

1 **(Firm)**
2 **BY: (Attorney) CSB#**
3 **Address XXXXXXXX**
4 **Phone XXXXXXXX**
5 **Fax XXXXXXXX**

6 **ATTORNEY FOR FATHER, (FATHER)**

7 **SUPERIOR COURT OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF XXX**
9 **SITTING AS THE JUVENILE COURT**

10 **In re:**) **Case No.:**
11 **(MINOR)**) **NOTICE OF MOTION TO RETURN**
12 **DOB: X**) **CASE TO DISPOSITIONAL HEARING**
13)
14 **A minor.**)

15 On X, 2004, in Department X at 10:30 a.m. I ____ attorney for father, (Father) will
16 motion the Superior Court of California, County of ____ sitting as the Juvenile Court to return
17 the case of (Minor), case number ____ to the Dispositional hearing pursuant to defective notice.
18 This motion will be based on the previously filed Points and Authorities and attached supporting
19 declaration regarding the motion to return case to dispositional hearing. The father is motioning
20 the court based on his contention that notice was not properly executed and that the Department
21 did not make reasonable efforts to locate him within the (other state) Department of Corrections
22 System. Therefore the father is requesting that the court grant his motion, vacate the current
23 Welfare and Institutions Code Section 366.26 hearing, and return the case to the dispositional
24 hearing.

25 Respectfully Submitted,

26 **DATED:** _____
27 **ATTORNEY FOR FATHER, (FATHER)**

28 In re: (Minor)
Case No.:

Motion to Return to Dispositional Hearing
Dated: X, 2004

1
2 PROOF OF SERVICE

3 **Case Name: IN RE: (MINOR)**
4 **Court: COUNTY SUPERIOR COURT; JUVENILE DIVISION**
5 **Case No.:**

6 I am a resident of the United States and of the State of California. I am employed in the County
7 of. My business address is. My business telephone number is; fax number is. I am over the age of
8 eighteen years. I am not a party to the within action or proceeding. On, X____,2004, I served the
9 following document(s):

- 10 1. MOTION TO RETURN TO DISPOSITIONAL HEARING
11 2. DECLARATION IN SUPPORT OF MOTION TO RETURN TO DISPOSITIONAL
12 HEARING

13 X by placing, or causing to be placed, a true copy thereof enclosed in a sealed envelope with
14 postage thereon fully prepaid, in the United States mail at, California, addressed as set forth
15 below. (CCP §1012, 1013, & 1013(a))

16 **ADDRESS**

17 X by personally delivering, or causing to be delivered, a true copy thereof to the person(s) at the
18 addresses set forth below. (CCP §1011)

19 **ADDRESS**

20 X by personally delivering, or causing to be delivered, a true copy thereof to the person(s) at the
21 Courthouse in the mailbox located in Room of the mail distribution center.

22 **ADDRESS**

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is
24 true and correct. Executed on X, 2004 at, California.

25 _____
26 NAME

27 In re: (Minor)

Motion to Return to Dispositional Hearing

Dated: X, 2004

28 Case No.:

1 (Firm)
2 BY: (Attorney) CSB#
3 Address XXXXXXXX
4 Phone XXXXXXXX
5 Fax XXXXXXXX

6 ATTORNEY FOR FATHER, (FATHER)

7 SUPERIOR COURT OF CALIFORNIA
8 IN AND FOR THE COUNTY OF X
9 SITTING AS THE JUVENILE COURT

10 In re:) Case No.:
11 (MINOR))
12 DOB:) POINTS AND AUTHORITIES IN
13) SUPPORT OF MOTION TO RETURN
14) CASE TO DISPOSITIONAL HEARING
15) PURSUANT TO DEFECTIVE NOTICE
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FACTUAL BACKGROUND

The child, (Minor) was taken into protective custody on X, 2003. The need listed for detention was the fact that the child's mother, (mother) had a substance abuse problem from which she had failed to rehabilitate which placed the child at risk if placed in her care. The petitions also alleged that the whereabouts of the child's father, (Father) were unknown. In the detention report on page four, the report does not list (Father) as an alleged father; it only lists as alleged fathers, J. and A. In the notices of hearing for the detention hearing the father to (Minor) is listed as unknown. The child's petition filed X, 2003 also lists the father to (Minor) as "unknown."

Between the detention hearing and the jurisdictional hearing set for X 2003, (mother) gave information that (Father) was the father to (Minor) In the jurisdictional report on page four the mother gave information that J. was siblings H's father and that he was currently incarcerated in (other state) for a probation violation. The mother did not know his birth date but indicated

1 that she had known him for a long time and he was arrested right after she became pregnant.
2 Attached to the jurisdictional report is a due diligence search conducted by X of the Department
3 of Health and Human Services. It lists on page twenty-four at line 16, that on May 13, 2003 the
4 undersigned contact (other state) Department of Corrections and that that Department could not
5 locate the alleged father, J.

6 Father, (Father) was ultimately noticed by publication when the matter was set for a
7 Welfare and Institutions Code Section 366.26 hearing and saw a legal notice in a news paper on
8 X, 2004 indicating that (Minor) was the subject of a proceeding in X of 2004 to terminate his
9 parental rights. Upon receiving this published notification the father contacted the court and
10 requested that counsel be appointed. On X, 2004 (firm) was appointed to represent the father,
11 (Father)

12 In speaking to the father, (Father) at his current location at _____, (firm) has obtained
13 information that in X of 2003, the father was located in State Prison, in (other state). The
14 Department of Health and Human Services indicates in its due diligence search that the
15 Department of Corrections in (other state) was contacted, however, the Department should have
16 located the father, (Father) in _____, State Prison at the time of the due diligence search for the
17 jurisdictional hearing.

18 In X of 2003 the Department filed an Addendum indicating that the mother had
19 previously given them the name of J. for the father and corrected his name to be K. At that time
20 the Department did a further due diligence search attached to an Addendum for X, 2003 which
21 indicated on page six at line twenty that on July 3rd and 7th the undersigned attempted to locate
22 the alleged father, (Father) through the (other state) Department of Criminal Justice and these
23 attempts were unsuccessful as the number remain busy. (Firm) has obtained information that the
24 father, (Father) remained in _____, State Prison and _____ State Prison through August of 2003
25 where he was moved to the _____ facility, also in (other state). The Department had received
26 information from the mother that the father was incarcerated in (other state) on two different
27 occasions in the beginning of the case. When the Department ascertained the father's legal name
28 of (Father) their due diligence search indicates that they contacted the (other state) and did not

In re: (Minor)

Motion to Return to Dispositional Hearing

Dated: X 2004

Case No.:

1 pursue any further contact because the phone lines were busy. The Department did a follow-up
2 Addendum of X, 2003 with respect to searches for other father's but did not do any follow up
3 search on the father, (Father) In the six month review hearing report prepared for X, 2003, the
4 Department indicated that the father to (Minor)'s whereabouts continue to be unknown. There is
5 no indication that the Department did any further search for (Father) once learning of his identity
6 in X of 2003.

7 In X of 2004, the Department sought to modify the permanent plan for (Minor) to
8 adoption and subsequently sent out notice by publication X, 2004 of an upcoming hearing. As
9 previously stated father, (Father) was given a copy of a newspaper in (other state) by his mother
10 which notified him of the upcoming 366.26 hearing for adoption. The published notification was
11 the first time the father, (Father) had been given notice that his child (Minor) was the subject of
12 any dependency proceedings in _____ County. Upon receiving published notification, the
13 father, (Father) contacted the court immediately and sought to participate in the up coming
14 proceedings. At that time (firm) was appointed and the 366.26 hearing was subsequently set for
15 trial on behalf of the father, (Father)

16 17 **LEGAL ARGUMENT & MOTION**

18
19 The father contends that the Department did not put forth a reasonable effort to locate
20 him, and therefore, the notice was insufficient and ineffective. Therefore, the father requests that
21 the case be returned to the Dispositional hearing stage. The Department did not exercise due
22 diligence in attempting to notice him, in that they were made aware that he was likely
23 incarcerated in (other state) and when given his correct name, discontinued attempts to call
24 the (other state) Correction Department because the phone lines were busy on two occasions.

25 In the recent California Court of Appeal 4th District case titled *In Re DeJohn B.*
26 (2000) 84 Cal.App.4th 100, the court held that due process requires the Department to make
27 every reasonable effort to locate and notice a parent of the dependency proceedings. The court
28 stated:

In re: (Minor)

Motion to Return to Dispositional Hearing

Dated: X 2004

Case No.:

1 We publish our decision because the failure to give notice carries such
2 grave consequences in the dependency court, where parent-child ties may
3 be severed forever. Social services agencies invested with a public trust
4 and acting as temporary custodians of dependent minors, are bound by law
5 to make every reasonable effort in attempting to inform parents of all
6 hearings. *They must leave no stone unturned.* (Emphasis added.)

7 In that case, the Appellate Court reversed the trial court's order terminating parental
8 rights and the permanent plan of adoption, and returned the matter to the W&I Section 366.21(e)
9 hearing because the notice to the mother was defective. (*Ibid.*)

10 In this case as well the Department did not leave every stone unturned. In fact, the
11 Department did not overturn the one stone it needed to. The Department was put on notice as
12 early as X of 2003, and definitely by X of 2003, that the father (Father) was likely incarcerated in
13 (other state). On two occasions in X of 2003 the Department attempted to call the (other state)
14 Department of Corrections and the phone line was busy. There is no indication that the
15 Department either wrote to the (other state) Department of Corrections or attempted further
16 phone follow up in order to locate and notice (Father) Father was not attempting to hide and
17 came forward immediately after being noticed by publication of an impending Welfare and
18 Institutions Code Section 366.26 hearing. In addition upon being notified father came forward
19 with relatives to be evaluated for potential placement of the child and her siblings. Had the
20 Department made diligent efforts to follow up with the Department of Corrections they would
21 have certainly located the father (Father) in that he was incarcerated within the (other state)
22 Prison system between the inception of the case in X of 2003 through the present day.

23 Father, prior to the setting of the Welfare and Institutions Code Section 366.26, hearing
24 did not have the opportunity to be present, to be represented by counsel, or to be heard on the
25 issues of jurisdiction or disposition as to his daughter. As a result, the remedy at this point is to
26 set aside the dispositional orders with respect to the father and return the matter to a dispositional
27 proceeding after providing him with proper notice. The father maintains that notice was not
28 properly executed in that the Department did not make reasonable efforts to locate him within
the (other state) Department of Corrections system. The father should receive a dispositional

1 hearing in order to determine whether he is entitled to reunification services, whether his
2 relatives who have previously come forward can achieve placement of the child and her siblings
3 and whether he is entitled to further participation than was allowed in the child's case.
4 Therefore, the father is requesting that the court vacate the current Welfare and Institutions Code
5 Section 366.26 hearing and return the case to disposition.

6
7 Respectfully Submitted,

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10 DATED:

11 ATTORNEY FOR FATHER, (FATHER)

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In re: (Minor)

Motion to Return to Dispositional Hearing

Dated: X 2004

Case No.:

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PROOF OF SERVICE

Case Name: IN RE: (MINOR)
Court: COUNTY SUPERIOR COURT; JUVENILE DIVISION
Case No.:

I am a resident of the United States and of the State of California. I am employed in the County of. My business address is. My business telephone number is; fax number is. I am over the age of eighteen years. I am not a party to the within action or proceeding. On, August 11, 2004, I served the following document(s):

- 1. MOTION TO RETURN TO DISPOSITIONAL HEARING

X by placing, or causing to be placed, a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at, California, addressed as set forth below. (CCP §1012, 1013, & 1013(a))

ADDRESS

X by personally delivering, or causing to be delivered, a true copy thereof to the person(s) at the addresses set forth below. (CCP §1011)

ADDRESS

X by personally delivering, or causing to be delivered, a true copy thereof to the person(s) at the Courthouse in the mailbox located in Room of the mail distribution center.

ADDRESS

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on X, 2004 at, California.

NAME

In re: (Minor)

Motion to Return to Dispositional Hearing

Dated: X 2004

Case No.:

1 **(Firm)**
2 **BY: (Attorney) CSB#**
3 **Address XXXXXXXX**
4 **Phone XXXXXXXX**
5 **Fax XXXXXXXX**

6 **ATTORNEY FOR FATHER, (FATHER)**

7 **SUPERIOR COURT OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF XXX**
9 **SITTING AS THE JUVENILE COURT**

10 **In re:**) **Case No.:**
11 **(MINOR)**) **DECLARATION IN SUPPORT OF**
12 **DOB:**) **MOTION TO RETURN CASE TO**
13 **A minor.**) **DISPOSITIONAL HEARING PURSUANT**
14) **TO DEFECTIVE NOTICE**

15 I _____ state and declare the following:

- 16 1) I am the attorney of record for the father, (Father) in the matter of (Minor), case
17 number.
- 18 2) (Firm) was appointed to represent the father, (Father) on or around X, 2004.
- 19 3) (Firm) has had consistent communication with the father, (Father) since our
20 appointment on or around X, 2004.
- 21 4) During the course of our communications, and in reviewing the discovery which
22 was provided by the Department of Health and Human Services, we have
23 discovered that the father, (Father) was first noticed of proceedings regarding his
24 child, (Minor) by way of legal publication regarding the .26 hearing originally set
25 for X, 2004 at 8:30 a.m. in Department.
- 26 5) Prior to that time, the Department filed declarations of search that indicated that at
27 the dispositional phase of this proceeding they attempted to notify the father,
28 (Father) by virtue of contacting the (other state) State Department of Criminal

In re: (Minor)

Case No.:

Declaration in Support of Motion to Return
to Dispositional Hearing
Dated: August 11, 2004

1 Justice. At that time the Department indicated that they did not pursue any further
2 contact with the father in the X State Department of Corrections and that the
3 phone lines were busy.

4 6) I have verified the information in the declaration of search with the father,
5 (Father) who indicates that he did not receive any previous notification of the case
6 involving (Minor) prior to receiving published notice in X of 2004. I have also
7 verified all information contained in the Points and Authorities in Support of
8 Motion to Return Case to Dispositional hearing with the father, (Father) who
9 indicates the factual background regarding his location and his lack of notice is
10 accurate.

11 7) The above information as well as that information contained in the Points and
12 Authorities in Support of Motion to Return Case to Dispositional Hearing is true
13 to the best of my knowledge.

14
15 I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct and that
16 this declaration was signed at X, California. The information contained in this declaration is confidential, and its
17 dissemination is limited to the administrator and his staff. Under no circumstances will this information be shared with any
18 other individuals. Any breach of this information will be considered a breach of the attorney/client privilege.

19
20 Respectfully Submitted,

21
22 DATED:

23 _____
24 NAME
25 ATTORNEY FOR FATHER, (FATHER)

26
27
28 In re: (Minor)

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Case No.: