# Defendant's Motion to Vacate Default Judgment and Set Aside Entry of Default

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Defendant, appearing pro se

**UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF CALIFORNIAOAKLAND DIVISION**

**Northwind Supply LLC**,
Plaintiff,

v.

**Jordan Avery**, an individual doing business as Avery Landscape Services,
Defendant.

Case No. 4:26-cv-00000-XYZ

**DEFENDANT'S NOTICE OF MOTION AND MOTION TO VACATE DEFAULT JUDGMENT AND SET ASIDE ENTRY OF DEFAULT; MEMORANDUM OF POINTS AND AUTHORITIES; DISCLOSURE STATEMENT UNDER FED. R. CIV. P. 7.1(a)(2) AND CERTIFICATION OF CONFLICTS, INTERESTED ENTITIES AND PERSONS, AND CITIZENSHIP UNDER CIVIL L.R. 3-15; DECLARATION OF Jordan Avery; PROPOSED ANSWER; PROPOSED ORDERS**

Fed. R. Civ. P. 55(c), 60(b)(1), 60(b)(4), 60(b)(6) and 62(b)

Hearing date: December 3, 2026
Time: 9:00 a.m.
Place: Courtroom 3 of the United States Courthouse, Oakland, California

## 1. Notice of motion and hearing

TO PLAINTIFF **Northwind Supply LLC** AND ITS ATTORNEY OF RECORD, Taylor Brennick, Esq., Brennick Vale LLP:

PLEASE TAKE NOTICE that on December 3, 2026, at 9:00 a.m., or as soon after that as the matter may be heard, in Courtroom 3 of the United States Courthouse, Oakland, California, Defendant **Jordan Avery** will, and hereby does, move the Court for an order (1) vacating the default judgment entered on October 6, 2026 (ECF No. 14); (2) setting aside the Clerk's entry of default entered on September 9, 2026 (ECF No. 9); (3) granting Defendant leave to file the proposed Answer attached as Exhibit A; and (4) staying enforcement of the judgment until the Court decides this motion.

This notice is served at least 14 days before the hearing date. If the Court's local rules or the assigned judge's standing order set a different notice period, require a different hearing procedure, or provide that the motion will be decided on the papers without a hearing, Defendant will follow that procedure and will appear at any hearing the Court sets.

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The motion is based on this notice, the motion, the memorandum of points and authorities below, the Declaration of Jordan Avery and its exhibits, the proposed Answer (Exhibit A), the proposed order, the records and files in this action, and any argument the Court permits. Because this motion is Defendant's first appearance in the action, Defendant files with it, as a separate document, Defendant's Disclosure Statement under Fed. R. Civ. P. 7.1(a)(2) and Certification of Conflicts, Interested Entities and Persons, and Citizenship under Civil L.R. 3-15.

Before filing this motion, on October 26, 2026, Defendant wrote to Plaintiff's counsel by email, explained the grounds for this motion, and asked whether Plaintiff would agree to set aside the default judgment and the entry of default. Plaintiff's counsel replied that Plaintiff would oppose the motion.

Defendant **Jordan Avery** ("Defendant"), appearing without a lawyer, moves the Court under Federal Rules of Civil Procedure 55(c) and 60(b) for relief from the default judgment entered on October 6, 2026 and from the Clerk's entry of default entered on September 9, 2026. Defendant states the grounds for the motion with particularity as follows:

1. **Excusable neglect, Rule 60(b)(1).** Defendant missed the deadline to answer the complaint because Defendant was hospitalized for emergency abdominal surgery and the complications that followed and then confined to home recovery under a doctor's orders from August 12, 2026 until September 18, 2026, a period that covered the entire answer period that remained after Defendant received the papers. The failure to answer was not intentional, Defendant acted in good faith, and Defendant moved promptly after learning of the judgment. In addition, Plaintiff did not serve the written notice of its application for default judgment that Rule 55(b)(2) requires, although Defendant's email to Plaintiff's counsel of September 24, 2026 had shown a clear purpose to defend.

2. **Meritorious defense.** Defendant has a defense to most of the claim. Plaintiff's own records show that Defendant returned goods worth $52,600.00 under Plaintiff's return authorization RMA-2207 and paid $8,000.00 by check No. 1047 dated May 4, 2026. On those facts no more than $25,800.00 of the $86,400.00 claimed could be owed, and Defendant disputes part of that balance.

3. **Mistake in the amount of the judgment, Rule 60(b)(1) and Rule 54(c).** The judgment awards $9,750.00 in attorney's fees, which the complaint did not demand. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings.

4. **Void judgment, Rule 60(b)(4), in the alternative.** Plaintiff did not serve Defendant by a method that Rule 4(e) allows. The papers were left at an apartment Defendant had moved out of more than a month earlier, with a person who lived there but was not a member of Defendant's household. Defendant raises the defense of insufficient service of process under Rule 12(b)(5) in this motion and in the proposed Answer so that it is not waived.

5. **Any other reason that justifies relief, Rule 60(b)(6), in the further alternative,** only if the Court finds that none of Rules 60(b)(1) through (b)(5) applies.

Defendant asks the Court to vacate the default judgment, set aside the entry of default, grant Defendant leave to file the proposed Answer within 14 days after the Court's order, decide the stay request on the papers before November 5, 2026, when the automatic stay of Rule 62(a) ends, or approve now Defendant's tender of $25,800.00 as security, and stay enforcement of the judgment pending the decision on this motion on that security or on any other bond or security the Court approves, and grant any further relief the Court finds just.

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United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 (2010)
Wilson v. Moore & Assocs., Inc., 564 F.2d 366 (9th Cir. 1977)

### Statutes

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28 U.S.C. § 1332(a)
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**Introduction**

This is a commercial collection case that has never been decided on its merits. Plaintiff **Northwind Supply LLC** ("Plaintiff") sued Defendant for $86,400.00, the full face value of six invoices. Plaintiff did not tell the Court that Defendant had returned two of the six shipments, worth $52,600.00, with Plaintiff's written authorization, or that Plaintiff had cashed Defendant's $8,000.00 payment toward a third invoice. Defendant did not answer because, two days after the papers reached Defendant, Defendant was rushed into emergency surgery and spent the following five weeks in the hospital and then recovering at home under a doctor's orders. The Clerk entered Defendant's default during that recovery, and the Court then entered a judgment of $96,555.00, which is more than the complaint asked for.

Defendant does not ask the Court to excuse a deliberate decision to ignore the case. Defendant asks for the chance to answer it. The Ninth Circuit has held that "judgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits." United States v. Signed Personal Check No. 730 of Yubran S. Mesle, 615 F.3d 1085 (9th Cir. 2010). Other circuits share that view. The Fourth Circuit has "repeatedly expressed a strong preference that, as a general matter, defaults be avoided and that claims and defenses be disposed of on their merits." Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc., 616 F.3d 413, 417 (4th Cir. 2010).

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**Issues to be decided**

1. Whether Defendant's failure to answer while hospitalized and recovering from emergency surgery was excusable neglect under Rule 60(b)(1).

2. Whether Plaintiff's failure to serve written notice of its application for default judgment, after Defendant's email of September 24, 2026 disputed the claim, is a further reason to set the judgment aside.

3. Whether Defendant has alleged specific facts that, if true, would be a defense to all or part of Plaintiff's claim.

4. Whether setting aside the judgment would prejudice Plaintiff in any way beyond requiring it to prove its claim.

5. Whether the motion is timely under Rule 60(c)(1).

6. In the alternative, whether the judgment is void for insufficient service of process under Rule 60(b)(4), and whether Rule 60(b)(6) applies if no other ground does.

7. Whether enforcement of the judgment should be stayed until the Court decides the motion.

**Statement of facts and procedural history**

The facts below are supported by the Declaration of Jordan Avery ("Def. Decl.") and its exhibits and by the Court's docket.

1. Defendant is an individual who runs a small landscaping and irrigation business under the trade name Avery Landscape Services. The business is a sole proprietorship. It is not a corporation, limited liability company or other entity. Def. Decl. ¶ 2.

2. In March 2026, Plaintiff sold and delivered to Defendant irrigation pumps and parts billed on six invoices, numbered NS-3314 through NS-3319, with a combined face value of $86,400.00. Def. Decl. ¶ 3.

3. Two of the shipments, billed on invoices NS-3317 and NS-3318, arrived with the wrong pump models. Plaintiff issued written return authorization RMA-2207. Defendant returned those goods, worth $52,600.00, and on April 14, 2026 Plaintiff confirmed by email that it had received them in its warehouse. Def. Decl. ¶ 4 and Ex. E.

4. Defendant paid $8,000.00 toward invoice NS-3319 by check No. 1047 dated May 4, 2026. Plaintiff deposited the check, and it cleared Defendant's bank account. Def. Decl. ¶ 5 and Ex. F.

5. On July 1, 2026, Defendant moved out of the apartment at 1410 Example Court, Apt. 3, Oakland, CA 94607 and into the home where Defendant now lives, at 77 Sample Row, Oakland, CA 94610. Defendant filed a change-of-address request with the Postal Service the same week, and from then on Defendant's mail was forwarded to the new home. Def. Decl. ¶ 6 and Ex. D. A new tenant, Robin Sample, moved into the apartment under a lease that began on July 5, 2026. Robin Sample did not know Defendant before moving in and has never shared a home with Defendant. Def. Decl. ¶ 7 and Ex. I.

6. On July 20, 2026, Plaintiff filed its complaint (ECF No. 1), demanding $86,400.00 and costs for six

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unpaid invoices for irrigation pumps and parts delivered to Defendant's landscaping business. The complaint does not demand attorney's fees. Complaint, Prayer for Relief.

7. Plaintiff's proof of service states that on August 3, 2026 a process server left the summons and complaint at 1410 Example Court, Apt. 3, Oakland, CA 94607 with "John Doe, co-occupant, approx. 40 years old." Defendant no longer lived at that address on that date. The person who received the papers was the new tenant of the apartment and has never been a member of Defendant's household. Def. Decl. ¶¶ 6-7.

8. On August 10, 2026, when Defendant stopped by the old apartment to collect misdirected mail, the new tenant handed Defendant an envelope that contained the summons and complaint. That was the first time Defendant saw them. Def. Decl. ¶ 7.

9. If service had been valid on August 3, 2026, an answer would have been due 21 days later, on August 24, 2026. See Fed. R. Civ. P. 12(a)(1)(A)(i).

10. Defendant intended to answer and on August 10, 2026 called two law offices to ask about representation. Two days later, on August 12, 2026, Defendant was admitted to the hospital through the emergency department for emergency abdominal surgery and the complications that followed. Defendant was discharged on August 21, 2026 with orders to stay at home, rest, and not work, and remained under those orders and on prescription pain medication until September 18, 2026. Def. Decl. ¶¶ 8-9 and Exs. B-C.

11. On September 2, 2026, Plaintiff asked the Clerk to enter Defendant's default. The Clerk entered the default on September 9, 2026 (ECF No. 9). The docket shows that the request and the entry of default were mailed to the old apartment. Defendant did not receive them. Defendant has checked all the mail forwarded to Defendant's home between September 2, 2026 and October 19, 2026, and it contained no papers from Plaintiff or the Court. Defendant later learned from Robin Sample that mail addressed to Defendant that arrived at the old apartment in September was returned to the sender or not passed on. Def. Decl. ¶ 10.

12. On September 22, 2026, Plaintiff applied to the Court for a default judgment that included attorney's fees and costs. Plaintiff's application included a declaration stating that Defendant is not in military service. Plaintiff did not serve Defendant with written notice of the application at any time, including after Defendant's email of September 24, 2026 described in paragraph 13. Def. Decl. ¶ 11.

13. On September 24, 2026, shortly after Defendant's doctor allowed Defendant to return to work, Defendant emailed Plaintiff's counsel, explained the surgery and recovery, stated that Defendant disputed the amount claimed because of the returned goods and the payment, and asked for time to find a lawyer and respond. Defendant received no reply. Def. Decl. ¶ 11 and Ex. H.

14. On October 1, 2026, Defendant met with a volunteer at a free legal clinic, who told Defendant that the clinic could not take the case but would place Defendant on a waiting list for a referral. Def. Decl. ¶ 12.

15. On October 6, 2026, the Court entered a default judgment against Defendant for $96,555.00, consisting of the $86,400.00 claimed, $9,750.00 in attorney's fees and $405.00 in costs (ECF No. 14).

16. Defendant first learned that a default and a default judgment had been entered on October 19, 2026, when Plaintiff's counsel sent Defendant a letter demanding payment of the judgment and stating that

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Plaintiff would seek a levy on Defendant's bank account. Def. Decl. ¶ 13 and Ex. G.

17. Defendant obtained the docket and the judgment from the Clerk's office, prepared this motion, the declaration and the proposed Answer, and files them on October 29, 2026, 23 days after the judgment was entered and ten days after Defendant learned of it. Def. Decl. ¶ 14.

**Legal standard**

Rule 55(c) sets two different standards. "The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b)." Fed. R. Civ. P. 55(c). Because a final judgment has been entered here, Defendant must show a ground listed in Rule 60(b). Rule 60(b) provides that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding" for six listed reasons, including "(1) mistake, inadvertence, surprise, or excusable neglect" and "(4) the judgment is void."

In this Circuit, the same three factors govern both the good-cause inquiry under Rule 55(c) and a motion to set aside a default judgment under Rule 60(b)(1). The Court considers "(1) whether [the party seeking to set aside the default] engaged in culpable conduct that led to the default; (2) whether [it] had [no] meritorious defense; or (3) whether reopening the default judgment would prejudice" the other party. Mesle, 615 F.3d 1085. "This standard, which is the same as is used to determine whether a default judgment should be set aside under Rule 60(b), is disjunctive, such that a finding that any one of these factors is true is sufficient reason for the district court to refuse to set aside the default." Id. Defendant therefore addresses each factor in turn and shows that none of them supports leaving the judgment in place.

The Ninth Circuit applies these rules with care for the party who defaulted: "Our rules for determining when a default should be set aside are solicitous towards movants," and that is especially so for a movant who acted without a lawyer. Id. Defendant is such a movant and appears personally, as 28 U.S.C. § 1654 permits. Other circuits weigh similar factors. The Fourth Circuit considers "whether the moving party has a meritorious defense, whether it acts with reasonable promptness, the personal responsibility of the defaulting party, the prejudice to the party, whether there is a history of dilatory action, and the availability of sanctions less drastic." Colleton, 616 F.3d at 417.

Defendant recognizes that the standard after judgment is stricter than the standard before it. As the Fourth Circuit put it, "Rule 60(b)’s 'excusable neglect' standard is a more onerous standard than Rule 55(c)’s 'good cause' standard, which is more forgiving of defaulting parties because it does not implicate any interest in finality." Colleton, 616 F.3d at 420. Defendant meets the stricter standard. Because the Court must also set aside the entry of default before Defendant can answer, Defendant asks for that relief as well, and the facts that satisfy Rule 60(b) satisfy the more forgiving good-cause test too.

**Defendant's failure to answer was excusable neglect, not culpable conduct**

Whether neglect is excusable is an equitable determination that takes account of all relevant circumstances, including "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993). In this action, the party whose prejudice the Court weighs is Plaintiff.

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**The reason for the delay was outside Defendant's control.** Defendant first saw the summons and complaint on August 10, 2026. Two days later Defendant was admitted to the hospital for emergency abdominal surgery and the complications that followed. From August 12, 2026 until September 18, 2026, Defendant was first an inpatient and then confined to home recovery under a doctor's orders and on prescription pain medication. Def. Decl. ¶¶ 8-9 and Exs. B-C. The answer deadline Plaintiff relies on, August 24, 2026, and the entry of default on September 9, 2026 both fell inside that period. A sudden medical emergency is the kind of reason that is not "within the reasonable control of the movant." Pioneer, 507 U.S. at 395.

**Defendant acted in good faith.** Defendant did not ignore the lawsuit. On the day the papers reached Defendant, Defendant called two law offices. As soon as Defendant's doctor allowed a return to work, Defendant wrote to Plaintiff's counsel, explained the illness, identified the returned goods and the payment, and asked for time to respond. Def. Decl. ¶¶ 8, 11 and Ex. H. Defendant then sought help from a free legal clinic. Def. Decl. ¶ 12. Defendant's mistake was to assume, as a person with no legal training, that writing to Plaintiff's counsel would hold matters while Defendant looked for a lawyer. That is neglect, but it is not bad faith.

**Defendant's conduct was not culpable.** In this Circuit, a defendant's "conduct is culpable if he has received actual or constructive notice of the filing of the action and intentionally failed to answer." Mesle, 615 F.3d 1085. Defendant did not intentionally fail to answer. Defendant was in the hospital or recovering at home when the answer would have been due and when the default was entered, and Defendant tried to engage with Plaintiff as soon as Defendant was able. Def. Decl. ¶¶ 8-11. Defendant gained no advantage from the delay and had no reason to want one: the default has exposed Defendant to a judgment far larger than any amount Plaintiff could prove.

**The delay was short and has had little effect on the case.** The case is in its earliest stage. No scheduling order has been entered, no discovery has taken place, and no trial date is set. Defendant moved 23 days after the judgment was entered and ten days after learning of it. Granting the motion would cause no delay beyond the short time needed for Defendant to file the Answer and for the case to proceed in the ordinary way.

**The amount of the judgment is also a mistake that Rule 60(b)(1) reaches.** Rule 54(c) provides that "[a] default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings." The complaint demanded $86,400.00 and costs. It did not demand attorney's fees. Complaint, Prayer for Relief. The judgment nevertheless awards $9,750.00 in fees. The Supreme Court has held that "a judge’s errors of law are indeed 'mistake[s]' under Rule 60(b)(1)." Kemp v. United States, 596 U.S. 528 (2022). At a minimum, then, the fee award should be vacated, because it exceeds what the pleadings demanded.

**Plaintiff did not give the notice Rule 55(b)(2) requires**

A party who "has appeared personally or by a representative" must be served with written notice of the application for default judgment "at least 7 days before the hearing." Fed. R. Civ. P. 55(b)(2). The appearance "need not necessarily be a formal one. . . . In limited situations, informal contacts between the parties have sufficed when the party in default has thereby demonstrated a clear purpose to defend the suit." Wilson v. Moore & Assocs., Inc., 564 F.2d 366, 369 (9th Cir. 1977); accord In re Roxford Foods, Inc., 12 F.3d 875, 879 (9th Cir. 1993).

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Defendant's email of September 24, 2026 shows that purpose. It reached Plaintiff's counsel after Plaintiff applied for a default judgment and before the Court entered it, disputed the amount claimed, identified the returned goods and the payment on which Defendant's defenses rest, and asked for time to respond. Def. Decl. ¶ 11 and Ex. H. Plaintiff never replied and never served notice of the application. Id.

Wilson is different on the point the Ninth Circuit found decisive. There, plaintiff's counsel had twice warned the defendant to retain a lawyer and answer or face a default, so the defendant had "actual, unqualified notice that delay in answering the complaint would result in default." Wilson, 564 F.2d at 369; see Roxford, 12 F.3d at 879. Plaintiff here gave no warning of any kind. Def. Decl. ¶ 11.

Defendant recognizes that informal contacts suffice only "in limited situations." Wilson, 564 F.2d at 369. But where notice is required, its absence "is a serious procedural irregularity that usually justifies setting aside a default judgment." Id. That irregularity is a further reason to grant relief under Rule 60(b)(1), under Rule 60(b)(6) if Rule 60(b)(1) does not apply, and under the good-cause standard of Rule 55(c).

**Defendant has a meritorious defense**

To show a meritorious defense, a defendant does not have to prove the defense now. "All that is necessary to satisfy the 'meritorious defense' requirement is to allege sufficient facts that, if true, would constitute a defense." Mesle, 615 F.3d 1085. The Court does not decide on this motion whether those facts are true; that is for the litigation that follows. Defendant alleges the following specific facts, each supported by the declaration and documents, and sets them out as defenses in the proposed Answer (Exhibit A).

**Return of goods worth $52,600.00.** Two of the six shipments, billed on invoices NS-3317 and NS-3318, contained the wrong pump models. Plaintiff authorized their return in writing under return authorization RMA-2207. Defendant shipped the goods back, and on April 14, 2026 Plaintiff confirmed by email that it had received them. Def. Decl. ¶ 4 and Ex. E. Plaintiff cannot recover the price of goods it took back. Yet the complaint seeks payment of both invoices in full.

**Payment of $8,000.00.** Defendant paid $8,000.00 toward invoice NS-3319 by check No. 1047 dated May 4, 2026, and Plaintiff deposited that check. Def. Decl. ¶ 5 and Ex. F. Payment is an affirmative defense that an answer must state, Fed. R. Civ. P. 8(c)(1), and the proposed Answer states it.

**Most that could be owed.** Taking Plaintiff's own documents at face value, the most that could be owed is $86,400.00, less $52,600.00 for the returned goods and $8,000.00 for the payment, which is $25,800.00. Defendant disputes part of that balance as well, because two pumps on invoice NS-3316 failed within the warranty period and Plaintiff has not honored its replacement promise. Def. Decl. ¶ 5. The judgment of $96,555.00 therefore exceeds by $70,755.00 the most that Plaintiff could recover on its own records.

**Insufficient service of process.** Defendant also has the procedural defense discussed below: the summons and complaint were not served by any method that Rule 4(e) allows. Defendant raises that defense now so that it is preserved.

These are not conclusions or general denials. They are specific facts, documented by Plaintiff's own emails and Defendant's bank records, that would defeat most of the claim if a factfinder accepts them. That is enough to satisfy the meritorious-defense factor.

**Setting aside the judgment will not prejudice Plaintiff**

The third factor asks "whether reopening the default judgment would prejudice" Plaintiff. Mesle, 615

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F.3d 1085. Plaintiff will suffer no prejudice that counts.

First, Plaintiff loses nothing but the advantage of a judgment entered without a contest. Having to prove a claim on the merits is not prejudice; it is what every plaintiff must do when a defendant answers. Courts prefer that "claims and defenses be disposed of on their merits." Colleton, 616 F.3d at 417.

Second, the delay is short. Only 23 days have passed since the judgment was entered, and less than four months since the complaint was filed. No evidence has been lost. Plaintiff's invoices, return authorization, warehouse receipt and bank records are business records that Plaintiff itself keeps, and the witnesses are Plaintiff's own employees and Defendant.

Third, nothing about the delay makes discovery harder or creates any opportunity for fraud or collusion. Defendant has not transferred or hidden assets and will not do so. To protect Plaintiff while the motion is pending, Defendant offers to deposit $25,800.00 with the Clerk of Court, or to post any other bond or security the Court approves, as discussed below.

Fourth, if the Court believes Plaintiff has incurred unnecessary expense because of the default, Rule 60(b) allows relief "on motion and just terms." Defendant does not oppose a reasonable condition, such as payment of Plaintiff's reasonable costs of the default proceedings, if the Court finds one appropriate.

There is no history of dilatory action by Defendant in this case, and a less drastic course than a judgment of $96,555.00 is plainly available: a decision on the merits.

**The motion is timely**

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). The one-year limit is a firm outer boundary, because "[a] court must not extend the time to act under" Rule 60(b). Fed. R. Civ. P. 6(b)(2).

The judgment was entered on October 6, 2026. Defendant files this motion on October 29, 2026, 23 days later, well inside the one-year limit. The motion is also made within a reasonable time. Defendant learned of the judgment on October 19, 2026 and filed this motion ten days later, after obtaining the docket, the judgment and the supporting documents. Def. Decl. ¶¶ 13-14.

The motion is also filed within 28 days after entry of the judgment, the time allowed for a motion under Rule 59. See Fed. R. Civ. P. 59(e). The time to appeal therefore runs from the order deciding this motion. See Fed. R. App. P. 4(a)(4)(A)(vi).

**In the alternative, the judgment is void for insufficient service of process**

If the Court does not grant relief under Rule 60(b)(1), it should grant relief under Rule 60(b)(4), which applies when "the judgment is void." Rule 60(b)(4) "applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 271 (2010). A judgment entered against a defendant who was never validly served is such a case: "a judgment entered without notice or service is constitutionally infirm." Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 84 (1988).

**Defendant's burden of proof.** Because Defendant had actual notice of the action before the default judgment, Defendant bears the burden of proving that service did not occur, and the signed proof of

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service is prima facie evidence of valid service that can be overcome only by strong and convincing evidence. SEC v. Internet Solutions for Business Inc., 509 F.3d 1161 (9th Cir. 2007). Defendant meets that standard with documents that do not depend on Defendant's word alone, as shown below.

**Service did not comply with Rule 4(e)(2).** An individual may be served by "(A) delivering a copy of the summons and of the complaint to the individual personally; (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process." Fed. R. Civ. P. 4(e)(2). Plaintiff's proof of service relies on the second method. But the apartment at 1410 Example Court, Apt. 3, Oakland, CA 94607 had not been Defendant's dwelling or usual place of abode since July 1, 2026, and the person who accepted the papers was the new tenant, not someone who resided with Defendant. Def. Decl. ¶¶ 6-7 and Ex. D. Defendant was not served personally and has never appointed an agent to receive service. Def. Decl. ¶ 7. Plaintiff's proof of service, which Rule 4(l)(1) requires to be made by the server's affidavit, does not claim any other method of service.

**The evidence that service did not occur is strong and convincing.** Three independent records show that the apartment was not Defendant's home on August 3, 2026 and that the person who took the papers did not live with Defendant:

1. The Postal Service change-of-address confirmation shows that Defendant moved from 1410 Example Court, Apt. 3, Oakland, CA 94607 effective July 1, 2026, more than a month before the claimed service, and that Defendant's mail was forwarded to 77 Sample Row, Oakland, CA 94610 from then on. Ex. D.

2. The new tenant's lease of the apartment began on July 5, 2026, also before the claimed service. Ex. I.

3. The new tenant, Robin Sample, states under penalty of perjury that Robin Sample is the person the proof of service describes as "John Doe, co-occupant, approx. 40 years old," that Robin Sample moved into the apartment as its sole occupant when the lease began, that Robin Sample did not know Defendant before moving in, and that Defendant has never lived with Robin Sample at that address or anywhere else. Ex. I.

The proof of service itself is consistent with these records. It describes the recipient only as "John Doe, co-occupant, approx. 40 years old," without giving the person's real name or saying how the server learned that Defendant lived there. Def. Decl. ¶ 7. A third party's sworn statement, a dated lease and a federal agency's record of the move are the kind of objective evidence that overcomes the presumption a signed proof of service creates.

**Nor was service valid under state law, which Rule 4(e)(1) also allows.** Rule 4(e)(1) permits service by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." Here both are California. California law did not allow this service either. Substituted service under Cal. Code Civ. Proc. § 415.20(b) requires that the papers be left at the defendant's dwelling house, usual place of abode, usual place of business or usual mailing address, with a competent member of the household or a person apparently in charge of the place of business or mailing address, and that a copy then be mailed by first-class mail to the defendant at the place where the papers were left. None of those conditions was met. The apartment was no longer Defendant's dwelling, usual place of abode or usual mailing address, because Defendant had moved and had Defendant's mail forwarded, and it was never Defendant's place of business. The recipient was not a

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member of Defendant's household. And the proof of service shows no follow-up mailing. Def. Decl. ¶¶ 6-7 and Exs. D and I.

**No meritorious defense is required for this ground.** Where a defendant has been deprived of property without valid service, "it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits." Peralta, 485 U.S. at 86-87. Defendant nonetheless has a meritorious defense, as shown above.

**This ground is raised within a reasonable time.** The Supreme Court has held that the reasonable-time requirement of Rule 60(c)(1) governs void-judgment motions too: "We hold that this time limit applies to a motion alleging that a judgment is void." Coney Island Auto Parts Unlimited, Inc. v. Burton, 607 U.S. 155, 157 (2026). Defendant raises the defect ten days after learning of the judgment, which is a reasonable time on any measure.

**The defense is preserved.** Rule 12(b) allows a party to assert "(4) insufficient process; (5) insufficient service of process" by motion, and a party waives those defenses by failing to make them by motion or to include them in a responsive pleading. Fed. R. Civ. P. 12(h)(1). Defendant therefore raises insufficient service of process both in this motion and in the proposed Answer. Defendant acknowledges having received the papers on August 10, 2026 and does not ask the Court to disregard that fact; Defendant asks the Court to hold Plaintiff to the methods of service that Rule 4(e) sets.

**In the further alternative, Rule 60(b)(6) applies**

Defendant relies on Rule 60(b)(6) only if the Court concludes that none of the other grounds applies. Relief under Rule 60(b)(6) is available "only when Rules 60(b)(1) through (b)(5) are inapplicable." BLOM Bank SAL v. Honickman, 605 U.S. ___ (2025). It "requires extraordinary circumstances." Id. Defendant also recognizes that Rules 60(b)(1) and (b)(6) are "mutually exclusive, and thus a party who failed to take timely action due to 'excusable neglect' may not seek relief more than a year after the judgment by resorting to subsection (6)." Pioneer, 507 U.S. at 393. That limit does not affect this motion, which is filed 23 days after the judgment.

If the Court were to find that Defendant's situation falls outside Rule 60(b)(1), the circumstances here are extraordinary: an emergency hospitalization that began two days after Defendant first saw the complaint, a judgment entered while Defendant was trying to engage with Plaintiff's counsel, and a judgment amount that exceeds both the complaint's demand and any sum Plaintiff could recover on its own records. Those circumstances justify relief under Rule 60(b)(6) if no other ground fits.

**Enforcement should be stayed while the motion is pending**

Filing this motion does not by itself protect Defendant from collection. A Rule 60(b) motion "does not affect the judgment's finality or suspend its operation." Fed. R. Civ. P. 60(c)(2). Execution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, unless the court orders otherwise. Fed. R. Civ. P. 62(a). That automatic stay ends on November 5, 2026, before the hearing date. After that, Plaintiff can enforce the judgment by a writ of execution under the procedure of the state where the Court sits. Fed. R. Civ. P. 69(a)(1). Plaintiff's counsel has already written that Plaintiff will seek a levy on Defendant's business bank account. Def. Decl. ¶ 13 and Ex. G.

"At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security." Fed. R. Civ. P. 62(b). A levy on

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Defendant's business account would leave Defendant unable to pay two employees and to buy materials for jobs already contracted, and it would do so to collect a judgment that exceeds the most Plaintiff could recover. Def. Decl. ¶ 15.

Defendant therefore asks the Court to stay enforcement of the judgment until it decides this motion, on condition that Defendant deposit $25,800.00 with the Clerk of Court within seven days, or on any other bond or security the Court approves. If any levy, garnishment or other enforcement step has been taken before the Court rules, Defendant asks that it be released or held in place, as the Court directs, until the motion is decided.

Because the automatic stay ends on November 5, 2026, before the hearing on December 3, 2026, a ruling on the stay request at that hearing would come too late to prevent enforcement. Defendant therefore asks the Court to decide the stay request on the papers before November 5, 2026. To that end, Defendant files with this motion a motion to shorten time under Civil L.R. 6-3, with the declaration and proposed order that rule requires. Alternatively, Defendant tenders $25,800.00 as security now and asks the Court to approve it now, because under Rule 62(b) the stay takes effect when the court approves the bond or other security. A [Proposed] Order Approving Security and Staying Enforcement Pending Decision is submitted with this motion.

**Servicemember status**

Defendant is not, and was not at any time during this action, in military service. Def. Decl. ¶ 16. Defendant therefore does not seek relief under the Servicemembers Civil Relief Act, 50 U.S.C. § 3931(g), which requires a court to reopen a default judgment entered against a servicemember during military service, or within 60 days after it ends, on an application filed no later than 90 days after military service ends, if the service materially affected the servicemember's ability to defend and the servicemember has a meritorious or legal defense. Defendant includes this statement so that the record on military status is complete.

**Conclusion and relief requested**

Defendant missed the answer deadline because of a medical emergency, acted in good faith, received no notice of the application for default judgment even after writing to Plaintiff's counsel to dispute the claim, has a documented defense to most of the claim, and moved within days of learning of the judgment. Plaintiff will suffer no prejudice beyond having to prove its case. For these reasons, Defendant respectfully asks the Court to enter an order:

1. vacating the default judgment entered on October 6, 2026 (ECF No. 14);
2. setting aside the Clerk's entry of default entered on September 9, 2026 (ECF No. 9);
3. granting Defendant leave to file the proposed Answer attached as Exhibit A within 14 days after the date of the Court's order;
4. in the alternative, if the Court does not vacate the judgment in full, vacating the award of $9,750.00 in attorney's fees as exceeding the relief demanded in the complaint;
5. before November 5, 2026, approving Defendant's deposit of $25,800.00 with the Clerk of Court, or any other bond or security the Court approves, and staying enforcement of the judgment until the Court decides this motion;

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releasing, or holding in place pending decision, any levy, garnishment or other enforcement step taken on the judgment; and

7. granting any other relief the Court finds just, on such terms as the Court sets.

Dated: October 29, 2026

Respectfully submitted,

**Jordan Avery**
Defendant, appearing pro se
77 Sample Row, Oakland, CA 94610
jordan.avery@example.com
(510) 555-0147

By signing, I certify that to the best of my knowledge, information and belief, formed after reasonable inquiry, the factual statements in this motion have evidentiary support, and the denials in the proposed Answer are warranted on the evidence.

**DEFENDANT'S DISCLOSURE STATEMENT UNDER FED. R. CIV. P. 7.1(a)(2) AND CERTIFICATION OF CONFLICTS, INTERESTED ENTITIES AND PERSONS, AND CITIZENSHIP UNDER CIVIL L.R. 3-15**

Defendant **Jordan Avery** ("Defendant") files this disclosure statement and certification, as a separate document, with Defendant's first appearance in this action and states:

1. The Complaint invokes the Court's jurisdiction on the basis of diversity of citizenship under 28 U.S.C. § 1332(a).

2. Defendant is an individual. On July 20, 2026, when this action was filed, and on the date of this statement, Defendant was and is domiciled in, and a citizen of, the State of California.

3. Avery Landscape Services is the trade name of a sole proprietorship that Defendant owns. It is not a corporation, limited liability company, partnership or other separate entity. No other individual's or entity's citizenship is attributed to Defendant.

4. Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, there is no conflict or interest (other than the named parties) to report.

5. Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, the citizenship of the following individuals or entities is attributed to the party submitting this certification: Jordan Avery, citizen of the State of California.

6. If any of the information in this statement and certification changes, Defendant will promptly file a supplemental statement and certification.

Dated: October 29, 2026

**Jordan Avery**
Defendant, appearing pro se
77 Sample Row, Oakland, CA 94610
jordan.avery@example.com

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(510) 555-0147

**DECLARATION OF Jordan Avery IN SUPPORT OF MOTION TO VACATE DEFAULT JUDGMENT AND SET ASIDE ENTRY OF DEFAULT**

I, Jordan Avery, declare:

1. I am the Defendant in this action. I am over 18 years of age. I make this declaration from personal knowledge, and if called as a witness I could and would testify to these facts.

2. I run a landscaping and irrigation business under the trade name Avery Landscape Services. I own it myself as a sole proprietor. It is not a corporation or a limited liability company.

3. In March 2026, Plaintiff delivered irrigation pumps and parts to my business, billed on six invoices numbered NS-3314 through NS-3319.

4. The shipments billed on invoices NS-3317 and NS-3318 contained the wrong pump models. Plaintiff issued return authorization RMA-2207, and I shipped those goods back. On April 14, 2026, Plaintiff's sales department confirmed by email that it had received them. A true and correct copy of the return authorization and of that email is attached as Exhibit E.

5. I paid $8,000.00 toward invoice NS-3319 by check No. 1047 dated May 4, 2026. Plaintiff deposited the check. A true and correct copy of my bank statement showing that the check cleared is attached as Exhibit F, with the account number redacted to its last four digits, 4417. Two pumps delivered on invoice NS-3316 stopped working within the warranty period, and Plaintiff has not replaced them.

6. On July 1, 2026, I moved out of the apartment at 1410 Example Court, Apt. 3, Oakland, CA 94607 and into my current home at 77 Sample Row, Oakland, CA 94610. I filed a change-of-address request with the Postal Service the same week, and from then on my mail was forwarded to my current home. A true and correct copy of the Postal Service confirmation is attached as Exhibit D. As I explain in paragraph 10, papers mailed to the old apartment in September did not reach me.

7. I was not personally handed the summons and complaint. I have never authorized anyone to accept legal papers for me. The person described in Plaintiff's proof of service as "John Doe, co-occupant, approx. 40 years old" is the tenant who moved into my old apartment after I left. That person's name is Robin Sample, and the lease of the apartment began on July 5, 2026. I did not know Robin Sample before that, and Robin Sample has never lived with me. Robin Sample signed a declaration under penalty of perjury confirming these facts and attached the first page of the lease, with the rent redacted. A true and correct copy of that declaration and lease page is attached as Exhibit I. On August 10, 2026, when I went to the old apartment to collect misdirected mail, the new tenant gave me an envelope containing the summons and complaint. That is the first time I saw them.

8. I intended to respond to the lawsuit. On August 10, 2026 I called two law offices to ask about representation. Neither could take the case that week.

9. On August 12, 2026, I was taken to the emergency department and admitted to the hospital for emergency abdominal surgery and the complications that followed. I was discharged on August 21, 2026 with my doctor's orders to stay at home, rest, and not work, and I took prescription pain medication during that time. My doctor cleared me to return to work on September 18, 2026. A true and correct copy of my doctor's letter confirming these dates is attached as Exhibit B, and a copy of

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the first page of my hospital discharge summary, with personal identifiers redacted, is attached as Exhibit C.

10. I did not receive Plaintiff's request for entry of default or the Clerk's entry of default. I understand from the docket that they were mailed to my old apartment. I have checked all the mail that was forwarded to my home between September 2, 2026 and October 19, 2026, and it contained no papers from Plaintiff or the Court. When I later asked Robin Sample, I learned that mail addressed to me that arrived at the old apartment in September was returned to the sender or not passed on to me.

11. On September 24, 2026, after my doctor cleared me to work, I emailed Plaintiff's counsel. I explained my surgery, said that I disputed the amount because of the returned goods and my payment, and asked for time to find a lawyer and respond. I did not receive a reply. Plaintiff's counsel never warned me that Plaintiff had applied, or would apply, for a default judgment, and I never received written notice of Plaintiff's application for default judgment. A true and correct copy of my email is attached as Exhibit H.

12. On October 1, 2026, I met with a volunteer at a free legal clinic. The volunteer told me the clinic could not take my case but would put me on a waiting list for a referral.

13. I first learned that a default and a default judgment had been entered against me on October 19, 2026, when Plaintiff's counsel sent Defendant a letter demanding payment of the judgment and stating that Plaintiff would seek a levy on Defendant's bank account. A true and correct copy of that letter is attached as Exhibit G.

14. After receiving that letter, I obtained the docket and the judgment from the Clerk's office and prepared this motion, this declaration and the proposed Answer as quickly as I could.

15. My business has two employees. A levy on my business bank account would leave me unable to pay them and to buy materials for jobs I have already agreed to do. I am able to deposit $25,800.00 with the Clerk of Court within seven days if the Court orders it.

16. I am not, and have not been at any time during this lawsuit, in military service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 29, 2026.

**Jordan Avery**

**INDEX OF EXHIBITS**

Exhibit A: Defendant's proposed Answer and affirmative defenses.

Exhibit B: Letter from Defendant's treating physician confirming the dates of hospitalization and home recovery, August 12, 2026 to September 18, 2026.

Exhibit C: First page of the hospital discharge summary dated August 21, 2026, with personal identifiers redacted.

Exhibit D: Postal Service change-of-address confirmation showing the move from 1410 Example Court, Apt. 3, Oakland, CA 94607 effective July 1, 2026.

Exhibit E: Plaintiff's return authorization RMA-2207 and Plaintiff's email of April 14, 2026 confirming receipt of the returned goods billed on invoices NS-3317 and NS-3318.

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Exhibit F: Defendant's bank statement showing that check No. 1047 dated May 4, 2026, for $8,000.00, cleared (account number redacted to the last four digits, 4417).

Exhibit G: Letter from Plaintiff's counsel received on October 19, 2026 demanding payment of the judgment.

Exhibit H: Defendant's email to Plaintiff's counsel dated September 24, 2026.

Exhibit I: Declaration of Robin Sample, the tenant of the apartment at 1410 Example Court, Apt. 3, Oakland, CA 94607, under 28 U.S.C. § 1746, stating that Robin Sample is the person described in the proof of service as "John Doe, co-occupant, approx. 40 years old," that the lease began on July 5, 2026, and that Defendant has never lived with Robin Sample, with the first page of the lease attached (rent redacted).

All exhibits have been redacted so that they show no more than the last four digits of any social-security, taxpayer-identification or financial-account number, the year of any person's birth, and the initials of any minor.

**EXHIBIT A**

**DEFENDANT'S [PROPOSED] ANSWER AND AFFIRMATIVE DEFENSES**

Defendant **Jordan Avery** ("Defendant") answers the Complaint (ECF No. 1) of Plaintiff **Northwind Supply LLC** ("Plaintiff") as follows. Each response below answers the paragraph of the Complaint with the number given. Any allegation that is not expressly admitted below is denied.

**Responses to the allegations**

1. Answering paragraph 1, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about Plaintiff's organization, members and citizenship, and therefore denies them.

2. Answering paragraph 2, Defendant admits that Defendant is an individual who does business as Avery Landscape Services. Defendant denies that Defendant resided at 1410 Example Court, Apt. 3, Oakland, CA 94607 on or after July 1, 2026.

3. Answering paragraphs 3 and 4, these paragraphs state legal conclusions about jurisdiction and venue, to which no response is required. To the extent a response is required, Defendant does not contest the Court's subject-matter jurisdiction or venue on the present record, and expressly preserves the defense of insufficient service of process stated below.

4. Answering paragraph 5, Defendant admits that in March 2026 Plaintiff delivered irrigation pumps and parts to Defendant billed on invoices numbered NS-3314 through NS-3319.

5. Answering paragraph 6, Defendant admits that the face value of those six invoices totals $86,400.00. Defendant denies that this sum, or any sum greater than the balance remaining after the credits described below, is owed.

6. Answering paragraph 7, which alleges that Defendant kept all goods delivered, Defendant denies the allegations. Defendant returned the goods billed on invoices NS-3317 and NS-3318, worth $52,600.00, under Plaintiff's return authorization RMA-2207, and Plaintiff confirmed receipt on April 14, 2026.

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Answering paragraph 8, which alleges that Defendant made no payment, Defendant denies the allegations. Defendant paid $8,000.00 toward invoice NS-3319 by check No. 1047 dated May 4, 2026, and Plaintiff deposited the payment.

8. Answering paragraph 9, Defendant admits that Plaintiff sent Defendant written demands for payment. Defendant denies that the amounts demanded were owed.

9. Answering paragraphs 10 through 14, which allege that Defendant breached the parties' agreement and owes Plaintiff $86,400.00, Defendant denies the allegations.

10. Answering the Prayer for Relief, Defendant denies that Plaintiff is entitled to any of the relief requested, and specifically denies that Plaintiff is entitled to attorney's fees, which the Complaint does not demand.

**Affirmative and other defenses**

Without assuming any burden of proof that the law places on Plaintiff, Defendant states the following defenses.

**First defense: insufficient service of process.** Plaintiff did not serve the summons and complaint on Defendant by any method permitted by Fed. R. Civ. P. 4(e). The papers were left at 1410 Example Court, Apt. 3, Oakland, CA 94607, which was not Defendant's dwelling or usual place of abode on August 3, 2026, with a person who did not reside with Defendant. Defendant asserts this defense under Fed. R. Civ. P. 12(b)(5) and does not waive it.

**Second defense: return and acceptance of goods.** Plaintiff authorized and accepted the return of the goods billed on invoices NS-3317 and NS-3318, worth $52,600.00, and cannot recover their price.

**Third defense: payment.** Defendant paid $8,000.00 toward the amounts claimed, and any recovery must be reduced by that payment.

**Fourth defense: breach of warranty and setoff.** Two pumps delivered on invoice NS-3316 failed within the warranty period, and Plaintiff did not replace them as promised. Defendant is entitled to set off the resulting damages against any amount found owing.

**Fifth defense: relief limited to the pleadings.** Plaintiff did not demand attorney's fees in its Complaint and is not entitled to them on the Complaint as pleaded.

Defendant reserves the right to amend this Answer to add defenses that become known through discovery, as the rules permit.

**Prayer**

Defendant asks that Plaintiff take nothing beyond any amount it proves is actually owing after credit for the returned goods, the payment and any setoff; that Plaintiff's request for attorney's fees be denied; and that the Court grant Defendant any other relief it finds just.

Dated: October 29, 2026

**Jordan Avery**
Defendant, appearing pro se
77 Sample Row, Oakland, CA 94610

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jordan.avery@example.com
(510) 555-0147

**[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION TO VACATE DEFAULT JUDGMENT AND SET ASIDE ENTRY OF DEFAULT**

The Court has considered Defendant **Jordan Avery**'s Motion to Vacate Default Judgment and Set Aside Entry of Default, the supporting declaration and exhibits, any opposition and reply, and the record in this action. Good cause appearing, and the Court finding that Defendant has shown excusable neglect under Fed. R. Civ. P. 60(b)(1), a meritorious defense, and the absence of prejudice to Plaintiff, IT IS ORDERED that:

1. The motion is GRANTED.
2. The default judgment entered on October 6, 2026 (ECF No. 14) is VACATED.
3. The Clerk's entry of default entered on September 9, 2026 (ECF No. 9) is SET ASIDE.
4. Defendant shall file and serve an answer or other response to the Complaint within 14 days after the date of this order.
5. Any writ of execution, levy, garnishment or other proceeding to enforce the vacated judgment is DISSOLVED, and any funds held under it shall be released to Defendant, unless the Court orders otherwise.
6. Any deposit made by Defendant with the Clerk of Court under the Court's stay order shall be held pending further order of the Court.

IT IS SO ORDERED.

Dated: [date of entry]

[Signature of the United States District Judge]

**[PROPOSED] ORDER APPROVING SECURITY AND STAYING ENFORCEMENT PENDING DECISION**

The Court has considered the request of Defendant **Jordan Avery**, made in the Motion to Vacate Default Judgment and Set Aside Entry of Default, for a stay of enforcement of the judgment until the Court decides that motion, and the supporting declaration. Under Fed. R. Civ. P. 62(b), a party may obtain a stay by providing a bond or other security, and the stay takes effect when the court approves the bond or other security. IT IS ORDERED that:

1. Defendant shall deposit $25,800.00 with the Clerk of Court as security within seven days after the date of this order.
2. On the Clerk's receipt of that deposit, the Court approves it as security under Fed. R. Civ. P. 62(b), and execution on the judgment entered on October 6, 2026 (ECF No. 14) and all proceedings to enforce it are STAYED until the Court enters its order deciding Defendant's motion.
3. If Defendant does not make the deposit within seven days after the date of this order, the stay in paragraph 2 does not take effect, unless the Court orders otherwise.

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The Clerk shall hold the deposit pending further order of the Court.

IT IS SO ORDERED.

Dated: [date of entry]

[Signature of the United States District Judge]

**CERTIFICATE OF SERVICE**

I certify that on October 29, 2026, I served true and correct copies of the following papers:

1. Defendant's Notice of Motion and Motion to Vacate Default Judgment and Set Aside Entry of Default, with the Memorandum of Points and Authorities;
2. Defendant's Motion to Shorten Time under Civil L.R. 6-3, with the supporting declaration and proposed order;
3. Defendant's Disclosure Statement under Fed. R. Civ. P. 7.1(a)(2) and Certification of Conflicts, Interested Entities and Persons, and Citizenship under Civil L.R. 3-15;
4. the Declaration of Jordan Avery, with Exhibits B through I;
5. the proposed Answer and Affirmative Defenses (Exhibit A); and
6. the proposed orders;

on Plaintiff **Northwind Supply LLC**, the only other party to this action, by placing them in a sealed envelope with first-class postage fully prepaid and depositing it in the United States mail, addressed to Plaintiff's counsel of record at counsel's last known address:

Taylor Brennick, Esq., Brennick Vale LLP
200 Example Plaza, Suite 900, San Francisco, CA 94105

On the same day, as Civil L.R. 6-3(c) requires, I also delivered the Motion to Shorten Time, its supporting declaration and its proposed order to Plaintiff's counsel by leaving copies at counsel's office at 200 Example Plaza, Suite 900, San Francisco, CA 94105 with a clerk or other person in charge.

I am not registered to file or serve papers through the Court's electronic-filing system, so I filed the originals with the Clerk of Court in paper form on the same day. As a courtesy, I also sent a copy of the papers by email to tbrennick@example.com on October 29, 2026. That email is not the method of service relied on in this certificate.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 29, 2026.

**Jordan Avery**

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