

# MOTION TO SET ASIDE DEFAULT JUDGMENT

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## I. PARTIES AND CASE INFORMATION

### A. COURT INFORMATION

The Court in which this action is pending is: \_\_\_\_\_

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

### B. PARTIES

Plaintiff(s):

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Defendant(s) / Moving Party:

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### C. JUDGMENT INFORMATION

Date of Entry of Default Judgment: \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Amount of Default Judgment: \$ \_\_\_\_\_

## II. RECITALS AND BACKGROUND

WHEREAS, a Default Judgment was entered against Defendant(s) in the above-entitled action on the date specified above; and

WHEREAS, Defendant(s) did not file a responsive pleading or appear in this action prior to the entry of said Default Judgment; and

WHEREAS, Defendant(s) now seeks to have the Default Judgment vacated and set aside, and the underlying default set aside, to permit Defendant(s) to present a defense on the merits of the action.

### III. GROUNDS FOR RELIEF

Defendant(s) moves this Honorable Court, pursuant to applicable rules of civil procedure, to vacate and set aside the Default Judgment entered against Defendant(s) and to set aside the underlying default, on the following grounds:

#### A. Excusable Neglect

The failure of Defendant(s) to respond or appear in this action was due to excusable neglect, mistake, or inadvertence, as more fully described in the Declaration of \_\_\_\_\_ attached hereto as Exhibit A and incorporated herein by reference.

#### B. Meritorious Defense

Defendant(s) possesses a meritorious defense to Plaintiff's claims, as more fully described in the Declaration of \_\_\_\_\_ attached hereto as Exhibit A and incorporated herein by reference.

#### C. Lack of Proper Service

(Check if applicable)

Defendant(s) asserts that service of the Summons and Complaint was not properly effected in accordance with applicable rules of civil procedure, thereby rendering the default judgment void or voidable.

#### D. Other Grounds

(Check if applicable and describe)

The judgment is void for other reasons, including \_\_\_\_\_

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### IV. STATEMENT OF FACTS AND ARGUMENT

Defendant(s) respectfully submits that the interests of justice require that the Default Judgment be vacated and the default set aside.



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Allowing Defendant(s) to present this defense will ensure that the case is decided on its merits, rather than on a procedural default.

**C. Lack of Prejudice to Plaintiff(s):**

Vacating the Default Judgment will not cause undue prejudice to Plaintiff(s). Any potential delay can be mitigated by appropriate scheduling orders. The prejudice to Defendant(s) of allowing the Default Judgment to stand, thereby depriving Defendant(s) of the opportunity to defend the action on its merits, far outweighs any minimal prejudice to Plaintiff(s).

**V. LEGAL STANDARD**

Courts generally favor resolving cases on their merits. The standard for setting aside a default judgment typically requires the moving party to demonstrate (1) excusable neglect or other good cause for the default, and (2) a meritorious defense to the action. The discretion of the court is usually exercised in favor of granting relief from default judgments where the moving party acts promptly, has a meritorious defense, and no substantial prejudice will result to the non-moving party.

**VI. PRAYER FOR RELIEF**

WHEREFORE, Defendant(s) respectfully requests that this Honorable Court enter an Order:

1. Vacating and setting aside the Default Judgment entered against Defendant(s) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;
2. Setting aside the underlying default entered against Defendant(s);
3. Granting Defendant(s) leave to file a responsive pleading within \_\_\_\_\_ days of the date of the Order; and

4. Granting such other and further relief as the Court deems just and proper.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Respectfully submitted,

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[MOVING PARTY / DEFENDANT]

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**VII. ATTORNEY FOR DEFENDANT (IF APPLICABLE)**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Bar Number (if any): \_\_\_\_\_

Date: \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Attorney for: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**VIII. PROPOSED ORDER**

**ORDER**

This matter having come before the Court on Defendant(s)' Motion to Vacate Default Judgment, and the Court having reviewed the Motion, the Declaration(s) in support thereof, and any opposition thereto, and being fully advised in the premises;

IT IS HEREBY ORDERED that:

1. Defendant(s)' Motion to Vacate Default Judgment is GRANTED.
2. The Default Judgment entered against Defendant(s) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, is hereby VACATED and SET ASIDE.
3. The underlying default entered against Defendant(s) is hereby SET ASIDE.
4. Defendant(s) is granted leave to file a responsive pleading to Plaintiff's Complaint within \_\_\_\_\_ days from the date of this Order.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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JUDGE OF THE \_\_\_\_\_ COURT

**IX. CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, a true and correct copy of the foregoing MOTION TO VACATE DEFAULT JUDGMENT was served upon the following parties by the method indicated below:

Plaintiff(s) or Attorney for Plaintiff(s):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Method of Service:

- U.S. Mail, postage prepaid
- Hand Delivery
- Facsimile
- Email
- Electronic Filing System

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Signature

Print Name: \_\_\_\_\_

**X. NOTARY ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ (Name of Defendant/Moving Party), known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

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Notary Public

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_