

# Motion to Set Aside (Relief from Default Judgment)

If a defendant does not respond to a civil lawsuit, the plaintiff may obtain a default and default judgment, winning the case without the defendant's participation. If the defendant has a valid reason for not responding, such as never being notified, they may file a motion asking the judge to set aside the default judgment. This is also called a motion for relief from default or a motion to vacate judgment. This guide gives the steps to write and file such a motion, and includes templates you can adapt to fit your situation.

## Templates and Forms

- [Motion for Relief from Default Judgment Template – DOCX](https://saclaw.org/wp-content/uploads/2026/02/sbs-relief-from-default-judgment-motion.docx) (<https://saclaw.org/wp-content/uploads/2026/02/sbs-relief-from-default-judgment-motion.docx>)

### Related Guides:

[Responding to a Debt Collection Lawsuit \(Answer-Contract\)](https://saclaw.org/resource_library/answer-contract/) ([https://saclaw.org/resource\\_library/answer-contract/](https://saclaw.org/resource_library/answer-contract/))

[Responding to a Lawsuit \(Answering a Complaint\)](https://saclaw.org/resource_library/responding-to-a-lawsuit/) ([https://saclaw.org/resource\\_library/responding-to-a-lawsuit/](https://saclaw.org/resource_library/responding-to-a-lawsuit/))

[Request a Default Judgment by Clerk](https://saclaw.org/resource_library/request-a-default-judgment-by-clerk-2/) ([https://saclaw.org/resource\\_library/request-a-default-judgment-by-clerk-2/](https://saclaw.org/resource_library/request-a-default-judgment-by-clerk-2/))

[Request a Default Judgment by Court](https://saclaw.org/resource_library/request-a-default-judgment-by-court/) ([https://saclaw.org/resource\\_library/request-a-default-judgment-by-court/](https://saclaw.org/resource_library/request-a-default-judgment-by-court/))

When a defendant is served with a Summons and Complaint, the defendant has a limited amount of time (typically 30 days) in which to respond to the lawsuit. The response must be a formal written response filed in court and served on the plaintiff. A letter or phone call will not protect the defendant.

If a defendant fails to respond, the plaintiff may ask the court to enter a default, cutting off the defendant's time to respond. The plaintiff can also file a request for default judgment for the amount they claim is owed.

In a breach of contract or collection case, the amount of the judgment is usually the amount requested by the plaintiff in the complaint. In a personal injury or property damage case, the amount awarded is limited to the amount of damages established by the evidence the plaintiff presents to the Court.

If the judgment is granted, the plaintiff can garnish the defendant's wages, levy their bank account, put a lien on their real estate, and use other collection methods to obtain the judgment amount.

Sometimes defendants are not actually notified of the lawsuits, often because they have moved. In that case, the defendant may only find out about it when their wages are garnished or their checks start bouncing because their bank account is empty. In those cases, the defendant may file a motion to vacate the judgment. If this motion is granted, the plaintiff must start over again, beginning by serving the defendant.

## Grounds for Relief

California Code of Civil Procedure (CCP) §§ 473(b)

([http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=473.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=473.)) , [473\(d\)](#)

([http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=473.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=473.)) , and [473.5](#)

([http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=473.5.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=473.5.)) and [Civil Code \(Civ\) § 1788.61](#)

([http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1788.61.&lawCode=CIV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1788.61.&lawCode=CIV)) specify the most common grounds upon which you can base a motion for relief from default or default judgment. These grounds include:

### **Inadherence, surprise, mistake, or excusable neglect (CCP § 473(b))**

([http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=473.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=473.))

Under CCP § 473(b), the court may set aside a default and default judgment if the defendant asking for the set aside presents enough evidence to the court to demonstrate that the default was entered by inadherence, mistake, surprise, or excusable neglect. This motion must be filed within six months of the default being set aside.

“Inadherence” and “excusable neglect” are virtually synonymous (See [Barnes v. Witt, 207 Cal. App. 2d 441 \(1962\)](#) ([https://scholar.google.com/scholar\\_case?case=5094354972251469523](https://scholar.google.com/scholar_case?case=5094354972251469523))), and are the most common reasons for a set aside. In addition to filing a timely motion, the defendant asking for the set aside must present sufficient evidence for the court to find that the inadherence or neglect was excusable. To be excusable, the neglect must have been the act or omission of a reasonably prudent person under the circumstances. Forgetting about the lawsuit, being too busy to properly respond, or being unable to afford an attorney are not grounds for excusable neglect.

Examples of excusable neglect include:

- Illness that disables the party from responding or appearing in court
- Failure to respond because you relied on your attorney to do so
- Failure to appear at trial because you relied on misinformation provided by a court officer

A *mistake of fact* occurs when a person understands the facts to be other than they are. A *mistake of law* occurs when a person knows the facts as they are, but has a mistaken belief as to the legal consequences of those facts. Ignorance of the law or negligence in researching the law does not generally constitute an excusable mistake, and therefore is not usually grounds for relief from a default; however, the more confusing or obscure the critical fact or point of law that caused the default, the more likely it becomes the court will find the mistake to be excusable.

Surprise occurs when a party is placed in an injurious legal situation, through no fault or negligence of his or her own, that ordinary prudence would not have guarded against.

Typically, in the day-to-day handling of these motions, the court does not focus on whether a problem is a “mistake” or “inadherence” or “excusable neglect,” but rather looks at what went wrong, and whether it is reasonable under the circumstances to relieve the requesting party from the judgment.

## Party not given actual notice in time to defend (CCP § 473.5)

([http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=473.5.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=473.5.))

Even if service of the summons is proper, sometimes it does not result in “actual notice” to a party in time to defend their case. “Actual notice” means the party genuinely does not know of the litigation, so to show a lack of actual notice a defendant would need to demonstrate to the court that he or she lacked knowledge that the lawsuit existed. This lack of knowledge cannot be caused by the defendant’s inexcusable neglect or avoidance of service. Motions based on CCP § 473.5 must be filed within a reasonable period of time, and that time must be within two years of the date of the judgment. *Goya v. P.E.R.U. Enterprises, 87 Cal. App. 3d 886 (1978)* ([https://scholar.google.com/scholar\\_case?case=14509758889642359421](https://scholar.google.com/scholar_case?case=14509758889642359421)).

## Party not given actual notice in time to defend action brought by a debt buyer (Civ § 1788.61)

([http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1788.61.&lawCode=CIV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1788.61.&lawCode=CIV))

Similar to the grounds discussed above, Civ § 1788.61 permits a defendant to set aside a default or default judgment when service of a summons did not result in actual notice in time to defend cases brought by a debt buyer. This code section applies only if you were sued by debt buyer, such as a collection agency or law firm that purchased the debt from the original creditor. Motions brought under this code section must be filed within either 6 years after the entry of default, or 180 days of the first actual notice of the action, whichever is earlier.

If this default judgment occurred because you were the victim of identity theft, or this is a case of mistaken identity (e.g., the judgment should be against someone else who shares your name), you have 180 days from the first actual notice of the case to ask the court to set aside the default judgment.

## Void judgments (CCP § 473(d))

([http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=473.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=473.))

The court may, on its own motion or the motion of either party, set aside any void judgment or order. A judgment or order may be void if the issuing court lacked subject matter jurisdiction over the action, if the court lacked personal jurisdiction over the defendant, if the judgment or order granted relief that the court had no power to grant, or if the judgment was procured by fraud on the court. Although there are numerous ways in which a judgment may be void, a common way default judgments are found to be void is if the judgment was obtained after improper or fraudulent service, resulting in a lack of personal jurisdiction over the defendant.

A judgment may be *void on its face* if review of the court file reveals that the judgment was improperly entered, for example, if a default judgment is entered against a defendant less than 30 days before 30 days have lapsed since the date of service shown on the Proof of Service of Summons. A judgment may be *void in fact* if the judgment appears to be properly entered in the court file, but evidence shows that the judgment was improperly entered, for example, if a defendant can establish that the Summons was never served.

A judgment void on its face is subject to set aside at any time, (see *Nagel v. P & M Distributors, Inc., 273 Cal. App. 2d 176 (1969)* ([https://scholar.google.com/scholar\\_case?case=1680930192793955366](https://scholar.google.com/scholar_case?case=1680930192793955366))), however courts typically require that a motion to set aside a judgment that is void in fact to be filed within a reasonable period of time. In determining the outer limits of what constitutes a reasonable time, courts have referred by analogy to statutory limitation

periods. Some courts have applied the six-month period applicable to motions under CCP § 473(b) (see, e.g., [Wells Fargo & Co. v. City etc. of S.F., 25 Cal. 2d 37 \(1944\)](https://scholar.google.com/scholar_case?case=7544535344915269819)). Other courts have applied the two-year or 180-day period applicable to motions under CCP § 473.5, particularly when the judgment or order is void in fact due to an extrinsic defect in service (see, e.g., [Rogers v. Silverman, 216 Cal. App. 3d 1114 \(1989\)](https://scholar.google.com/scholar_case?case=797196198912525155)). Given the wide discretion of the court and the lack of consensus of what constitutes a reasonable period of time, it is typically best to promptly file any motion seeking to set aside a void judgment.

## Step-by-Step Instructions

1

### Collect Supporting Evidence

Before starting the motion itself, gather information that can help you convince the judge to grant your motion. Motions to set aside default judgments typically include one or more documents attached as exhibits, which provide the court with evidence supporting your claims. The documents you will attach vary depending on your situation, the grounds you are claiming, and what you are attempting to prove.

For example, you may want to collect:

- Evidence of your residential or business address on the purported date of service, if you are claiming that you did not receive actual notice because service occurred at an old address;
- Medical documentation if you claim excusable neglect based on a medical condition;
- Proof that you are not the party named in the judgment if you are claiming mistaken identity;
- [Identity Theft Victim's Complaint and Affidavit](https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/id_theft_affidavit.pdf) or a copy of a related police report if you are claiming identity theft (NOTE: If you are claiming identity theft under Civ § 1788.61, one of these **must** be included with your motion);
- Documentation of any misinformation you received from a court officer, etc.

Remember, you are not trying to convince the court why you should win the lawsuit at this point. You are attaching only documents that prove why the default should be set aside. If your motion is granted, you will have an opportunity to present your defense to the lawsuit.

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### Schedule the Hearing

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 25, 28, 53, or 54. [Check your case file online](https://prod-portal-sacramento-ca.journaltech.com/public-portal/) (<https://prod-portal-sacramento-ca.journaltech.com/public-portal/>) to find which department your case is assigned to.

Note: Prior to November 10, 2025, each civil case was assigned to either Department 53 or 54 for most motions. If your case was filed before that date, **its assigned department may have 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/) ([https://saclaw.org/resource\\_library/new-civil-home-court-system-in-sacramento/](https://saclaw.org/resource_library/new-civil-home-court-system-in-sacramento/))

A few types of motions are heard in other departments. [Check which departments hear which types of motions in Sacramento on the Civil Motions webpage.](https://www.saccourt.ca.gov/civil/motions-hearings-general.aspx) (<https://www.saccourt.ca.gov/civil/motions-hearings-general.aspx>)

## Reserve the date for the hearing

In the Civil Home Departments, for most motions, you must reserve a court date through the court’s online reservation system. (Exceptions are some discovery-related motions, which must be reserved in advance by calling the clerk of the assigned department.)

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/) (<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

**Disclaimer!** Some motions have different time requirements. Check the rules for the motion you are filing.

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) ([http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=1005](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1005))). "Court days" are Monday through Friday, excluding court holidays.

NOTE: the court must receive the documents by that day. Postmark will not count.

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](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12c.&lawCode=CCP) ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=12c.&lawCode=CCP](http://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.

MAY							JUNE						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5					1	2	
6	7	8	Day 5 falls on a weekend, so the last day for service by mail rolls over to the previous court day.			12	3	4	5	6	7	8	9
13	14	15	16	17	18	19	10	11	12	13	14	15	16
20	21	22	23	24	25	26	17	18	19	20	21	22	23
27	28	29	30	31			24	25	26	27	28	29	30

Annotations on the calendar:

- May 28 is circled with a red marker and labeled "Holiday".
- May 29 is circled with a red marker and labeled "Day 14".
- May 30 is circled with a red marker and labeled "Day 13".
- May 31 is circled with a red marker and labeled "Day 12".
- June 18 is circled with a red marker and labeled "Hearing Date".
- June 19 is circled with a red marker and labeled "Day 1".
- June 20 is circled with a red marker and labeled "Day 2".
- June 21 is circled with a red marker and labeled "Day 3".
- June 22 is circled with a red marker and labeled "Day 4".
- June 23 is circled with a red marker and labeled "Day 5".
- June 24 is circled with a red marker and labeled "Day 6".
- June 25 is circled with a red marker and labeled "Day 7".
- June 26 is circled with a red marker and labeled "Day 8".
- June 27 is circled with a red marker and labeled "Day 9".
- June 28 is circled with a red marker and labeled "Day 10".
- June 29 is circled with a red marker and labeled "Day 11".
- June 30 is circled with a red marker and labeled "Day 12".

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 attorneys

You must have a copy of the motion served on all other attorneys (or self-represented parties) by a strict deadline set by law. Earlier is always fine.

*Personal service:* 16 **court** days before the hearing, the same as the minimum filing deadline. The server should fill out [Proof of Personal Service—Civil \(POS-020\)](https://www.courts.ca.gov/documents/pos020.pdf) (<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) ([http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=1005](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1005))). The server should fill out [Proof of Service by First-Class Mail—Civil](https://www.courts.ca.gov/documents/pos030.pdf). (<https://www.courts.ca.gov/documents/pos030.pdf>)

“Court days” are business days – Monday – Friday, except holidays.

“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.

Make a note on your calendar to have the motion served by mail before the mail 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.

### 3 Prepare Your Motion and Proposed Response

A request to set aside a default is made through a motion. A “motion” is a request made in a case asking the court to issue an order of some sort. Most motions are in writing. With few exceptions (such as in family law cases), there is no Judicial Council form for making a motion. Instead, the motion must be typed on 28-line pleading paper. A written motion consists of four parts:

1. Notice of Motion;
2. Motion;
3. Points and Authorities; and
4. Declaration

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/) (<https://www.saclaw.org/glossary/perjury/>), supporting the motion.

The parts can be filed as separate documents or combined into one document, as in our template motion.

#### 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 Guide.

The template includes Points and Authorities for all the grounds listed above. The template also includes arguments to be used if you are seeking to quash the service of summons. These are used in instances where the service itself was improper (e.g., it never took place; substituted service was upon a minor child, etc.). In your case, you will likely not be making all of these arguments. You must read the template very carefully, and select only the grounds and arguments that fit your situation.

This sample includes a number of checkboxes that can be filled in by hand. Although you may use this form as is, it will be substantially shortened and look cleaner if you download the customizable template of the motion from the link listed above, and remove the instructions in parenthesis, checkboxes and associated text that are

not appropriate to your case, and underlining (after filling in the underlined sections, of course).

Although the declaration (the last part of the motion) can be used as a checkbox form, it is generally preferable if you use your own words to explain the facts of your case. The checkbox form does not anticipate all possible facts that might arise, and is best used as a guideline for some of the points that should be made in your declaration. The declaration is the most important part of the motion, because the declaration presents to the court the evidence that you wish the court to consider when ruling on your motion. Because it is your responsibility as the moving party to prove the basis of your motion, the better your declaration, the more likely it is that your motion will be granted by the court.

## Prepare Your Responsive Pleading

A copy of your proposed responsive pleading must be attached to your motion as an exhibit. Your responsive pleading is most likely an Answer, but other options are available. For more information, see the guide on [Responding to a Lawsuit](https://www.saclaw.org/resource_library/responding-to-a-lawsuit/) ([https://www.saclaw.org/resource\\_library/responding-to-a-lawsuit/](https://www.saclaw.org/resource_library/responding-to-a-lawsuit/)) or [Responding to a Debt Collection Lawsuit](https://www.saclaw.org/resource_library/answer-contract/) ([https://www.saclaw.org/resource\\_library/answer-contract/](https://www.saclaw.org/resource_library/answer-contract/)).

## 4 Assembling and copying papers for service

Put the motion and any other papers into proper order and format to serve the other side.

Before serving the documents, be sure that they include everything necessary, including the Notice of Motion and Motion, the Memorandum, supporting declaration(s) with exhibits attached, and any other documents such as request for judicial notice.

### 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, or Exhibit 1, 2, and so forth in numerical order. These are then attached at the end of your declaration.

Make enough copies of your papers to serve one set on each other party in the case, plus an optional one for you to keep. Staple the copies, but leave the original unstapled so it can easily be scanned into the court's file system.

In a later step, you will either e-file the documents or file the original and your optional copy in the court.

## 5 Have Your Documents Served on the Attorney(s) or Self-Represented Party(s)

You must serve one copy on each other party in the case, and have the server sign the Proof of Service form.

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You must have someone serve your papers on the other attorney or self-represented party in the case. (If there are more than two parties, you must serve all parties, or their attorneys if they have one).

Service must be complete 16 court (business) days before the hearing date, plus five calendar days if you have it served by mail.

**Tip:** If the mailing deadline (16+5 days) has passed, but there are still more than 16 court days before the hearing, you can have it served by personal delivery. If you miss the service deadline entirely, you will need to re-schedule your motion.

#### **Proof of Service form:**

After service is done, you will need to file a Proof of Service signed by the server. If serving by mail, you can use [Proof of Service by Mail \(POS-030\)](https://www.courts.ca.gov/documents/pos030.pdf) (<https://www.courts.ca.gov/documents/pos030.pdf>). For personal service, use [Proof of Personal Service \(POS-020\)](https://www.courts.ca.gov/documents/pos020.pdf) (<https://www.courts.ca.gov/documents/pos020.pdf>). You can fill most of the Proof of Service out now, but it should not be signed. **Make a copy of the unsigned proof of service before proceeding** and include it with the motion papers when you have them served.

After serving the papers, your server will sign the Proof of Service form, and give it to you.

Attach the original signed Proof of Service to your original signed motion. If you are using an optional copy for yourself, attach a copy of the Proof of Services to that.

You can also file it as a separate document, without attaching it to your motion papers.

## 6

## Assemble your Documents for Filing

*If you are e-filing, you will simply email the documents to the efilng provider of your choice.*

Assemble your packet for filing as follows. The original should be unstapled, while any copy is stapled.

- Motion, including Memorandum of Points and Authorities and Declaration with exhibits: original plus one optional copy to be returned to you.
- Proposed Order, if included, plus one optional copy.
- Completed Proof of Service form: The original plus plus one optional copy. This proof of service can filed as its own document, or it can be attached as the last page of the Motion when filing. If it is attached, then attach the original signed Proof of Service to the original signed Motion.
- Any other documents, such as Request for Judicial Notice, should be treated the same way: create a stack of original plus one optional copy and file along with the others.

If you are submitting the papers in the dropbox, you will find cover sheets and large binder clips to hold the whole package together near the box.

## 7 File at the Hall of Justice Building

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.

All moving papers, oppositions, and replies can be e-Filed, mailed to 720 9th Street, Room 102, Sacramento, CA 95814, or filed in person at the Hall of Justice Building, 813 6th Street, Room 212, 2nd Floor Sacramento, CA 95814.

**Note:** If you file in person, go to 813 6th Street for all departments (even though Dept. 25 and Dept. 28 are physically located in the main courthouse at 720 9th Street).

Your options are:

- Wait in line to file with the clerk in Room 212.
- Drop your paperwork and payment in the dropbox in the lobby. 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: 720 9th St., Rm 102, Sacramento CA 95814. Payment **must** be by check or money order. Your papers must **arrive** by the due date; the postmark will be ignored.
- Use the court's efilng 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.

At this time there is a \$60 filing fee for a motion, unless your fees were waived. Dropbox filings must include a check or money order/cashiers check, no credit cards. Credit cards can be accepted at the counter or used when efilng.

**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/](https://www.saclaw.org/resource_library/fee-waiver/)).

## 8 Opposition Papers and the Moving Party's Optional Reply Papers

The opposing party must file written opposition or risk losing automatically. The moving party may file and serve a Reply, but it is optional.

If any opposing counsel or self-represented party opposes the motion, they may serve and file an opposition at least **nine court days** prior to the hearing. No fee is required to file an opposition.

**Written Opposition is required.** Going to the hearing is not sufficient. If you do not file a written Opposition on time, the judge will probably grant the Motion and cancel the hearing.

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.

The moving party 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 the opponent raised in the opposition. No fee is required to file a reply. See our guide on [Writing, Scheduling, and Opposing Motions](https://www.saclaw.org/resource_library/motions-in-civil-cases/) ([https://www.saclaw.org/resource\\_library/motions-in-civil-cases/](https://www.saclaw.org/resource_library/motions-in-civil-cases/)) for more information.

## 9 Review Tentative Ruling at 2 p.m. the Court Day before the Hearing; Schedule Argument by 4 p.m. if Necessary

Before the hearing, the judge reads the papers and decides how they plan to rule. They post the decision on the court's website the day before the hearing. If a party wants a chance to speak to the judge to change their mind, they must notify the other party and the court by 4 p.m.

Most California courts use the tentative ruling system. In Sacramento, pursuant to [Local Rule 1.06](https://www.saccourt.ca.gov/local-rules/docs/local-rules.pdf) (<https://www.saccourt.ca.gov/local-rules/docs/local-rules.pdf>), the Civil Home Court departments issue tentative rulings on the motion by 2:00 p.m. **the court day before the hearing**. You then have two hours to request oral argument, if you choose to do so. Other departments may have different times or may not use tentative rulings; check with the department clerk.

### **Warning!** **Your hearing will be canceled**

If neither party calls the court, the hearing will be canceled and you will not be permitted to talk to the judge.

You may [read the tentative ruling online](https://www.saccourt.ca.gov/indexes/new-portal-info.aspx) (<https://www.saccourt.ca.gov/indexes/new-portal-info.aspx>) or call 916-874-7858 or 916-874-7848 to have a clerk read the ruling to you. For more information, see the Sacramento County Superior Court's [Civil Tentative Rulings](https://www.saccourt.ca.gov/civil/docs/cv-tentative-ruling.pdf) (<https://www.saccourt.ca.gov/civil/docs/cv-tentative-ruling.pdf>) page.

Closely review the Tentative Ruling. If you are making the motion, you are looking for your motion to be "GRANTED." If you are opposing the motion, you are looking for the motion to be "DENIED." The motion may also be "GRANTED IN PART" and "DENIED IN PART." The judge sometimes orders the parties to appear ("APPEARANCE REQUIRED"), even if neither party requests oral argument.

**Losing party:** If you are not happy with the Tentative Ruling, and wish to present oral argument in front of the judge, you must call all opposing counsel and/or self-represented parties right away. Let them know that that you are appearing, and that they can appear via Zoom. Leaving a message is fine.

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Then call the Law and Motion Oral Argument Request Line at (916) 874-2615 before 4:00 p.m. Leave a message with the following information: 1. Your name, and that you want to appear; 2. the item number (to the left of your case number on the Tentative Ruling); and 3. that you have let the other parties know you are appearing, and that they can appear via Zoom.

**Note:** carefully consider whether it is worth your time to request oral argument. It is very rare for judges to change their mind, but it does happen sometimes.

**Winning party:** If you are happy with the Tentative Ruling, you **do not** need to do anything unless the Tentative Ruling orders you to appear, or the other side calls you before 4:00 p.m. that day to request oral argument. If that happens, you should go to the court hearing in person or by Zoom and be prepared to argue your case.

If neither party requests oral argument by 4:00 p.m., the court will simply make the tentative ruling permanent, and no oral argument will be permitted.

## 10 Attend the Hearing, if Required

If neither party calls the court and opposing party to request oral argument, the hearing will be cancelled, and the tentative ruling will become final.

If you or the other party request oral argument, arrive in court or log onto Zoom early. There will probably be other cases scheduled at the same time; there is usually a list posted on the wall outside the courtroom that lists the order in which cases will be heard. Go into the courtroom or Zoom waiting room and check in with the bailiff or clerk.

### In Person

If your Home Court Department is Dept. 53 or 54, you will go to 813 Sixth Street, second floor.

If your Home Court Department is 25 or 28, you will go to 720 9th Street, fourth floor.

### Zoom Hearings

For most types of motions, you can appear remotely by connecting on the Zoom app. The tentative ruling will explain how to connect.

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.

If you have questions about the order, you can ask them at the hearing. Make sure you understand if you are expected to do something as a result of the order. For instance, if you are ordered to file an amended complaint or serve responses, make sure you know the deadline and what is expected.

11

## File Your Answer or Other Responsive Pleading

If the judge grants your motion, have your server serve your response on your opponent and sign the proof of service. Attach the signed proof of service to your signed original and file it, plus one copy, with the court.

## For Help

### [SH@LL \(Self-Help at the Law Library\)](https://saclaw.org/services/civil-self-help/)

609 9<sup>th</sup> 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)

["](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

### On the Web:

For information about the Sacramento County Superior Court's motion requirements, visit [Motions and Hearings](https://www.saccourt.ca.gov/civil/motions-hearings-general.aspx).

### At the Law Library:

#### **California Civil Procedure Before Trial** KFC 995 .C34 Chap. 38.

Electronic Access: On the Law Library's computers, using *OnLaw*.

#### **California Practice Guide: Civil Procedure Before Trial** KFC 995 .W45 Chap. 5.

#### **California Forms of Pleading and Practice** KFC 1010 .A65 C3 (Ready Ref) Chap. 489.

Electronic Access: On the Law Library's computers, using *Lexis Advance*.

#### **California Civil Practice: Procedure** KFC 995 .A65 B3 Chap. 29.

#### **California Pretrial Civil Procedure** KFC 995 .M38 Chap. 36.

Electronic Access: On the Law Library's computers, using *Lexis Advance*.

#### **California Points and Authorities** KFC 1010 .B4 (Ready Ref) Chap. 70.

Electronic Access: On the Law Library's computers, using *Lexis Advance*.

**Younger on California Motions** KFC 1012 .C35 Chap. 26.

## Samples

You may print the template and fill in the blanks by hand, or you may type the document using the form motion as a template. If you are typing the document, you may delete the checkboxes and accompanying text for anything that you are not asserting.

1 Doug Defendant  
2 123 Main Street  
3 Sacramento, CA 95814  
4 916-555-9876  
5 Defendant In Pro Per

6 Your name, address, phone  
7 number, and party designation.

8 **SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO**

9 Identify the plaintiff(s), defendant(s), and  
10 Case No.: 34-2011-00012345  
11 Plaintiff, Plaintiff,  
12 vs.  
13 Doug Defendant,  
14 Defendant

15 Insert the date, time and department of  
16 the hearing, as well as the date that the  
17 lawsuit was first filed.

18 Check this box or delete the checkbox if you  
19 are requesting that the court quash service  
20 of the Summons.

21 TO EACH PARTY AND TO THE COUNSEL OF RECORD FOR EACH PARTY:  
22 YOU ARE HEREBY NOTIFIED THAT at the above-captioned date and time and  
23 department in the courthouse located at 813 Sixth Street, Sacramento, California that Defendant will  
24 move the court for an order requesting that the Default and, if entered, Default Judgment be set aside,  
25 as well as an order quashing the service of the Summons due to lack of jurisdiction pursuant to  
CCP § 418.10(a)(1). This motion is made on the following grounds:

26 Check the box(es) that  
27 identify the basis for  
28 your motion. (Or delete  
29 the checkboxes and the  
30 selections that do not  
31 describe the basis for  
32 your motion.)

33  Inadherence, surprise, mistake, or excusable neglect (CCP §473(b));  
34  Service of the Summons did not result in actual notice (CCP §473.5);

MOTION TO SET ASIDE- 1

Motion to Set Aside (page 1)



1                    Service of the Summons did not result in actual notice in time to defend action  
 2                   brought by a debt buyer (Civ. §1788.) If you are arguing any other  
 3                   statutory basis for set aside, check the box and identify the  
 4                   basis of the set aside.  
 5                    The judgment and/or default is void  
 6                    Other Grounds:

This motion will be based upon this notice, the attached points and authorities and declaration of  
 7                   **Doug Defendant**, and the records and files in this action. The name of the person making the  
 8                   declaration (most likely you) goes here.

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

16                  The local rules of the Sacramento Superior Court  
 17                  requires this notice about the tentative ruling system  
 18                  be included with each motion. Other courts have  
 19                  different requirements.

Dated: October 1, 2011

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## Motion to Set Aside (page 2)



The Points and Authorities explains the legal basis for your motion.

The background explains how the default came about. Either fill in the blanks and check the appropriate boxes, or write your own description.

**Memorandum of Points and Authorities in Support of Motion for Set Aside**

## I. Background

On January 17, 2011, Plaintiff filed a Complaint in this court. On March 26, 2011 this court entered a default,  and on March 26, 2011 a judgment was entered against the Defendant. The moving defendant is now asking for a set aside of that default and, if entered, default judgment  as well as an order quashing service of the Summons for lack of jurisdiction.

## II. LEGAL ARGUMENT

(If checked paragraphs A – D are argued) Pursuant to California Code of Civil Procedure §473(b), the court should set aside this adverse judgment or ruling based on inadvertence, surprise, or excusable neglect.

**A. Grounds for Relief.** On application by the plaintiff or his or her legal representative from a judge, motions for relief are seeking set aside due to inadvertence, surprise, mistake or excusable neglect. (CCP § 473(b)). If you are not asserting this, either do not check the box, or delete the heading and paragraphs A to D. party or  
against  
him or her through his or her mistake, inadvertence, surprise, or excusable neglect (Code Civ. Proc. § 473(b)). This motion is filed within a reasonable period of time, not exceeding six months after entry of the default.

**B. Policy of Law Favors Trial on Merits.** The policy of the law is that controversies should be heard and disposed of on their merits (*Fasuyi v. Permatex, Inc.* (2008) 167 Cal. App. 4th 681, 694–703, 84 Cal. Rptr. 3d 351; *Berman v. Klassman* (1971) 17 Cal. App. 3d 900, 909, 95 Cal. Rptr. 417).

**C. Court Has Wide Discretion in Granting Relief.** A trial court has wide discretion to grant relief under Code of Civil Procedure Section 473 (*Berman v. Klassman* (1971) 17 Cal. App. 3d 900, 909, 95 Cal. Rptr. 417).

**D. Liberal Construction of Statute.** Code of Civil Procedure Section 473(b) is a remedial measure to be liberally construed, and any doubts existing as to the propriety of setting aside a default thereunder will be resolved in favor of a hearing on the merits (*Berman v. Klassman* (1971) 17 Cal. App. 3d 900, 910, 95 Cal. Rptr. 417).

**MOTION TO SET ASIDE- 3**

### Motion to Set Aside (page 3)

	<p>1      <input type="checkbox"/> <i>(If checked paragraphs E – H are argued) The court should grant defendant's motion for relief</i></p> <p>2      <b>pursuant to CCP §473.5 because he/she received no actual notice of the action in time to defend,</b></p> <p>3      <b>he/she has filed a timely motion for relief, and the default and default judgment was not caused</b></p> <p>4      <b>by the plaintiff's avoidance of service or inexcusable neglect.</b></p> <p>5</p> <p>6      <b>E. Motion for Relief From Default for Lack of Actual Notice.</b> When service of a summons has not</p> <p>7      resulted in actual notice to a party in time to defend the action and a default or default judgment has</p> <p>8      been entered against him or her in the action, the party may serve and file a notice of motion to set</p> <p>9      aside the default or default judgment and for leave to defend the action (Code Civ. Proc. § 473.5(a)).</p> <p>10</p> <p>11     <b>F. Court May Grant Relief on Timely Motion if Defendant Not at Fault.</b> On a finding by the</p> <p>12     court that the motion was made within the two year time period permitted by Code of Civil Procedure</p> <p>13     Section 473.5(a) and that his or her lack of actual notice in time to defend the action was not caused</p> <p>14     by his or her avoidance of service or inexcusable neglect, it may set aside the default or default</p> <p>15     judgment on whatever terms as may be just and allow the party to defend the action ( Code Civ. Proc.</p> <p>16     § 473.5(c); <i>Goya v. P.E.R.U. Enterprises</i> (1978) 87 Cal. App. 3d 886, 890–891, 151 Cal. Rptr. 258).</p> <p>17</p> <p>18     <b>G. Granting of Relief Within Discretion of Trial Court.</b> Whether or not relief should be granted</p> <p>19     under Code of Civil Procedure Section 473.5 is a matter within the discretion of the trial court</p> <p>20     (<i>Brockman v. Wagenbach</i> (1957) 152 Cal. App. 2d 603, 611, 313 P.2d 659).</p> <p>21</p> <p>22     <b>H. Policy Favors Application for Relief.</b> Unless inexcusable neglect is clear, the policy favoring</p> <p>23     trial on the merits prevails over the general rule of deference to the trial court's exercise of discretion</p> <p>24     and doubts are resolved in favor of the : <input type="checkbox"/> <i>Check or delete the checkbox and parenthetical if you are seeking</i></p> <p>25     <i>set aside the default due service not resulting in actual notice in time to defend a case brought by a debt buyer. (Civ. Code § 1788.61). If</i></p> <p>26     <i>you are not asserting this, either do not check the box, or delete the heading and paragraphs I to K.</i></p> <p>27     <input type="checkbox"/> <i>(If checked paragraphs I-K are argued) The court should grant defendant's motion for relief</i></p> <p>28     <b>pursuant to Civil Code § 1788.61 because he/she received no actual notice of the action in time to defend against an action brought by a debt buyer, he/she has filed a timely motion for relief,</b></p>
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Motion to Set Aside (page 4)



1 and the default and default judgment was not caused by the plaintiff's avoidance of service or inexcusable neglect.

**I. Motion for Relief From Default for Lack of Actual Notice.** When service of a summons has not resulted in actual notice to a party in time to defend an action brought by a debt buyer and a default or default judgment has been entered against him or her in the action, the party may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action (Civ. Code § 1788.61(a)(1)).

**J. Court May Grant Relief on Timely Motion if Defendant Not at Fault.** On a finding by the court that the motion was made within the time period(s) permitted by Civ. Code § 1788.61(a)(2)(A), Civ. Code § 1788.61(a)(2)(B) and/or Civ. Code § 1788.61(a)(3)(A), and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action (Civ. Code § 1788.61(c)).

**K. Court may consider evidence presented by either party.** Either party may introduce, and the

17 court may consider, evidence in sup  
18 server who appears on the proof of

Check or delete the checkbox and parenthetical if you are seeking set aside the default because the judgment is void due to a lack of service (CCP § 473(d)). If you are not asserting this, either do not check the box, or delete the heading and paragraphs L to N.

(If checked paragraphs L – N are argued) The court should grant defendant's motion to set aside the default and default judgment, if entered on the ground that it is void because, although its invalidity may not appear from an examination of the judgment roll, it is nonetheless void in fact in that the summons and complaint were never validly served on the defendant, and the defendant lacked actual notice of this lawsuit

**L. Statutory Power to Set Aside Void Judgment.** The court may, on motion of either party after notice to the other party, set aside any void judgment or order (Code Civ. Proc. § 473(d)).

**M. Inherent Power to Set Aside Judgment Not Void on Its Face but Void in Fact.** The law is settled that courts of record have inherent power to set aside a void judgment whether or not it is void

**MOTION TO SET ASIDE- 5**

## Motion to Set Aside (page 5)

1	on its face ( <i>Rogers v. Silverman</i> (1989) 216 Cal. App. 3d 1114, 1122, 265 Cal. Rptr. 286). As 2 described in the attached Declaration, the service of the Summons was improper, depriving the court 3 of jurisdiction as to the defendant. Furthermore, the defendant is filing this motion within a 4 reasonable period of time within six months of learning of the existence of this lawsuit. 5	6
6	<b>N. Court Has Duty to Set Aside Judgment.</b> It is well settled that when an application to vacate and 7 set aside a judgment is filed, the court must consider the motion and enter a judgment setting aside the 8 default judgment if the court finds that the default was void. (See CCP § 473(d).) If you are not asserting 9 this, either do not check the box, or delete the heading and paragraphs O to R. 10	11
11	<input type="checkbox"/> <i>(If checked paragraphs O – R are argued) The court should set aside the default and, if 12 entered, default judgment in this action as void on its face because</i> <input type="checkbox"/> <i>no proof of service was 13 filed</i> <input type="checkbox"/> <i>this is a consumer credit debt, however no declaration of venue has been filed and the complaint is not verified.</i>	14
14	<b>O. Relief From Void Judgment or Order.</b> The court may, on motion of either party after notice to 15 the other party, set aside any void judgment or order (Code Civ. Proc. § 473(d)). 16	17
17	<b>P. Inherent Power to Set Aside Judgment Void on Its Face.</b> A court has inherent power, 18 independent of statute, to set aside a judgment or order that is void on its face ( <i>People v. Greene</i> 19 (1887) 74 Cal. 400, 405–406, 16 P. 197; <i>Hendrix v. Hendrix</i> (1955) 130 Cal. App. 2d 379, 383, 279 20 P.2d 58). 21	22
22	<b>Q. Test for Establishing That Judgment Is Void on Its Face.</b> A judgment or order is void on its 23 face when its invalidity appears from an examination of the judgment roll ( <i>People v. Davis</i> (1904) 24 143 Cal. 673, 676, 77 P. 651; <i>Carrasco v. Craft</i> (1985) 164 Cal. App. 3d 796, 808, 210 Cal. Rptr. 25 599). 26	27
27	<b>R. Judgment Roll When Complaint Not Answered.</b> If the complaint is not answered by any 28 defendant, the following papers, without being attached together, constitute the judgment roll: the	29
	MOTION TO SET ASIDE- 6	

Motion to Set Aside (page 6)

1 summons, with the affidavit or proof of service; the complaint; the request for entry of default with a  
2 memorandum endorsed thereon that the default of the defendant in not answering was entered, and a  
3 copy of the judgment; if defendant has appeared by demurrer, and the demurrer has been overruled,  
4 then notice of the overruling thereof served on defendant's attorney, together with proof of the  
5 service; and in case the service is made by publication, the affidavit for publication of summons, and  
6 the order directing publication.  
7  *(If checked paragraphs S-V are argued) The court should quash service of the summons due to  
8 lack of jurisdiction.*

10 **S. Motion to Quash Service of Summons.** On or before the last day of his or her time to plead, or  
11 within such further time as the court may for good cause allow, a defendant may serve and file a  
12 notice of motion to quash service of summons on the ground the court lacks jurisdiction over him or  
13 her (Code Civ. Proc. § 418.10(a)(1)).

15 **T. Compliance With Statutory Provisions Governing Service of Process Is Required.** Service of  
16 summons in conformance with the mode prescribed by statute is deemed jurisdictional, and, absent  
17 such service, no jurisdiction is acquired by the court in the particular action (*Renoir v. Redstar Corp.*  
18 (2004) 123 Cal. App. 4th 1145, 1150, 20 Cal. Rptr. 3d 603; *Schering Corp. v. Superior Court* (1975)  
19 52 Cal. App. 3d 737, 741, 125 Cal. Rptr. 337; *Sternbeck v. Buck* (1957) 148 Cal. App. 2d 829, 832,  
20 307 P.2d 970).

22 **U. Strict Compliance Necessary for Substituted or Constructive Service.** A court has no authority  
23 to render judgment on the basis of substituted or constructive service of the summons when statutory  
24 requirements have not been strictly complied with (*Summers v. McClanahan* (2006) 140 Cal. App.  
25 4th 403, 412, 44 Cal. Rptr. 3d 338 (improper service on personal manager); *Zirbes v. Stratton* (1986)  
26 187 Cal. App. 3d 1407, 1416, 232 Cal. Rptr. 653 (substituted service); *Eagle Electric Mfg. Co. v.  
27 Keener* (1966) 247 Cal. App. 2d 246, 251, 55 Cal. Rptr. 444 (same); *Bank of America v. Carr* (1956)  
28 138 Cal. App. 2d 727, 737, 292 P.2d 587 (constructive service)).

MOTION TO SET ASIDE- 7

Motion to Set Aside (page 7)

1		
2	<p><b>V. General Appearance After Default Judgment Does Not Validate Defective Service.</b> The</p> <p>3 general appearance after entry of a default judgment by a defendant who was defectively served with</p> <p>4 summons does not make the defective service retroactively valid (<i>In re Marriage of Smith</i> (1982) 135</p> <p>5 Cal. App. 3d 543, 545, 547–552, 185 Cal. Rptr. 411).</p>	
6		
7	<p><input type="checkbox"/> <b>THE DEFENDANT ADDITIONALLY ARGUES:</b></p> <p>8 F This section is provided for you to argue any additional legal basis for your</p> <p>9 default ju motion to set aside. Either check the box and write your additional points and</p> <p>10 authority in the lines provided, or delete the check box and type your points</p> <p>11 aside for lack of jurisdiction.</p>	and if applicable, summons be set
12	Date, sign, and print your name where indicated, and enter	
13	your party designation.	
14	As in the rest of this document, if you are typing the	
15	document using the form motion as a template, you may	
16	delete checkboxes for anything you are asserting, and	
17	checkboxes with accompanying text for anything that you	
18	are not asserting. This will provide a shorter, cleaner	
19	document.	
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	<hr/> MOTION TO SET ASIDE-8	

Motion to Set Aside (page 8)

<p>The declaration contains the evidence that supports your motion. It is the most important part of the motion. Because your facts are unique to your case it is preferable that the declaration be written specifically to your circumstances, using this template only as a rough guide to the types of facts you might include.</p>	
1	DECLARATION
2	<p>Enter the name and party designation of person making the declaration.</p>
3	<p>I, <u>Doug Defendant</u>, am the <u>Defendant</u> in this matter, and I declare the following in support of my</p>
4	<p>motion to set aside the default in my case:</p>
5	<p>6</p>
	<p>CONTENTS OF THE PROOF OF SERVICE OF SUMMONS</p>
12	<p>This section identifies whether there was a Proof of Service of Summons in the file, and what it stated.</p>
13	<p>1. I have reviewed the court file, and <input checked="" type="checkbox"/> there is <input type="checkbox"/> there is not a Proof of Service of Summons filed in this case. (If there is not a Proof of Service of Summons filed, paragraphs 2-7 below are not asserted as part of this declaration).</p>
14	<p>2. The Plaintiff's Proof of Service of Summons states that <input type="checkbox"/> I was personally served <input checked="" type="checkbox"/> I was served by substituted service.</p>
15	<p>3. Service allegedly took place on January 21, 2011 at 2:15 pm at 3579 Oak Ave., Sacramento.</p>
16	<p>4. The Proof of Service of Summons describes the person served as being named <u>John Doe</u>, and having the following physical description: white male, 5'10", 195 pounds, brown hair and brown eyes.</p>
17	<p><input type="checkbox"/> There was no physical description provided.</p>
18	<p>5. The Proof of Service of Summons identifies the server as <input type="checkbox"/> a registered process server <input type="checkbox"/> a Sheriff's Department employee <input checked="" type="checkbox"/> a private individual.</p>
19	<p>6. As to the service of the Summons: (check <u>only</u> one):</p>
20	<p><input type="checkbox"/> I do not contest the manner of service. I was served as described in the Proof of Service of Summons. (If checked, paragraph 7, below, is not asserted or claimed.)</p>
21	<p><input type="checkbox"/> Although the Proof of Service of Summons claims that I was personally served, I was not served with the Summons and Complaint for the reasons described in the following paragraphs.</p>
22	<p><input checked="" type="checkbox"/> Although the Proof of Service of Summons claims that I was served by substituted service, I did not live or work at the address where substituted service allegedly took place, as described in the following paragraphs.</p>
23	<p><input type="checkbox"/> Service of the Summons was invalid because:</p>
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25	
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27	
28	
<p>MOTION TO SET ASIDE- 9</p>	

Motion to Set Aside (page 9)



1 7.  The following facts support my contention in paragraph 6: The address shown on the Proof  
2 of Service is a former address. I moved from that address to my current residence at 123 Main  
3 Street, Sacramento, in August 2010. A copy of my rental agreement for this residence is  
4 attached as Exhibit B.

#### ACTUAL KNOWLEDGE OF THE LAWSUIT

This section describes when and how you learned about the lawsuit.

12 listed on my credit report was the first I had ever heard of this lawsuit.

In early September, I was denied a loan to purchase a vehicle. I requested a copy of my credit report, and was surprised to see a judgment against me for this case. Finding the judgment listed on my credit report was the first I had ever heard of this lawsuit.

13 9.  I was not evading service, so my lack of actual notice of this case is not the result of

evasion of service. If you contend you did not respond due to a lack of actual notice of the lawsuit, the lack of notice cannot be because you were evading service.

#### INADVERTANCE, SURPRISE, MISTAKE, EXCUSABLE NEGLECT

## OR LACK OF NOTICE

18 10. I contend that my failure to respond was the result of inadvertence, surprise, mistake, or  
19 excusable neglect or lack of notice for the following reasons: \_\_\_\_\_

State the facts that describe the reason you did not respond, and how this lack of response was the result of inadvertence, surprise, mistake, excusable neglect or lack of notice.

to Set Aside (page 10)

11. But for the above facts, I would have filed the Proposed Answer, attached as Exhibit A.  
12.  I additionally wish the court to consider the following when evaluating my request to set aside the default:

4 Remember- the declaration is your explanation and your evidence as to why the set  
5 aside motion should be granted. If you can, you should write the declaration portion of  
6 the motion on your own, in your own words, rather than using the language of this  
7 template. The resulting declaration will likely be shorter, and will hopefully better convey  
8 the reasons for your motion. When writing, there are several tips you should keep in  
9 mind:

- 10 • This declaration is being read by a judge that has no knowledge of you or the  
11 facts of your case. It should be written in a way that quickly and clearly explains  
12 your position to a complete stranger. You may benefit by having someone else  
13 read your declaration to see if he or she understands the points that you are  
14 attempting to make.
- 15 • It is your responsibility to present enough evidence to convince the court to grant  
16 your motion. If, for example, you contend that service of the Summons and  
17 Complaint was invalid, what evidence can you present to support this?  
18 Remember to present facts that apply to your reasons for set aside. For  
19 example, if the Proof of Service of Summons alleges that you were served by  
20 substituted service (i.e. service was on an adult in your home or place of work),  
21 proving that you weren't at home or work at the time does not invalidate the  
22 service, but showing that it wasn't your home or work would.

- 14  
15 13.  I have attached the following exhibits to this declaration in support of my motion to set  
16 aside the default:

- 17 a.  Exhibit A: Proposed Answer
- 18 b.  Exhibit B: Lease agreement showing my residence on date of service.
- 19 c.  Exhibit C: (describe)
- 20 d.  Exhibit D: (describe)
- 21 e.  Exhibit E: (describe)

22 Your motion must have the responsive pleading (typically an Answer, but it could also be a demurrer, motion to quash, motion to transfer or other valid initial pleading) that you would have filed in this case attached as an exhibit. You may also attach other exhibits to support the points that you have made in your declaration. Be sure to refer to them in the section to which they are relevant.

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

27 This language is what allows the declaration to be  
28 considered as evidence. Without this language, none of your  
facts can be considered by the court.

Dated: \_\_\_\_\_

Doug Defendant  
Defendant, In Pro Per

27 Date, sign, and print your name where indicated.

MOTION TO SET ASIDE- 11

Motion to Set Aside (page 11)

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# Proposed Answer Exhibit A

MOTION TO SET ASIDE- 12

Motion to Set Aside (page 12)