

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W19-05

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| Title | Action Requested |
| Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information | Review and submit comments by February 12, 2019 |
| Proposed Rules, Forms, Standards, or Statutes | Proposed Effective Date |
| Adopt form CIV-165 | September 1, 2019 |
| Proposed by | Contact |
| Civil and Small Claims Advisory Committee | Susan R. McMullan, 415-865- |
| Hon. Ann I. Jones, Chair | 7990 susan.mcmullan@jud.ca.gov |

Executive Summary and Origin

Legislation effective January 1, 2019, authorizes a person who believes that his or her personal identifying information has been used unlawfully in a business entity filing to petition a court for a determination of unlawful use and issuance of an order certifying that determination and ordering specified actions. Senate Bill 1196 (Jackson; Stats. 2018, ch. 696) requires the Judicial Council to develop a form for issuing the order. The Civil and Small Claims Advisory Committee proposes that new *Order on Unlawful Use of Personal Identifying Information* (form CIV-165) be used for that purpose.

The Proposal

SB 1196 provides that a party may petition a court to stop the wrongful use of the party's identity in a business entity filing with the Secretary of State and mandates that the council adopt a form that may be filed with the Secretary of State.

SB 1196 adds new Civil Code section 1798.201 to authorize a person who has learned or reasonably suspects that his or her personal identifying information has been used unlawfully¹ in a business entity filing, and who has initiated a law enforcement investigation into the unlawful use, to petition the superior court for an order directing the person who acquired the information with the intent to defraud, if known, and the person using the personal identifying information in

¹ This is defined in Penal Code section 530.5(a) as "any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of [another] person."

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

the business entity filing, to appear at a hearing before the court. The alleged perpetrator and the person using the personal identifying information must show cause for both (1) why the personal identifying information should not be labeled to show the information is impersonated and does not reflect the person's identity, and (2) why the personal identifying information should be associated with the business entity. (Civ. Code, § 1798.201(a) & (b).)

SB 1196 also adds new Civil Code section 1798.202, which provides that if the court determines the petition is meritorious and there is no reasonable cause to believe that the victim's personal identifying information has been used lawfully in the business entity filing, the court must make a finding that the victim's personal identifying information has been used unlawfully in the business entity filing and issue an order certifying this determination. Upon making the determination, the court must order that the name and identifying information be redacted or labeled to show that it is impersonated and that it be removed from publicly accessible electronic indexes and databases.

This proposal recommends the adoption of new *Order on Unlawful Use of Personal Identifying Information* (form CIV-165) to comply with the requirement of SB 1196. Form CIV-165 would include the findings necessary under new Civil Code section 1798.202 for a judicial determination that the petitioner's personal identifying information was used unlawfully and the action that a judge must order upon such a determination: that the name and identifying information be redacted or labeled to show that it is impersonated and that it be removed from publicly accessible electronic indexes and databases. The form would require the petitioner to file a certified copy of the order with the Secretary of State. (See Civ. Code, § 1798.202(f).)

Alternatives Considered

The advisory committee considered how to word item 2 on form CIV-165. In stating that the court found no reasonable cause to believe that the petitioner's personal identifying information had been used lawfully, the three alternatives considered were to (1) set out the types of information the court relied on in making the finding, by tracking the language of the statute; (2) state only that the court relied on relevant and reliable information in making its finding; or (3) state only that the court made the finding. Some members were concerned that if the types of information includes police reports, petitioners may attach them or include them when their petitions are filed. This could require a filing under seal. Others noted that police reports and other documents that petitioners might show to judicial officers did not necessarily need to be filed. After discussion of the alternatives, the committee decided to track the language of the statute and is interested in comments on this question.

Fiscal and Operational Impacts

The fiscal and operational impacts of the proposal are limited. This proposal is for a form order that must be filed by the petitioner with the Secretary of State. The authority and procedures for setting and holding a hearing on the petition are required by statute and not created by this proposal.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the language in item 2 include the types of information, as set out in new Civil Code section 1798.202, that the court may have relied on in making its findings?

The advisory committee also seeks comments from *courts* on the following implementation matters:

- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Form CIV-165, at page 4
2. Link A: Senate Bill

1196, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1196

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| ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (<i>Name</i>): _____ | FOR COURT USE ONLY DRAFT 11-27-2018 Not approved by the Judicial Council |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____ | |
| PETITION OF (<i>Name</i>): _____ | |
| ORDER ON UNLAWFUL USE OF PERSONAL IDENTIFYING INFORMATION | CASE NUMBER: _____ |

1. The petition of (*name*): _____ under Civil Code section 1798.201 came on for hearing
 on (*date*): _____ at (*time*): _____
 in Dept.: _____

2. THE COURT FINDS, based on declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be made part of the record by the court, that the petition is meritorious and there is no reasonable cause to believe that the petitioner's personal identifying information has been used lawfully in the business entity filing. The court finds that the victim's personal identifying information has been used unlawfully in the business entity filing.

3. THE COURT ORDERS that the name and associated personal identifying information in the business entity filing is to be redacted or labeled to show that the data is impersonated and does not reflect the victim's identity and the name and personal identifying information is to be removed from publicly accessible electronic indexes and databases.

4. For this order to be carried out, the petitioner must file a certified copy of this order with the Secretary of State.

Date: _____

JUDICIAL OFFICER