

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-19

Title	Action Requested
Small Claims: Forms to Address Default in Payment of Judgment in Installments	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms SC-223 and SC-224	July 1, 2012
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Alan Wiener, 818-558-3051 alan.wiener@jud.ca.gov

Summary

This is a proposal for two new Judicial Council forms for use by parties in small claims cases when a judgment creditor alleges there has been a default in the payment of a judgment in installments. These forms supplement and help make more effective the forms previously adopted and approved effective July 2010, relating to the payment of small claims judgments in installments.

Discussion

Small claims procedures are less formal than procedures for other civil actions, but are often not simple or easy for small claims litigants to correctly follow. In addition, as a result of increases in the small claims jurisdictional limit and the cost of hiring counsel, the monetary value of cases filed in small claims court is increasing, raising the stakes for all involved.

The Civil and Small Claims Advisory Committee considers forms and instruction sheets an important means of guiding litigants through the small claims process. This guidance helps to provide self-represented litigants with effective access to justice and to promote the efficient operation of the small claims court.

Code of Civil Procedure section 116.620 authorizes the court to order that a small claims judgment be paid in installments. Effective July 1, 2010, the Judicial Council adopted and approved five forms that address or pertain to the payment of a small claims judgment in installments. (See *Notice of Entry of Judgment* (form SC-200), *Payments in Small Claims Cases*

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

(form SC-220-INFO), *Request to Make Payments* (form SC-220), *Response to Request to Make Payments* (form SC-221), and *Order on Request to Make Payments* (form SC-222).)

Forms SC-200 and SC-222 provide: “[i]f any payment is not made in full and on time, the judgment creditor may notify the court to cancel the payment plan, and the entire unpaid balance will become due and collectible.” There are, however, currently no forms or instructions for the judgment creditor to notify the court of the alleged default in payment or for the judgment debtor to respond to the allegation that there was a default.

The proposed *Declaration of Default in Payment of Judgment* (form SC-223) and *Response to Declaration of Default in Payment of Judgment* (form SC-224) are intended for use when a judgment creditor alleges there has been a default in the payment of a judgment in installments. The description of the court’s payment order in item 4 of form SC-223 is based on the payment order provisions in forms SC-200 and SC-222. Items 5 through 7 of forms SC-223 and SC-224 are parallel to each other, so that the court can readily determine whether and, if so, about what issues the parties disagree.

Comments Requested

Comments are invited on all aspects of the proposal and on the following additional questions:

1. Should a form order be developed for use when the court rules on an allegation that there has been a default in payment of a judgment in installments?
2. Should Judicial Council small claims forms request the parties’ e-mail addresses, and, if so, should the forms indicate that this information is optional?
3. Are additional instructions, forms, or other tools necessary to help small claims litigants compute postjudgment interest? If so, what type of assistance would be most helpful?

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**Declaration of Default
in Payment of Judgment**

Clerk stamps here when form is filed.

Not approved by the Judicial Council

Draft Rev. 3-17-11

Read the other side before you fill out this form.

① I am asking the court to order that the remaining balance of a small claims judgment is now due and collectible because payments were not made as the court ordered.

My name is: _____

Mailing address: _____

Phone: _____ E-mail (optional): _____

② The plaintiff or defendant (judgment debtor) who has not made payments as the court ordered is (complete a separate form for each plaintiff or defendant who has not paid as ordered):

Name: _____

Mailing address: _____

Phone: _____ E-mail (optional): _____

③ On (date): _____ the court ordered that the plaintiff or defendant named in ② must pay me, or someone who assigned the judgment to me, the total amount of \$ _____.

④ On (date): _____ the court ordered that the plaintiff or defendant named in ② may pay the judgment as follows:

a. Payments of \$ _____ on the _____ day of each (month, week, other): _____ starting (date): _____, until (date of final payment): _____; amount of final payment: \$ _____

b. Other payment schedule (specify): _____

⑤ The payments listed below, and no others, have been made on the judgment described in ③.

Check here if there is not enough space below. List the date, amount, and maker of each payment on a separate page and write "SC-223, Item 5" at the top.

Date	Amount	Paid by	Date	Amount	Paid by

⑥ The total amount of the payments that have been made on the judgment described in ③ is \$ _____, and the balance due, without adding any interest after the judgment, is \$ _____.

⑦ I request interest on the judgment, in the amount of \$ _____, calculated as follows:

Check here if there is not enough space below. Explain how you calculated interest on a separate page and write "SC-223, Item 7" at the top.

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

Date: _____

Type or print your name

▶
Sign here



Default in Payments on Small Claims Judgment

General Information

If the court ordered that another plaintiff or defendant may pay a small claims judgment in payments, and that plaintiff or defendant has not made the payments as ordered, you can ask the court to order that the full balance of the judgment is due and collectible. Here's how:

- Read this form.
- Fill out Form SC-223, *Declaration of Default in Payment of Judgment*. Fill out a separate form for each plaintiff or defendant (judgment debtor) who did not make payments as ordered.
- File your completed forms with the small claims court clerk.

The court will mail all other plaintiffs and defendants in the case copies of your *Declaration* and a blank Form SC-224, *Response to Declaration of Default in Payments of Judgment*.

The other parties will have 10 days to file a **Response**. Then the court will mail all plaintiffs and defendants in the case:

- A decision or
- A notice to go to a hearing.

If the court ordered that you may make payments on a judgment and another plaintiff or defendant has filed Form SC-223, *Declaration of Default in Payment of Judgment*, asking the court to order that the full balance is now due and collectible because you did not make the payments:

- Read this form and the *Declaration*.
- If you agree with the court ordering that the amounts claimed in the *Declaration* are now due in full, you do not need to do anything.
- **If you do not agree with the *Declaration* or with the court ordering that the amounts it claims are now due in full, file a *Response* within 10 calendar days after the court clerk mailed the *Declaration* to you.** (This date is on the *Clerk's Certificate of Mailing*.)

To file your *Response*:

- Fill out Form SC-224, *Response to Declaration of Default in Payment of Judgment*.
- Have your *Response* served on all other plaintiffs and defendants in your case. (See Form SC-112A, *Proof of Service By Mail*.)
- File your *Response* and *Proof of Service* with the small claims court clerk.

Answers to Common Questions

When is the judgment due?

Unless the court orders otherwise, small claims judgments are due immediately. If the judgment is not paid in full within 30 days, the judgment creditor (person to whom the money is owed) can take legal steps to collect any unpaid amount. (Collection may be postponed if an appeal or a request to vacate (cancel) or correct the judgment is filed.)

When can the judgment debtor make payments?

A party who was ordered to pay a small claims judgment (the judgment debtor) can ask the court for permission to make payments. If the court agrees, the party who is owed money (the judgment creditor) cannot take any other steps to collect the money as long as the payments are made on time. If payments are not made on time, the judgment creditor can ask the court to order that the remaining balance of the judgment is due and collectible.

Is interest added after the judgment?

Interest (10 percent per year) is usually added to the unpaid amount of the judgment from the date the judgment is entered until it is paid in full. Interest can only be charged on the unpaid amount of the judgment (the principal); interest cannot be charged on any unpaid

interest. If a partial payment is received, the money is applied first to unpaid interest and then to unpaid principal.

When the court allows payments, the court often does not order any interest, as long as all payments are made in full and on time. Unless the creditor asks for interest to be included in the order allowing payments, the creditor may lose any claims for interest. But, if the debtor does not make full payments on time, interest on the missed payment or the entire unpaid balance might become due and collectible.

How do I calculate interest?

If you are asking for interest or disagreeing with a request for interest, you need to explain your interest calculation. Interest, at the rate of 10 percent per year (.0274 percent per day), may be added to the full unpaid balance of the judgment or only to payments that were not made on time. To calculate interest, show the unpaid principal balance, the dates and number of days you want the court to allow interest on that amount, and the total interest for that period. If payments were made, you will need to make separate calculations for the reduced principal balance after each payment.



Need help?

For free help, contact your county's small claims advisor:

[local info here]

Or go to "County-Specific Court Information" at www.courts.ca.gov/selfhelp/smallclaims

Clerk stamps here when form is filed.

Not approved by the Judicial Council

Draft Rev. 3-17-11

Read the other side before you fill out this form.

① I am responding to a *Declaration of Default in Payment of Judgment* (Form SC-223).

My name is: _____

Mailing address: _____

Phone: _____ E-mail (optional): _____

② The plaintiff or defendant (judgment creditor) who filed the *Declaration of Default* is:

Name: _____

Mailing address: _____

Phone: _____ E-mail (optional): _____

③ I agree with the information in the *Declaration of Default*.

④ I do not agree that the court ordered the payment schedule stated in item ④ of the *Declaration of Default*. The court actually ordered (describe payment schedule that court ordered):

⑤ I do not agree with the dates or amounts of the payments listed in item ⑤ of the *Declaration of Default*. The payments listed below have been made on the judgment.

Check here if there is not enough space below. List the date, amount, and maker of each payment on a separate page and write "SC-224, Item 5" at the top.

Date	Amount	Paid by	Date	Amount	Paid by

⑥ The total amount of the payments that have been made on the judgment is \$ _____, and _____ the balance due, without adding any interest after the judgment, is \$ _____.

⑦ I agree that interest in the amount of \$ _____ may be added to the balance of the judgment. This interest is calculated as follows:

Check here if there is not enough space below. Explain how you calculated interest on a separate page and write "SC-224, Item 7" at the top.

⑧ I ask the court not to order that the judgment is now due and collectible in full, even though I have not made the payments that the court ordered, because (explain):

Check here if there is not enough space below. Explain why you are asking the court not to order that the judgment is now due in full on a separate page and write "SC-224, Item 8" at the top.

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

Date: _____

Type or print your name

Sign here



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Item SPR11-19 Response Form

Title: Small Claims: Forms to Address Default in Payment of Judgment in Installments (approve forms SC-223 and SC-224)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: www.courts.ca.gov/policyadmin-invitationstocomment.htm

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.