

DEFAULT NOTICE SENT TO APARTMENT COMPLEX WITH NO APARTMENT NUMBER DOES NOT SATISFY NOTICE REQUIREMENT

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Sandra Ruiz v. Marisela Lopez
Ct. Appeals, Div. One, August 3, 2010

Authored by the [JSH Appellate Team](#)

Ruiz sued Lopez for breach of contract, conversion, and fraud. The summons and complaint were personally served on Lopez at the address of a Costco store where she worked. Lopez did not answer within the time permitted, and sixty-one days later, Ruiz filed an application for default, affidavit of default, and entry of default against Lopez. Ruiz mailed copies of these documents to Lopez by regular mail to her "huge" apartment complex in Mesa, but did not specify her apartment number.

Lopez failed to attend the default hearing, and the court entered a default judgment against her for over \$66,000. Lopez subsequently moved to set aside the judgment because Ruiz failed to comply with the service requirements of Rule 55(a)(1)(i), which requires the application for entry of default to be mailed to the party claimed to be in default," and also provides a ten day grace period before the default judgment is entered. The trial court vacated the default judgment.

The court of appeals affirmed. A party should receive the best notice practicable under the circumstances, and Ruiz could have complied simply by mailing the notice to Costco, where Lopez had been personally served. The court rejected Ruiz's argument that a mail carrier or the apartment manager would probably be able to get the mail to Lopez, stating that "notice is matter of due process, not getting lucky." Because Ruiz didn't comply with the notice requirements, the ten day time clock to enter the default judgment never started ticking. Without notice, the ten day grace period did not begin to run, the entry of default was ineffective, and the default judgment was void.