

1 **LINDA B. HALL**

2 21781 Ventura Blvd. #23376
3 Woodland Hills, CA 91364
4 Telephone: (747)200-1393

5 In propria persona Defendant and Cross-Complainant Linda Hall

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **COUNTY OF VENTURA**

8 805ESCROW, INC., A CALIFORNIA
9 CORPORATION

10 Plaintiff,

11 vs.

12 CHRISTINA YVONNE REDMON, an
13 individual,
14 LANA TONEY, an individual, aka TILANA J.
15 TONEY, LDR, Inc., a California corporation;
16 ROBERT A. LECHMAN, an individual;
17 RRPS, Inc. a suspended California corporation;
18 PROSPEROUS HORIZONS, an unknown
19 business entity,
20 COLLECTIVE COURIERS, and unknown
21 business entity, and Does 1 through 100,
22 inclusive.

23 Defendants.

24 CHRISTINA YVONNE REDMON, an
25 individual,
26 LANA TONEY, an individual;
27 Cross-Complainants

28 vs

805ESCROW, INC., a California corporation;
SG ASSOCIATES, INC., D/B/A CENTRAL
COAST ESCROW, a California Corporation;
SERGIO GONZALEZ, an individual; GALEN
CALLAHAN An individual; MARISA
PORTILLO, an individual, And ROES 1 to 50,
Inclusive;

Cross-Defendants.

Case No.: 56-2019-00534953-CU-FR-VTA
UNLIMITED CIVIL ACTION
COMPLAINT FILED 10-11-19

**LINDA B. HALL'S NOTICE AND
MOTION TO SET ASIDE ENTRY OF
DEFAULT JUDGMENT / DEFAULT
JUDGMENT UNDER SECTION 473**

Date:
Time:
Dept.:
Res ID.:

1 **TO EACH PARTY AND TO THE COUNSEL OF RECORD FOR EACH PARTY:**

2
3 PLEASE TAKE NOTICE that on _____,2022, at..... in Department _____
4 of this court located at _____, Defendant and Cross-Complainant LINDA B. HALL
5 (hereinafter referred to as “HALL”) will move the court for an order to set aside entry of default
6 judgment / default judgment and under section 473.

7 This motion is based on the declaration of LINDA B. HALL and supporting memorandum
8 served and filed herewith, on the papers and records on file herein, and on such oral and documentary
9 evidence as may be presented at the hearing, if any, on the Motion.

10
11 Dated: January _____ 2022

12 _____
13 **LINDA B. HALL**
14 21781 Ventura Blvd. #23376
15 Woodland Hills, CA 91364
16 Telephone: (747)200-1393

17 In propia persona Defendant and Cross-
18 Complainant Linda Hall
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Case No.: 56-2019-00534953-CU-FR-VTA
UNLIMITED CIVIL ACTION
COMPLAINT FILED 10-11-19

**LINDA B. HALL'S MEMORANDUM
OF LAW AND ARGUMENTS TO SET
ASIDE ENTRY OF DEFAULT
JUDGMENT / DEFAULT JUDGMENT
UNDER SECTION 473**

Date:
Time:
Dept.:
Res ID.:

1 Defendant and Cross-Complainant Linda Hall submits this motion to set aside entry of default
2 judgment / default judgment under section 473. For the reasons that follows, the Entry of Default
3 Judgment or Default Judgment should be set aside.

4 5 **1. INTRODUCTION**

6 In law, few things can be fairly characterized as “clear” or “obvious.” Indeed, legal
7 arguments introduced by adverbs such as “clearly” or “obviously” are, more often than not, weak
8 arguments; if the outcome was so “clear” and “obvious,” the matter probably wouldn’t be in court.
9 But if the law teaches us anything, it is that every rule has an exception. This case is one of those
10 exceptions. As Defendant was not properly served with summons and complaint in order to
11 successfully defend this case. Therefore, there was no reasonable basis for believing that service
12 documents were properly served when it was delivered. Also, the improper service is strictly
13 construed against the Plaintiff under California law.

14 **2. BACKGROUND**

15 By way of background on or about October 11, 2019, Plaintiff filed a Complaint with this
16 Court against Defendant and Cross-Complainant Linda Hall, Plaintiff filed a defective Proof of
17 Service. The defective Proof of Service resulted to Defendant not responding to the Plaintiff’s
18 complaint. Hall was served with an improperly marked summons, thus this case highlights the
19 importance in properly completing a capacity notice before serving a defendant, a task that is usually
20 neglected by plaintiff’s attorneys and falls to the process server. The summons did not indicate that
21 defendant Hall was being served as a fictitiously named Doe defendant, it did not command her to do
22 anything, and service was fatally defective.

23 A Doe designation is a California anomaly. It allows a plaintiff to file a case to preserve the
24 statute of limitations, and to name unknown defendants, “Doe defendants”, who may be responsible
25 for harm. When the true name of the defendant is discovered, they are brought into a pending case by
26 amendment and served as a “Doe” defendant. Because a summons is issued when the case is filed, it
27 bears only the names of the original parties to the action. When it is served on an unknown party, and
28 brings that new defendant into the lawsuit as a Doe defendant, the summons must be inscribed with

1 the new defendant's name and the defendant's Doe designation to let him or her know how he or she
2 is being sued. The capacity notice on the summons served on Hall only indicated a check mark as "an
3 individual defendant", and not as a defendant sued under the fictitiously named Doe defendant, and
4 did not specifying her name.

5 Plaintiff filed a Request for Enter of Default against Defendant and Cross-Complainant Linda
6 Hall. It is against this backdrop that Hall file this instant motion to set aside entry of default judgment
7 / default judgment under section 473.

8 9 3. LEGAL STANDARD

10 A motion to set aside a judgment that is voidable, rather than void, must be brought within the
11 time limits of section 473(b) or section 473.5. Section 473(b) provides that an application for relief
12 must be made within a reasonable time but not longer than six months after the judgment or dismissal
13 has been entered. "This six-month time limitation is jurisdictional; the court has no power to grant
14 relief under section 473 once the time has lapsed." (Austin v. Los Angeles Unified School Dist. (2016)
15 244 Cal.App.4th 918, 928.) An order granting or denying relief under section 473(b) is reviewed
16 under the abuse of discretion standard. (Austin v. Los Angeles Unified School Dist., supra, 244
17 Cal.App.4th at p. 929.)

18 Also, the purpose of section 473 is to promote the determination of actions on their merits.
19 (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830,
20 839.) To that end, it offers two avenues, one discretionary and one mandatory, for parties to obtain
21 relief from defaults, default judgments, and other orders. The discretionary relief provides that the
22 trial court "may, upon any terms as may be just, relieve a party or his or her legal representative from
23 a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake,
24 inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a
25 copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not
26 be granted.

27 The mandatory relief portion provides: "Notwithstanding any other requirements of this
28 section, the court shall, whenever an application for relief is made no more than six months after entry

1 of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or
2 her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk
3 against his or her client, and which will result in entry of a default judgment, or (2) resulting default
4 judgment or dismissal entered against his or her client, unless the court finds that the default or
5 dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect."

6
7 After the time limitations of sections 473(b) and 473.5 have elapsed, and statutory relief is no longer
8 available, a court may grant relief based on nonstatutory, equitable grounds, such as extrinsic fraud
9 or mistake. (Kulchar v. Kulchar (1969) 1 Cal.3d 467, 471 (Kulchar); County of San Diego v. Gorham
10 (2010) 186 Cal.App.4th 1215, 1228 (Gorham).)

11 12 13 14 15 **4. ARGUMENTS**

16 Extrinsic fraud arises when a party has been deliberately kept ignorant of an action or
17 proceeding or has been fraudulently prevented from presenting a claim or defense. (Kulchar, supra, 1
18 Cal.3d at p. 471; Sporn v. Home Depot USA, Inc. (2005) 126 Cal.App.4th 1294, 1300.) Extrinsic
19 fraud typically arises when the party obtaining the default used fraud or deception, for example by a
20 false promise of settlement, to induce the defaulted party not to present his or her case, or when the
21 party obtaining the default took steps to keep the defaulted party ignorant of the lawsuit. (Kulchar,
22 supra, 1 Cal.3d at p. 471.) Extrinsic mistake arises when circumstances extrinsic to the litigation
23 unfairly prevent a party from obtaining a determination on the merits. (Manson, Iver & York v. Black
24 (2009) 176 Cal.App.4th 36, 47.) Extrinsic mistake, unlike extrinsic fraud, affords relief for the
25 defaulting party's excusable neglect rather than for another party's fraud or misconduct. (Ibid.)

26 To obtain equitable relief based on extrinsic fraud or mistake, the defaulted party must show:
27 (1) a meritorious case; (2) satisfactory reasons for not presenting the defense to the original action;

1 and (3) diligence in seeking to set aside the default or default judgment once it was discovered.
2 (Rappleyea v. Campbell, supra, 8 Cal.4th at p. 982; Lee v. An, supra, 168 Cal.App.4th at p. 566.) We
3 infer the trial court made implied findings in Jackson's favor on those three requirements. (Fladeboe
4 v. American Isuzu Motors Inc., supra, 150 Cal.App.4th at pp. 59-60.)
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7 Courts have held that a wide range of misconduct can constitute fraud on the court. The fraud
8 perpetrated upon this Court through the Moonlight Fire prosecution is multi-faceted and pervasive,
9 involving numerous, distinct types of misconduct, each one of which is sufficient to cause the Court
10 to now terminate the action and vacate the settlement. The fact that the Moonlight Fire case serves as
11 a veritable warehouse display of numerous types of misconduct that, on their own, would be sufficient
12 to terminate an action for fraud upon the court only compounds the egregious quality of the fraud, as
13 well as the need for this Court to use the full weight of its inherent powers to address the conduct of
14 the Moonlight Investigators and Prosecutors.

15 **Fraud Upon the Court May Arise From a Course of Conduct.**

16 Fraud upon the court may also be found in an entire course of conduct by a party, rather than a single
17 act of fraud directed at the court. Pumphrey, 62 F.3d at 1133 (listing course of conduct undertaken by
18 general counsel which constituted fraud on the court). There is no authority suggesting that relief
19 under Rule 60 depends on the existence of a single egregious act of litigation malfeasance. Rather,
20 the case law makes clear that fraud on the court occurs when a party engages in “fraud which does[,]
21 or attempts to, defile the court itself, or is perpetrated by officers of the court so that the judicial
22 machinery cannot perform in the usual manner its impartial task of adjudging cases that are present
23 for adjudication.”
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1 "There can be no question as to the inherent power of the court to set aside the final
2 decree if obtained by fraud." (Miller v. Miller, [26 Cal. 2d 119](#), 121 [156 P.2d 931].) There
3 the husband obtained a final decree of divorce on an affidavit **[135 Cal. App. 2d**
4 **817]** stating that he had fully complied with the terms of the interlocutory decree as to
5 support, which statement was untrue. It should be pointed out that the relief obtained
6 in this case by defendant in having the final decree set aside was based upon the alleged
7 false representations of plaintiff to the court. In Security-First Nat. Bank v. Hauer, [47](#)
8 [Cal. App. 2d 302](#) [117 P.2d 952], in obtaining a judgment the plaintiff concealed certain
9 vital facts from the court. In upholding the trial court's action in setting aside the
10 judgment the court said (pp. 306-307): "Where, as in the instant case, the motion to set
11 aside the judgment on the ground of fraud is made under the provisions of section 473
12 of the Code of Civil Procedure, it is immaterial whether the fraud be extrinsic or intrinsic.
13 (In re Johnson, 7 Cal. App. 436 [94 P. 592].)" (See also Rice v. Rice, [93 Cal. App. 2d 646](#),
14 651 [209 P.2d 662].)

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19 A decision under section 473, subdivision (b), must be grounded on principles of justice and
20 fair dealing. (*Hansen v. Bernstein* (1952) 110 Cal.App.2d 170, 242.) The required discretion is not a
21 mental one, but an impartial one guided by fixed legal principles to be exercised in conformity with
22 the spirit of the law in a manner to subserve, rather than to impede or defeat, the ends of substantial
23 justice. (*Id.*) "[A]ny doubts in applying section 473 must be resolved in favor of the [moving] party."
24 (*Rappleyea v. Campbell*, supra, 8 Cal.4th at p. 980.) Under Code of Civil Procedure section 473,
25 subdivision (d), "[t]he court may, upon motion of the injured party, or its own motion, correct clerical
26 mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and
27 may, on motion of either party after notice to the other party, set aside any void judgment or order."

1 This means that, if a summons is not properly served, relief from default or default judgment may be
2 sought under Code of Civil Procedure section 473, subdivision (d).

3 **G. The Plaintiff Was At Least Entitled To Relief Under The Discretionary Provision Of Section**
4 **473.**

5 In the unlikely event the mandatory provision of section 473 is inapplicable, the trial court had
6 no choice under the circumstances of this case but to grant the Plaintiff relief under the discretionary
7 provision of that section.

8 Section 473, subdivision (b) also provides for discretionary relief:

9 "The court may, upon any terms as may be just relieve a party or his or her legal
10 representative from a judgment, dismissal, order, or other proceeding taken against
11 him or her through his or her mistake, inadvertence, surprise, or excusable neglect."

12 (*Code Civ. Proc.*, § 473, *subd.* (b).)

13 The discretionary relief provision is "applied liberally where the party in default moves
14 promptly to seek relief, and the party opposing the motion will not suffer prejudice if relief is granted."
15 (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.) In other words, "[b]ecause the law favors
16 disposing of cases on their merits, 'any doubts in applying section 473 must be resolved in favor of
17 the party seeking relief from default [citations].'" (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 980,
18 emphasis added, quoting *Elston v. City of Turlock*, *supra*, 38 Cal.3d at p. 233.)

19 The relief provided by the discretionary provision is both broader and narrower than that
20 provided by the mandatory provision. That discretion, however, "is not a capricious or arbitrary
21 discretion, but an impartial discretion, guided and controlled in its exercise by fixed legal principles.
22 It is not a mental discretion, to be exercised *ex gratia*, but a legal discretion, to be exercised in
23 conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends
24 of substantial justice." *Benjamin v. Dalmo Mfg. Co.* (1948) 31 Cal. 2d 523, 526 [190 P.2d 593];
25 *Bailey v. Taaffe* (1866) 29 Cal. 423, 424.).

26 'Discretion is compatible only with decisions "controlled by sound principles of law, ... free
27 from partiality, not swayed by sympathy or warped by prejudice." ' " (*People v. Superior Court*

1 (Alvarez) (1997) 14 Cal.4th 968, 977, 60 Cal.Rptr.2d 93, 928 P.2d 1171.) “ ‘[A]ll exercises of legal
2 discretion must be grounded in reasoned judgment and guided by legal principles and policies
3 appropriate to the particular matter at issue.’ ” (*Ibid.*)

4 Because the discretionary provision gives relief from a "judgment, dismissal, order or other
5 proceeding" (emphasis added), it applies to "any step taken in a case," not only defaults, default
6 judgments and dismissals. (*Zellerino v. Brown* (1991) 235 Cal.App.3d 1097, 1106, internal quotation
7 marks and citations omitted.) Accordingly, even if this Court is to conclude that the judgment in this
8 case was not the equivalent of a default, that conclusion would not bar discretionary section 473 relief.

9 However, while the mandatory provision of section 473 provides relief from excusable and
10 inexcusable conduct (*Yeap v. Leake*, supra, 60 Cal.App.4th at p. 601), the discretionary provision of
11 section 473 normally provides relief from only excusable conduct. (*Zamora v. Clayborn Contracting*
12 *Group, Inc.* (2002) 28 Cal.4th 249, 258.) In determining whether the attorney's or Pro se litigant's
13 mistake, inadvertence, surprise or neglect was excusable, "the court inquires whether "a reasonably
14 prudent person under the same or similar circumstances" might have made the same error.' [Citation.]
15 In other words, the discretionary relief provision of section 473 only permits relief from attorney error
16 'fairly imputable to the client, i.e., mistakes anyone could have made.' [Citation.]" (*Ibid.*).

17 Defendant's actions satisfy the "excusable conduct" standard, because any reasonably prudent
18 person could have made the same excusable mistakes for not responding to the purported summons
19 and complaint under similar circumstances. On or about October 11, 2019, Plaintiff filed a Complaint
20 with this Court against Defendant and Cross-Complainant Linda Hall, Plaintiff filed a defective Proof
21 of Service. The defective Proof of Service resulted to Defendant not responding to the Plaintiff's
22 complaint. Hall was served with an improperly marked summons. The summons did not indicate that
23 defendant Hall was being served as a fictitiously named Doe defendant, it did not command her to do
24 anything, and service was fatally defective.

25 The capacity notice on the summons served on Hall only indicated a check mark as "an
26 individual defendant", and not as a defendant sued under the fictitiously named Doe defendant, and
27 did not specifying her name. From the above a reasonably prudent person would also anticipate that
28 the service was not effectuated.

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2 **H. Defendant Is Diligent In Seeking Relief.**

3 The discretionary relief provision is "applied liberally where the party in default moves promptly
4 to seek relief. . . ." (*Elston v. City of Turlock*, supra, 38 Cal.3d at p. 233; see also *Zamora v. Clayborn*
5 *Contracting Group, Inc.*, supra, 28 Cal.4th at p. 258 ["The party seeking relief must... be diligent"].)
6 Here, Defendant file this motion, the moment Defendant realized that it has not filed a response to
7 the complaint. The Defendant was particularly shocked to learned that she had a pending case against
8 Plaintiff and Default Judgment has already been entered against the corporation. Therefore,
9 Defendant has acted diligently to protect its interests. On a finding by the court that the motion was
10 made within time period(s) permitted by Civ. Code § 1788.61(a)(2)(A), Civ. Code § 1788.61(a)(2)(B)
11 and/or Civ. Code § 1788.61(a)(3)(A), and that his or her lack of actual notice in time to defend the
12 action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the
13 default or default judgment on whatever terms as may be just and allow the party to defend the action
(Civ. Code § 1788.61(c)), infra.

14 **I. This Court has Discretion to Vacate the Default Judgment**

15 The court has broad discretion to vacate the entry of default, default judgment, or dismissal, but
16 that discretion can be exercised only if the defendant establishes a proper ground for relief, by the proper
17 procedure and within the set time limits. (*Code of Civ. Proc., § 473(b).*) A trial court has wide discretion
18 to grant relief under Code of Civil Procedure Section 473 (*Berman v. Klassman* (1971) 17 Cal. App.
19 3d 900, 909, 95 Cal. Rptr. 417). Whether or not relief should be granted under Code of Civil Procedure
20 Section 473.5 is a matter within the discretion of the trial court (*Brockman v. Wagenbach* (1957) 152
21 Cal. App. 2d 603, 611, 313 P.2d 659).

22 Since Defendant was not served with the service documents, defendant could not successfully
23 defend this action and, thus the Default Judgment is void. The law is settled that courts of record have
24 inherent power to set aside a void judgment whether or not it is void on its face (*Rogers v. Silverman*
25 (1989) 216 Cal. App. 3d 1114, 1122, 265 Cal. Rptr. 286). As described in the attached Declaration,
26 the service of the Summons was improper, depriving the court of jurisdiction as to the defendant.
27 Furthermore, the defendant is filing this motion within a reasonable period of time.

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CONCLUSION

Plaintiff failed to properly serve Defendant consequently, Defendant was deprived an opportunity to defend herself against this frivolous lawsuit. Therefore, the entry of *Default Judgment or default Judgment* must be set aside so that Defendant’s answer can be filed.

Dated: January __, 2022.

LINDA B. HALL
21781 Ventura Blvd. #23376
Woodland Hills, CA 91364
Telephone: (747)200-1393

In propia persona Defendant and
Cross-Complainant Linda Hall

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Case No.: 56-2019-00534953-CU-FR-VTA
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**DECLARATION IN SUPPORT OF
MOTION TO SET ASIDE ENTRY OF
DEFAULT JUDGMENT / DEFAULT
JUDGMENT UNDER SECTION 473**

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Cross-Defendants.

DECLARATION OF LINDA B. HALL

I, **LINDA B. HALL** declares:

1. I make this declaration of my own personal knowledge, except where stated on information and belief, and if called to testify in Court on these matters, I could do so competently.
2. I am one of the Defendants and, Cross-Complainants in the above matter and, I have personal knowledge of the matters deposed to here except where otherwise stated to be based on information and belief.
3. I have conducted a diligent search of my case and have made appropriate inquiries of others to inform myself in order to make this Declaration.
4. On or about October 11, 2019, Plaintiff filed a Complaint with this Court against me, Plaintiff filed a defective Proof of Service. Exhibit **A**.
5. Plaintiff filed a Request for Enter of Default against me. It is against this backdrop that I file this instant motion to set aside entry of default judgment / default judgment. Exhibit **B**.

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6. The summons did not bear the endorsement that I have been served as one of the fictitious defendants. Exhibit C.

7. The defective Proof of Service resulted to me not responding to the Plaintiff’s complaint.

8. I was served with an improperly marked summons, the summons did not indicate that I was being served as a fictitiously named Doe defendant, it did not command me to do anything, and service was fatally defective. Exhibit D.

9. I hereby make this declaration in support of Defendant’s motion to vacate renewal of Judgment and Default Judgment.

I declare, under penalty of perjury, that the foregoing is true and correct under the laws of the State of California and that this declaration was executed on January _____, 2022, in _____ California.

LINDA B. HALL