



**STANISLAUS COUNTY SUPERIOR COURT Civil Division**

[www.stanct.org](http://www.stanct.org)

**(209) 530-3100**

Revised Dec-15

# **Ex Parte Motion to Set Aside Judgment after Trial Unlawful Detainer**

This packet includes the necessary forms to respond to an eviction.

Judicial Council forms, local forms and information are available in the Clerk's Office, the Stanislaus County Law Library located at 1101 13<sup>th</sup> Street, Modesto, and on the following Websites:

Stanislaus County Superior Court

- <http://www.stanct.org/courts/index.html>  
Local forms
- <http://www.stanct.org/courts/forms/index.html>  
Judicial Council's Self-Help website
- <http://www.courts.ca.gov/selfhelp>  
For more information on Libraries, Websites, or Self-Help Legal Books
- <http://www.courts.ca.gov/selfhelp/lowcost/libraries.html>  
California Superior Court's Interactive Electronic Forms Program

Superior Court Self-Help Center, 800 11<sup>th</sup> Street, Room 220, Modesto

**PROVIDING ASSISTANCE TO PARTIES REPRESENTING THEMSELVES**

**Services are offered on a first come, first serve basis.**

Material prepared and/or distributed by the Superior Court Self Help Center IS INTENDED FOR INFORMATIONAL AND EDUCATIONAL PURPOSES ONLY. Such material is NOT LEGAL ADVICE and is not intended to be legal advice as to your specific case. IT IS NOT INTENDED TO TAKE THE PLACE OF COMPETENT LEGAL ADVICE FROM AN ATTORNEY. You are strongly urged to seek the advice of a licensed attorney before starting or completing your case in order to protect valuable legal rights that you may have, of which you may be unaware. Please contact a competent attorney of your choice or contact the LAWYERS REFERENCE SERVICE of the Stanislaus County Bar Association at (209) 571-5727 for a referral. The Clerk's Office cannot give you legal advice.

## MOTION TO SET ASIDE JUDGMENT AFTER TRIAL

This packet of forms is to request a Set Aside of a Default and Vacate a Judgment in an Unlawful Detainer (Eviction) case. **If you did not previously file an Answer, a "Proposed Answer" must be filed along with the motion to set aside the default.**

**NOTE:** In order to be eligible to request that the Court set aside the Default and Judgment, you must be able to meet **both** of these requirements:

- a) Be able to show good cause for not filing an Answer or for not appearing in court for the trial, **and**
- b) Be able to show that you had a defense to the underlying eviction.

### Step-by-Step Instructions

1. **GIVE 24-HOUR NOTICE:** You must give the Plaintiff or the Plaintiff's Attorney 24 hour's prior notice of your intent to seek an order to Set Aside the Default and Vacate the Judgment. You do this by contacting the Plaintiff or Plaintiff's Attorney by telephone and stating:

"I will be submitting a request to Set Aside the Judgment twenty-four hours from the time of this call."

**NOTE:** Remember the **DATE & TIME** of the call and the **RESPONSE (if any)** received from the Plaintiff or their attorney, because this information is required for the request.

2. **PREPARE THE DOCUMENTS:** Complete the following documents:
  - Ex Parte Motion
  - Declaration
  - Points and Authorities
  - Order on Motion
  - Ex Parte Application for Order Shortening Time
3. **FILING YOUR DOCUMENTS:** Take the original and 2 copies (copies will be made for you if you have a fee waiver on file) to the Clerk's office for filing. The Clerk will file-mark the documents and set a **HEARING DATE**. There will be a filing fee due at the time of filing unless you qualify for a Fee Waiver. You can get a Fee Waiver packet from the Clerk's Office or the Self Help Center. If you qualify for a Fee Waiver, the Clerk's Office will make the copies for you.
4. **SERVING DOCUMENTS:** A copy of the documents must be given to the Plaintiff or Plaintiff's Attorney, prior to the time of the hearing. Someone other than you must **HAND DELIVER** a copy of the DOCUMENTS to the Plaintiff or the Plaintiff's Attorney. They must be over 18 years old and **CANNOT** be you or anyone else living in the home or named as a defendant in the lawsuit. Once they deliver a copy of the documents to the plaintiff or plaintiff's attorney have them complete, date and sign a PROOF OF SERVICE.

(Cont'd on Page 2)

FILE the Proof of Service with the Clerk's Office, if possible, otherwise bring it with you to the hearing. Be sure to attend the hearing.

5. **CHECK THE TENTATIVE RULING:** The court will issue a Tentative Ruling announcement on the court day prior to your hearing date.

If the Tentative Ruling in your case is satisfactory, you need not appear at the scheduled time, the ruling becomes final. However, if you are not satisfied with the Tentative Ruling, and wish to appear and argue the matter, **YOU MUST NOTIFY** the Clerk's Office and the opposing party of your intent before **4:00 p.m. THE DAY BEFORE YOUR HEARING.**

You may request a hearing by calling the calendar line at (209) 530-3162 or the main line at (209) 530-3100, prior to 4:00 p.m. **OR** by e-mailing at [civil.tentatives@stanct.org](mailto:civil.tentatives@stanct.org). Email requests must be made prior to 4:00 p.m. **AND** confirmed by return e-mail. If you do not receive confirmation e-mail from the clerk, you **MUST** call (209) 530-3162 to request your hearing. If you fail to notify the Clerk's Office of your request for hearing, the court will not allow you to argue the merits of your motion at the hearing.

The tentative ruling announcement is posted on the court's website at [www.stanct.org](http://www.stanct.org) after 1:30 P.M. THE DAY BEFORE THE HEARING. If you do not have access to a computer to check the ruling on the website, you may call the court directly after 1:30 p.m. at (209) 530-3162 to obtain the tentative ruling (Monday-Thursday only).

6. **ORDER:** If the Judge grants the stay, the courtroom clerk will notify the Sheriff's Office and the Clerk's office will fax a copy of the signed order to the Sheriff's office once signed by the Judge.

1 Name **TOM TENANT**  
2 Address: **123 ANYWHERE STREET**  
3 **SOMEWHERE, CA 95356**  
4 Telephone: **209.123.4567**

5  
6 IN PRO PER

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF STANISLAUS

10 Plaintiff: **LARRY LANDLORD**  
11  
12 Vs.  
13  
14 Defendant: **TOM TENANT**  
15

CASE NO. **UD-19-123456**  
NOTICE OF MOTION AND MOTION  
TO SET ASIDE JUDGMENT AFTER  
TRIAL, MEMORANDUM OF POINTS  
AND AUTHORITIES AND  
DECLARATION IN SUPPORT OF  
MOTION

16  
17 TO: PLAINTIFF AND/OR PLAINTIFF'S ATTORNEY OF RECORD:

18 NOTICE IS HEREBY GIVEN that on **DECEMBER 3, 2019** at **8:30 A.M.** or as soon  
19 thereafter as the matter can be heard, in Department **19** of the above-entitled court located at  
20 300 Starr Avenue, Turlock, California, defendant **TOM TENANT** will and  
21 does hereby move the Court for an order setting aside the judgment after trial and recall and  
22 quash any Writ of Execution.

23 Said motion is made upon the ground that said resulting judgment was entered against  
24 defendant due to mistake, surprise, inadvertence and excusable neglect.

25 Said motion is based upon this Notice, the pleadings, declarations records and filed in the  
26 attached Memorandum of Points and Authorities, and oral and documentary evidence that may  
be presented at the hearing.

27 Dated: **11/21/2019**

**/s/**  
\_\_\_\_\_  
Print Name: **TOM TENANT**  
Defendant



1 court and a trial upon the merits . . . Even in a case where the showing under  
2 section 473 is not strong, or where there is any doubt as to settling aside of a  
3 default, such doubt, should be resolved in favor of the application.

3.  
4 CONCLUSION

5 For the foregoing reasons, defendant urges that the motion to set aside the default and  
6 vacate the judgment thereon and to recall and quash any writs of execution be granted.

7  
8 Dated: 11/21/2019

Respectfully submitted,

9  
10 /s/

11 Defendant, In Pro Per

12 DECLARATION IN SUPPORT OF MOTION

13 The undersigned declares:

- 14 1. I am over the age of eighteen and a named defendant in this action.  
15  
16 2. (Check appropriate boxes)

- 17 a.  I was not served a summon and complaint.  
18 b.  I did not  I did not  answer the complaint  appear at trial

19 because of my mistake and excusable neglect as follows:

20  
21 I WAS VERY ILL AND HOSPITALIZED DURING THE TIME THAT IT STATES THAT  
22 SERVICE WAS DONE. SEE ATTACHED HOSPITAL RECORDS.  
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3. I have valid defenses to the complaint herein. See my “proposed answer” attached hereto and incorporated herein.

I am asking for my day in court so that the case can be decided on its merits.

4. I notified the plaintiff/plaintiff’s attorney of this Motion to Set Aside Default and Vacate Judgment by TELEPHONE (telephone, fax, in person) on NOVEMBER 21, 2019 at 09:30 a.m./p.m. and advised of my intent to request a hearing.

The plaintiff/plaintiff’s attorney’s office responded by saying: OKAY

and  did or  did not indicate any opposition to this motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in SOMEWHERE, California on NOVEMEBER 21, 2019.

/s/  
Defendant, In Pro Per

1 Name **TOM TENANT**

2  
3 Address: **123 ANYWHERE STREET**  
4 **SOMEWHERE, CA 95356**

5 Telephone: **209.123.4567**

6 IN PRO PER

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF STANISLAUS

10 Plaintiff: **LARRY LANDLORD**

CASE NO.

ORDER SETTING ASIDE JUDGMENT  
AFTER TRIAL

11 Vs.

12  
13  
14 Defendant: **TOM TENANT**

15  
16 The motion of \_\_\_\_\_ for an order setting aside default came  
17 on regularly for hearing by the Court on \_\_\_\_\_. Plaintiff appeared by  
18 \_\_\_\_\_; defendant appeared In Pro Per.

19  
20 Upon proof made to the satisfaction of the Court and good cause appearing therefore:

21 IT IS ORDERED that the default be set aside.

22 IT IS FURTHER ORDERED that if defendant has not filed an answer in this matter,  
23 defendant shall file an answer herein within \_\_\_\_\_ days of the date of this order.

24 Dated:

25  
26 \_\_\_\_\_  
27 JUDGE OF THE SUPERIOR COURT



1 Name

2 Address:

3  
4 Telephone:

5  
6 IN PRO PER

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF STANISLAUS

10 Plaintiff:

11  
12 Vs.

13  
14 Defendant:

CASE NO.  
EX PARTE APPLICATION FOR  
ORDER SHORTENING TIME FOR  
NOTICE OF DEFENDANT’S MOTION  
TO SET ASIDE JUDGMENT AFTER  
TRIAL AND ORDER

Date:  
Time: 8:30 A.M.  
Dept.:

15  
16  
17 TO: PLAINTIFF AND HIS/HER ATTORNEY OF RECORD:

18 COME(S) NOW DEFENDANT(S) \_\_\_\_\_ to request  
19 an Order Shortening time for hearing on the attached Motion to Set Aside Judgment after Trial  
20 Under CCP §473, et seq. Good cause exists for granting Defendant’s request in that:

- 21 1. The underlying action is one for Unlawful Detainer, which pursuant to the applicable  
22 statutory scheme is heard on a substantially shortened timeline.  
23 2. Defendant’s motion is timely as it is being filed well within the 180 days provided  
24 under CCP §473.5.  
25 3. Defendant has not filed his/her Answer and was prevented from timely appear at the  
26 hearing due to circumstances beyond his/her control as detailed in the attached  
27 Motion to Set Aside.  
28

1 4. Defendant therefore request that Ex Parte Request for Order Shortening Time for  
2 Hearing be granted and that the Motion to Set Aside Judgment after Trial be heard no  
3 less than three and no more than five days prior to hearing.

4 5. I declare under penalty of perjury that the foregoing is true and correct and that this  
5 declaration was executed on \_\_\_\_\_ at Modesto, California.

6 Dated:

7 \_\_\_\_\_  
8 Defendant, In Pro Per

9 **ORDER**

10 GOOD CAUSE APPEARING, it is so ordered.

11 Hearing on Defendant's Motion to Set Aside Judgment after Trial shall be heard on  
12 \_\_\_\_\_ . Service on Plaintiff or his/her Attorney shall be completed  
13 no later than \_\_\_\_\_ days prior to hearing. Any responsive pleadings must be filed with the  
14 court and served on Defendant no later than \_\_\_\_\_ days prior to hearing.

15 Dated:

16 \_\_\_\_\_  
17 JUDGE OF THE SUPERIOR COURT  
18  
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1 Name  
2 Address:  
3  
4 Telephone:  
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6 IN PRO PER

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF STANISLAUS

10 Plaintiff:  
11  
12 Vs.  
13  
14 Defendant:  
15  
16

CASE NO.  
NOTICE OF MOTION AND MOTION  
TO SET ASIDE JUDGMENT AFTER  
TRIAL, MEMORANDUM OF POINTS  
AND AUTHORITIES AND  
DECLARATION IN SUPPORT OF  
MOTION

17 TO: PLAINTIFF AND/OR PLAINTIFF'S ATTORNEY OF RECORD:

18 NOTICE IS HEREBY GIVEN that on \_\_\_\_\_ at \_\_\_\_\_ or as soon  
19 thereafter as the matter can be heard, in Department \_\_\_\_ of the above-entitled court located at  
20 300 Starr Avenue, Turlock, California, defendant \_\_\_\_\_ will and  
21 does hereby move the Court for an order setting aside the judgment after trial and recall and  
22 quash any Writ of Execution.

23 Said motion is made upon the ground that said resulting judgment was entered against  
24 defendant due to mistake, surprise, inadvertence and excusable neglect.

25 Said motion is based upon this Notice, the pleadings, declarations records and filed in the  
26 attached Memorandum of Points and Authorities, and oral and documentary evidence that may  
be presented at the hearing.

27 Dated: \_\_\_\_\_  
28 Print Name: \_\_\_\_\_  
Defendant



1 court and a trial upon the merits . . . Even in a case where the showing under  
2 section 473 is not strong, or where there is any doubt as to settling aside of a  
3 default, such doubt, should be resolved in favor of the application.

3. **CONCLUSION**

4  
5 For the foregoing reasons, defendant urges that the motion to set aside the default and  
6 vacate the judgment thereon and to recall and quash any writs of execution be granted.

7  
8 Dated: Respectfully submitted,

9  
10  
11 \_\_\_\_\_  
12 Defendant, In Pro Per

13 **DECLARATION IN SUPPORT OF MOTION**

14 The undersigned declares:

- 15 1. I am over the age of eighteen and a named defendant in this action.  
16 2. *(Check appropriate boxes)*

- 17 a.  I was not served a summon and complaint.  
18 b.  I did not  I did not  answer the complaint  appear at trial

19 because of my mistake and excusable neglect as follows:  
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3. I have valid defenses to the complaint herein. See my “proposed answer” attached hereto and incorporated herein.

I am asking for my day in court so that the case can be decided on its merits.

4. I notified the plaintiff/plaintiff’s attorney of this Motion to Set Aside Default and Vacate Judgment by \_\_\_\_\_ (telephone, fax, in person) on \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ a.m./p.m. and advised of my intent to request a hearing.

The plaintiff/plaintiff’s attorney’s office responded by saying: \_\_\_\_\_

and  did *or*  did not indicate any opposition to this motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in \_\_\_\_\_, California on \_\_\_\_\_.

\_\_\_\_\_  
Defendant, In Pro Per

1 Name

2  
3 Address:

4  
5 Telephone:

6 IN PRO PER

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF STANISLAUS

10 Plaintiff:

CASE NO.

ORDER SETTING ASIDE JUDGMENT  
AFTER TRIAL

11 Vs.

12  
13  
14 Defendant:

15  
16 The motion of \_\_\_\_\_ for an order setting aside default came  
17 on regularly for hearing by the Court on \_\_\_\_\_. Plaintiff appeared by  
18 \_\_\_\_\_; defendant appeared In Pro Per.

19  
20 Upon proof made to the satisfaction of the Court and good cause appearing therefore:

21 IT IS ORDERED that the default be set aside.

22 IT IS FURTHER ORDERED that if defendant has not filed an answer in this matter,  
23 defendant shall file an answer herein within \_\_\_\_\_ days of the date of this order.

24  
25 Dated:

26 \_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT