

## **COLLECTING YOUR JUDGMENT**

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## **CHAPTER 1: WHEN TO START COLLECTING**

### **When to Start Collecting Your Judgment**

**Small Claims:** You must wait 30 days after the Judgment is entered or mailed to collect your small claims judgment<sup>1</sup>. This gives the defendant the opportunity to appeal. There is no longer a wait time after an appeal.

- If the defendant appears at the hearing and lost, he or she has 30 days to file for an appeal. If there is no appeal, you can start collecting after this period of time. If the defendant chooses to appeal, there will be a new hearing date at the superior court. If you win at this new hearing, you can start collecting upon receipt of the new judgment, which usually occurs within 10 days.
- If the defendant failed to show up at the hearing and lost, you would also have to wait 30 days from the date of judgment to start collecting. The defendant, however, has the option to file a motion to vacate judgment within 180 days after the date of the original judgment. Based on the defendant's reason for not appearing at the hearing, the judge may allow the motion to vacate the judgment. One good reason would be that the defendant was not served properly or on time. If the judge approves the motion and sets another date for a hearing, you must wait another 30 days from the date of the new judgment to collect. If the motion to vacate was denied, you can start collecting; however, the defendant can still appeal the denial of the motion. It is a complicated process and rarely happens; however, if the defendant does so, you must wait until the appeal is resolved.

**Civil:** There is no waiting period unless the court has ordered a stay pending appeal.

### **How to Collect a Judgment from another State**

NOTE: The judgments are not entered in California as small claims judgment, even if they were originally small claims judgments; they are entered as civil judgments.

If a creditor previously obtained an out of state judgment, and now wishes to collect it in California, then the judgment must be registered in California courts. One reason is that the California Sheriff's Department is only authorized to enforce California judgments.

#### Determining the Court

If the debtor lives in California, the creditor must file the forms in the county in which the debtor lives. If the debtor does not live in California, but has assets in the state, then the forms may be filed at the county courthouse that serves the jurisdiction where the property is located.

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<sup>1</sup> CCP 116.810

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### **Forms to File at the Court**

Before filing the forms to turn an out of state judgment into a California judgment, you must get an authenticated copy of the sister-state judgment.

- This can be obtained at the court that issued the judgment.

### ***Application for Entry of Judgment on Sister-State Judgment (Form EJ-105)***

- This is the application needed to have your out of state judgment become registered in California.

### ***Notice of Entry of Judgment on Sister-State Judgment (Form EJ-110)***

- This is used to notify the debtor that you have applied to have a judgment enforced in California.

Make two copies of each of the forms and file them at the appropriate court. Be sure that the judgment is still valid, because the California courts will reject an expired judgment from a sister-state.

### **Serving the Forms**

The debtor must be served a set of the documents. This can be done through personal service, substituted service, or by mail.

**Personal Service** involves having a process server (which could be a friend, relative, sheriff, or registered process server) personally hand copies of the documents to the other party, or a representative of a business who can receive the service of process. CCP §415.10.

**Substituted Service** involves having a process server leave copies of the documents with someone over the age of 18 at the other party's residence or workplace. The process server must then follow up by mailing a second copy of the documents addressed to the other party at the place where the documents were left. Substituted service may only be done after the process server has made at least 3 diligent attempts to personally serve the other party. CCP §415.20.

**Service by Mail** involves having a process server mail a copy of the papers to the other party. When service is done by mail, the party being served is typically entitled to an extra five to ten days to respond to the action. CCP §415.30.

There are two methods you can use to serve the debtor by mail.

- **Service by Acknowledgment:** The server mails the debtor the papers, along with a return envelope, and has the debtor sign and return an acknowledgement of receipt.
- **Service by Certified Mail, with return receipt:** The server uses certified mail and obtains a return receipt of the delivery.

Once the other party has been served, you need to file a proof of service with the court. The proof of service is on page 2 of the *Notice of Entry of Judgment*. For service done by mail, the acknowledgment of receipt or return receipt must be included with the proof of service.

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### **Collecting the Judgment**

30 days after the debtor was served you can obtain a *Writ of Execution* (EJ-130). If the debtor does not file a motion to vacate the judgment in those 30 days, then your California judgment is finalized and you can begin collecting.

### **Expiration of Judgment**

If your judgment in the sister-state court has expired, then the California court will not approve your request to turn the judgment into a California one. If your judgment has already expired, you should consult an attorney before taking any action. California judgments last for 10 years from the date they were entered.

## **How to Collect a Federal Court Judgment**

If you win a judgment issued by a federal court, you may start collecting right away. The defendant has 30 days to file an appeal or post a bond. If the defendant posts a bond you must cease your collection efforts (Federal Rules of Appellate Procedure 4(b)). If the judgment was entered against the United States, a federal officer, or a federal agency, then the time allotted for an appeal is extended to 60 days. (Federal Rules of Appellate Procedure 4(a)(1)). While you are entitled to begin collecting on the judgment as soon as it is entered by the court, it may be a good idea to wait until the appeals period has ended. This is because if you collect on the judgment and the defendant appeals, and subsequently wins, you will be required to reimburse the defendant the amount of the judgment plus interest and court costs. The defendant also has one year to file a motion to vacate the judgment based on the ground of “mistake, inadvertence, surprise or excusable neglect”(FRCP 60(b)). Nevertheless, the judgment is rarely overturned through this process.

## **CHAPTER 2: HOW TO LOCATE THE DEBTOR**

Locating a debtor after a judgment has been entered in your favor may be a complicated and troublesome process. You will need to know some information about the debtor before you can collect on their assets.

If you have trouble locating the debtor, there are a number of available options you may exhaust:

### **Internet**

Try to use the Internet to find information on the debtor by typing their name into a search engine and see what comes up. You should be wary about obtaining information off of the Internet however, because more than one person with the same name may come up in a general search.

### **Telephone Directory**

Sometimes the telephone directory can serve as a good resource when you are trying to find information on the debtor. Utilize resources like the White Pages to find available information. You can also try calling Directory Assistance to locate the debtor's phone number.

### **U.S. Post Office Forwarded Addresses**

If you cannot find the debtor, the U.S. Post Office will not voluntarily reveal the debtor's new forwarding address. However, you can try to send an envelope to the last known residence and if the debtor filed a Change of Address form, then the post office will forward the envelope to the debtor's new address. It is then up to the debtor whether or not they contact you with their new address. If you have specific questions regarding change of addresses or forwarding addresses, call the U.S. Post Office Customer Service hotline: 1-800-275-8777.

### **Credit reports**

Regardless of how much information you might have (i.e., the debtor's social security number, driver's license number, etc.), it is illegal to run the debtor's credit report without his or her knowledge. However, a good place to look up background information on the debtor is [www.ussearch.com](http://www.ussearch.com).

### **Business records**

If the debtor owns a business then you may be able to collect from the business' assets. The City Hall website and the Secretary of State's website are great resources to help you conduct business searches. You can request information from the Secretary of State regarding the business by writing to the Secretary of State or visiting its website.

**Private investigator**

For a fee, private investigators can help you find information on the debtor. Many investigators are listed online or in the Yellow Pages.

**Public Real Estate Records:**

If you are having trouble locating a debtor, one way to obtain information is to go through public real estate records at the County Recorder's Office. The County Recorder's Office is in charge of recording any last recorded document under a person's name such as real property transactions. Each county has its own recorder's office that stores public information for their residence. You will need the full legal name of the person and go to the county where you think the debtor resides to be able to look up any records through the County Recorder's Office indexes. You can also look up records through the County Recorder's Office by using the Internet and entering the debtor's name.

## **CHAPTER 3: THINGS NOT TO DO WHEN COLLECTING YOUR JUDGMENT**

Many state and federal laws have been enacted to prevent judgment debtors from being the victims of unfair debt collection practices. Most of these only apply to third party debt collection agencies; however, be reasonable when approaching and contacting the debtor. In order to avoid running afoul of any of these laws, you should use your best common sense. Trying to take revenge on a debtor or trying to make his/her life miserable may lead to liability for some of these laws.

### **Phone communication**

Contacting a debtor over the phone is probably the easiest way for you to contact him or her about the debt. While collection agencies must cease contact with the debtor upon request, you, as the judgment creditor, do not have to. Even though you may be exempt from that law, do not harass the debtor.

**Do** identify yourself on the phone.

**Do not** call before 8 a.m. or after 9 p.m.

**Do not** call the debtor if you know he has a lawyer.

**Do not** call the debtor at work if he cannot receive phone calls at work.

**Do not** make repeated phone calls.

**Do not** pretend you are a different person.

### **Harassment**

Using excessive harassment on the debtor can be counterproductive. In extreme cases, the debtor could turn around and sue you!

**Do not** threaten the debtor with violence

**Do not** threaten to vandalize the debtor's property

**Do not** threaten to hurt the debtor's reputation

**Do not** use obscene language when talking to the debtor

**Do not** visit the debtor and refuse to leave when asked to

### **Do not use Deception when Contacting the Debtor**

Misleading the debtor could make you liable for violating federal laws.

**Do not** claim to be a law enforcement officer.

**Do not** falsely represent the amount owed.

**Do not** claim to be a lawyer.

**Do not** claim that you are going to put a lien on the debtor's property if you have no intention on doing so.

**Do not** claim that the debtor has violated the law.

**Do not** claim that you are going to a collection agency if you have no intention on doing so.

**Do not** forge legal documents.



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**Do not** use false business names.

**Do not** claim to be from a collection agency.

**Unfair Methods to Collect Debt**

**Do not** include more interest on the debt than there should be.

**Do not** deposit post-dated checks prior to the date on the check.

**Do not** solicit a post-dated check.

**Do not** cause unnecessary phone charges by calling him with toll service numbers.

**Contacting Third Parties**

You cannot contact third parties about the debtor and his or her debt. There are a few exceptions to this rule:

Debtor's attorney

Debtor's credit bureau

Employer for wage garnishment

Commanding Officer, if in the military

If you need to contact a third party about location changes, do not state that you are collecting a debt. State that you are only interested in obtaining correct information about the whereabouts of the debtor. When mailing a letter to a debtor, make sure that all information is contained in a sealed envelope with "PERSONAL" written on the outside. Even though a person may owe you a debt, refrain from harassing and defaming them.

## **CHAPTER 4: COMMON PROBLEMS WITH THE JUDGMENT**

### **Errors with the Judgment Debtor's Name**

In order to collect your judgment, you must use the correct name of the person or business that owes you money. If the name listed is incorrect, you may not be able to collect your judgment. If this is the case, the plaintiff may request to amend the judgment to include the appropriate and legal name(s).<sup>2</sup>

You can request a new judgment with the correct name if:

- The name on the judgment is spelled incorrectly
- The name on the judgment is a maiden name, and the debtor has a new married name (or if the debtor changed their name back to their maiden name)
- First name is listed as the last name
- Legal change of name
- Debtor routinely assumes an alias and possesses assets in that name
- Judgment lists the business name, but not the debtor's personal name, and the business is owned by the debtor as the sole proprietor

Aside from clerical errors, you must first check with your local court to see if they have a local form you must use to make your request.

### **In a Small Claims Case**

Here is how:

- 1) Obtain Form SC-105 from the court clerk (or download a .pdf form from [www.occourts.org](http://www.occourts.org)) and fill it out
- 2) Indicate that you're asking for an order to change the judgment to reflect the debtor's true name(s)
- 3) In the declaration:
  - a. State whether you are the plaintiff or the defendant who won the claim
  - b. Explain why you want to change the name on the judgment, and that this change will support the interest of justice. If you have documents, state that "exhibits are attached" and attach the papers to your form
- 4) File form SC-105 (and attachments) with the small claims clerk. The clerk will put a hearing date on the form. You will have to pay a filing fee
- 5) After filing, the clerk will mail a copy of it to the other side, and a decision will be made at the hearing

If the error was on the part of the clerk:

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<sup>2</sup> For small claims judgment see CCP §116.560(b).

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- 1) File a "Request to Correct or Cancel Judgment and Answer" (Form SC-108).
- 2) Indicate that you're asking for an order to correct (NOT vacate) the judgment
- 3) In the declaration:
  - a. State whether you are the plaintiff or the defendant who won the claim
  - b. Explain why you want to change the name on the judgment. If you have documents that support your request, state that "exhibits are attached" and attach the papers to your form
- 4) File form SC-108 with the small claims (or civil court) clerk within 30 days after the clerk mails form SC-130. Keep an extra copy for your records

After filing the request, the court clerk will mail a copy of it to the other party. The debtor will have 15 days to file and serve an opposition to the declaration. If the debtor files an opposition, it will state why the judge should deny your request. The debtor can serve the opposition to you by mail. If the debtor does file an opposition, the court may schedule a hearing so the parties can present their cases to the judge. If a hearing is scheduled, the court will send both parties a notice of the hearing. Contact the court clerk if you do not receive a notice of the hearing from the court after one week. If the debtor does not file an opposition within 15 days, the judge will most likely grant your request.

Judges will deny a request to "correct" a judgment that asks to:

- Name a spouse or domestic partner that was not named as a defendant in the action (unless they appeared in court the day of the hearing and defended the case)
- Name a different entity or person than the one originally sued

## **CHAPTER 5: COLLECTION TECHNIQUES FOR SPECIAL CASES**

### **Collecting a Small Claims Judgment against a Company or Corporation**

When suing a business, whether it is a corporation, limited liability company, or an individual doing business as a fictitious business name, it is extremely important to name the debtor correctly. If you do not name them correctly you will either lose your case or obtain a judgment that cannot be collected upon. Before filing your suit you must do a little research to find out exactly from whom it is you will be collecting. To put this in perspective, consider an example:

Let's say a plaintiff slipped on a wet floor that was not marked at 'Giant Mart'. The plaintiff immediately takes pictures of the floor, water, aisle sign, and the big 'Giant Mart' sign outside. Since medical expenses are incurred, the plaintiff sues, naming Giant Mart as the defendant. The small claims trial concludes with the plaintiff receiving a judgment against the debtor Giant Mart. The plaintiff then decides he wants the sheriff to perform a till tap in order to satisfy the judgment. When trying to collect on that judgment, the sheriff walks into Giant Mart and asks the manager for money from the till to satisfy the judgment. The manager takes one look at the judgment form and tells the sheriff that he is in the wrong place, that this is a Big Grocery doing business as Giant Mart.

What you should take away from this example is that you cannot simply read the sign outside the company's store or offices. Companies can use fictitious names and dba's (doing business as). I recommend that you begin at City Hall in the city where the business is located. Speak with someone at the Business Licensing Division. Find out how the business is named and owned from the license. You can use the County Recorder's website (<http://cr.ocgov.com/fbn/index.asp> for Orange County) of the county you are suing in to find fictitious name declarations

### **Collecting a Small Claims Judgment for a Motor Vehicle Accident**

#### **Suspending Judgment Debtor's License (Civil and Small Claims)**

If a California court awards you a civil judgment against the party at fault (judgment debtor) in a motor vehicle accident that occurred in California, you may have the DMV suspend the judgment debtor's driver's license. \*All accidents must be on a public street, highway, or private property in the **STATE OF CALIFORNIA\***

#### **CRITERIA**

A. If the judgment is for more than \$750 in property damages (\$500 if prior to January 1, 2003) (not including the court cost)

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- (1) The judgment is not paid within 30 days after the judgment becomes final
- (2) The judgment is based on bodily injury or wrongful death. Actions will be taken on any amount.

If you meet all the criteria listed above you can complete DMV form DL 30, *Certificate of Facts Re Unsatisfied Judgment*, and suspend the debtor's driving privilege. You can view and print this form by visiting DMV's website at:

<http://www.dmv.ca.gov/forms/dl/dl30.pdf>

B. The judgment is for less than \$750 in property damages (\$500 if prior to January 1, 2003) (not including the court cost)

- (1) The judgment is not paid within 90 days after the judgment becomes final.

If you meet all the criteria listed above then you can complete DMV form DL 17, *Notice of Unsatisfied Judgment of \$750 or less*, and suspend the debtor's driving privilege. You can view and print this form by visiting DMV's website at

<http://www.dmv.ca.gov/forms/dl/dl17.pdf>

The fee for processing the judgment is \$20.00. Please make the check or money order payable to the Department of Motor Vehicles. After completion of form DL 30 or 17, please mail it with your check or money order and certified court documents to:

Department of Motor Vehicles  
ATTN: CIVIL JUDGMENT  
P.O. Box 942884  
Mail Station J237  
Sacramento, CA 94284-0884

**DO NOT TAKE FORMS TO YOUR LOCAL DEPARTMENT OF MOTOR VEHICLES**  
If you have any questions please contact DMV customer service representatives at 916-657-7573 for more information.

### **Suing a Government Agency**

It must first be stated that you cannot sue a federal government agency in small claims court. Only state and/or local agencies may be sued.

Before filing a suit against a government agency<sup>3</sup> you must generally:

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<sup>3</sup> For claims against a state agency see (form):  
[www.boc.ca.gov/docs/forms/claims/GCClaimForm.pdf](http://www.boc.ca.gov/docs/forms/claims/GCClaimForm.pdf)

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- 1) Have filed a claim with the agency you want to sue within 6 six months of the injury, some claims a year. You may seek permission to file a late claim;
- 2) Have that agency must reject your claim. If the agency does not respond at all to your claim, it is considered rejected. You may need to file a copy of the rejection letter at the court, so be sure to keep it; and

Once these prerequisites have been satisfied, you must name the agency as the defendant and check the box stating that the defendant is a government entity.

**Collecting a Small Claims Judgment against a Government Agency**

A government agency is any entity that falls within CCP § 708.710

Once you have received a monetary judgment against a government agency, there are unique steps you must follow that differ from collecting from other parties. CCP §708.710-708.795:

- 1) You need to write a written declaration under the penalty of perjury attesting that you have a judgment. You need to include the agency name, the amount of the judgment, and that you do indeed want the agency to pay you. Be sure to sign and date your letter
- 2) You must get a certified copy of your judgment or an *Abstract of Judgment* (Form EJ-001) from the clerk of the court
- 3) You must then contact the agency you have received your judgment against and ask if/how much their fee is for processing a court judgment and getting it paid off. This fee will be small, under \$10

Because you need to let both the court and the agency know you have done this, you will need to make copies of your written declaration and the copy of the judgment, in addition to the processing fee, and have another person hand deliver or mail the photocopies to the agency. That person will then need to fill out a *Proof of Service* and file it with the court clerk.

The agency will then be required to deposit the money owed to you to the court, which will mail you a check. Therefore, make sure the court has your correct name and address on file.

**Collecting a Small Claims Judgment against a Licensed Contractor**

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When you win a claim against a licensed contractor<sup>4</sup>, he or she has 30 days after the *Notice of Entry of Judgment* to appeal. (The easiest way to find out whether or not the contractor has a license is to conduct a search through the Contractors State License Board's website [www.cslb.ca.gov](http://www.cslb.ca.gov) or call at 1-800-321-2752.) After the 30-day period, you can choose to execute either one or both of these options:

(1) If the judgment was issued due to poor workmanship, you can contact the contractor's bond insurance company and collect money from the bond. You can also search for this information at the above website ([www.cslb.ca.gov](http://www.cslb.ca.gov)). The insurance company will walk you through the process to file a complaint and collect your money according to their policy.

(2) You can file a complaint form with the Contractor's State License Board by calling the Board's toll-free automated information phone line, 1-800-321-CSLB, or writing to P.O. Box 269116, Sacramento, CA 95827. You can also file the form online at [www.cslb.ca.gov/](http://www.cslb.ca.gov/) or download it at <http://www.cslb.ca.gov/Resources/forms-and-applications/consumer-complaint-form.pdf>. The Contractor's State License Board will send a notice to the contractor giving him or her 90 days to either pay the judgment in full, sign a written agreement before a notary to pay in installments, or post bond. If the contractor fails to respond within the 90 days, the Board will suspend the contractor's license until he or she pays you in full. If the contractor has more than one case filed against him or her, their license could be suspended indefinitely.

For general information on collecting a judgment from a person or business, please refer to Chapter 7.

**Collecting From a Real Estate Agency**

When you win a claim against a real estate agency, the agency has 30 days after the *Notice of Entry of Judgment* to appeal. You can find out whether or not the real estate agent is licensed by conducting a search through the Department of Real Estate's website at <http://www.dre.ca.gov/> or call (916) 227-0931.

You can also file a complaint against specific real estate brokers and salespersons accused of misleading or defrauding consumers. If the Department of Real Estate can prove a violation of the Real Estate Licensing Law, a formal hearing may be held which could result in the revocation or suspension of the agent's license.

To file a complaint complete the *Licensee/Subdivider Complaint* (RE 519). For more information on filling out your complaint form you can download *Complaint Form Information* (RE 519A).

Things to include:

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<sup>4</sup> The claim must relate to the license and should state that in the Judgment ("poor workmanship").

- A. Provide a written explanation of the exact nature of your complaint.
- B. Summarize your complaint in a chronological manner using these guidelines:
  - (1) State what happened. Start from the beginning and describe the events as they occurred. Be specific as to what was said and who said it
  - (2) State who was present during these conversations or acts, including contact information for witnesses
  - (3) State when and where these conversations/acts took place
- C. Provide names, addresses, and telephone numbers of any witnesses to the events described in your complaint.
- D. Provide photocopies of all documents involved in your transaction.

The Department of Real Estate CANNOT act as a court of law, so they **cannot** order that monies be refunded, contracts be canceled, damages are awarded, etc. If you have this type of problem, you should consult an attorney.

For general information on collecting a judgment from a person or business, please refer to Chapter 7.

### **May I Sue an Out-of-State Internet-Based Company?**

Although the Internet brings many benefits to Internet shoppers and for those doing business over the Internet, there is greater potential for being subject to suit anywhere in the world. If an Internet merchant is exposing themselves to buyers internationally and throughout the country they may be liable in numerous jurisdictions.

When suing an Internet-based company you should consider the following circumstances:

How is this company presenting itself on the Internet? Is it active, interactive or passive? Is it targeting consumers in your state?

Three General Types of Websites:

*According to the Zippo Sliding Scale Analysis* (Zippo Manufacturing Co. v. Zippo Dot Com, Inc (W.D.Pa.1997) 952 F.Supp.1119.) The Court will exercise jurisdiction based on the interactivity of the website. Courts have created three (3) separate categories of websites: active, interactive or passive.

#### **Active**

This type of website is CLEARLY doing business over the Internet. This occurs when you can order products online, the website has forms and prices, or is advertised to be an



Internet shopping site. With this type of website, practically every court has personal jurisdiction over the company.

### **Inter-Active**

This type of website falls between an active and a passive website (discussed below). Here, information exchanged between you and the host computer is allowed. Factors that are relevant to the “sliding scale” analysis:

- Does the defendant make sales in the jurisdiction?
- Does the defendant have a toll-free telephone number accessible on the website?
- Does the website include a disclaimer as to where the defendant will or will not sell to?
- What is the level of interactivity that the website allows?
- Does the website allow the visitor to sign up for an interactive mailing list to receive information about the defendant’s services and products?
- Does the website allow for orders to be placed online?

In this middle ground, the exercise of personal jurisdiction is based on examining the intensity of interactivity and the level of the commercial nature of how the information exchange is presented on the website. This range of factors has been brought up in courts in the past. As for your specific case, it will be for the judge to decide the intensity and level of activity of the defendant’s website in order to exercise personal jurisdiction.

### **Passive**

This is at the opposite end of the spectrum from what an active website is. A passive website is a website simply providing information to the visitor of the website (Realtor’s website, restaurant website). This can include an advertisement, or just minimal contacts. With this type of website, there are no grounds for exercising personal jurisdiction.

## **ADD something about service**

## **CHAPTER 6: GETTING VOLUNTARY PAYMENT OF JUDGMENT FROM DEBTOR**

### **Asking For Your Money:**

After receiving a judgment, you may want to contact the debtor to request payment. You can do this in person, in writing, or by phone. Do not request the debtor to pay the judgment before the time to appeal has expired.

When requesting payment, be courteous and do not engage in unlawful acts or conduct meant to harass or mislead the debtor. The debtor should know that a judgment was entered against them even if the judgment was a default one. However, if the debtor is ignoring the fact that the judgment was entered against them, you should be sure to let them know in any communication that you have with them:

- (1) That you are committed about collecting your judgment
- (2) The amount that the debtor owes you, including any court costs and fees

If the first communication with the debtor does not result in a satisfaction of the judgment, you should send the debtor a final formal demand letter stating that you will take further action within 10 days to collect from their assets if they do not comply.

### **Contacting the Debtor by Phone:**

- If the debtor has an attorney, contact the attorney directly
- When calling, first identify yourself and state why you have called
- Do not make repeated phone calls

### **Unlawful Conduct:**

- Do not harass the debtor
- Do not threaten the debtor
- Do not use profane language
- Do not lie or give false information

If the debtor does not comply with your request for payment, then you can continue on to other methods of collecting your judgment.

### **Getting the Debtor to Pay Voluntarily**

Negotiating Installment Agreements

#### Negotiating Installment Agreements

If the debtor claims that he or she cannot afford to pay the full amount of the judgment, you may want to make arrangements for a payment plan. Taking the initiative, practicing caution, and utilizing effective advocacy will ensure a full payment. If you and the debtor agree on an installment plan, you should draw up a contract or hire an attorney to create

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one for you. If the debtor defaults on the agreement then you should proceed with collecting the remainder of the judgment. If you decide on an Installment Agreement then you should have the debtor fill out an Income and Expense Statement, which would indicate the debtor's assets, income, and expenses. This information may help in determining what types of payments the debtor could be able to make and in the event that they default, you will have the information you need to collect from them.

### (1) Installment Payment Agreement

- a. Letter explaining the terms of the installment payments (informal)
- b. Stipulation of Payment of the Judgment (formal)
  - i. Needs to be approved by the judge- if debtor fails to keep word, you must obtain court approval to end the stipulation and initiate formal collection activities (not recommended)

### (2) Income and Expense Statement

- c. lists assets, bank accounts, etc.

## **Accepting Less Than the Judgment as Full Payment**

If the debtor offers to pay only a portion of the debt upon the condition that it will be satisfied, you may want to consider negotiating with them. There are certain considerations that you should take into account in considering to accept less than the judgment as the full payment.

### 1) Four Considerations

- a. Likelihood of collecting the full judgment
- b. Value of your time
- c. Possibility of losing more money
- d. Your desire to get the last dime

### 2) Partial Payment Offer

- a. The debtor must send you a letter stating that she intends to send you a partial payment check- also called a restrictive endorsement- to cover the full amount
- b. 15 days to state any objection
- c. If you don't object, debtor will send the partial payment with a letter stating that the check satisfies full payment
  - i. For prejudgment collections see CommCode 3311 and CC 1526.

## **Respond to the Debtor's Claims of "No Money"**

### 1) Help the Debtor Find money

- a. Deposit Accounts
- b. Retirement Accounts (401k, IRAs, etc.)
- c. Investments
- d. Income tax refunds
- e. Personal loans

- f. Home equity loans
  - g. Credit card cash advance
  - h. Insurance Policies
  - i. Pay advance
  - j. Loans from friends or relatives
  - k. Selling personal possessions
  - l. Investors or new business partners
  - m. Hobbies
  - n. Rental income
  - o. Help the debtor find work
- 2) Barter for Goods or Services
- a. Non-monetary ways to satisfy judgment
    - i. Ex.: lessons, electronic equipment, sports equipment
  - b. Remember to draw up an agreement on a letter

### **Why Accept Less Than the Entire Judgment as Full Payment**

Collecting a judgment may be the most difficult step in the small claims process for many people. More often than not, a debtor may be difficult to find, stubbornly reluctant to pay, or might simply lack the financial means to pay the judgment in full. However, sometimes the option of accepting less than the judgment as full payment may be a viable alternative for both the creditor and debtor. Before consenting or declining a partial payment as full payment, consider the following:

Think of the likelihood of collecting the full judgment—Determine whether or not the debtor has the economic resources to satisfy the judgment. If the debtor lacks the financial means to pay the judgment in full, perhaps it would make more sense to accept the maximum available amount than to wait for a larger sum that may never be accessible.

Think of the value of time—When comparing a partial sum as full satisfaction to the full judgment, subtract from the full retrieval the value of the time it takes to acquire it. The question is, “How much is the creditor’s time worth”?

Think of the possibility of losing more money—Expending more money on useless collection techniques, such as levying empty bank accounts, can financially obstruct a creditor even more. Not only does the debtor fail to satisfy the judgment, the creditor in turn must spend more money that may never be compensated.

Think of the importance to get the entire judgment—It is up to the creditor to decide how much time, trouble, and extra monetary expenses the full judgment is worth.

### **Accepting Less Than the Entire Judgment**

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The Code of Civil Procedures allows the creditor and debtor to settle their case for a lesser amount than the entire judgment<sup>5</sup>. Once such an arrangement has been made, the creditor has an obligation to give or file an *Acknowledgment of Satisfaction of Judgment* if he/she decides to accept an amount less than the judgment as full payment.

Be sure that you put the agreement in writing.

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<sup>5</sup> Code of Civil Procedures §724.010

## **CHAPTER 7: OPTIONS FOR COLLECTING YOUR JUDGEMENT**

Collecting your money judgment can be difficult. However, there are some things the sheriff can help you do. You must give the sheriff specific instructions. You must know where the defendant works, banks, has his business, or the year and make of his vehicle. (If you have an Attorney, ALL INSTRUCTIONS MUST BE SIGNED BY THE ATTORNEY. CCP §§488.030, 687.010).

### **ORDER FOR EXAMINATION**

**Fee: \$70.00**

If you are unaware of the defendant's assets or the location of these assets you may return to the court and request an *Order for Examination*. This order, after being served on the defendant by the sheriff, requires the defendant to appear in court so that you can ask the debtor about their assets. If s/he does not appear, you may pay a fee and request a warrant for his or her arrest. Your instructions for service must contain the defendant's address and your signature.

### **EARNINGS WITHHOLDING ORDER (WAGE GARNISHMENT) Fee: \$25.00**

An *Earnings Withholding Order* requires an employer to send to the Sheriff about 25% of the defendant's net earnings every payday. The employer has 15 days after being served to send an answer to the Sheriff's Dept. regarding the defendant's employment/pay status. A copy of this answer will be sent to you. The defendant is entitled to file a *Claim of Exemption* for return of withheld monies and relief from the order if they are poor. You may then apply for a hearing to oppose the exemption.

### **BANK LEVY**

**Fee: \$30.00**  
**Safe Deposit Box Fee: \$125.00**

A defendant's bank account may be levied. Instructions to the sheriff must include the name of the bank and the address. It is important that the name on the account be exactly the same as on the name on the writ. Though not necessary, the account number will assist the bank in locating the account. The defendant may file a *Claim of Exemption* for return of monies.

### **VEHICLE LEVY**

**Deposit: \$1,500.00**

A vehicle registered to and in the possession of the defendant may be levied on and sold at auction by the sheriff. Your instructions must state the make, year and license plate number of the vehicle and the address where it can be found. The legal owner may make a claim in which case it must be paid off by you before the vehicle can be sold. If the vehicle is the only one registered to the defendant he receives an automatic exemption of \$2,550.00. This means that the bidding at the auction starts at \$2,550.00. If this minimum bid is not received, the vehicle is returned to the defendant.

### **TILL TAP LEVY (CASH REGISTER LEVY)**

**Fee: \$85.00**

If the defendant owns or is in a business that maintains a "cash till" on the premises, you may instruct the sheriff to execute a "Till Tap Levy". Monies from the till are removed and paid to you. The sheriff's instructions must give the name and address of the business.

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**8HRS-Deposit: \$205.00**

**KEEPER LEVY**

**Open Ended-Deposit: \$2,600.00**

If the defendant owns or is a business you may instruct the sheriff to execute a "Keeper Levy". Upon installation of the keeper, the business and all assets are under control of the sheriff, as well as any money. The name on the writ must be the defendant's and s/he must own the business. Your instructions must give the name of the defendant, the name of the business and the address. There could be a backlog of 6 weeks or more. This backlog is based on the availability of the sheriff.

## **CHAPTER 8: HOW TO LOCATE A DEBTOR'S ASSETS**

### **What is a Debtor's Examination?**

A Debtor's Examination is conducted to assist you, the judgment creditor, with gathering information that may help you to collect your small claims judgment. After following the necessary procedures (outlined below), the debtor must appear in court and answer your questions. You may also serve the debtor an additional form (SC-107, "Small Claim's Subpoena and Declaration") which requires them to bring certain documents (i.e. bank statements, etc) for the exam that you may review.

### **When Can I File?**

Once a small claims judgment is entered, the clerk mails the debtor a form called a "Judgment Debtor's Statement of Assets" (SC-133) to complete and return to the judgment creditor within 30 days (CCP 116.830). This form requires the debtor to disclose information about their assets (i.e. regarding bank accounts, property owned, gross pay, etc.) If the judgment debtor files an appeal or motion to vacate, he/she does not have to return the "Judgment Debtor's Statement of Assets" until 30 days after losing his/her appeal or motion to vacate.

### **How Do I Get a Hearing for a Debtor's Examination?**

If:

You do not receive the "Judgment Debtor's Statement of Assets" (SC-133) from the debtor,

**OR**

You question the validity of the document, seek more information, or desire information on assets of the debtor's spouse...

30 days after the "Notice of Entry of Judgment" the judgment creditor can initiate a debtor's examination by filing one of two forms<sup>6</sup>:

"Application and Order to Produce Statement of Assets and to Appear for Examination"  
(SC-134)

**OR**

"Application and Order for Appearance and Examination" (EJ-125).

To set a hearing using an "Application for Order to Produce Statement of Assets and to Appear for Examination" (SC-134), you must<sup>7</sup>:

1. Complete the form
2. File the form with the clerk (you will receive a court date)
3. Pay fees
4. Hire a Sheriff to **personally** serve a copy of the form along with a blank copy of the "Judgment Debtor's Statement of Assets" (SC-133).

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<sup>6</sup> Both forms perform essentially the same function, to force the judgment debtor to appear in court and provide information regarding his/her assets. The **only distinguishing factor** is that the "Application and Order to Produce Statement of Assets and to Appear for Examination" allows the judgment creditor to require the judgment debtor to complete and provide the "Judgment Debtor's Statement of Assets."

<sup>7</sup> This method is preferable because this form may provide helpful information



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To set a hearing using an "Application and Order for Appearance and Examination" (EJ-125):

1. Complete the form
2. File the form with the clerk (you will receive a court date)
3. Pay fees
4. Hire a Sheriff to serve a copy of the form

Either form (SC-134 or EJ-125) must be **personally** served on the judgment debtor at least ten calendar days before the hearing date. You must then file a "Proof of Service" (Form SC-104) with the clerk at least five calendar days before the court date.

The judgment creditor can also require the judgment debtor to bring specific documents with him to court if those documents are material important to the judgment creditor's efforts to collect the judgment. In which case, the judgment creditor must complete and file a "Small Claim's Subpoena and Declaration" (SC-107). For more information with regard to preparing and having a subpoena issued, you can refer to "How to Subpoena a Witness and Documents."

### **About the Process**

The "Application and Order to Produce Statement of Assets and Appear for Examination" (SC-134) and the "Application and Order for Appearance and Examination" (EJ-125) can be filed every 120 days or shorter with good cause.

### **Planning for the Hearing**

Before your hearing, you should call the court clerk to ensure it is still scheduled. Sometimes, the Debtor's Examination is removed from the calendar if procedural guidelines were not followed adequately (i.e. it was not filed in time, the debtor was not served on time, etc). Assuming your hearing is still scheduled, you should make a list of **relevant** questions to ask the debtor. For a list of sample questions to ask at the Debtor's Examination, see the "Questions to Ask for Debtor's Examination" fact sheet.

### **At the Hearing**

The hearing is generally scheduled for a courtroom and is then transferred to a different location within the courthouse. Once you arrive at this second location, there will be a judge (or possibly a commissioner or referee) and a bailiff. Sometimes, debtors do not show for the hearing<sup>8</sup>. Assuming they do appear, once your name is called, the debtor is sworn in. You are then sent to a location where you can discuss the matter confidentially with the debtor (often the courtroom hall). This is the time to ask the relevant questions you generated about the debtor's assets. If the debtor becomes difficult and/or fails to answer relevant questions, you should return to the hearing location and ask the judge or supervising official for assistance.

## **How Do I File For a Debtor's Examination in Civil Court?**

For civil cases, the process to order the debtor into court and list his or her assets is the same except for the form number. For civil cases, you must use *Application and Order for Appearance and Examination* (AT-138). Just as in small claims, it must be filed with the

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<sup>8</sup> If the debtor does not appear, judges generally set a new date for the hearing. Often times, the court notifies the debtor of this new date but ensure that this is the case by asking. If the debtor fails to appear again, you can request (and pay for) a bench warrant. See next section for details.

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clerk along with the fee, and then served by the sheriff or a registered process server on the debtor at least 10 days before the scheduled hearing.

**What if the Judgment Debtor Fails to Appear**

If the debtor fails to appear to the examination you may ask the judge to issue a bench warrant. First, fill out the *Bench Warrant* form (local form #L525) and the *Sheriff Instruction Sheet*. Then you must submit the forms with the appropriate fees (make your check payable to the "Sheriff"). For Orange County the fee is \$50. If your Bench Warrant is for another county, please contact the Sheriff's Office in that county for their fees. You must either hand deliver or mail the completed *Bench Warrant*, *Sheriff Instruction Sheet*, and any required fee to the Clerk's Office at the Justice Center where your case is filed. The Clerk's Office will present the completed warrant to a judge for signature, affix the court seal to the form, and return it to you or forward the completed *Bench Warrant* and fee to the Sheriff's Department.

For other civil judgments follow the same process except you should use an *Application and Order for Appearance and Examination* (form EJ-125).

## **Questions to Ask In the Debtor Examination**

You should come to the hearing with a list of questions to ask the debtor. Be sure to think about the answers to these questions. They may help you think of other questions to ask. Here are some sample questions to help you prepare for your examination:

In a debtor's examination, you can ask the debtor:

1. What is your home address?
2. What is your home telephone number? Cell phone number?
3. Are you married or do you have registered domestic partnership?
  - a) If so, what is the first name, maiden name, and last name of your spouse or domestic partner?
4. Do you live in a leased apartment? A single family home? A condo? A mobile home? What's the address?
5. If you live in a single family, home, condo, or mobile home, do you own it?
6. If you live in a leased apartment, who pays the rent? To whom is it paid?
7. Is it paid by check? Is your rent/mortgage up to date?
8. Do you have any boarders or subtenants?
  - a) If so, what are their names and how much do they pay you each month?
9. Do you have a vacation home, recreational vehicle, or boat?
10. What's your occupation?
11. What's your social security number? (Note: this is a question that legally does not need to be answered)
12. Are you presently employed?
  - a) If so, by whom?
  - b) At what address? Where is the payroll office located?
  - c) What's your work telephone number?
  - d) What's the name of your supervisor?
  - e) What's your gross salary? What's your net salary? What payroll deductions are made?

13. Do you receive commissions?
  - a) If so, when are you paid?
  - b) How much is owed to you now?
14. Do you have any part-time employment?
  - a) If so, please explain.
15. Is your spouse or domestic partner employed or in business?
  - a) If so, what's his or her salary? What is the address of his or her workplace?
16. Do you own any stock or any interest in the business where you work?
  - a) If so, please explain.
17. Do you or your spouse or domestic partner have any checking or savings accounts?
  - a) If so, what is the name of the bank branch, and what are the account numbers and present balances?
18. Do you, your spouse, or domestic partner have a driver's license? For what state? What are the driver's license numbers?
19. How did you get here today?
20. What is the year and make of your car? Do you own it? Is it financed? By whom? What is owed?
21. Do you have any credit cards? Can you get a cash advance on any of those cards?
22. What type of retirement accounts do you have? Are you able to borrow against your retirement account?
23. Do you have life insurance? Is it a whole life policy?
24. Do you have any property, personal effects, cash, or other assets that you've not yet mentioned?
  - a) If so, please explain.
25. Do you understand that as long as the judgment remains unpaid, it accrues interest at the rate of 10% per year? Do you also understand that as long as the judgment remains unpaid, it is probably damaging to your credit rating?

Do you understand that if the judgment remains unpaid, I have the right to examine you again in 120 days?

Questions to Ask a Business:

1. What is the name of your business?
2. What is your business' address?
3. What is your business' telephone number?
4. How many employees does your business have?
5. How does your business pay its employees?
6. Where is the payroll office located?
7. How many contracts does your business have?
8. Who are those contracts with?
9. Where are your corporate headquarters?
10. How many companies does your corporation own?
11. Where does your business bank?
12. What are your business bank account numbers and present balances?
13. Does your business have any credit cards?
14. Is there any equipment or furniture at your business?
15. Are there any computers at your business?
16. Are there cash registers at your business?
17. Does your corporation own any vehicles?
18. Do you have outstanding account receivables?
19. Does your business own any stocks or interests?
20. Does your business have any investments?
21. What kind of profit is your business making?
22. What is your business' gross salary? What is your business' net salary?

## **CHAPTER 9: Common Methods**

### **How to Levy a Bank Account**

A bank levy means that money will be taken from the judgment debtor's bank account to pay the judgment. Steps in this process are as follows:

1. Find the debtor's bank name and branch location.
  - The easiest way to locate bank and account information is on returned or canceled checks
  - Take the debtor to a debtor's examination by filing the *Application and Order to Produce Statement of Assets and Appear for Examination* (form SC-134) with the Justice Center where the trial was heard
  - Other methods include: Have a third party write a current check to the business and get information from the returned check, ask business associates, or approach banks near debtor's house or workplace
2. Fill out the *Writ of Execution* (form EJ-130) to gain authorization to levy bank accounts, and make three (3) copies. Take all copies to the Clerk's Office and have the clerk issue the *Writ of Execution*. The original copy of the writ gets filed with the clerk of the court, two of the other copies go to the sheriff to execute the writ, and the third copy of the writ is for you and should be put away for safe keeping.

NOTE: The *Writ of Execution* is good for 180 days
3. Contact the local Sheriff's Office for information of how to obtain a levying officer.
4. Provide instructions for the levying officer: include name and street address of the financial institution, account number (if known), name or names that the account is held under, and when to perform the levy (usually after pay-day).
5. Levying officer will use the *Writ of Execution* and written instructions to fill out *Notice of Levy (EJ-150)* and serve it on the bank.
6. Once the Levying officer collects the proceeds from the levy he will distribute them to the creditor. A short delay is normal for the distribution of the funds.

### **Rules of Bank Account Levying**

If the debtor holds a bank account, the creditor may collect if:

- Judgment debtor's name is on the account
  - For example, if the judgment is against John Smith, creditor can collect ONLY from John Smith's personal bank accounts, NOT from the business accounts of John Smith Windows, Inc.

- Funds are NOT exempt
  - Examples of exempt funds are Public Benefits, Retirement Plans, Insurance Proceeds, and Financial Aid. A list of exempt funds and items is listed on form EJ-155

NOTE:

- Joint bank accounts CAN be levied, but the co-owners will have an opportunity to object
- There is a downside to using the bank account number in levying a debtor's bank account. The sheriff will ignore other accounts under the debtor's name if a bank account number is listed. Thus, it is in the creditor's best interest to only use the debtor's name in levying a bank account

**How to Garnish Wages**

\*If the judgment debtor is working, the judgment creditor may be able to intercept up to 25% of wages if:

- Debtor receives regular wages (i.e. *not* self employed)
- Debtor is *not* subject to other wage garnishments
- All garnishments are paid sequentially, not simultaneously
- Debtor is *not* a federal employee or in the military (special rules apply)
- Pay is above the poverty line. For poverty line debtors, the creditor can only garnish 25% of the excess income above the poverty line
- Pay is *NOT* for basic support

Steps in this process are as follows:

1. Locate the debtor's workplace:
  - If you are unable to do so, a Debtor's Examination may be necessary, which requires the debtor to appear and produce *Judgment Debtor's Statement of Assets* (SC-133) and answer questions concerning their employment. (See Chapter 8 for additional information)
2. Fill out the *Writ of Execution* (EJ-130) and make three (3) copies. Take all copies to the clerk and have the clerk issue the *Writ of Execution*. There is a small fee. This writ is good for 180 days from the date it is issued by the court clerk.
3. Complete the *Application for Earnings Withholding* (WG-001).
4. Contact the local Sheriff's Office for instructions on garnishing wages.

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Provide the levying officer with the original *Writ of Execution* and instructions for the garnishment. The levying office will prepare the *Earnings Withholding Order* and serve it, along with an *Employer's Return* (WG-005), on the employer or officer in charge of payroll.

5. Wait for the levying officer to return the *Employer's Return* and take note of information provided on the form (i.e. paid monthly or every two weeks).

  - With no objections from the debtor, the levying officer collects from wages to satisfy judgment
  - If employer does not withhold the assigned amount, you can sue the employer to recover the amount that should have been withheld

If debtor objects by taking a *Claim of Exemption* (WG-006) to the sheriff to contest the garnishment, the creditor will be given a *Notice of Filing of Claim of Exemption* (WG-008).

- Within ten (10) days of receiving this notice, creditor must file a *Notice of Opposition to Claim of Exemption* (WG-009) and the *Notice of Hearing on Claim of Exemption* (WG-010) with the Clerk's Office and Sheriff's Office
- The debtor must be personally served with the *Notice of Opposition...* and the *Notice of Hearing...* papers at least 21 days before the scheduled claim of exemption hearing (CCP 1005 (b)). If service is done by mail, the required 21-day notice shall be increased by 5 calendar days within California, or 10 days if outside California

### **How to Collect Money from a Debtor Spouse's Bank Account**

California law allows a judgment creditor to collect money from the bank account of a debtor's spouse even when the debtor's name is not on the account.

A court order is not required to place a levy on a spouse's bank account. However, the creditor must provide a Writ of Execution and a Declaration under oath to the levying officer (usually a Sheriff). The Declaration must state that the person whose account you want to place a levy on is married to the debtor who owes you money. The officer will then provide you a signed Declaration along with the Writ of Execution to the financial institution at the time of levy.

- Step 1: Sign a Declaration (see sample)
- Step 2: Contact the court or go to and fill out a Writ of Execution (Form EJ-130).
- Step 3: Contact the levying bank officer for any additional requirements and give them the signed Declaration, Writ of Execution and the Bank information.



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Be sure to provide the following information to the levying officer:

- Name of the Defendant
- Name of the Bank or financial institution
- Bank's Branch
- Street Address of the Bank
- Name of the individual who holds the account.

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**Declaration (Sample)**

**DECLARATION**

I \_\_\_\_\_, judgment creditor, declare as follows:

On \_\_/\_\_/\_\_, a judgment was entered in my favor against the judgment debtor \_\_\_\_\_ at the Orange County small claims courthouse located at \_\_\_\_\_ case # \_\_\_\_\_.

I have full knowledge and believe to be true that judgment debtor \_\_\_\_\_ is married to \_\_\_\_\_.

As permitted by California Code of Civil Procedure 700.160(b)(2), I hereby request a levy be placed on the bank account of \_\_\_\_\_ who I believe to be married to and the spouse of Defendant \_\_\_\_\_.

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

**Service Instructions**

**Levy On a Spouse's Bank Account (Sample)**

**SERVICE INSTRUCTIONS**

**LEVY ON A SPOUSE'S BANK ACCOUNT.**

Date: \_\_\_\_\_

Dear Sheriff,

I \_\_\_\_\_, judgment creditor, was awarded a judgment against \_\_\_\_\_, the judgment debtor on \_\_/\_\_/\_\_, by the Orange County small claims court located at \_\_\_\_\_ in the amount of \$ \_\_\_\_\_.  
Case # \_\_\_\_\_

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As of today's date, Defendant has paid me \$\_\_\_\_\_ of the total judgment.

As permitted by California law CCP §700.160(b)(2)<sup>9</sup>, I hereby request your office to place a levy on the bank account of the Defendant's spouse in the amount of \$\_\_\_\_\_. The bank information is provided below. Also please find the attached copies of the Writ of Execution and my signed Declaration.

Individual named on the account\_\_\_\_\_

Bank: \_\_\_\_\_

Bank Address: \_\_\_\_\_

Branch\_\_\_\_\_

Account # \_\_\_\_\_

Bank telephone # \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

<sup>9</sup> The judgment debtor's spouse, whether alone or together with other third persons. An Affidavit showing that the person in whose name the account stands is the judgment debtor's spouse shall be delivered to the financial institution at the time of levy

***Code of Civil Procedure***

Under California Community Property laws, income earned by either spouse is considered jointly owned and a creditor is allowed to collect it to satisfy a judgment against either spouse.

§700.160

(a) Except as provided in subdivision (b), a deposit account or safe-deposit box standing in the name of a person other than the judgment debtor, either alone or together with other third persons, is not subject to levy under §700.140 or §700.150 unless the levy is authorized by court order. The levying officer shall serve a copy of the court order on the third person at the time the copy of the writ of execution and the notice of levy are served on the third person.

(b) A court order is not required as a prerequisite to levy on a deposit account or safe-deposit box standing in the name of any of the following:

(1) The judgment debtor, whether alone or together with third persons.

(2) The judgment debtor's spouse, whether alone or together with other third persons.

An affidavit showing that the person in whose name the account stands is the judgment debtor's spouse shall be delivered to the financial institution at the time of levy.

(3) A fictitious business name if an unexpired fictitious business name statement filed pursuant to Chapter 5 (commencing with §17900) of Part 3 of Division 7 of the Business and Professions Code lists as the persons doing business under the fictitious business name either (A) the judgment debtor or (B) the judgment debtor's spouse or (C) the judgment debtor and the judgment debtor's spouse, but does not list any other person. A copy of a fictitious business name statement, certified as provided in §17926 of the Business and Professions Code, that satisfies these requirements shall be delivered to the financial institution at the time of levy, and if a person other than the defendant is listed in the statement, an affidavit showing that the other person is the judgment debtor's spouse shall also be delivered to the financial institution at the time of levy.

(4) The additional name of a judgment debtor listed on the writ of execution pursuant to an affidavit of identity as provided by §680.135, whether alone or together with third persons.

(c) In any case where a deposit account in the name of a person other than the judgment debtor, whether alone or together with the judgment debtor, is levied upon, the financial institution shall not pay to the levying officer the amount levied upon until being notified to do so by the levying officer. The levying officer may not require the financial institution to pay the amount levied upon until the expiration of 15 days after service of notice of levy on the third person.

## **How to perform a Till Tap Levy**

If you request a till tap, the levying officer makes a single trip to the business and picks up all the cash and checks in the cash register or cash box. This is a quick way of going after business receipts and you can request one as often as you want, but you have to prepare new levy forms each time. If the business owner keeps his money in his wallet or locked safe, a till tap will probably not work.

Before you can levy against cash receipts, you must obtain a “Writ of Execution” (EJ-130) & “Memorandum of Costs After Judgment Acknowledgment of Credit and Declaration of Accrued Interest” (Form MC-012). This is a process issued by the court directing the U.S. Marshal to enforce and satisfy a judgment for payment of money. The writ can be served by a U.S. Marshal, or another who is presumably a law enforcement officer. Complete the “Writ of Execution”, submit it to the court where your original case was filed/heard, and have the clerk issue it.

Once you have the writ, follow the steps below:

1. Obtain till tap information:  
To find the levying officer for a county, call the Sheriff’s Office of the county where the business is located and ask if it levies on civil money judgment. If not, find out who does. Then call and find out the fees for a till tap, whether the levying officer has his own form (Orange County Sheriff’s department has its own form, the *Sheriff Instruction Sheet* (L-1176)) and how many copies of the writ are required. Instruct the sheriff to do a till tap. You must know the name and address of the business. If there isn’t enough money in the register to pay the judgment, you’ll have to pay another fee each time the sheriff goes back.
2. Provide the levying officer with instructions:  
If the levying officer does not provide a form, submit your own *Instructions to Levying Officer* letter. If you believe the business is likely to have a substantial amount of cash on hand at a certain time, instruct the levying officer to visit then. After you type up the instructions, make the necessary copies of the writ instructions for the levying officer, plus one set for your file. Send the original and copies of the writ along with your instructions and fees to the levying officer for the county where the debtor’s business is located. If you are levying against money only, you could use a process server to speed up the process.
3. Get your money:  
The levying officer will proceed with your instructions. He may advise you about the outcome of the levy. If there was any problem with the levy, for example, the business is in a private him, (what?) or has moved, he should contact you. Once the levying officer has collected the proceeds of the levy, he will disburse them to

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you. Don't expect your money right away; delay is common. While you can call the levying officer to make sure your case hasn't fallen through the cracks, be patient. Levying officers often transmit collected lump sums rather than distributing the funds as they are collected.

Make sure you keep track of all money collected as well as any costs incurred by you.

Collection factors – levying on cash coming into the business:

- Potential cost to you: low
- Potential for producing cash: high
- Potential for settlement: high
- Potential time and trouble: moderate
- Potential for debtor bankruptcy: low

Restrictions:

- You cannot levy against receipts received by a home-based business without a court order
- You cannot levy against credit card receipts, or receipts for sales that are not yet final, such as a down payment or layaway deposit
- Some levying offices refuse to collect checks because of the problems involved in getting them cashed. You might deal with this by asking the levying officer to have the debtor endorse the checks over to you

**Keeper Levy\***

A "keeper" involves sending a sheriff's deputy to a business for 4 or 8 hours to collect all cash and checks paid to the business during that time period. If the debtor is a business, the sheriff will, for a fee, remain in the debtor's business establishment and take all the funds that come in until the judgment is paid. The keeper can collect cash, checks and bank credit card drafts. You'll need the name and address of the business. Obtain a "Writ of Execution" (EJ-130) and a "Memorandum of Costs After Judgment Acknowledgment of Credit and Declaration of Accrued Interest" (Form MC-012)". Have the clerk issue the Writ of Execution, and take it to the sheriff. Tell the sheriff you want to put a keeper in the business. You will need to pay the sheriff substantial fees up-front. If the debtor closes the business while the sheriff is there, you'll have to pay another fee each time the sheriff goes back.

## **CHAPTER 10: TAKING ACTION AGAINST AN UNPAID JUDGMENT**

### **Lien on Real Property**

This method of collecting your judgment puts a lien on real estate, usually the judgment debtor's home or rental property. It often prevents the debtor who owns any interest in real property for (i.e., a plot of land, a house, a commercial building) from being able to sell or refinance property without first paying off the judgment.

An Abstract of Judgment (form EJ-001) must be issued with the court. You must wait at least 30 days from the date the judgment is entered.

### **Starting the Process of a Lien**

1. Complete the abstract form and pay the fee to issue the *Abstract of Judgment* form. File the original and 2 copies of the EJ-001 with the Clerk's Office. The Clerk will issue and give you back the original and filed copies.
2. Take or mail the *Abstract of Judgment* to the county recorder's office in the county where you believe the debtor owns real property. They will record the abstract, which places a lien on the property. The recorder's office will then give you back a recorded (stamped) copy. (The recording fee should be about \$20).

You will not be paid automatically, but if there is a refinancing or sale of the property, you should get paid your money with interest. (CCP § Sections 697.310 through 697.410) Some county assessors will confirm if a debtor owns real property over the phone.

Even if the debtor doesn't own property now, you can still record a filed copy of the *Abstract of Judgment* form at the county recorder's office. This accomplishes two things:

- (1) Credit reporting agencies routinely check for recorded abstracts to find out if people have unpaid judgments against them
- (2) If the debtor ever owns any interest in real property in the future, the pre-recorded abstract will adversely impact the debtor's ownership interest until the judgment is paid off

Liens last up to 10 years, the same amount of time your judgments lasts. Before the 10 years run out, be sure to renew your judgment.

### **Can I Have the Debtor's House or Other Real Estate Sold at Public Auction?**

Yes. You can have the sheriff/marshal take the debtor's real property and have it sold at public auction. For more information, check out Code of Civil Procedure §700.015, §§701.540 through 701.680, and §§704.710 through 704.850. This is a relatively complex way to collect a judgment. If you still want to do it, follow these steps:

1. Start by getting information about the real property from the county assessor's office and the county recorder's office. Does a bank or other lender have an interest in the property? Are there other owners of the property?
2. Have the court issue a *Writ of Execution* (EJ-130) to the sheriff/marshal in the county where the real property is located.
3. Give the sheriff/marshal written instructions and their fees. The sheriff will probably have a form of *Real Property Levy Instructions*. The fees will probably be approximately \$1,000.
4. An officer will then serve a *Notice of Levy* on the debtor and you.
5. If the real property is a dwelling, you must ask the court for an order of sale. You must do this within 20 days of receiving notice that the levy has been made.
6. After 120 days, an officer will then serve a *Notice of Sale* on the debtor. The notice will be posted in a public place and on the property. It's served on the occupant of the property, if there is one. The notice also is published in the local newspaper and mailed to any lien holders.
7. Proceeds from the sale are to be distributed within 30 days after the sale.

### **Can I Have the Sheriff Take The Debtor's Car and Sell It?**

Yes, but this process is fairly expensive and a portion of the value of the vehicle is exempt. Also, there often isn't enough value, if any, left in the vehicle to pay very much of the judgment. Follow these steps:

Start by getting information about the vehicle, including its identification number (VIN), make, model, color, license number, and physical location. If possible, also find out if a bank or other lender has an interest in the vehicle.

1. Ask the court to issue a *Writ of Execution* (EJ-130) directed to the sheriff/marshal in the county where the vehicle is located.
2. Give the sheriff/marshal written instructions that describe the vehicle as thoroughly as possible, and their fees and deposit (approximately \$1,000).
3. An officer will then physically remove the vehicle and store it. Daily storage costs will accrue until the vehicle is sold.
4. The sheriff/marshal then advertises the public auction of the vehicle and gives notice to the debtor.
5. If the vehicle is sold at auction, the bank, the exemption, the sheriff's fees and the creditors must be paid first before you are paid. Also, the debtor is entitled to approximately \$2,500 of the proceeds of the sale (paid to them or to a lien holder if there is a loan on the vehicle).



### **Suspending the Judgment Debtor's License**

If a California court awards you a civil judgment against the at fault party (judgment debtor) in a motor vehicle accident occurring in California, you may have the DMV suspend the judgment debtor's driver's license. All accidents must be on a public street, highway, or private property in the state of California.

A. If the judgment is for more than \$750 in property damages *or* \$500 or more for accidents prior to January 1, 2003 (not including the court cost), and

1. The judgment is not paid within 30 days after the judgment becomes final
2. The judgment is based on bodily injury or wrongful death. Actions will be taken on any amount

If you meet all the criteria listed above you can complete the DMV's *Certificate of Facts Re Unsatisfied Judgment* (DMV form DL 30), and suspend the debtor's driving privilege.

You can view and print this form by visiting DMV's website at  
<http://www.dmv.ca.gov/forms/dl/dl30.pdf>

B. If the judgment is for less than \$750 in property damages *or* \$500 or less for accidents prior to January 1, 2003 (not including the court cost), and

1. The judgment is not paid within 90 days after the judgment becomes final

If you meet all the criteria listed above then you can complete the DMV's *Notice of Unsatisfied Judgment of \$750 or less* (DMV form DL 17).

You can view and print this form by visiting DMV's website at  
<http://www.dmv.ca.gov/forms/dl/dl17.pdf>

The fee for processing the form is \$20.00. Please make the check or money order payable to the Department of Motor Vehicles. After completing forms DL 30 or DL 17, mail it with your check or money order and certified court documents to:

Department of Motor Vehicles  
ATTN: CIVIL JUDGMENT  
P.O. Box 942884 Mail Station J237  
Sacramento, CA 94284-0884

**\*DO NOT TAKE FORMS TO YOUR LOCAL DEPARTMENT OF MOTOR VEHICLES\***  
If you have any questions please contact DMV customer service representatives at 916-657-7573 for more information.

## **CHAPTER 11: POSTJUDGMENT COSTS AND INTEREST**

### **How do I Compute the 10% Interest That I'm Entitled to on the Paid Portion of the Judgment?**

Interest begins on the day the final judgment is entered. If partial payments are made, those payments are first applied to the accrued interest and then to the unpaid principal. For more information, check out Code of Civil Procedure §§685.010 to 685.030.

To calculate the interest, first determine the daily amount of interest. For example, a \$5,000 judgment will accrue \$500 of interest per year at a rate of 10%. Dividing \$500 by 365 days gives you a daily interest rate of \$1.37.

Now, assume that after 145 days the debtor pays you \$400. The following computation shows the amount of interest that will accrue after that payment is made:

After 145 days, \$198.65 (145 days x \$1.37/day) of interest will have accrued on the \$5,000 judgment. Out of the debtor's \$400 payment, pay yourself the accrued interest first. You then will have \$201.35 left ( $\$400 - \$198.65 = \$201.35$ ). Now credit the remaining \$201.35 against the \$5,000 judgment ( $\$5,000 - \$201.35 = \$4,798.65$  of unpaid principal). The new daily interest will then accrue at a rate of \$1.31/day ( $\$4,798.65 \times 10\% = \$479.86 \div 365$ ).

Assume, then, that 215 days later a \$1,700 payment is made. During the 215 days, \$281.65 (215 days x \$1.31/day) of interest will have accrued. Out of the \$1,700, pay yourself the accrued interest first ( $\$1,700 - \$281.65 = \$1,418.35$ ) leaving \$1,418.35 to apply to unpaid principal. Now credit the \$1,418.35 against the remaining judgment principal of \$4,798.65, and we find that \$3,380.30 remains unpaid. The new daily interest will then accrue at a rate of \$0.93/day ( $\$3,380.30 \times 10\% = \$338.03 \div 365$ ).

Make sure to file a *Memorandum of Costs* to collect interest. You can only collect 2 years' worth of interest (maximum) with the *Memorandum of Costs*, so don't wait more than 2 years to document the accrued interest with the court.

## **CHAPTER 12: RENEWING YOUR JUDGMENT**

In California, a judgment is good for 10 years, and may be renewed for another 10 years. You may also renew your judgment at any time prior to 10 years. To renew a judgment you must file an *Application for and Renewal of Judgment* (EJ- 190), as well as a *Notice of Renewal of Judgment* (EJ-195).

In order to include accrued interest from the date the judgment was issued you must fill out a *Memorandum of Costs After Judgment* (MC-012).

The renewal extends the period of enforceability of the judgment until 10 years from the date the application for renewal was filed. If the judgment debtor objects to this renewal, they may make a motion to vacate or modify the renewal with the court. The debtor must make this motion within 30 days after service of this notice.

Once these forms are filed, the debtor must be personally served or served by mail. Also, any liens that exist must also be renewed. The filing fee is currently \$14 to renew a judgment from small claims.

## **CHAPTER 13: CONFLICTS THAT MAY ARISE IN COLLECTING YOUR JUDGMENT**

### **What to do if the Debtor files Bankruptcy**

#### *When the Debtor files for Bankruptcy*

Upon filing for bankruptcy, the court issues an “automatic stay,” meaning that you must stop all collection efforts against the debtor.

- If you started levying property or garnishing wages, you must let the sheriff or levying officer know. Give him the case name and number. In addition, you may need to tell him to release any funds collected to bankruptcy court
- If you have started collecting money, you may be required to return that money you obtained 90 days prior to the bankruptcy filing

#### *What if there are co-debtors?*

A co-debtor is another defendant who owes you a judgment. This also includes the debtor’s spouse, if the defendant was married at the time his debt to you was incurred. You may be able to collect from a co-debtor depending on the type of bankruptcy filed.

- Chapter 7: You may collect from the co-debtor at any time
- Chapter 13: You cannot collect from a co-debtor while the case is pending. Should you receive only a portion of what the debtor owes you from the repayment plan, you may request the co-debtor to pay the balance

#### *Examine Bankruptcy Papers*

If you are listed as a creditor, you will probably receive a notification of the type of bankruptcy.

- Chapter 7 “no asset” case: The debtor has no assets that can be liquidated
- Chapter 7 “asset” case: The debtor has assets to pay some creditors
- Chapter 13 case: The debtor intends to repay a portion of the debt

In the case of a Chapter 7 “asset” case and a Chapter 13 case, you must obtain a *Proof of Claim* form, fill it out, and file it at the bankruptcy court. The *Proof of Claim* must be filed in order to be paid.

#### *Types of Bankruptcy*

- Chapter 7: The debtor asks the court to cancel his debts. Any non-exempt property is taken by the courts and liquidated. The money is distributed to the creditors. If the debtor has only exempt property, the creditors may not receive anything.
- Chapter 13: The debtor reorganizes the debt to be paid over the course of 3 to 5 years. Debt may be reduced, and if the debtor successfully completes the plan, the remaining balances are wiped out.

*If you didn't receive papers*

If you think the debtor filed for bankruptcy and didn't receive notification, act as if you did receive them. Call the bankruptcy court and ask if the debtor has filed for bankruptcy. Get the case number and the name and phone number of the trustee managing the case and contact him. Tell him that you are a judgment creditor and didn't receive notice of the bankruptcy. Ask for a notice to be sent to you so you can file a *Proof of Claim*.

### **How Do I Collect My Judgment If the Debtor Dies?**

In the case that you are trying to collect a judgment and the debtor happens to die, there are two ways in which you can try to collect your judgment:

#### **Probate**

If the debtor's assets are distributed through probate, you can collect your judgment by filing a *Creditor's Claim* (DE-172) in the Probate Court. This notifies the court of your claim and asks the court to satisfy your judgment through the debtor's assets. You must file a *Creditor's Claim* in order to collect through probate; if you fail to file a claim, you may give up all your rights to collect.

*When to File Your Claim—*

- Claims by creditors of the debtor must be filed with the court and served within 60 days of the date notice was received from the personal representative
- If no notice was provided to the creditor, you have four months after letters of administration were issued to the personal representative

*Filing Creditor's Claim—*

- Make sure to make four copies
- File the original claim and a copy at the court
- Another copy should be mailed or hand delivered to the personal representative. A proof of service can be found on the reverse of the *Creditor's Claim* form
- The last copy should be kept as a personal record

After the personal representative receives the claim, they will send you an *Allowance or Rejection of Claim* form. In the case where the personal representative ignores or rejects your claim, you can file a lawsuit against the personal representative within approximately 30 days after the *Creditor's Claim* was filed.

#### **No Probate**

If the debtor's assets are passed outside of probate, the only way you can try to collect your judgment is to find the assets that formerly belonged to the deceased debtor. Once the debtor's assets are passed on, it can be hard to trace. In most cases, you can sue the debtor's spouse, children, or whoever received their assets.

**\*NOTE:** In either case, if you placed a lien on the debtor's property, it will make it easier for you to collect because liens remain on the property that is passed on. The lien is usually paid off before the property is sold. However, if the property is held in joint

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tenancy, and your claim is only against one joint tenant, the lien ends when the tenant dies.

## **CHAPTER 14: SATISFIED JUDGMENT**

After a judgment is paid, the court clerk shall enter satisfaction of a money judgment when the following occur:

- a) A writ is returned satisfied for the full amount of a lump-sum judgment
- b) An *Acknowledgement of Satisfaction of Judgment* is filed with the court
- c) The court orders an *Entry of Satisfaction of Judgment*

When a money judgment is satisfied, the judgment creditor must immediately file an acknowledgement of satisfaction of judgment with the court. This section does not apply where the judgment is satisfied in full pursuant to a writ.

If an abstract of a money judgment has been recorded with the recorder of any county, and the judgment is satisfied, the judgment creditor shall immediately do both of the following:

- a) File an *Acknowledgment of Satisfaction of Judgment* with the court
- b) Serve an *Acknowledgement of Satisfaction of Judgment* on the judgment debtor. Service can be made personally or by mail

### **Small Claims Judgment CCP §§116.850- 116.860**

If full payment of the judgment is made to the judgment creditor, then immediately upon receipt of payment, the judgment creditor must file with the clerk of the court an acknowledgment of satisfaction of the judgment.

A judgment debtor may also make payment to the court in which the judgment was entered. In order to do so, the judgment debtor must file a request to make payment to the court; this shall be made on a form approved or adopted by the Judicial Council. Upon the filing of the request to make payment, the payment to the clerk of the amount of the judgment, any accrued interests and costs after judgment, and any required fees, the clerk shall enter satisfaction of the judgment and remit payment to the judgment creditor. A fee of twenty dollars (\$20) shall be paid by the judgment debtor to the clerk of the court for the costs of administering the transaction.

### **What if the Creditor Won't File a *Satisfaction of Judgment* (Small Claims)?**

Any judgment creditor whom, after receiving full payment of the judgment and written demand by the judgment debtor, fails without good cause to execute and file an acknowledgement of satisfaction of judgment with the clerk of the court in which the judgment is entered within 14 days after receiving the request, is liable to the judgment debtor for all damages sustained by reason of such failure, and shall also pay fifty dollars (\$50) to the judgment debtor.

### **What if The Creditor Won't File a *Satisfaction of Judgment* (Civil)? CCP §724.050**

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If the judgment has been satisfied and the judgment creditor fails to comply with the demand within the time allowed, the judgment creditor is liable to the judgment debtor, who made the demand, for all damages sustained by reason of such failure, and shall also pay one hundred dollars (\$100) to the judgment debtor.