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[attorney info redacted]
[attorney info redacted]
[attorney info redacted]
[attorney info redacted]

Attorney for Plaintiff [redacted]

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

CENTRAL DISTRICT, MOSK COURTHOUSE — UNLIMITED

[redacted], Plaintiff

v.

James Garrison;
Beverly Davis; and
DOEs 1 to 100, Defendants

[names changed]

Case Number: [redacted]
Dept.: [redacted]
Judge: [redacted]
Trial Date: [redacted]

PLAINTIFF’S EX PARTE MOTION TO SET ASIDE AND REVOKE [REDACTED] RULING [CCP §473(d)] DUE TO DEFENDANT’S FAILURE TO SERVE NOTICE OF THE HEARING ON PLAINTIFF, OR ALTERNATIVELY AN ORDER SHORTENING TIME OR POSTPONING TRIAL DATE FOR THE SAME TO BE HEARD ON NOTICED MOTION; DECLARATION BY PLAINTIFF’S ATTORNEY IN SUPPORT THEREOF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; AND DECLARATION OF EX PARTE NOTICE

[PROPOSED] ORDER LODGED HERewith

Hearing Date: _____
Hearing Time: _____

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2 TO THE ABOVE-ENTITLED COURT AND ALL INTERESTED PARTIES HEREIN:

3 Appearing ex parte, Plaintiff [redacted] (hereinafter “Plaintiff”) hereby moves to set
4 aside the ruling made by the Court on [date redacted], which granted an alleged motion by
5 Defendant James Garrison prohibiting Plaintiff from presenting at trial any evidence in
6 support of the breach of contract cause of action and setting an OSC regarding sanctions of
7 \$250 against Plaintiff or Plaintiff’s attorney. This ex parte motion is based upon the grounds
8 that Plaintiff’s attorney was not served with notice of the hearing on [date redacted], at which
9 the ruling was made. Such notice was required pursuant to Plaintiffs essential right to due
10 process and as codified at CCP §1005(b). Also, the Superior Court web site currently does
11 not list such notice under the above-captioned case.

12 This motion is made ex parte because of the extremely close proximity of trial, which
13 is set for [date redacted], and because ruling made on [date redacted], if allowed to stand,
14 will cause Plaintiff irreparable harm.

15 This motion is made pursuant to Code of Civil Procedure (hereinafter “CCP”) §§
16 473(d) and 1008(a), and is based upon the accompanying Declaration by Plaintiff’s Attorney,
17 the accompanying Memorandum of Points and Authorities, the accompanying Declaration of
18 Ex Parte Notice, all pleadings and papers on file in the above-captioned action, and other
19 evidence that may be presented by Plaintiff at the hearing on this motion.

20
21 Dated: _____

[attorney name redacted]

22
23 _____
24 Attorney for Plaintiff [redacted]

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2 **DECLARATION BY PLAINTIFF’S ATTORNEY**

3
4 I, [redacted], declare as follows:

5 1. I am a resident of the State of California and over the age of 18 years. I have personal
6 knowledge of the facts set forth in this declaration, and, if called to testify as a witness, I
7 could competently testify to said facts.

8
9 2. I am the attorney of record for Plaintiff [redacted] in the above-captioned matter (Case
10 Number: [redacted]).

11 3. On [redacted], I received via U.S. mail a NOTICE OF RULING, a true and correct copy
12 of which is attached hereto as **Exhibit A**. The NOTICE OF RULING indicates that a
13 hearing was held in the above-captioned matter on [redacted] (hereinafter “the hearing”).
14 Neither my client nor I ever received notice of the hearing.

15
16 4. I checked the Los Angeles Superior Court web site (<https://www.lasuperiorcourt.org>), at
17 “Case Summary” and entered the case number “[redacted].” A true and correct printout
18 of said Case Summary is attached hereto as **Exhibit B**. Under “Documents Filed” it lists
19 the following two adjacent entries and nowhere lists any notice of the hearing:

20 [redacted] Order
21 Filed by Attorney for Defendant/Respondant

22 [redacted] Statement-Non-Agreement
23 Filed by Mediator

24 5. Had I received notice of the hearing, I would have filed an opposition and appeared at the
25 hearing to argue for DENIAL of the motion.

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6. Over the past six months, I have received service vi mail of numerous other discovery documents in this matter from Mr. Jones, all correctly addressed.

7. Trial is set in this matter for [redacted], and hence, there is insufficient time remaining for this motion to be heard on notice. My client’s entire case rests upon the breach of contract cause of action. The prohibition, set forth in the NOTICE OF RULING, of our presenting evidence in support of the breach of contract cause of action will cause my client irreparable harm. I am therefore appearing ex parte to present this motion.

I declare under penalty of perjury that the foregoing is true and correct.

Signed at _____, California on _____.

Dated: _____

[attorney name redacted]

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EXHIBIT A
NOTICE OF RULING
(Attached to Declaration of Plaintiff's Attorney)

PLAINTIFF'S EX PARTE MOTION TO SET ASIDE AND REVOKE [REDACTED] RULING [CCP §473(d)] DUE TO DEFENDANT'S FAILURE TO SERVE NOTICE OF THE HEARING ON PLAINTIFF, OR ALTERNATIVELY AN ORDER SHORTENING TIME OR POSTPONING TRIAL DATE FOR THE SAME TO BE HEARD ON NOTICED MOTION; DECLARATION BY PLAINTIFF'S ATTORNEY IN SUPPORT THEREOF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; AND DECLARATION OF EX PARTE NOTICE

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EXHIBIT B
CASE SUMMARY FROM LASC WEB SITE
(Attached to Declaration of Plaintiff's Attorney)

PLAINTIFF'S EX PARTE MOTION TO SET ASIDE AND REVOKE [REDACTED] RULING [CCP §473(d)] DUE TO DEFENDANT'S FAILURE TO SERVE NOTICE OF THE HEARING ON PLAINTIFF, OR ALTERNATIVELY AN ORDER SHORTENING TIME OR POSTPONING TRIAL DATE FOR THE SAME TO BE HEARD ON NOTICED MOTION; DECLARATION BY PLAINTIFF'S ATTORNEY IN SUPPORT THEREOF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; AND DECLARATION OF EX PARTE NOTICE

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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **1. Introduction**

4 The ruling made in the above-captioned matter by this Court on [redacted],
5 (hereinafter the “Ruling”), granting an alleged motion (hereinafter the “Alleged Motion”) by
6 Defendant James Garrison (hereinafter “Defendant”), was made without any opposition or
7 appearance by Plaintiff [redacted] (hereinafter “Plaintiff”). As supported by the Declaration
8 of Plaintiff’s Attorney (hereinafter the “Attorney’s Declaration”), Plaintiff did not receive
9 notice of the Alleged Motion and hearing on [redacted], and had Plaintiff been so notified,
10 Plaintiff would have filed an opposition, appeared at said hearing, and vigorously opposed
11 the Alleged Motion. Plaintiff’s right to due process compels this Court to set aside and to
12 revoke the ruling.

13 Hereinafter, “CCP” refers to the Code of Civil Procedure, and “CRC” refers to the
14 California Rules of Court.

15 **2. Plaintiff Had the Right to Be Notified of the**
16 **Alleged Motion and [redacted] Hearing.**

17 The U.S. Supreme Court has made clear that *the essence* Plaintiff’s right to due
18 process includes the right *to be notified of any hearing on a matter adverse to his interest.*

19 “The essence of due process is the requirement that ‘a person in
20 jeopardy of serious loss (be given) notice of the case against him and
21 opportunity to meet it. All that is necessary is that the procedures be
22 tailored, in light of the decision to be made, to ‘the capacities and
23 circumstances of those who are to be heard,’ to insure that they are
24 given a meaningful opportunity to present their case.’ ” *Mathews v.*
25 *Eldridge* (1976) 424 U.S. 319@348-349 [96 S.Ct. 893; 47 L.Ed.2d
26 18], emphasis added.

27 This essential due-process right is codified by California statute:

1
2 “(b) Unless otherwise ordered or specifically provided by law, all
3 moving and supporting papers shall be served and filed at least 16
4 court days before the hearing. The moving and supporting papers
5 served shall be a copy of the papers filed or to be filed with the court.
6 However, if the notice is served by mail, the required 16-day period of
7 notice before the hearing shall be increased by five calendar days if the
8 place of mailing and the place of address are within the State of
9 California,... and if the notice is served by facsimile transmission,
10 express mail, or another method of delivery providing for overnight
11 delivery, the required 16-day period of notice before the hearing shall
12 be increased by two calendar days.” CCP §1005(b), emphasis added.

13 “Notices must be in writing, and the notice of a motion, other
14 than for a new trial, must state when, and the grounds upon which it
15 will be made, and the papers, if any, upon which it is to be based.”
16 CCP §1010.

17 CCP §1005 is referenced by the California Rules of Court:

18 “(a) [In general] Unless otherwise ordered or specifically provided by
19 law, all moving and supporting papers shall be served and filed in
20 accordance with Code of Civil Procedure section 1005.” CRC, rule
21 317(a).

22 There can be no doubt whatsoever that Plaintiff had the right to be notified of the
23 alleged motion and [redacted] hearing.

24
25 **3. The Court Should Set the Ruling Aside as Void**
26 **Pursuant to CCP §473(d).**

3.1. The Court May Set Aside a Void Order at Any Time.

The Court may, *at any time*, set aside a ruling that it determines to be void.

“(d) The court may, on motion of either party after notice to the
other party, set aside any void judgment or order.” CCP §473(d),
emphasis added.

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2 **3.2. Failure to Notify Plaintiff of Hearing on [redacted]**
3 **Renders the Ruling Void.**

4 Plaintiff's due-process right to be notified of a hearing on a motion adverse to his
5 interests renders any ruling, which was made in the absence of such notice, *void on its face*
6 *and subject to collateral attack at any time.*

7 “Respondent's failure to serve appellant with notice of the motion is
8 the equivalent of failure to serve summons and complaint, which
9 renders a judgment void on its face and subject to collateral attack at
10 any time.” *In re Marriage of Kreiss* (6 Dist.,1990) 224 Cal.App.3d
11 1033@1039 [274 Cal.Rptr. 226], emphasis added.

12 As supported by the Attorney's Declaration, the Ruling was made without notice to
13 Plaintiff of the hearing at which it was made, and is therefore void.

14 Therefore, the Court should set the Ruling aside as *void* pursuant to CCP §473(d).

15 **4. The Facts of the Case Support**
16 **Ex Parte Issuance of the Requested Order.**

17 The Court may issue an order ex parte based on affirmative evidence that the party
18 applying for the relief will suffer irreparable harm if the matter is delayed until it can be
19 heard on notice.

20 “An applicant must make an affirmative factual showing in a
21 declaration containing competent testimony based on personal
22 knowledge of irreparable harm, immediate danger, or any other
23 statutory basis for granting relief ex parte.” CRC rule 379(b).

24 Trial is set in this matter for [redacted], and if the motion is heard at a noticed
25 hearing, such hearing would be just two days before trial. As supported the Attorney's
26 Declaration, Plaintiff's entire case rests upon the breach of contract cause of action., and the
prohibition, set forth in the Ruling, of Plaintiff presenting evidence in support of the breach
of contract cause of action would cause Plaintiff irreparable harm.

1
2 Therefore, the requirement of CRC rule 379(b) is satisfied, and ex parte issuance of
3 the requested order is appropriate.

4 **5. In the Alternative the Court Should Issue an Order Shortening**
5 **Time, or Postponing the Trial Date, for the Motion to Be Heard at**
6 **a Noticed Hearing.**

7 In the event that Defendant's attorney, or the Court, needs additional time for
8 consideration of this motion, as an alternative to ex parte issuance of the requested order, the
9 above-described irreparable harm can also be avoided by a noticed hearing at least seven
10 days prior to trial. Such can be accomplished by either (a) the Court issuing an order
11 shortening time for a noticed hearing to be held no later than [redacted], or (b) the Court
12 issuing an order postponing trial until after [redacted].

13 As to a noticed hearing, for which the notice must normally be served at least 16 days
14 before the hearing, *the Court has the authority to shorten such time:*

15 "Unless otherwise ordered or specifically provided by law, all moving
16 and supporting papers shall be served and filed at least 16 court days
before the hearing. ... The court, or a judge thereof, may prescribe a
shorter time." CCP §1005(b).

17 "(a) [In general] Unless otherwise ordered or specifically provided by law,
18 all moving and supporting papers shall be served and filed in accordance
with Code of Civil Procedure section 1005." CRC, rule 317(a).

19 **6. Conclusion**

20 For the foregoing reasons, Plaintiff's motion to set aside June 8, 2006, Ruling [CCP
21 §473(d); CCP §1008(a)] should be GRANTED.

22 Dated: _____

[attorney name redacted]

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24 _____
Attorney for Plaintiff [redacted]

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DECLARATION OF EX PARTE NOTICE

I, the undersigned, declare:

I am a citizen of the United States of America, am over the age of eighteen (18) years, and am not a party to the within action. My business address is [redacted].

One [redacted], at 4:30 p.m., I telephoned the office of attorney William Jones at [redacted] and spoke with [redacted]. I informed him that attorney [redacted] will be appearing ex parte in the above-captioned matter on [redacted], at 8:30 a.m. in Department [redacted] of the above-entitled court. I gave him the case number and title. He then put me on the phone with attorney [redacted], who was familiar with the matter. I again explained that attorney [redacted] will be appearing ex parte on [redacted], at 8:30 a.m. in the above-entitled court. He asked me to read him the caption on the motion, and I read it to him. His tone was adversarial, and although he did not directly say so, he seemed to indicate that an attorney from his office would be appearing at the ex parte.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on [redacted], at Los Angeles, California,

[redacted]

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[attorney info redacted]
[attorney info redacted]
[attorney info redacted]
[attorney info redacted]

Attorney for Plaintiff [redacted]

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

CENTRAL DISTRICT, MOSK COURTHOUSE — UNLIMITED

[redacted], Plaintiff

v.

James Garrison;
Beverly Davis; and
DOEs 1 to 100, Defendants

Case Number: [redacted]
Dept.: [redacted]
Judge: [redacted]
Trial Date: [redacted]

[PROPOSED] ORDER

Hearing Date: _____
Hearing Time: _____

GOOD CAUSE HAVING BEEN SHOWN, IT IS ORDERED THAT:

The ruling made on [date redacted], in the above-entitled matter, which (a) prohibited the Plaintiff from presenting at trial any evidence in support of the breach of contract cause of action, and (b) set an OSC regarding sanctions of \$250 against Plaintiff or Plaintiff's attorney, is set aside as VOID.

IT IS SO ORDERED.

Dated: _____

Judge (or Judicial Officer)