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

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

|  |  |  |
| --- | --- | --- |
| {{ opposing\_party.name }},  Plaintiff,  v.  {{client.name.first }} {{client.name.last }}  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 small\_claims == False %}Mass. R. Civ. P. 4. {% else %}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. {% endif %}

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.

Wherefore, Defendant respectfully requests that the court vacate the Default Judgement.

DEFENDANT

{{ client.signature }}

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{{ client.name.firstlast() }}  
{{ client.address.address }}

Dated: {{ format\_date(today()) }} {{ client.address.city }}, {{ client.address.state }} {{ client.address.zip }}

{{ client.phone\_number }}