

_____, Case No. _____
Plaintiff,
vs.

_____,
Defendant.

**ORDER ON MOTION TO
SET ASIDE DEFAULT
JUDGMENT
AND APPLICATION
FOR NEW TRIAL**

This matter comes before the court upon the _____ defendant's _____ plaintiff's Motion to Set Aside the Default Judgment entered against them, and to set a new trial.

Review of the record shows that the Default Judgment was entered on _____.

The Motion to Set Aside the Default Judgment was filed more than 10 days after the entry of the default judgment. This Motion is set for hearing on _____

at _____ .m. in _____
County Courtroom # _____.

The Motion to Set Aside the Default Judgment was filed less than 10 days after the entry of the default judgment. Upon review of the court file and the defendant's Motion:

The Default Judgment is hereby set aside. Trial to the court is scheduled for _____ at _____ .m. in _____

County Courtroom # _____.

The defendant's request to set aside the judgment is denied.

Dated: _____

BY THE COURT:

Certificate of Service

I certify that on _____, I have mailed a copy of this Order on the defendant's Motion to Set Aside Default Judgment and Application for New Trial to the parties in this case or their attorney(s). Their name(s) and address(es) are listed below:

Name:

Address:

Dated: _____ For the Court: _____

25-2804 (7) For a default judgment rendered by a Small Claims Court (a) the default judgment may be appealed as provided in section [25-2807](#), (b) if a motion for a new trial, by the procedure provided in sections [25-1142](#), [25-1144](#), and [25-1144.01](#), is filed ten days or less after entry of the default judgment, the court may act upon the motion without a hearing, or (c) if more than ten days have passed since the entry of the default judgment, the court may set aside, vacate, or modify the default judgment as provided in section [25-2720.01](#). Parties may be represented by attorneys for the purpose of filing a motion for a new trial or to set aside, vacate, or modify a default judgment.

25-1142. New trial, defined; grounds.

A new trial is a reexamination in the same court of an issue of fact after a verdict by a jury, report of a referee, or a trial and decision by the court. The former verdict, report, or decision shall be vacated and a new trial granted on the application of the party aggrieved for any of the following causes affecting materially the substantial rights of such party: (1) Irregularity in the proceedings of the court, jury, referee, or prevailing party or any order of the court or referee

or abuse of discretion by which the party was prevented from having a fair trial; (2) misconduct of the jury or prevailing party; (3) accident or surprise, which ordinary prudence could not have guarded against; (4) excessive damages, appearing to have been given under the influence of passion or prejudice; (5) error in the assessment of the amount of recovery, whether too large or too small, if the action is upon a contract or for the injury or detention of property; (6) that the verdict, report, or decision is not sustained by sufficient evidence or is contrary to law; (7) newly discovered evidence, material for the party applying, which the moving party could not, with reasonable diligence, have discovered and produced at the trial; and (8) error of law occurring at the trial and excepted to by the party making the application.

25-1144. New trial; motion; form.

The application for a new trial shall be by motion, upon written grounds, filed at the time of making the motion. It shall be sufficient, however, in assigning the grounds of the motion to assign the same in the language of the statute and without further or other particularity. The causes enumerated in subdivisions (2), (3), and (7) of section [25-1142](#) shall be sustained by affidavits showing their truth and may be controverted by affidavits.