

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

In Pro Per

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

_____	)	Case No.: _____
	)	
Plaintiff,	)	<b>NOTICE OF MOTION AND MOTION TO</b>
	)	<b>SET ASIDE DEFAULT AND DEFAULT</b>
vs.	)	<b>JUDGMENT, MEMORANDUM OF</b>
	)	<b>POINTS AND AUTHORITIES AND</b>
_____	)	<b>DECLARATION OF DEFENDANT</b>
	)	
Defendant	)	Hearing Date: _____
	)	Dep't: _____
_____	)	Judge: <b>Neal A. Cabrinha</b>

To Plaintiff:

PLEASE TAKE NOTICE that on \_\_\_\_\_ at \_\_\_\_\_ in Department \_\_\_\_\_, of the above entitled court, located at 191 North First Street, San Jose CA 95113, before the Honorable Neal A. Cabrinha, defendant will move to set aside the default and any judgment thereon taken against defendant.

This Motion is made pursuant to CCP § 473 and is based on one or more of the following grounds:

- 1. SET ASIDE DEFAULT JUDGMENT WITHIN SIX MONTHS BASED ON:
  - MISTAKE
  - INADVERTENCE
  - SURPRISE
  - EXCUSABLE NEGLECT

1  
2 This Motion is based on the Memorandum of Points and Authorities and the Declaration of  
3 \_\_\_\_\_ which follow, and on all of the pleadings, records, and files in this  
4 action.

5  
6 Dated:

7  
8 By: \_\_\_\_\_  
9 In Pro Per

10 MEMORANDUM OF POINTS AND AUTHORITIES

11 Code of Civil Procedure Section 473 (b) states in relevant part:

12 The court may, upon any terms as may be just, relieve a party of  
13 his or her legal representative from a judgment, dismissal, order, or  
14 other proceeding taken against him taken against him or her  
15 through his or her mistake, inadvertence, surprise or excusable  
16 neglect. Application for this relief shall be accompanied by a copy  
17 of the answer or other pleading proposed to be filed therein, . . .  
18 and shall be made within a reasonable time, in no case exceeding  
19 six months, after the judgment, order or proceeding was taken.

20 In the present case, defendant did not file a timely response to the complaint for the  
21 reasons stated in the attached declaration. The policy of the law is to have every case tried on its  
22 merits and that policy views with disfavor a party who, regardless of the merits, attempts to take  
23 advantage of the mistake, inadvertence, or neglect of his adversary. This policy is so strong that  
24 “any doubts in applying section 473 must be resolved in favor of the party seeking relief from  
25 default.” *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233; *Slusher v. Durrer* (1977) 69 Cal.  
App. 3d 747, 753.

26 For the reasons stated in this Memorandum and in the attached Declaration, the  
27 court should set aside the default and any judgment thereon taken against defendant.

1 DECLARATION OF DEFENDANT

2 I, \_\_\_\_\_, declare:

3  
4 I am the Defendant in this action. I have personal knowledge of the matters discussed below and,  
5 if called as a witness, I could competently testify to them. **I did not file a timely response to**  
6 **the complaint in this action for the following reason(s):**

7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_

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

21  
22 Dated: \_\_\_\_\_ By: \_\_\_\_\_  
23 In Pro Per