



Federal *Pro Se* Clinic

CENTRAL DISTRICT OF CALIFORNIA: WESTERN DIVISION

▣ How to Move to Set Aside Entry of Default ▣

If you fail to file a response to a lawsuit in time, the plaintiff can ask the Court to enter “default” against you. When the Court enters default against you, you no longer have the right to oppose the lawsuit. To regain the right to oppose the lawsuit, you must file a Motion to Set Aside Entry of Default.

To file a Motion to Set Aside Entry of Default in the U.S. District Court for the Central District of California, you will need to prepare the following documents:

- 1) Notice of Motion and Motion to Set Aside Entry of Default
- 2) Memorandum of Points and Authorities in Support of Motion to Set Aside Entry of Default
- 3) Defendant’s Declaration in Support of Motion to Set Aside Entry of Default
- 4) (Proposed) Order
- 5) Proof of Service by Mail

A template of each of these document is included with this guide.

Description of Each Document

1) **Notice of Motion and Motion to Aside Entry of Default**

The Notice of Motion and Motion lets the Court and the opposing party know what kind of motion you are making.

2) **Memorandum of Points and Authorities in Support of Motion to Set Aside Entry of Default**

The Memorandum of Points and Authorities contains your legal argument for why the Court should set aside the default. In your Memorandum, you must show the Court that (1) you had a good reason for not responding to the lawsuit in time, (2) you have a defense to the lawsuit, and (3) your delay has not harmed the plaintiff’s ability to pursue the lawsuit. The Memorandum of Points and Authorities must not exceed **25 pages**.

3) **Declaration in Support of Motion to Set Aside Entry of Default**

A Declaration is a sworn statement to the Court where you write the facts that support your motion.

4) **(Proposed) Order**

This is an Order for the judge to sign if he or she wants to grant your motion. You do not sign the proposed order—instead, you leave a space for the judge’s signature.

Federal Pro Se Clinic • Roybal Courthouse • 255 East Temple Street, Suite 170 • Los Angeles, CA 90012 • (213) 385-2977 ext. 270
Open on most Mondays, Wednesdays, and Fridays. By appointment only.

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5) Proof of Service by Mail

In this document, you or someone else will swear to the Court that you have mailed a copy of the motion documents to the opposing counsel.

Meeting and Conferring with Opposing Counsel Prior to Filing Your Motion

Before you can file the Motion to Set Aside Entry of Default, you are required to call the opposing counsel (the lawyer for the plaintiff) to explain that you wish to set aside the default. You must do this **7 days before** filing your motion. You will include the date on which you talked to opposing counsel in the last paragraph of your Notice of Motion and Motion to Set Aside Entry of Default.

The purpose of this rule is to encourage parties to resolve problems without having to resort to a formal motion. Do not be afraid to ask opposing counsel to agree to set aside the default. If the opposing counsel says no, explain that you will then file a formal motion with the Court.

Scheduling a Hearing Date

When you file a written motion, you must propose a hearing date—a date on which you and the other party must appear before the judge assigned to your case to orally argue about the motion. In the Central District of California, the date must be at least **31 days** after the date you file the motion and serve a copy by mail. You will write this date under the title of your motion (see the sample on the next page). **Note, however, that judges will often move a scheduled hearing date or cancel the hearing altogether and decide the motion based only on the written documents.**

To schedule a motion date, you must look at your judge's schedule and find out when the judge hears civil motions. To find this information online, do the following:

- 1) Go to the Central District's website, at <http://www.cacd.uscourts.gov>.
- 2) On the left hand side of the website, you will find a list of links. Click on the link called "Judges Procedures and Schedules."
- 3) Click on your judge's name.
- 4) Read your judge's procedures, and look for the day that he or she hears civil motions. For example, your judge may hear civil motions every Monday at 1:30 p.m. If that is the case, you must propose a hearing date on a Monday that is 31 days or more after the day you file your motion.
- 5) Towards the beginning of each judge's page, there is a link that says, "Click here to view Closed Motion Dates." That page lists the dates on which each judge will **not** be hearing motions. Click that link to make sure that you are not scheduling a hearing on a closed motion date.

If you do not have internet access, you should call the courtroom deputy (CRD) for the judge assigned to your case.

Updating the Table of Contents and Table of Authorities (Microsoft Word Users Only)

The sample Memorandum of Points and Authorities included in this guide includes a Table of Contents and a Table of Authorities. As you add your facts to the Memorandum, you may find that the page numbers for everything will change. To update the page numbers for the Table of Contents and Table of Authorities, do the following:

- 1) Right-click on each table.
- 2) Select "Update Field."
- 3) If asked, select, "Update entire table."

NOTE: Be sure to complete the above process for the Table of Contents and both the "Cases" and "Statutes" sections of the Table of Authorities.

Filing and Serving Your Motion

When you have completed your motion, you must file it with the Civil Intake Division of the courthouse in which the judge who is hearing your motion is located. The Civil Intake Division requires **1 original** and **2 copies** of each document you wish to file. In addition, send **1 copy** of each document to the opposing counsel by mail on the same day that you file.

You may file your motion with the court in person or by mail. Keep in mind that mailing your motion may delay the date on which it is filed. The addresses for the Civil Intake Division for the Central District of California courthouses are as follows:

LOS ANGELES

United States Courthouse
Central District of California
255 East Temple St., Ste TS-134
Los Angeles, CA 90012

SANTA ANA

United States Courthouse
Central District of California
Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701-4516

RIVERSIDE

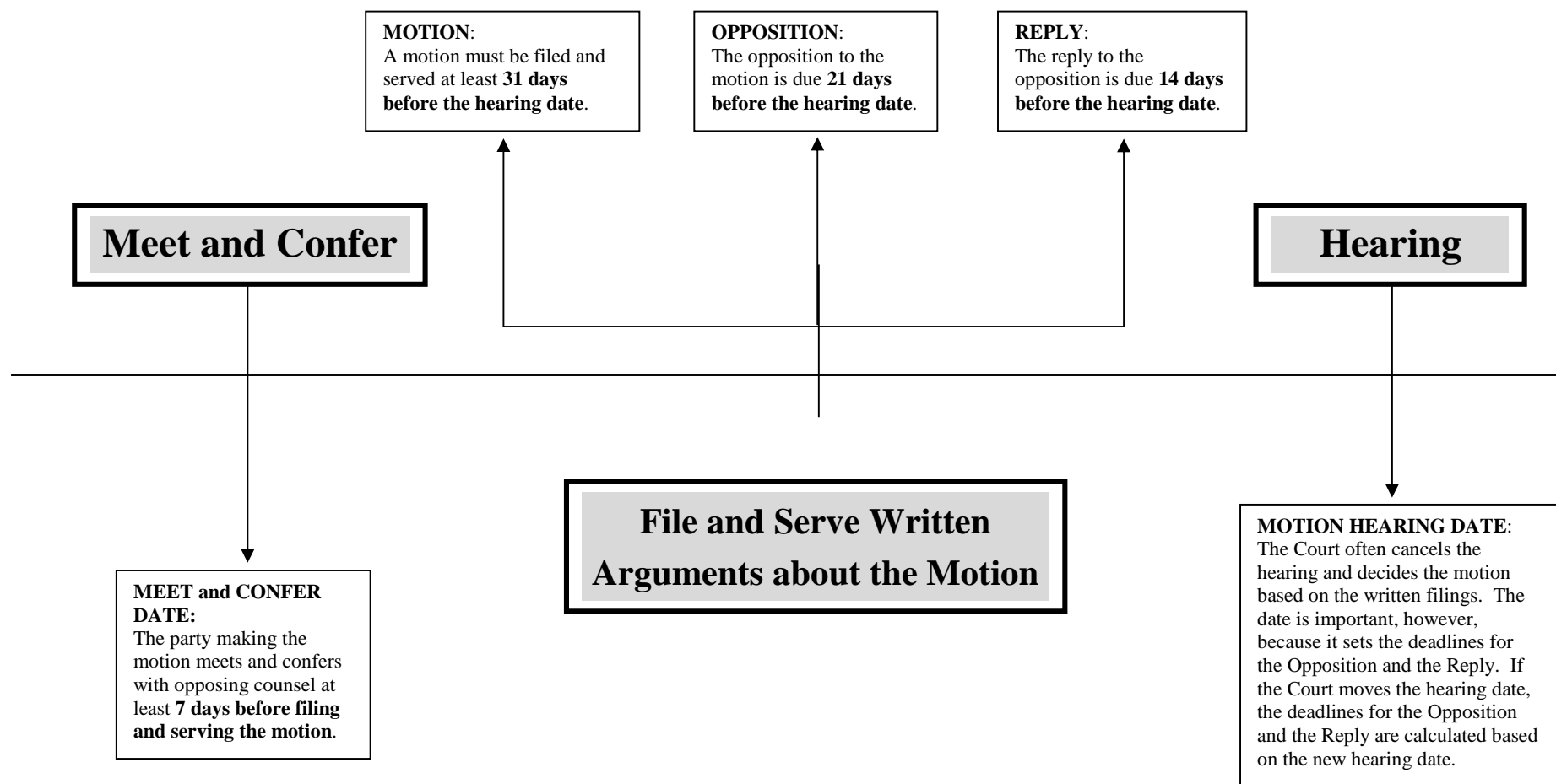
United States Courthouse
Central District of California
Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Response Deadlines

Any opposition to a motion must be filed no later than **21 days before the motion hearing date**. The person who made the motion is not required to reply to an opposition. Those who wish to reply, however, must do so no later than **14 days before the motion hearing date**. You may title the reply, "Reply to Opposition to Motion to (insert the title of your motion)."

A reply should be short. Some judges impose page limits on replies. Be sure to read any orders issued by your judge carefully to make sure you are complying with your judge's rules

Typical Motion Timeline in the Central District of California



1 _____ (Full Name)

2 **Individually**

3 d/b/a _____ (Business Name)

4 _____ (Email)

5 _____ (Address Line 1)

6 _____ (Address Line 2)

7 _____ (Phone Number)

8 Defendant in Pro Per

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 _____,

13 **Plaintiff,**

14 vs.

15 _____

16 _____

17 _____,

18 **Defendant(s).**

Case No.: _____

19 **NOTICE OF MOTION AND**
20 **MOTION TO SET ASIDE ENTRY**
21 **OF DEFAULT PURSUANT TO**
22 **FED. R. CIV. P. 55(c)**

23 **Hearing Date:** _____

24 **Hearing Time:** _____

25 **Judge:** _____
(Judge's name)

26 **Place:** _____
(courtroom number)

27 **TO THE HONORABLE COURT AND TO ALL PARTIES:**

28 PLEASE TAKE NOTICE that on _____ at _____,
(date) (time)

or as soon thereafter as this matter may be heard in the above-entitled Court

located at _____,
(address of the Court in which the motion is being made)

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_____, the Defendant in this case, will
(your name)

move this Court to set aside entry of default for good cause, pursuant to Rule 55(c) of the Federal Rules of Civil Procedure.

This motion is based upon the attached Memorandum of Points and Authorities, Declaration(s) in Support, the complete files and records in this action, and upon such oral and documentary evidence as may be allowed at the hearing of this motion.

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on _____.
(date)

DATED: _____ By: _____
(sign)

(print name)

Defendant in Pro Per

1 _____ (Full Name)

2 **Individually**

3 d/b/a _____ (Business Name)

4 _____ (Email)

5 _____ (Address Line 1)

6 _____ (Address Line 2)

7 _____ (Phone Number)

8 Defendant in Pro Per

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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_____,

Plaintiff,

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vs.

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Defendant(s).

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Case No.: _____

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION TO SET
ASIDE ENTRY OF DEFAULT
PURSUANT TO FED. R. CIV. P.
55(c)**

Hearing Date: _____

Hearing Time: _____

Judge: _____
(Judge's name)

Place: _____
(courtroom number)

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Defendant respectfully submits this Memorandum of Points and Authorities
in Support of Defendant's Motion to Set Aside Entry of Default.

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*Revised: August 2011
Form Prepared by Public Counsel.
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Cases

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1 **I. INTRODUCTION**

2 The Court should set aside entry of default against Defendant pursuant to
3 Fed. R. Civ. P. 55(c) because there is good cause for Defendant’s delay in
4 appearing in this action. Defendant (*name*): _____ appears
5 pro se on behalf of (*check one*):

6 Defendant only.

7
8 Defendant individually and doing business as Defendant’s
9 unincorporated sole proprietorship, (*name of business*): _____
10 _____.

11 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

12 Plaintiff filed a lawsuit against Defendant on (*date*): _____.
13 According to the Proof of Service on file with this Court, Defendant was served
14 on (*date*): _____. The Court entered default against Defendant
15 on (*date*): _____.

16 Defendant became aware of the lawsuit on (*date*): _____.
17 (Decl. of Defendant ¶ 3.) Defendant found out about the lawsuit because
18 _____
19 _____ (Decl. of Defendant ¶ 3.)

20 Defendant took the following actions in response to the lawsuit (*include*
21 *specific dates*): _____
22 _____
23 _____

24 ¹ Courts have recognized that a sole proprietorship may appear pro se. *See United*
25 *States v. Hagerman*, 545 F.3d 579, 581 (7th Cir. 2008) (holding that a sole
26 proprietorship may appear *pro se*, but a limited liability company may not) (citations
27 omitted); *see also Clark v. Amazon.com*, 2007 U.S. Dist. LEXIS 34314, at *1 (E.D.
28 Cal. May 10, 2007) and *Crossbow Tech., Inc. v. YH Tech.*, 2007 U.S. Dist. LEXIS
8028, at *2 (N.D. Cal. Jan. 22, 2007) (noting that plaintiff, a sole proprietorship, was
proceeding *pro se*).

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_____. (Decl. of Defendant ¶ 4.)
Defendant did not file a response to the lawsuit with the Court on time for
the following reasons: _____

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_____ . (Decl. of Defendant ¶ 5.)

The following facts support Defendant’s defenses to this lawsuit:

_____ . (Decl. of Defendant ¶ 6.)

III. ARGUMENT

Federal Rule of Civil Procedure 55(c) provides that an entry of default may be set aside upon a showing of good cause. Fed. R. Civ. P. 55(c). The Ninth Circuit’s good cause standard for setting aside entry of default is the same as that for setting aside default judgment under Rule 60(b), but the test for setting aside entry of default is less rigid and is more generous to the party in default. *Franchise Holding II, LLC v. Huntington Rests. Group, Inc.*, 375 F.3d 922, 925 (9th Cir. 2004).

1 The Court considers three factors when deciding whether to set aside
2 default: (1) whether the defendant’s culpable conduct led to the default; (2)
3 whether the defendant has a meritorious defense; and (3) whether setting aside
4 default would prejudice the plaintiff. *Id.* at 925-26. In addition, “[t]he law does
5 not favor defaults,” and “therefore, any doubts as to whether a party is in default
6 should be decided in favor of the defaulting party.” *Bonita Packing Co. v.*
7 *O’Sullivan*, 165 F.R.D. 610, 614 (C.D. Cal. 1995).

8
9 **A. Defendant’s Delay in Responding to the Lawsuit was Not**
10 **Culpable.**

11 In the Ninth Circuit, analysis of “culpability” for the purposes of
12 demonstrating “good cause” under Rule 55(c) overlaps with the standard for
13 “excusable neglect” under Rule 60(b)(1). *TCI Group Life Ins. Plan v. Knoebber*,
14 244 F.3d 691, 696 (9th Cir. 2001) (questioned on other grounds); *also see*
15 *Meadows v. Dominican Republic*, 817 F.2d 517, 522 (9th Cir. 1987) (finding that
16 the conduct of defendants in district court was culpable because defendants were
17 aware of federal law, and their intentional failure to respond to the action was not
18 excusable neglect). The Ninth Circuit finds a negligent failure to respond
19 excusable if the defaulting party offers a credible, good-faith explanation for the
20 delay that negates “any intention to take advantage of the opposing party, interfere
21 with judicial decision-making, or otherwise manipulate the legal process.”
22 *Knoebber*, 244 F.3d at 697-98. Further, in analyzing culpability, the Court may
23 consider a defendant’s exigent personal matters, his mental state, and his lack of
24 familiarity with legal matters. *See id.* at 699 (finding defendant’s delay in
25 response not culpable because she was grieving the death of her husband and was
26 not familiar with the legal system).

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1 Defendant had no intent to gain an advantage over the opposing party or to
2 delay legal proceedings. As Defendant's delay in response was due to excusable
3 neglect, the Court should find that Defendant's conduct was not culpable.

4
5 **B. Defendant Has a Meritorious Defense to the Lawsuit.**

6 A defense is considered meritorious if "there is some possibility that the
7 outcome of the suit after a full trial will be contrary to the result achieved by the
8 default." *Hawaii Carpenters' Trust Funds v. Stone*, 794 F.2d 508, 513 (9th Cir.
9 1986). All that is required is an assertion of "a factual or legal basis that is
10 sufficient to raise a particular defense; the question of whether a particular factual
11 allegation is true is resolved at a later stage." *Audio Toys, Inc. v. Smart AV Pty*
12 *Ltd.*, 2007 U.S. Dist. LEXIS 44078, *8 (N.D. Cal. June 6, 2007).

13 Defendant has the following defenses to this lawsuit:

14 *(Explain your defenses to the lawsuit and include supporting facts.)*

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If Defendant prevails on these defenses, the outcome would be contrary to the result achieved by default. Therefore, Defendant has set forth a meritorious defense and satisfies the second good cause factor.

C. Plaintiff Will Not Suffer Prejudice If Entry of Default Is Set Aside.

Prejudice is determined by whether a party will be hindered in pursuing its claim. See *Knoebber*, 244 F.3d at 701. The fact that a party may be denied a quick victory is not sufficient to deny relief from default judgment. *Bateman v. United States Postal Service*, 231 F.3d 1220, 1225 (9th Cir. 2000). “The delay must result in tangible harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion.” *Audio Toys*, 2007 U.S. Dist. LEXIS at *9.

1 Allowing the case to move forward on the merits after only a short delay
2 should not prejudice Plaintiff's ability to litigate its case. The only prejudice that
3 might result to Plaintiff by a denial of default judgment is that Plaintiff will not be
4 able to ensure an easy victory. As no prejudice will result to Plaintiff in
5 reopening this case, the third and final good cause factor is satisfied.

6 Defendant is ready and willing to litigate this lawsuit. Defendant's delay
7 in responding was not culpable, Defendant has meritorious defenses, and Plaintiff
8 will not suffer any prejudice in pursuing its claims if default is set aside.
9 Therefore, Defendant has met the good cause standard of Rule 55(c) and this
10 Court should set aside the entry of default against him.

11 **IV. CONCLUSION**

12 Based on the above reasons, this Court should grant Defendant's motion.
13

14 DATED: _____ By: _____

(sign)

(print name)

Defendant in Pro Per

1 _____ (Full Name)

2 **Individually**

3 d/b/a _____ (Business Name)

4 _____ (Email)

5 _____ (Address Line 1)

6 _____ (Address Line 2)

7 _____ (Phone Number)

8 **Defendant in Pro Per**

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 _____,

13 **Plaintiff,**

14 **vs.**

15 _____

16 _____

17 _____,

18 **Defendant(s).**

Case No.: _____

19 **DEFENDANT'S DECLARATION**
20 **IN SUPPORT OF MOTION TO**
21 **SET ASIDE ENTRY OF DEFAULT**
22 **PURSUANT TO FED. R. CIV. P.**
23 **55(c)**

24 **Hearing Date:** _____

25 **Hearing Time:** _____

26 **Judge:** _____
(Judge's name)

27 **Place:** _____
(courtroom number)

28 I, _____, declare as follows:
(print name)

1. I am the Defendant in the above-entitled case.
2. I have personal knowledge of the following facts, and, if called as a witness, I could and would competently testify thereto.

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3. I became aware of this lawsuit on *(date)*: _____.

I found out about this lawsuit because: _____

4. I responded to the lawsuit by taking the following actions:

(Explain what actions you took to respond to the lawsuit, and include specific dates.)

1 5. My delay in filing a response to the lawsuit was not intentional. I
2 did not file a timely formal response to the lawsuit for the following reasons:

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24 6. The following facts support my defenses to this lawsuit:

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7. I have no reason to believe Plaintiff will suffer prejudice if the Court grants this motion.

8. *(Include any other facts you want the Court to know.):* _____

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

Executed on _____, in _____.
(date of signing) (city, state of signing)

Sign: _____

Print Name: _____

Defendant in Pro Per

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

_____,
Plaintiff,
vs.

_____,
Defendant(s).

Case No.: _____

**(PROPOSED) ORDER
GRANTING DEFENDANT'S
MOTION TO SET ASIDE ENTRY
OF DEFAULT PURSUANT TO
FED. R. CIV. P. 55(c)**

Having considered Defendant's Motion and finding good cause therefore,
IT IS HEREBY ORDERED that Defendant's Motion to Set Aside Entry of
Default is GRANTED. Defendant is ORDERED to file an answer or a motion
pursuant to Rule 12 of the Federal Rules of Civil Procedure by _____.

DATED: _____

Signed: _____

Hon. _____
(Judge's name)

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_____ (Full Name)

Individually

d/b/a _____ (Business Name)

_____ (Email)

_____ (Address Line 1)

_____ (Address Line 2)

_____ (Phone Number)

Defendant in Pro Per

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

_____,

Plaintiff,

vs.

_____,

Defendant(s).

Case No.: _____

PROOF OF SERVICE BY MAIL

I, _____, declare as follows:
(name of person serving documents)

My address is _____

_____, which is located in the
county where the mailing described below took place.

1 On _____, I served the document(s) described as:
(date of mailing)

- 2 • Notice of Motion and Motion to Set Aside Entry of Default Pursuant to
- 3 Fed. R. Civ. P. 55(c)
- 4 • Memorandum of Points and Authorities in Support of Motion to Set Aside
- 5 Entry of Default Pursuant to Fed. R. Civ. P. 55(c)
- 6 • Defendant's Declaration in Support of Motion to Set Aside Entry of Default
- 7 Pursuant to Fed. R. Civ. P. 55(c)
- 8 • (Proposed) Order Granting Defendant's Motion to Set Aside Entry of
- 9 Default Pursuant to Fed. R. Civ. P. 55(c)

10 _____
(list the names of any other documents you have included in your motion)

11 _____
12 _____
13 on all interested parties in this action by placing a true and correct copy thereof in
14 a sealed envelope, with first-class postage prepaid thereon, and deposited said
15 envelope in the United States mail at or in _____,
(city and state of mailing)

16 addressed to:

17 _____ (name) _____ (name)
18 _____ (address) _____ (address)
19 _____ (address) _____ (address)
20 _____ (address) _____ (address)
21 _____ (address) _____ (address)

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed on _____ at _____.
(date) (city and state of signing)

24 _____
(sign)

25 _____
(print name)