customizable template may be downloaded from the link at the top of this page.

More information about how to customize the motion is included on the sample at the end of this guide.

3 Copy and Assemble Your Documents

Make one copy of your Motion for each other party in the case. One of these copies is to be served on each party's attorney (or the party, if they do not have an attorney); the original is to be filed with the court. Staple each of the copies, but leave the original unstapled so the court can scan it.

Attaching Exhibits

For each exhibit attached to your motion, you must place a page in front of the exhibit identifying it as Exhibit A, B, and so forth in alphabetical order.

4 Have the Motion Served and Attach the Proof of Service to Remaining Copies

Your motion must be served by a person over the age of 18 who is not a party to the case. Your server must complete a proof of service form, either *Proof of Service by First Class Mail* (POS-030) (http://www.courts.ca.gov/documents/pos030.pdf) or *Proof of Personal Service* (POS-020) (http://www.courts.ca.gov/documents/pos020.pdf). For more information on these Proofs of Service, see our guides for Serving Documents by Mail (https://www.saclaw.org/resource_library/serving-documents-by-mail/) and Service by Personal Delivery (https://www.saclaw.org/resource_library/personal-service/).

The proof of service form should be completely filled out, but not signed. **Make copies of the unsigned Proof of Service before proceeding and include it with the service copy.** It is not necessary to copy the instruction page.

The server must then personally deliver or mail the service copy on the other party's attorney (or the other party, if they do not have an attorney).

The server then signs the Proof of Service form, and gives the signed Proof of Service to you.

Make a copy of the signed Proof of Service for you to keep. Create a stack of the original Proof of Service plus three copies, like the other papers.

5 File Your Motion in the Law and Motion Department

As long as your filing is received by the deadline (16 court days before the hearing), you can file at the counter, by dropbox, or by mail. But note that it must be **received** by the deadline. Postmarked does not count.

As of April 13, 2026, all civil moving papers, oppositions, and replies can be e-Filed, mailed to the Tani G. Cantil-Sakauye Courthouse, 500 G St., 2nd Fl., Sacramento, CA 95814, or filed in person.

Your options are:

Use the court's efiling system. This system is optional for self-represented litigants. Fees will be paid to the electronic filing service provider, which forwards them to the court.

Wait in line to file with the clerk in the Filing Room (second floor).

Drop your paperwork and payment in the dropbox on the second floor. Payment **must** be by check or money order. Your papers will be marked as filed on the day you place them in the box if they arrive before 5 p.m.

Mail your paperwork and payment to: to the Tani G. Cantil-Sakauye Courthouse, 500 G St., 2nd Fl., Sacramento, CA 95814. Payment **must** be by check or money order. Your papers must **arrive** by the due date; the postmark will be ignored.

Filing Fee: There is a $60 fee to file a motion.

Fee Waiver: If you are receiving government benefits such as Medi-Cal or are otherwise qualified because of low income, you can apply for a fee waiver. If you do not yet have a fee waiver, turn the fee waiver request forms in with the motion instead of a fee payment. For more information, see our Step-by-Step guide on Fee Waivers (https://www.saclaw.org/resource_library/fee-waiver/) .

6 Opposition Papers and Your Optional Reply Papers

If any opposing counsel or self-represented party opposes your motion, he or she may serve and file an opposition at least **nine court days** prior to your motion. No fee is required to file an opposition. The opposition contains a memorandum of points and authorities and usually a declaration, but does not need the notice of motion or motion. Be sure to check your mail, and read any documents you receive carefully.

If the other attorney or party opposes your motion, you may choose to serve and file a reply to the opposition at least **five court days** prior to the motion. CCP § 1005 (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1005.) . It must be served by overnight mail to reach the opposing party no more than one day after it is filed.

The reply is optional and is usually used to address new issues your opponent raised in the opposition. No fee is required to file a reply. See the our guide on Writing, Scheduling, and

Opposing Motions (https://www.saclaw.org/resource_library/motions-in-civil-cases/) for more information.

7 Review the Tentative Ruling and Notify Court and Opponent if You Wish to Appear

Sacramento Superior Court uses a Tentative Ruling System. Pursuant to Local Rule 1.06 (https://www.saccourt.ca.gov/general-information/local-rules-standing-orders), the court will make a tentative ruling on the merits of your matter by 2:00 p.m. the court day before the hearing. You may read the tentative ruling online, or may call (916) 874-7858 or (916) 874-7848 to hear it. More information is available at Sacramento County Superior Court's Cvil Home Court web page (https://www.saccourt.ca.gov/divisions/civil/civil-home-courts) (scroll down the page to the header for "Tentative Rulings & Oral Argument.")

In the tentative ruling, the judge will determine what funds, if any, are exempt from collection. The ruling will typically order the release of non-exempt funds to the creditor.

If you are happy with the tentative ruling, you do not need to do anything. You won't have to go to court unless ordered to appear in the tentative ruling or unless the other side calls you and the court between 2:00 p.m. and 4:00 p.m. the court day before your hearing date to request an oral argument in front of the judge. If that happens, attend the court hearing and be prepared to argue your case.

If you are not happy with the tentative ruling, and wish to present arguments in front of the judge, you must call all opposing counsel and/or self-represented parties, and the court clerk at the department where the hearing is held, no later than 4:00 p.m. the court day before your hearing and state that you are requesting oral argument on the motion.

Oral Argument Request Lines in the Civil Home Court Departments are:

- Department 8C: 916-874-8380
- Department 8D, 916-874-7719
- Department 16C, 916-874-1475
- Department 16D, 916-874-3056

If neither you nor the opposing counsel or self-represented party requests oral argument, the court will simply make the tentative ruling the order of the court, and no oral argument will be

permitted.

8 Attend the Hearing, if Necessary

If neither party calls the court and opposing party to request oral argument, the court will simply make the tentative ruling the order of the court.

If you or the other party request oral argument, you can attend in person or remotely by video or phone call using the Zoom app. The tentative ruling will explain how to connect if you choose to use Zoom.

Arrive or log onto Zoom early. There will probably be other cases scheduled at the same time. Go into the courtroom or Zoom waiting room and check in with the bailiff or clerk..

When your name is called, be ready to speak and to answer any questions the judge has. You will only have a few minutes. After both sides speak, the judge may make a decision right away, or may “take it under consideration” and mail out the decision in a few days.

For Help

SH@LL (Self-Help at the Law Library) (https://saclaw.org/services/civil-self-help/)
609 9th Street, Sacramento CA 95814
(916) 476-2731 (Appointment Request Line)

Services Provided: SH@LL provides general information and basic assistance to self-represented litigants on a variety of legal issues. All assistance is provided by telephone. Visit “What we can help with (https://saclaw.org/services/civil-self-help/#canhelp) ” for a list of qualifying cases.

Eligibility: Must be a Sacramento County resident or have a qualifying case (https://saclaw.org/services/civil-self-help/#who) in the Sacramento County Superior Court.

For More Information

At the Law Library:

California Civil Courtroom Handbook and Desktop Reference KFC 995 .Z9 T46
§§ 20:26-20:41

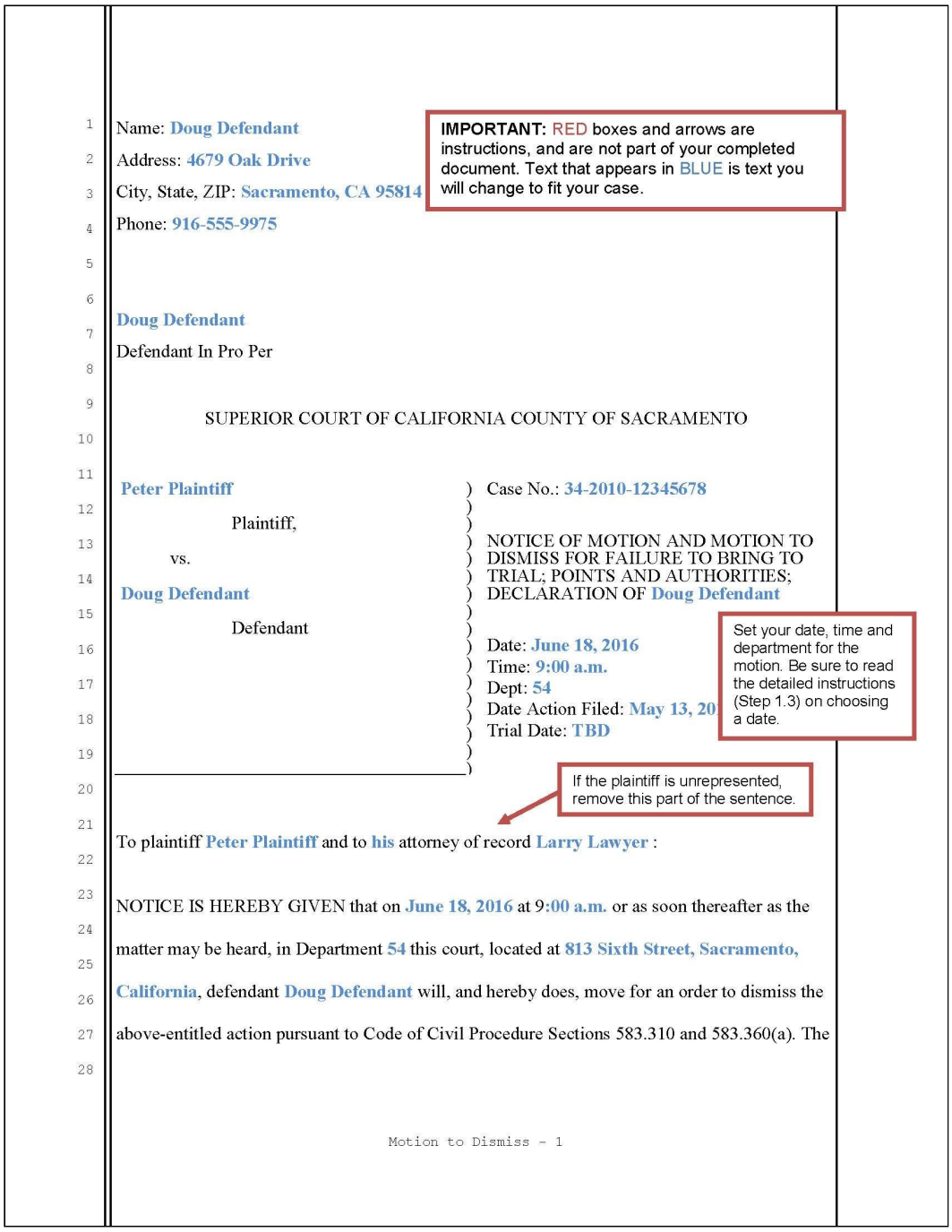
California Civil Practice: Procedure KFC 995 .A65 B3 §§ 22:41-22:64

California Forms of Pleading and Practice KFC 1010 .A65 C3 (Ready Reference)
§§ 212.120-212.149
Electronic Access: On the Law Library's computers, using *Lexis Advance.*

California Practice Guide: Civil Procedure Before Trial KFC 995 .W45
§§ 11:191 *et seq*.

California Pretrial Civil Procedure Practice Guide: The Wagstaffe Group KFC 995 .W34
Chap. 59
Electronic Access: On the Law Library's computers, using *Lexis Advance.*

Samples



Name: Doug Defendant
Address: 4679 Oak Drive
City, State, ZIP: Sacramento, CA 95814
Phone: 916-555-9975

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.

Doug Defendant
Defendant In Pro Per

SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO

Peter Plaintiff
Plaintiff,
vs.
Doug Defendant
Defendant

Case No.: 34-2010-12345678

NOTICE OF MOTION AND MOTION TO DISMISS FOR FAILURE TO BRING TO TRIAL; POINTS AND AUTHORITIES; DECLARATION OF Doug Defendant

Date: June 18, 2016
Time: 9:00 a.m.
Dept: 54
Date Action Filed: May 13, 20
Trial Date: TBD

Set your date, time and department for the motion. Be sure to read the detailed instructions (Step 1.3) on choosing a date.

If the plaintiff is unrepresented, remove this part of the sentence.

To plaintiff Peter Plaintiff and to his attorney of record Larry Lawyer :

NOTICE IS HEREBY GIVEN that on June 18, 2016 at 9:00 a.m. or as soon thereafter as the matter may be heard, in Department 54 this court, located at 813 Sixth Street, Sacramento, California, defendant Doug Defendant will, and hereby does, move for an order to dismiss the above-entitled action pursuant to Code of Civil Procedure Sections 583.310 and 583.360(a). The

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Motion to Dismiss for Failure to Bring to Trial within Five Years (page 1)

motion is made on the ground that plaintiff has failed to prosecute the above-entitled action and to bring it to trial within five years after it was commenced against the defendant.

The motion is based on this notice of motion, on the declaration(s) of **Doug Defendant** and the supporting memorandum served and filed with it, on the records and file in this action, and on any evidence that may be presented at the hearing of the motion.

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

Dated: **May 20, 2016**

Doug Defendant
Defendant, In Pro Per

Motion to Dismiss for Failure to Bring to Trial within Five Years (page 2)

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

Memorandum of Points and Authorities in Support of Motion to Dismiss

THE ACTION MUST BE DISMISSED PURSUANT TO SECTION 583.360 OF THE CODE OF CIVIL PROCEDURE BECAUSE IT WAS NOT BROUGHT TO TRIAL WITHIN THE TIME PERIOD SPECIFIED IN SECTION 583.310 OF THE CODE OF CIVIL PROCEDURE.

A. Statutory Requirements. An action must be dismissed by the court on its own motion or the defendant's motion, after notice to the parties, if it is not brought to trial within five years after it is commenced against the defendant (Code Civ. Proc. §§ 583.310, 583.360(a)).

B. Dismissal Mandatory. Dismissal of an action pursuant to Section 583.360 of the Code of Civil Procedure is mandatory in the sense that if the action is not brought to trial within the period provided in Section 583.310 of the Code of Civil Procedure, the court is without discretion to refuse dismissal unless the plaintiff can establish an extension, excuse, or exception expressly provided by statute (Code Civ. Proc. § 583.360(b); see Andersen v. Superior Court (1921) 187 Cal. 95, 97, 200 P. 963; Fannin Corp. v. Superior Court (1974) 36 Cal. App. 3d 745, 749, 111 Cal. Rptr. 920).

C. Beginning of Period for Bringing Action to Trial. The statutory period described in Section 583.310 of the Code of Civil Procedure runs from the date of filing of the original complaint against the defendant and is not affected by the filing of an amended complaint stating the same cause of action against the same defendant (see Davalos v. County of Los Angeles (1983) 142 Cal. App. 3d 57, 63, 190 Cal. Rptr. 711).

In the present case, the original complaint against the defendant was filed on May 13, 2010, more than five years ago.

D. When Action Is Deemed to Have Been Brought to Trial. The requirement that an action be brought to trial or new trial within a specified period of time is not satisfied unless a jury is impaneled, a witness is called who testifies, or there has otherwise been a determination of law or fact that brings the action to the stage of final disposition (see McDonough Power Equipment

Motion to Dismiss for Failure to Bring to Trial within Five Years (page 3)

Co. v. Superior Court (1972) 8 Cal. 3d 527, 531–532, 105 Cal. Rptr. 330, 503 P.2d 1338; Weeks v. Roberts (1968) 68 Cal. 2d 802, 805, 69 Cal. Rptr. 305, 442 P.2d 361).

E. Even When Tolled for Periods of Suspended Jurisdiction, Trial Was not Commenced In Time. Exceptions to mandatory dismissal include written stipulations or oral agreements made in open court extending the five-year time period; exclusion from the computation of the five years any time period during which the jurisdiction of the court was suspended or the prosecution of the action was stayed; and bringing the action to trial was impossible, impracticable, or futile (Code Civ. Proc. §§ 583.330(a), (b), 583.340(a)–(c); Jordan v. Superstar Sandcars (2010) 182 Cal. App. 4th 1416, 1420, 107 Cal. Rptr. 3d 5).

In this case, the defendant filed for a Motion to Set Aside Default and Default Judgment and a Motion to Quash on March 23, 2011. The motions were granted on May 2, 2011. Even if the court were to find that this period of default tolled the time to bring this case to trial, more than five years have passed since May 2, 2011.

For the aforementioned reasons, this lawsuit is subject to mandatory dismissal and should be dismissed by the court for failure to bring to trial.

Dated: May 20, 2016

Doug Defendant

Defendant, In Pro Per

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Motion to Dismiss for Failure to Bring to Trial within Five Years (page 4)

Start the declaration on a new page. The declaration is a statement sworn under penalty of perjury that you wish the court to consider when deciding your motion.

DECLARATION OF DOUG DEFENDANT

I, Doug Defendant, am the Defendant in this matter, and I declare the following:

1. This lawsuit arises from a personal loan agreement which the plaintiff alleges I breached on April 18, 2008.
2. Plaintiff filed his case against me on May 13, 2010, and subsequently entered a default against me on September 16, 2010.
3. I subsequently filed a Motion to Set Aside the Default and Default Judgment and a Motion to Quash on March 23, 2011.
4. On May 2, 2011 my Motion to Set Aside the Default and Default Judgment was granted, and I was permitted to file an Answer to the Complaint.
5. I filed my Answer on May 13, 2011.
6. Since then, the plaintiff has taken no action in this case, no trial commenced trial or obtained an order extending its time to bring this matter to trial.
7. Five years expired on September 16, 2010, but even if the court were to start counting the five years from the date of the set aside order, that time would have lapsed on May 13, 2016.
8. As of today, May 20, 2016 trial on this matter has not commenced, and trial is not scheduled at this present time.
9. For these reasons, I am asking that the court dismiss this case.

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

Dated: May 20, 2016

The contents of the declaration will depend entirely on the specific facts of the case. Include all facts showing that the period for bringing the case to trial have elapsed, even when taking into account any extensions or tolled periods. Remember that you are explaining your circumstances to a judge that likely knows nothing about what is going on in your case. Be clear and concise.

Doug Defendant
Defendant, In Pro Per

Motion to Dismiss - 5

Motion to Dismiss for Failure to Bring to Trial within Five Years (page 5)

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