

DEFAULT JUDGMENT CHECKLIST CLERK DEFAULT JUDGMENT – CIVIL

Use this checklist to complete your default judgment prior to filing it with the court. The Default Judgment Checklist is intended to provide a guideline to properly file your Proof of Service, Request for Entry of Default and Clerk Default Judgment.

A clerk may enter a default judgment in a written obligation (e.g., contract or promissory note) action only if the amount due is set forth in the contract or may be determined from the terms of the agreement. The action must state the amount due in the written agreement or must be easily determined without taking evidence. Examples of case types that are typical of a Clerk Default Judgment include: open book accounts (credit cards), bad checks, accounts stated based on statements, and promissory notes for money owed, and collection cases.

A clerk default judgment may be obtained when the defendant fails to file a response to the summons and complaint within the time specified on the summons. Even if the defendant fails to file a response, you will not obtain a default judgment if the named defendant has not been properly served, the party names do not match the names on the complaint or on any subsequent amendments to the complaint, or there are other technical defects such as omitting a signature.

This information is intended as a guide to assist you in processing your default judgment.

1. **Proof of Service.** Use Judicial Council form POS-010. A sheriff or process server may use a similar form that complies with California Rules of Court, rule 2.150.
 - A separate Proof of Service of Summons must be used for each defendant served.
 - The name of the party served is the same as the defendant or cross-defendant named in complaint or in any subsequent amendment.
 - Indicate the name and title of the person authorized to accept service on behalf of a business/entity.
 - If substituted service method was used on a natural person, a Declaration of Due Diligence must be attached to the Proof of Service.
 - If service is done by Notice and Acknowledgment of Receipt – Civil (POS-015), file the Proof of Service of Summons (POS-010) along with the signed Notice and Acknowledgment of Receipt – Civil.

2. **Request for Entry of Default.** Use Judicial Council form CIV-100. This form specifies which sections are required to be completed to obtain default only, or to obtain default and apply for a default judgment. The default cannot be entered if any of the following exists:
 - The time for the defendant to respond, as specified in the summons, has not expired.
 - An answer, demurrer, notice of motion to strike any part of the pleading, notice of motion to transfer, notice of motion to dismiss, notice of motion to quash service of summons or to stay or dismiss the action, or notice of filing a writ of mandate. (Code of Civil Procedure section 585(a)–(c))
 - The POS-010 does not indicate the defendant was properly served.

If any of the following exists, the default of defendant may not be entered:

 - The names of the defendant(s), including “aka’s”, are not the same as the names on the complaint or any amendment.
 - Proof of service of Statement of Damages (Judicial Council form CIV-050) has not been filed when the complaint is for Personal Injury or Wrongful Death action.
 - Proof of service of statement of damages has not been filed when the complaint is requesting punitive damages.

3. Clerk Default Judgment. Use Judicial Council form JUD-100.

*Note: If a statement of damages was required, you must proceed with a Court Default Judgment.

Any damages, prejudgment interest, attorney fees, costs or other monetary amounts, if requested, must be stated 1) in the prayer of the complaint, and 2) must be specified on the Request for Entry of Default form (page 1, section 2). The clerk will not calculate the amounts for you.

- Use Judicial Council form CIV-110 – Request for Dismissal, to dismiss any named or doe defendants **not** stated on the judgment.

Costs claimed on the judgment:

- If the case could have been filed in Small Claims Court , you may apply to the court to have costs allowed as part of the judgment.
- If the case could **not** have been filed in Small Claims Court (e.g., assigned claim), submit a declaration stating that the demand letter was mailed to the defendant, notifying them that they are liable for court costs (Code of Civil Procedure section 1033). You must apply to the court to have costs allowed as part of the judgment.

Interest claimed on the judgment:

- Interest is allowed at the legal rate unless the contract allows for a higher rate. This must also be specified in the prayer of the complaint. If the amount exceeds the legal rate, the original contract must be filed with the court.

Attorney Fees claimed on the judgment:

- Attorney fees claimed must comply with any schedule provided for by local court rules.
- If attorney fees are allowed by a specific statute, such as Civil Code section 1717, et seq., this must be specified in a separate declaration or specified in the prayer of the complaint.
- If attorney fees are based on a written agreement, this must be stated in the prayer of the complaint. The original contract must be filed with the court.

Written Agreement:

- Submit the original contract **or** a copy of the contract with a declaration why the original contract cannot be submitted. This must be filed when requesting attorney fees in accordance to the agreement or when requesting interest that is more than the legal limit. You can help expedite your judgment by highlighting the agreement for attorney fees and any interest claimed that exceeds the legal amount. In most instances, the legal amount is 10%.

Fee Waiver has been granted for prevailing party:

- The judgment must include all fees that were waived by the court. Any costs collected must be paid to the court.

4. Basics to check or include before submitting your document to the court.

- Is each document and declaration dated and signed?
- If you are not eFiling or filing by FAX, each document submitted must be an original unless you have applied to the court to accept a copy in lieu of the original.
- Did you include a self-addressed, stamped envelope of sufficient size and with sufficient postage for the clerk to return your file stamped copies to you?

Default Judgment – General Civil Complaints (non-Unlawful Detainer Actions)

General Information

<p>Clerk Default Judgment A Clerk Default Judgment may be obtained in an action arising from a contract for the recovery of money or damages where the relief sought is fixed. The judgment may be entered immediately following the entry of default. CCP 585(a)</p>	<p>Samples of Types of Cases that may be Suitable for Clerk Default Judgment Open-book accounts as defined in CCP 337(a) Promissory notes Recovery of money or damages only Breach of Contract Collection cases</p>
<p>Court Default Judgment When the Clerk does not have the authority to enter a default judgment, a Court Default Judgment is required.</p>	<p>Samples of Types of Cases not suitable for a Clerk Default Judgment Amount of relief sought is not fixed or determinable from the contract terms; Case did not arise from a contract or judgment; The summons was served by publication; At least one of the defendants is not in default and has not been dismissed.</p>

Answers to Common Questions

<p>What is required to be filed to have a default entered? Proof of Service of Summons (for each party to be defaulted); Request to Enter Default (Judicial Council form CIV-100)</p>	<p>What is required to be filed with my judgment form to obtain a Clerk Default Judgment? Proof of Service of Summons (if not already filed); Request to Enter Default (if not already filed); Declaration pursuant to Code of Civ. Proc. § 1033 (if judgment amount is less than the jurisdiction of Small Claims Court); Original agreement or declaration to accept copy in lieu of original (if applicable).</p>
<p>The court has set a Case Management Conference. If I submit a default judgment, will the hearing still be held? The hearing will be held unless your default judgment is processed and entered by the clerk prior to the hearing date. Filing your documents accurately and in a reasonable time prior to the hearing date will help ensure your case is removed from the court calendar.</p>	<p>When is the original agreement required for judgment? When interest exceeds the legal rate When attorney fees are based on written agreement</p>

Useful Resources

<p>Useful resources include forms and California Rules of Court found at www.courts.ca.gov.</p> <ul style="list-style-type: none"> • Case management timelines can impact the filing of your documents. These can be found in California Rules of Court, rule 3.110. This does not apply to Collection cases under rule 3.740(a), unlawful detainer actions, and other proceedings for which different service requirements are prescribed by law. • Cal Code of Civil Procedure, sections 425.11; 415.115; 417.10 et seq.; 579; 585-587; 1033 • Cal Rules of Court, rule 3.1800 – Dismissal of defendants • Cal Rules of Court, rule 3.1806 – Cancellation of original contract by clerk • Civil Code 1717.5 – Open book, attorney fees • Local rules of the court where your case is filed
