

1 Name, Address and Telephone Number

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4 \_\_\_\_\_  
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6  Attorney for Parent  Self-Represented Parent

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF \_\_\_\_\_

11 In the Matter of the Guardianship of )  
12 \_\_\_\_\_, a Minor )

Case No. \_\_\_\_\_  
*Insert Existing Case Number*

13 NOTICE OF MOTION AND MOTION TO  
14 VACATE EX PARTE AWARD OF GUARDIAN  
15 SHIP – PENDING THE HEARING  
16 (Probate Code § 1511)  
17 Hearing Date \_\_\_\_\_  
Time \_\_\_\_\_  
Department:  Family Law  Probate

18 **To** \_\_\_\_\_ [and to \_\_\_\_\_ his or her attorney of  
19 record:] **NOTICE IS HEREBY GIVEN** that, on \_\_\_\_\_, at \_\_\_\_\_, or as soon  
20 thereafter as the matter may be heard, in Department or Courtroom # \_\_\_\_\_ of this Court,  
21 located at \_\_\_\_\_ in \_\_\_\_\_, California

22 \_\_\_\_\_ will, and hereby does, move for an order vacating the  
23 *ex parte* award of emergency guardianship that was awarded *without notice* pursuant to the non-notice  
24 provisions of Probate Code section 1511, subdivisions (g)(2) and (h)(2). The motion will be based on  
25 the grounds that neither of the statutory exceptions to the requirement of giving the  Mother  Father  
26 notice (Prob. Code §1511, subs. (g)(1) or (g)(2)) existed – and that the Court will be in agreement with  
27 the Parent that *notice was in fact necessary* when the Parent’s declaration(s) are included in the record.

28 Dated: \_\_\_\_\_

1 Respectfully submitted,

2 \_\_\_\_\_  
3 Signature

4 \_\_\_\_\_  
5 Name

6  
7 STATEMENT OF FACTS

8  
9 The relationship of the disputing parties in the instant proceeding is Mother Father and  
10 Maternal Paternal Grandmother Grandfather.

11 There is no related case.

12 There is a related case.

13 In the related case, case number FL \_\_\_\_\_, the Judge in family court made orders,  
14 granting  sole legal  primary physical  sole physical custody of the child(ren) to the  
15 Mother Father. Personal Conduct (i.e. Restraining) Orders restraining the  Mother   
16 Father from committing one or more acts are are not made a part of these orders. Pursuant  
17 to the current orders, the Mother Father has does not have joint legal custody. The  
18 Mother's Father's timeshare is \_\_\_%.

19 On \_\_\_\_\_, \_\_\_\_\_ (the child(ren)'s maternal paternal  
20 grandmother grandfather applied for, and received, orders granting her emergency guardianship of  
21 the child(ren) - without the requirement of first giving the Mother Father notice of her ex parte  
22 application for these orders.

23 Mother Father acknowledges that, prior to making this motion she he read Probate Code  
24 section 1511. This section reads:

25 (a) Except as provided in subdivisions (f) and (g), at least 15 days before the hearing on  
26 the petition for the appointment of a guardian, notice of the time and place of the hearing  
27 shall be given as provided in subdivisions (b), (c), (d), and (e) of this section. The notice  
28 shall be accompanied by a copy of the petition. The court shall not shorten the time for  
giving the notice of hearing under this section.

1 (b) Notice shall be served in the manner provided in Section 415.10 or 415.30 of the  
2 Code of Civil Procedure, or in any manner authorized by the court, on all of the following  
persons:

3 (1) The proposed ward if 12 years of age or older.

4 (2) Any person having legal custody of the proposed ward, or serving as guardian of the  
5 estate of the proposed ward.

6 (3) The parents of the proposed ward.

7 (4) Any person nominated as a guardian for the proposed ward under Section 1500 or  
8 1501.

9 (c) Notice shall be delivered pursuant to Section 1215 to the addresses stated in the  
petition, or in any manner authorized by the court, to all of the following:

10 (1) The spouse named in the petition.

11 (2) The relatives named in the petition, except that if the petition is for the appointment of  
a guardian of the estate only the court may dispense with the giving of notice to any one  
or more or all of the relatives.

12 (3) The person having the care of the proposed ward if other than the person having legal  
13 custody of the proposed ward.

14 (d) If notice is required by Section 1461 or 1542 to be given to the Director of State  
Hospitals or the Director of Developmental Services or the Director of Social Services,  
15 notice shall be delivered pursuant to Section 1215 as required.

16 (e) If the petition states that the proposed ward is receiving or is entitled to receive  
benefits from the Veterans Administration, notice shall be delivered pursuant to Section  
17 1215 to the office of the Veterans Administration referred to in Section 1461.5.

18 (f) Unless the court orders otherwise, notice shall not be given to any of the following:

19 (1) The parents or other relatives of a proposed ward who has been relinquished to a  
licensed adoption agency.

20 (2) The parents of a proposed ward who has been judicially declared free from their  
21 custody and control.

22 (g) Notice need not be given to any person if the court so orders upon a determination of  
either of the following:

23 (1) The person cannot with reasonable diligence be given the notice.

24 (2) The giving of the notice would be contrary to the interest of justice.

25 (h) Before the appointment of a guardian is made, proof shall be made to the court that  
each person entitled to notice under this section either:

26 (1) Has been given notice as required by this section.

27 (2) Has not been given notice as required by this section because the person cannot with  
28 reasonable diligence be given the notice or because the giving of notice to that person  
would be contrary to the interest of justice.

1 (i) If notice is required by Section 1460.2 to be given to an Indian custodian or tribe,  
2 notice shall be mailed as required.

3 *(Amended by Stats. 2017, Ch. 319, Sec. 30. (AB 976) Effective January 1, 2018.)*

4  
5 APPLICATION OF THE LAW TO THE FACTS

6 This is **YOUR WRITTEN LEGAL ARGUMENT TO THE JUDGE**: Explain *why you win* - why the only  
7 natural conclusion to be reached from the law and the evidence is that you are right and the other side is  
8 wrong.

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23 \_\_\_\_\_

24 WHEREFORE, the undersigned moves to set aside this order on grounds that the statutory  
25 exceptions to Notice do not exist in this case.

26 Respectfully submitted,

27 Dated: \_\_\_\_\_, 2019

28 \_\_\_\_\_  
Signature

1 \_\_\_\_\_  
2 Printed Name

3 **VERIFICATION**

4 (Code Civ. Proc. § 446)

5 I have read the foregoing and know the contents thereof. The same is true of my own knowledge,  
6 except as to the matters which are therein stated on my information or belief, and as to those matters I  
7 believe it to be true. I declare under penalty of perjury under the laws of the State of California that all  
8 of the foregoing, including any attachments, is true and correct of my own personal knowledge, except  
9 as to the matters which are therein stated on my information or belief, and as to those matters I believe it  
10 to be true.  
11

12 Dated: \_\_\_\_\_

13 Respectfully submitted:

14 \_\_\_\_\_  
15 Signature

16 \_\_\_\_\_  
17 Name (Please Print)  
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1 Name, Address and Telephone Number

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6  Attorney for Parent  Self-Represented Parent

7  
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF \_\_\_\_\_  
9

10  
11 In the Matter of the Guardianship of \_\_\_\_\_ ) Case No. \_\_\_\_\_  
12 \_\_\_\_\_, a Minor ) Insert the Case Number  
13 ) ORDER  
14 )  
15 )  
\_\_\_\_\_

16 The motion of \_\_\_\_\_ Your Name for an order vacating and  
17 setting aside the ex parte award of temporary guardianship that was earlier made, without notice,  
18 pursuant to the non-notice provisions of the Probate Code, came on upon an order shortening time for a  
19 hearing by the court on \_\_\_\_\_, \_\_\_\_', \_\_\_\_'.

20 The Parent was Month  present  not present Day Year

21 The Temporary Guardian was  present  not present

22 On proof made to the satisfaction of the court that the motion ought to be  granted or  denied, **IT**  
23 **IS ORDERED** that the motion be, and hereby is,

24 \_\_\_\_\_.

25 Dated \_\_\_\_\_, \_\_\_\_\_,  
26 [Month] [Date] [Year]

27 \_\_\_\_\_  
28 Judge of the Superior Court