Commonwealth of massachusetts  
{{ court\_name }} COURT  
{{ court\_department }} department of the trial court

Suffolk, SS. Action No. {{ docket\_number }}

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| {{ other\_parties }},  Plaintiff,  v.  {{ users }}  Defendant. | )  )  )  )  )  )  ))  )  )  )  ) |  |

motion to vacate default judgment for lack of notice

The Defendant respectfully moves this Honorable Court, pursuant to{% if small\_claims == False %} Mass. R. Civ. P. 60b(4),{% else %} Rule 8 of the Uniform Small Claims Rules,{% endif %} to vacate the default judgment entered in the above-captioned action (the “**Default Judgment**”).

As grounds for the motion, Defendant asserts that no notice of this action was received by the Defendant, as is required by {% if reason\_for\_missing == “Lack of Notice” and small\_claims == True %} Rules 2(b) and 8 of the Uniform Small Claims Rules. Uniform Small Claims Rule 8 provides that “[i]f the court determines that no notice was received, the court shall vacate or grant relief from any judgment or order entered under these rules.” The Uniform Small Claims Rules require dismissal here. {% elif reason\_for\_missing == “COVID-19” and small\_claims == True %} Rule 8 of the Massachusetts Uniform Small Claims Rules allows the Court to set aside a default judgment within one year upon a showing of “any cause that the court may deem sufficient.” Unif. Sm. Cl. R. 8. “[C]ase law applying Rules 59 and 60 may appropriately guide a clerk magistrate or judge's discretion in granting relief from judgment in a small claim.” 41 Mass. Prac., Appellate Procedure § 41:8 (3d ed.). {% else %} Mass. R. Civ. P. 4. {% endif %}

{% if reason\_for\_missing == “Lack of Notice” %}

Under Massachusetts law, “[i]t is…well settled that acquisition of personal jurisdiction over a defendant cannot be satisfied without proper service of process or an appropriate substitute.” *Wang v. Niakaros*, 67 Mass. App. Ct. 166, 172 (2006). It is also well-settled that, when service is inadequate to provide proper notice of an action, the principles of due process are not satisfied. *Uzoma v. Okereke*, 88 Mass. App. Ct. 330, 330 (2015). “If a judgment is void for lack of subject matter or personal jurisdiction, or for failure to conform to the requirements of due process of law, the judge must vacate it.” *Wang*, 67 Mass. App. Ct. at 172 (citing *O'Dea v. J.A.L., Inc.*, 30 Mass. App. Ct. 449, 455 (1991); *Harris v. Sannella*, 400 Mass. 392, 395 (1987)). Since the Defendant did not receive notice of this action, neither the principles of personal jurisdiction nor of due process are satisfied.

Thus, the Default Judgment must be vacated.

{% endif %}

{% if reason\_for\_missing == “COVID-19” %}

Mass. R. Civ. P. 55 allows the Court to set aside a default for “good cause.”  The Court may find “good cause” for any of the grounds set forth in Mass. R. Civ. P. 60(b), which include “any other reason justifying relief from the operation of judgment.” Mass. R. Civ. P. 60(b)(1),(6).

Rule 60(b)(6) gives the court ample power to vacate a judgment whenever such action is appropriate to accomplish justice. The Rule permits relief from judgment upon a showing that such relief is justified based on extraordinary circumstances. *Henderson v. D'Annolfo*, 15 Mass. App. Ct. 413, 425 n. 15 (1983).

The COVID-19 pandemic represents such extraordinary circumstances. The World Health Organization (WHO) first declared a global health emergency on January 30, 2020 and later declared COVID-19 to be a global pandemic. On January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States. As of March 10, 2020, the day that Governor Baker declared a State of Emergency in Massachusetts, there were already more than 114,000 confirmed cases of COVID-19 worldwide, and over 4,000 of those cases had resulted in death.

As Governor Baker stated in his Executive Order declaring the State of Emergency, “the worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and the Commonwealth significantly affect the life and health of our people, as well as the economy, and is a disaster that impacts the health, security, and safety of the public[.]” Executive Order No. 591: Declaration of a State of Emergency to Respond to COVID-19.

These state, federal, and internal proclamations, which began before judgment entered, demonstrate extraordinary circumstances within the scope of Rule 60(b)(6) . The Housing Court Department has already recognized such extraordinary circumstances, issuing a Standing Order that “any default judgment entered between March 1, 2020, and April 21, 2020, *shall* be vacated, upon motion.” Housing Court Standing Order 2-20: Temporary modifications to court operations arising from the coronavirus (COVID 19) outbreak (emphasis added).

Thus, in light of the extraordinary circumstances of COVID-19, justice requires that the default judgment entered against the Defendant on {{ judgment\_entry\_date }} be vacated.

{% endif %}

DEFENDANT

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| {%tr if defined('users[0].signature') %} |
| {%tr for user in users %} |
| {{ user.signature }} |
| {%tr endfor %} |
| {%tr endif %} |
| {{ users }} |
| {{ users[0].address.block() }} |

Dated: {{ format\_date(today()) }}