\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

{{ opposing\_party.name }},

PLAINTIFF,

**DEFENDANT’S MOTION TO REMOVE DEFAULT AND VACATE JUDGMENT**

v.

{{user.name.full() }},

DEFENDANT.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Defendant {{client.name.full() }}, moves this Honorable Court to remove the default and vacate the default judgment entered in this case on {{ judgment\_entry\_date }}. In support of this Motion, the Defendant states:

{%p if small\_claims == True %}

1. 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.).

{%p endif %}

1. 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).
2. 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).
3. 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.
4. 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.
5. 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).
6. 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.

Respectfully Submitted,

DEFENDANT

{{ user.signature }}

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

{{ user.name.full() }}  
{{ user.address.address }}

{{ user.address.city }}, {{ user.address.state }} {{ client.address.zip }}

{{ user.phone\_number }}  
 {{ user.email }}

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

*Prepared with the assistance of legal counsel*