



STATESIDELEGAL

Legal help for military members, veterans and their families

Stateside Legal™ Letter Packet Letter from Service Member Motion and Order to Set Aside Default Judgment (Protections under the Servicemembers Civil Relief Act)

This self-help resource was created by the Stateside Legal Project. Stateside Legal provides these sample forms and information free of charge to individuals with military connections (IMC). These forms are not based upon any specific state law or jurisdiction. They are intended as samples of how to use the protections of the Servicemembers Civil Relief Act (SCRA) to assist active duty members of the military in requesting a court to set aside a default judgment.

For information about the Servicemembers Civil Relief Act or many more topics concerning individuals with military connections, visit www.statesidelegal.org or contact your local Judge Advocate General's Corps office sometimes referred to as a military legal assistance office. Use the following website to locate the nearest one: <http://legalassistance.law.af.mil/content/locator.php>.

Read all instructions at the end of this packet very carefully. Some content has been provided by the Department of Defense and the Armed Forces Legal Assistance.

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DISCLAIMER: *The Stateside Legal Information Series is produced by the Pine Tree Legal Assistance of Maine®, Arkansas Legal Services Partnership®, and the Legal Services Corporation®. These organizations promote or provide free legal services to eligible low-income people. Additional information can be found at www.lsc.gov. This sample form packet is given to you as a guide to help you generally understand the way legal matters are handled. Local courts interpret things differently. The information and statements of law contained in this fact sheet are not intended to be used as legal advice. Before you take any action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.*

IN THE _____ COURT OF _____
COUNTY OF _____
_____ DIVISION

_____)	CASE NO. [ENTER CASE NO.]
)	
Plaintiff,)	JUDGE [ENTER JUDGE'S NAME]
)	
vs.)	
)	
_____)	
)	
Defendant.)	

MOTION TO SET ASIDE DEFAULT JUDGMENT

COMES NOW the Defendant, _____, *pro se*, and for a Motion to set Aside a Default Judgment ordered against the Defendant, respectfully states and alleges:

1. That this motion is brought pursuant to the _____ Rules of Civil Procedure and the protections provided by the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. § 3901 et seq.
2. That on _____, a Default Judgment was entered against Defendant servicemember in this court.
3. That the Defendant servicemember did not make an appearance in this action.
4. That the Default Judgment was obtained, on motion by Plaintiff, improperly pursuant to the protections in the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. § 3931.
5. That, Plaintiff failed to comply with 50 U.S.C. § 3931 of the SCRA pertaining to protection of servicemembers against default judgments.

6. That, Plaintiff's request for default judgment against the Defendant was defective and the resulting Default Judgment is void ab initio.
7. That, because the Default Judgment is void, it should be set aside and Plaintiff's action should be dismissed.
8. That, alternatively, if the court does not grant dismissal of Plaintiff's action, then this court should grant a stay of proceedings pursuant to 50 U.S.C. § 3934 until _____ and for such relief as is just and proper.

WHEREFORE, Defendant prays that [HIS/HER] motion be granted and that the Default Judgment entered against [HIM/HER] in this action be set aside and that Plaintiff's action be dismissed; that alternatively, if the court does not grant dismissal of Plaintiff's action, that this court grant a stay of proceedings until _____; that Plaintiff be ordered to return any moneys that been collected from Defendant as a result of the Default Judgment; that Defendant be awarded [HIS/HER] costs herein expended, and for all other just and proper relief to which may be entitled.

Respectfully Submitted,

[NAME]
[ADDRESS]

DATE: _____

Certificate of Service

I, _____, hereby certify that on this date _____, I have delivered a true and accurate copy of the above pleading to Plaintiff [OR PLAINTIFF'S ATTORNEY], via first-class mail, postage paid addressed to: _____.

SIGNATURE: _____

DATE: _____

IMPORTANT NOTICE: This is a **Sample Motion Form**. It is based on a federal law that applies throughout the U.S. However, each state has its own rules of court. These rules include standards about the contents and formatting of court pleadings. Consult with your local court about local rules before relying on this **Sample Form and the attached Information**.

IN THE _____ COURT OF _____
COUNTY OF _____
_____ DIVISION

_____)	CASE NO. [ENTER CASE NO.]
)	
Plaintiff,)	JUDGE [ENTER JUDGE'S NAME]
)	
vs.)	
)	
_____)	
)	
Defendant.)	

BRIEF IN SUPPORT OF MOTION TO SET ASIDE DEFAULT JUDGMENT

COMES NOW the Defendant, _____, *pro se*, and for [HIS/HER] Brief in Support of Motion respectfully states and alleges:

Factual Background

A Default Judgment was entered against Defendant by the Plaintiff in this court on _____. The Defendant was on active-duty in military service at the time of the default judgment and did not enter an appearance. At the time the judgment was rendered the Defendant was prejudiced in [HIS/HER] ability to provide a defense to this action due to military service. Further, but for the Defendant's military service, the Defendant could have presented a meritorious legal defense to the initial claim.

ADDITIONAL FACTS: _____

Law and Argument

Plaintiff failed to properly follow the safeguards provided by the Servicemembers Civil Relief Act (SCRA) pertaining to 50 U.S.C. § 3901 et seq.. The SCRA applies to all members of the United States military on active duty, and to U.S. citizens serving in the military of United States allies in the prosecution of a war or military action. (50 U.S.C. §§ 3902 and 3914).

A default judgment should not be entered against a servicemember in his or her absence unless the court follows the procedures set out in the SCRA. (50 U.S.C. § 3931). When the servicemember does not make an appearance then 50 U.S.C. § 3931 governs. The court must first determine whether an absent or defaulting party is in military service (50 U.S.C. § 3931 (b) (1) (A)).

The plaintiff must file an affidavit that states “whether or not the defendant is in military service and showing necessary facts in support of the affidavit” before entry of a default judgment can entered for the Plaintiff (50 U.S.C. § 3931(b)(1)(B)). The SCRA also provides criminal penalties for filing a knowingly false affidavit (50 U.S.C. § 3931(c)). Further, if an affidavit had of been properly filed by the Plaintiff stating that the Defendant is in the armed forces then no default can be taken until the court has appointed an attorney to represent the member (50 U.S.C. § 3931(b)(2)). If the court fails to appoint an attorney, then the judgment or decree is voidable. *Id.*

Servicemembers are protected from default judgments under the SCRA. The Act poses specific requirements which must be fulfilled before a default judgment should be entered and also provides for the vacation of a judgment in certain circumstances (50 U.S.C. § 3931). *See Dogbar Fishing Charters, Inc. v. Lash*, No. 2:16-cv-00373-JAW, 2016 U.S. Dist. LEXIS 117916, at *3 (D. Me. Sep. 1, 2016); *see also Nationwide Prop. & Cas. Ins. Co. v. Janis*, No.

1:08-cv-00153, 2008 U.S. Dist. LEXIS 52998, at *7 (M.D. Pa. July 11, 2008) (holding that the SCRA affidavit is a mandatory precondition to any default judgment).

Because the Plaintiff failed to comply with 50 U.S.C. § 3931, the resulting Default Judgment entered against Defendant is therefore void ab initio and should be set aside.

Respectfully Submitted,

[NAME]
[ADDRESS]

DATE: _____

Certificate of Service

I, _____, hereby certify that on this date _____, I have delivered a true and accurate copy of the above pleading to Plaintiff [OR PLAINTIFF'S ATTORNEY], via first-class mail, postage paid addressed to: _____.

SIGNATURE: _____

DATE: _____

LAW YOU SHOULD KNOW

The purpose of the Servicemembers Civil Relief Act (SCRA) is to provide help to servicemembers that have difficulty meeting financial and legal obligations because of military service. The SCRA provides important protections if you are sued while on active duty. These protections apply in administrative and judicial proceedings at all levels of state and federal government.

Any member of the uniformed services on active duty is covered under the SCRA. This includes: Reserve component personnel called to active duty; Coast Guard personnel; Public Health Service; and National Oceanic and Atmospheric Administration.

50 U.S.C. § 3931 provides safeguards for servicemembers from having default judgment entered against them. It also provides a remedy that can be used to void a judgment if the SCRA protections were not provided to an active duty service member. This section also provides protections for a servicemember whose service prevents them from receiving notice of proceedings filed against them.

ABOUT THIS FORM

Carefully read over these forms and instructions. Make sure the information you have given is correct and complete. The forms and instructions in this packet are not based upon any specific state law or jurisdiction. The sample a *Motion to set aside Default Judgment* will likely need to be modified before you use it in your jurisdiction. This is only a sample form.

SAMPLE BRIEF IN SUPPORT OF MOTION TO SET ASIDE DEFAULT JUDGMENT

This packet also includes a sample brief that may need to be filed with your motion. The sample supporting brief will likely need to be modified before you use it in your jurisdiction. This is only a sample brief.

FILING YOUR MOTION AND SUPPORTING BRIEF

Different jurisdictions will have different requirements for filing documents with the court. You may be able to locate your jurisdiction's Rules of Civil Procedure online and review the requirements by going to your state's judiciary (court) website. Or you can ask the court clerk for information about filing and serving motions.

Generally, to file a pleading involving a lawsuit, you can mail the pleading and attachments to the court clerk where the lawsuit has been filed. Send three copies. Also send a self-addressed/stamped envelope with your pleading so the court clerk can send you back two copies of the file marked pleading.

You also have to notify the other party. One of the file stamped copies you receive back should be sent to the opposing party and the other is for your records. It may be enough just to mail their lawyer a copy of what you filed with the court. Again, your state or local rules will specify how you must notify the other party. You must always follow the local rules of procedure.

More Information: For information about the Servicemembers' Civil Relief Act or many more topics about individuals with military connections, visit www.statesidelegal.org or contact your local Judge Advocate General's Corps office, sometimes referred to as a military legal assistance office. Use the following website to locate the nearest one: <http://legalassistance.law.af.mil/content/locator.php> .

The Stateside Legal Project sincerely thanks you for your service to our county.

UPDATED: July 2018

THE SERVICEMEMBERS CIVIL RELIEF ACT 50 U.S.C. § 3931

PROTECTION OF SERVICEMEMBERS AGAINST DEFAULT JUDGMENTS

(a) Applicability of section

This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.

(b) Affidavit requirement

(1) Plaintiff to file affidavit

In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

- (A) Stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
- (B) If the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

(2) Appointment of attorney to represent defendant in military service

If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a service member cannot locate the service member, actions by the attorney in the case shall not waive any defense of the service member or otherwise bind the service member.

(3) Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act [50 USCS §§ 3901 et seq.].

(4) Satisfaction of requirement for affidavit

The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

(c) Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(d) Stay of proceedings

In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that—

- (1) There may be a defense to the action and a defense cannot be presented without the presence of the defendant; or
- (2) After due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) Inapplicability of section 202 procedures

A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202 [50 USCS § 3932].

(f) Section 202 Protections

If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 202 [50 USCS § 3932].

(g) Vacation or setting aside of default judgments

(1) Authority for court to vacate or set aside judgment

If a default judgment is entered in an action covered by this section against a service member during the service member's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the service member, reopen the judgment for the purpose of allowing the service member to defend the action if it appears that—

(A) The service member was materially affected by reason of that military service in making a defense to the action; and

(B) The service member has a meritorious or legal defense to the action or some part of it.

(2) Time for filing application

An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

(h) Protection of bona fide purchaser

If a court vacates, sets aside, or reverses a default judgment against a service member and the vacating, setting aside, or reversing is because of a provision of this Act [50 USCS §§ 3901 et seq.], that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.