

| | |
|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY OR GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406) <i>(Name, State Bar number, and address):</i> TELEPHONE NO: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____ | FOR COURT USE ONLY <h2 style="margin: 0;">Draft 8</h2> <h2 style="margin: 0;">2/01/05</h2> <h2 style="margin: 0;">1000 hrs</h2> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT: | |
| NOTICE OF MOTION TO SET ASIDE JUDGMENT OF PATERNITY | CASE NUMBER: _____ |

1. To: Petitioner Respondent Local Child Support Agency Other (specify): _____
2. A hearing on the motion for the relief requested will be held as follows:

| | | | |
|----------------|-------------|--------------------------------|-------------------------------|
| a. Date: _____ | Time: _____ | Dept: <input type="checkbox"/> | Rm.: <input type="checkbox"/> |
|----------------|-------------|--------------------------------|-------------------------------|

b. Address of court same as noted above other (specify): _____

3. I declare and request as follows (List all children on the paternity judgment):

| <u>Name of Child</u> | No Relief Required | Order Genetic Testing | Paternity Judgment Entered | Date/County Filed | Declaration of Paternity Signed |
|----------------------|--------------------------|-----------------------------|----------------------------------|-------------------|---------------------------------------|
| a. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> |
| b. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> |
| c. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> |
| d. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> |
| e. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> |
| f. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> |
| g. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> |
| h. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> |

i. additional children are listed on a page attached to this notice.

4. I request that the court find the previously established father is not the biological father of the children for whom genetic testing is requested.
5. I request that the court set aside any voluntary declaration of paternity or judgment of paternity, and all child support and unpaid arrearage orders concerning any children listed above for whom genetic testing is being requested, and enter a judgment of nonpaternity.

Other (specify): _____

6. A local child support agency is providing services in this case.

NOTICE FOR CASES INVOLVING A LOCAL CHILD SUPPORT AGENCY

This case may be referred to a court commissioner for hearing. By law, court commissioners do not have the authority to issue final orders and judgments in contested cases unless they are acting as temporary judges. The court commissioner in your case will act as a temporary judge unless, *before the hearing*, you or any other party objects to the commissioner acting as a temporary judge. The court commissioner may still hear your case to make findings and a recommended order. If you do not like the recommended order, you must object to it within 10 court days; otherwise, the recommended order will become a final order of the court. If you object to the recommended order, a judge will make a temporary order and set a new hearing.

| | |
|-----------------------|--------------|
| PETITIONER/PLAINTIFF: | CASE NUMBER: |
| RESPONDENT/DEFENDANT: | |
| OTHER PARENT: | |

7. The judgment of paternity has been registered in the following states and counties (*specify*):

State County Court Case Number

8. I desire that my requests in this motion be granted.

9. The marital presumption contained in Family Code section 7540 does not apply.

10. I request that the court appoint a guardian ad litem for each child subject to this motion.

11. Other (*specify*):

12. Number of pages attached: _____

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

Date:

 (TYPE OR PRINT NAME)

▲ _____
 (SIGNATURE OF PERSON REQUESTING THESE ORDERS)

| | |
|---|--------------|
| PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT: | CASE NUMBER: |
|---|--------------|

ATTACHMENT

(Attach a copy of this page for each additional child.)

1. The orders requested are for the following child. The legal name, home address, date of birth (DOB), and county of residence are *(if unknown, write "unknown")*:

Child's name: _____ DOB: _____
 Address: _____
 County of residence: _____

2. The name, mailing address, and county of residence, or, if deceased, the date and place of death, of the following persons are *(if unknown, write "unknown")*:

Previously Established Father

Name: _____
 Address: _____
 County of residence: _____
 Deceased Date of death: _____
 Place of death: _____

Biological Father Same as above

Name: _____
 Address: _____
 County of residence: _____
 Deceased Date of death: _____
 Place of death: _____

Guardian of the Child

Name: _____
 Address: _____
 County of residence: _____
 Deceased Date of death: _____
 Place of death: _____

Guardian Ad Litem of the Child

Name: _____
 Address: _____
 County of residence: _____
 Deceased Date of death: _____
 Place of death: _____

Previously Established Mother

Name: _____
 Address: _____
 County of residence: _____
 Deceased Date of death: _____
 Place of death: _____

Biological Mother Same as above

Name: _____
 Address: _____
 County of residence: _____
 Deceased Date of death: _____
 Place of death: _____

Person With Custody of the Child

Name: _____
 Address: _____
 County of residence: _____
 Deceased Date of death: _____
 Place of death: _____

Other (specify):

Name: _____
 Address: _____
 County of residence: _____
 Deceased Date of death: _____
 Place of death: _____

3. In support of the attached request, I declare:

a. I believe the previously established father is not the biological father of the child. The specific reasons for this belief are:

Included in an attached declaration.

b. There is is not another judgment of paternity in a different case for the same previously established father and child. The other court case number is *(specify case number, state, and county of court)*:

A copy of the other judgment is is not attached. *(If not attached, explain why.)*

c. Other *(specify)*:

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

Date: _____

 (TYPE OR PRINT NAME)

 (SIGNATURE OF PERSON REQUESTING THESE ORDERS)

| | |
|---|--------------|
| PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT: | CASE NUMBER: |
|---|--------------|

COMPLETE THIS SECTION ONLY IF THERE IS A VOLUNTARY DECLARATION OF PATERNITY.

4. The previously established father has signed a voluntary declaration of paternity for the child involved.
- a. A copy of the voluntary declaration of paternity is is not attached. *(If not attached, explain why.)*
- b. There is is not an order for child support, custody, or visitation based on the voluntary declaration of paternity, initially filed on *(date)*: _____ in *(specify state and county)*: _____
A copy of the order is is not attached. *(If not attached, explain why.)*
- c. The grounds for setting aside the voluntary declaration of paternity are *(check all boxes that apply)*:
- (1) No more than 2 years have passed since the date of birth of the child.
- (2) No more than 6 months have passed since the date of the initial order for child support, custody, or visitation based on the voluntary declaration of paternity and there is a mistake of fact or law, inadvertence, surprise, or excusable neglect regarding the signing of the voluntary declaration of paternity.
- (3) No more than 6 months have passed since the discovery of fraud or perjury regarding the signing of the voluntary declaration of paternity.
- (4) Other *(specify)*:

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

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF PERSON REQUESTING THESE ORDERS)

**INFORMATION SHEET FOR COMPLETING
NOTICE OF MOTION TO SET ASIDE JUDGMENT OF PATERNITY**

**NOTICE:
YOU MUST CONTINUE PAYING SUPPORT DURING THE PENDENCY OF THIS ACTION.**

Use this motion to set aside (vacate) an existing paternity judgment. If there is also a corresponding voluntary declaration of paternity, this motion may also be used to set aside the voluntary declaration of paternity. The voluntary declaration of paternity and/or judgment of paternity may only be set aside if the previously established father is determined by genetic testing not to be the biological father of the child. (Even if the motion can be brought as described below, there may be other grounds to set aside the paternity judgment or other related relief may be available. You may wish to consult with an attorney or the family law facilitator.) In addition to this motion, you may file a separate motion to modify child support and set arrears. For information on changing the support order, see *Information Sheet on Changing a Child Support Order* (form FL-192, page 2).

The following persons may bring this motion:

- A previously established mother,
- A previously established father,
- A child,
- A legal representative of any of the above persons, or
- A Local Child Support Agency (LCSA).

This motion must be brought within the following time frames:

- (1) Within a two-year period commencing with the date:
 - (a) on which the previously established father knew or should have known of a judgment that established him as the father of the child (for example, the date a wage garnishment was served), or
 - (b) on which the previously established father knew or should have known of the existence of an action to adjudicate the issue of paternity (for example, the date of service of a summons),

whichever is first, except as provided in paragraph (2) or (3) below.
- (2) Within a two-year period commencing with the date of the child's birth if paternity was established by a voluntary declaration of paternity.
- (3) In the case of any previously established father who is the legal father as a result of a default judgment as of January 1, 2005, within a two-year period after the enactment of Assembly Bill 252.

This motion *may not* be brought if any of the following conditions apply:

The paternity judgment resulted from a marital dissolution, legal separation, or nullity action.

The marital presumption contained in Family Code section 7540 applies.

There is a voluntary declaration of paternity and there is no basis to set aside the voluntary declaration of paternity.

There is another California judgment of paternity in a different case for the same previously established father and child, unless both paternity judgments qualify for this motion and you filed a motion in each case.

The paternity judgment was not issued in California.

The paternity judgment is based on genetic tests that were conducted prior to the judgment and that indicated the previously established father is the biological father of the child.

The judgment is based on an adoption.

The child was conceived by artificial insemination, and the judgment is based on Family Code section 7613.

The child was conceived under a surrogacy agreement.

The completed motion and a blank *Response to Notice of Motion to Set Aside Judgment of Paternity* (form FL-276) must be served on the following, if applicable:

Previously established mother,
Previously established father,
The child's guardian ad litem, if any, and
The LCSA if it is providing services.

GENETIC TESTING

In most cases, genetic tests will be required. If LCSA is providing services, the LCSA will pay for and coordinate the genetic testing.

If you receive an administrative order for genetic testing from the LCSA, you may file a motion with the court seeking relief from the LCSA genetic testing order. However, the court may order participation in genetic testing.

If any person refuses to submit to genetic testing after receipt of the LCSA order for genetic testing, or fails to seek relief from the court prior to the scheduled test date or within 10 days after the scheduled test date, the court may resolve the question of paternity against that person or enforce the LCSA order if the rights of others or the interest of justice so require.

The moving party is not required to present evidence of a paternity test indicating that the previously established father is not the biological father of the child in order to bring this motion.

ADDITIONAL INFORMATION

A guardian ad litem may be appointed by the court to represent the best interest of the child.

If the previously established father is found to be the biological father of the child, then the court may still deny this motion if it determines it is in the best interest of the child to do so.

If the court grants this motion to set aside the paternity judgment, the previously established father has no right of reimbursement of any support paid prior to the granting of the motion.

To obtain information about or a copy of a declaration of paternity in your case, contact:

Your Local Child Support Agency
A family law facilitator

California Department of Child Support Services — POP Unit at:

P.O. Box 419064
Rancho Cordova, CA 95741-9064
Telephone (toll-free): 866-249-0773

| | |
|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY OR GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406) <i>(Name, State Bar number, and address):</i> TELEPHONE NO: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____ | FOR COURT USE ONLY <h2 style="margin: 0;">Draft 8</h2> <h2 style="margin: 0;">2/01/05</h2> <h2 style="margin: 0;">1000 hrs</h2> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT: | |
| RESPONSE TO NOTICE OF MOTION TO SET ASIDE JUDGMENT OF PATERNITY | |
| HEARING DATE: _____ TIME: _____ DEPT., ROOM, OR DIVISION: _____ | CASE NUMBER: _____ |

1. My position on the facts regarding paternity as alleged in the motion to set aside the judgment and voluntary declaration of paternity, if a declaration was filed regarding the following children is:

- | | <u>Name of Child</u> | | <u>Date of Birth</u> |
|----|--|--|----------------------|
| a. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| b. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| c. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| d. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| e. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| f. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| g. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| h. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| i. | <input type="checkbox"/> Additional children are listed on a page attached to this response. | | |

2. My position on genetic testing of the following children is:

- | | <u>Name of Child</u> | | <u>Date of Birth</u> |
|----|--|--|----------------------|
| a. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| b. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| c. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| d. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| e. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| f. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| g. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| h. | <input type="checkbox"/> Agree <input type="checkbox"/> Disagree | | |
| i. | <input type="checkbox"/> Additional children are listed on a page attached to this response. | | |

3. I agree disagree with the request to appoint a guardian ad litem for each of the children subject to this request.

4. The motion is not complete *(specify)*:

5. The motion is not timely *(specify)*:

6. The motion is not proper because *(specify)*:

| | |
|---|--------------|
| PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT: | CASE NUMBER: |
|---|--------------|

7. The facts in support of this response are:
- a. The paternity judgment resulted from a marital dissolution, legal separation, or nullity action.
 - b. The marriage presumption contained in Family Code section 7540 applies.
 - c. The paternity judgment was not issued in California.
 - d. There is another California judgment of paternity in a different case for the same previously established father and child.
 - e. There is a voluntary declaration of paternity and there is no basis to set it aside.
 - f. Genetic tests were conducted prior to the judgment that indicated the previously established father is the biological father of the child.
 - g. The paternity judgment is based on an adoption.
 - h. The child was conceived by artificial insemination and the paternity judgment is based on Family Code section 7613.
 - i. The child was conceived under a surrogacy agreement.
 - j. The motion is not in the best interest of the child because *(specify)*:

 - k. Other *(specify)*:
8. Contained in the attached declaration.
9. Number of pages attached: _____

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

(PRINT NAME)

▶ _____
(SIGNATURE OF DECLARANT)

| | |
|-----------------------|--------------|
| PETITIONER/PLAINTIFF: | CASE NUMBER: |
| RESPONDENT/DEFENDANT: | |
| OTHER PARENT: | |

4. Other (*specify*):

THE COURT ORDERS

5. All orders previously made in this action will remain in full force and effect except as specifically modified below.

| Name of Child | Date of Birth | Judgment of Paternity Set Aside | | Voluntary Declaration of Paternity Set Aside | |
|---------------|---------------|---------------------------------|-----------------------------|--|-----------------------------|
| | | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| a. | | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| b. | | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| c. | | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| d. | | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| e. | | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| f. | | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| g. | | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| h. | | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

All child support and arrearage orders concerning each child for whom a previous judgment of paternity that has been set aside are vacated. The previously established father has no right to reimbursement for any child support paid before the set aside of the judgment/voluntary declaration of paternity.

i. A judgment of nonpaternity is granted with respect to the following children (*specify*):

j. The motion is denied, based upon the best interest of the child with regard to the following children (*specify*):

6. For the children named in item 5j, the court denies the motion to set aside because of (*check all that apply*):

a. the age of the child (*specify*):

b. the length of time since the entry of the judgment establishing paternity (*specify*):

c. the nature, duration, and quality of the relationship between the previously established father and the child, including the duration and frequency of any time periods during which the child and the previously established father resided in the same household or enjoyed a parent-child relationship (*specify*):

d. the fact that the previously established father has requested that the parent-child relationship continue (*specify*):

e. the fact that the biological father of the child does not oppose preservation of the relationship between the previously established father and the child.

f. the fact that there would be a detriment to the child if biological parentage was established (*specify*):

| | |
|---|--------------|
| PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT: | CASE NUMBER: |
|---|--------------|

6. g. the fact that the previously established father has hindered the ability to discover the identity of, or get support from, the biological father (*specify*):

h. other factors concerning the best interest of the child (*specify*):

7. If this order vacates/sets aside a voluntary declaration of paternity, the court clerk must send a copy of this order to the California Department of Child Support Services at (*specify address*):





8. The court further orders (*specify*):

Date:

JUDICIAL OFFICER

Number of pages attached: _____

SIGNATURE FOLLOWS LAST ATTACHMENT

| |
|---|
| Approved as conforming to court order: Date:  |
| SIGNATURE OF ATTORNEY FOR (<i>specify</i>): <input type="checkbox"/> PETITIONER/PLAINTIFF <input type="checkbox"/> RESPONDENT/DEFENDANT <input type="checkbox"/> OTHER |
| Approved as conforming to court order: Date:  |
| SIGNATURE OF ATTORNEY FOR (<i>specify</i>): <input type="checkbox"/> PETITIONER/PLAINTIFF <input type="checkbox"/> RESPONDENT/DEFENDANT <input type="checkbox"/> OTHER |
| Approved as conforming to court order: Date:  |
| SIGNATURE OF ATTORNEY FOR (<i>specify</i>): <input type="checkbox"/> PETITIONER/PLAINTIFF <input type="checkbox"/> RESPONDENT/DEFENDANT <input type="checkbox"/> OTHER |
| Approved as conforming to court order: Date:  |
| SIGNATURE OF ATTORNEY FOR (<i>specify</i>): <input type="checkbox"/> PETITIONER/PLAINTIFF <input type="checkbox"/> RESPONDENT/DEFENDANT <input type="checkbox"/> OTHER |