

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR17-07

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<b>Title</b>	<b>Action Requested</b>
Civil Practice and Procedure: Request for Entry of Default	Review and submit comments by April 28, 2017
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Adopt form CIV-105; revise form CIV-100	January 1, 2018
<b>Proposed by</b>	<b>Contact</b>
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	Christy Simons, 415-865-7694 <a href="mailto:christy.simons@jud.ca.gov">christy.simons@jud.ca.gov</a>

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### Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes adopting a new form to request entry of a default judgment in cases under the Fair Debt Buying Practices Act to facilitate compliance with the statutory requirements for a default judgment in such cases. The committee also proposes revising the current form used to request entry of a default judgment in all other civil cases to include a notice that the form is not for use in actions under the Fair Debt Buying Practices Act.<sup>1</sup> In addition, both forms include a revised declaration of nonmilitary status to clarify the language and include the state law definition of military service. Both proposals originated from suggestions submitted by the Office of the Attorney General.

### Prior Circulation

This proposal circulated previously in spring 2016. At that time, the committee proposed revising form CIV-100 by adding text to alert the court and parties that compliance with the Fair Debt Buying Practices Act, Civil Code sections 1788.50–1788.64, may be required for a default judgment. Many comments received by the committee requested that more be done to specify the numerous statutory requirements for a default judgment under the Act. The committee concluded that the best way to assist the courts and litigants in complying with the Act was to create a separate form for use only in such cases.

The proposed revisions to the declaration of nonmilitary service also circulated in spring 2016. The comments were all positive. However, the committee decided to defer action on these

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<sup>1</sup> Current form CIV-100 is available at [www.courts.ca.gov/documents/civ100.pdf](http://www.courts.ca.gov/documents/civ100.pdf).

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

revisions and recirculate them with this proposal rather than revise form CIV-100 twice in two years.

## **The Proposal**

### **Requirements of the Fair Debt Buying Practices Act**

The Fair Debt Buying Practices Act, which took effect January 1, 2014, imposes a number of requirements on debt buyers pursuing collection efforts, including that no default judgment may be entered against a debtor defendant unless the debt buyer plaintiff submits certain documents, authenticated through a sworn declaration, to establish specified facts (§ 1788.60(a), (b)). If the debt buyer has not complied with the Act's requirements, the court cannot enter a default judgment for the debt buyer (§ 1788.60(c)).

The current general civil form for requesting a default judgment, form CIV-100, does not refer to the Act or include any of its requirements. The original proposal by the Office of the Attorney General was a response to the large number of default judgments that were entered across the state without satisfying these statutory requirements. Proposed new form CIV-105, based on form CIV-100, lists all of these requirements for a default judgment to assist both courts and litigants in complying with the Act.

The Act does not specify whether a default judgment should be entered by the clerk or the court, and the proposed form does not attempt to resolve this question. The form retains the boxes in the caption area in which the filing party requests entry of default and/or court judgment or clerk's judgment. In the body of the form, there is a single check box to request a default judgment under the Act.

To highlight the distinction between the new form and general civil default form CIV-100, proposed form CIV-105 includes, just below the caption, a statement that this form is "Only for use in actions under the Fair Debt Buying Practices Act, Civil Code Section 1788.50 et seq."

The proposed form also includes new items 3, 4, and 5, which specify the statutory requirements for a default judgment. Item 3 requires the party seeking a default judgment to state that the action is not barred by the statute of limitations (§ 1788.56). Comments would be appreciated on whether this statement should be required to be made under penalty of perjury. Item 4 lists the required allegations of the complaint (§ 1788.58), all of which must in fact have been alleged for a debt buyer plaintiff to obtain a default judgment (§ 1788.60). Item 5 lists the requirements for a default judgment (§ 1788.60). The statutory requirements in items 3, 4, and 5 do not have check boxes because all of these items must be present for the plaintiff to establish that the requirements of the Act have been met.

Items 6, 7, and 8 on pages 2 and 3 of proposed form CIV-105 are identical to items 4, 5, and 6 on form CIV-100, and all are declarations under penalty of perjury. Item 9 is the revised declaration of nonmilitary status (see below). Item 10, the memorandum of costs, is identical to item 7 on form CIV-100. The signature lines for items 9 and 10 have been consolidated.

### **Revisions to existing form CIV-100**

Two changes are proposed for this form. One is the addition just below the caption of a statement that this form is “Not for use in actions under the Fair Debt Buying Practices Act, Civil Code section 1788.50 et seq.” The other is the revisions to the declaration of nonmilitary status, item 8 (see below).

### **Declaration of nonmilitary status**

The proposed revisions to the declaration of nonmilitary status (item 8 on form CIV-100), briefly, are to (1) add reference to the state law definition of military service, (2) update the statutory reference to federal law, (3) simplify the language to correct an ambiguity, and (4) delete an unnecessary check box. The changes are fully described in the spring 2016 invitation to comment, available at [www.courts.ca.gov/documents/SPR16-07.pdf](http://www.courts.ca.gov/documents/SPR16-07.pdf).

### **Alternatives Considered**

#### **Revisions to form CIV-100 in light of Fair Debt Buying Practices Act**

The committee considered expanding the general civil default form (CIV-100) to include the Act’s statutory requirements. However, doing so would have added a substantial amount of content to an already dense form, pushing the form onto a third page for content that would only have relevance for a single type of case.

The committee also considered creating an attachment for use with the current default request form. Under this alternative, form CIV-100 would include a question about whether the Act applies. If the question were answered in the affirmative, the filer would be instructed to submit the attachment with the information and documents required by the Act. The committee does not recommend this alternative because an attachment can be overlooked and might not as effectively achieve compliance with the Act.

#### **Declaration of nonmilitary service**

The committee considered but rejected the alternative of making no revisions to this item because the changes are necessary to comply with state law and to accurately refer to federal law.

#### **Implementation Requirements, Costs, and Operational Impacts**

This proposal will require training of clerks regarding the new form and the documents that must be attached at the time of filing. The new form should, however, clarify requirements already imposed by law and make it easier for judges and clerks to determine compliance with the Act when reviewing requests for default judgment.

## 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 statement regarding the statute of limitations in item 3 be required to be made under penalty of perjury?

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

- Would the proposal provide cost savings? If so please quantify.
- 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 three and a half months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Proposed forms CIV-100 and CIV-105, at pages 5–9



Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant  did  did **not** for compensation give advice or assistance with this form. If declarant has received **any** help or advice for pay from a legal document assistant or unlawful detainer assistant, state

a. assistant's name: c. telephone no.:  
b. street address, city, and zip code: d. county of registration:  
e. registration no.:  
f. expires on (date):

5.  **Declaration under Code Civ. Proc., § 585.5** (for entry of default under Code Civ. Proc., § 585(a)). This action

a.  is  is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).  
b.  is  is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).  
c.  is  is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was

a.  **not mailed** to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (*names*):  
b.  **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:  
(1) Mailed on (*date*): (2) To (*specify names and addresses shown on the envelopes*):

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.  
Date: \_\_\_\_\_

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(TYPE OR PRINT NAME)

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(SIGNATURE OF DECLARANT)

7. **Memorandum of costs** (required if money judgment requested). Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

a. Clerk's filing fees .....	\$
b. Process server's fees .....	\$
c. Other ( <i>specify</i> ):	\$
d.	\$
e. <b>TOTAL</b> .....	\$ _____

f.  Costs and disbursements are waived.  
g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
Date: \_\_\_\_\_

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(TYPE OR PRINT NAME)

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(SIGNATURE OF DECLARANT)

8. **Declaration of nonmilitary status** (required for a judgment). No defendant named in item 1c of the application is in the military service as that term is defined by either the Servicemembers Civil Relief Act, 50 U.S.C. Appen. § 3911(2), or Military and Veterans Code section 400(b).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
Date: \_\_\_\_\_

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(TYPE OR PRINT NAME)

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(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not Approved by</b> <b>the Judicial Council</b> <b>02.06.2017</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	
<b>REQUEST FOR</b> <input type="checkbox"/> <b>Entry of Default</b> <input type="checkbox"/> <b>Clerk's Judgment</b> <b>(Application)</b> <input type="checkbox"/> <b>Court Judgment</b>	CASE NUMBER:
<b>Only for use in actions under the Fair Debt Buying Practices Act, Civil Code section 1788.50 et seq.</b>	

1. TO THE CLERK: On the complaint or cross-complaint filed
  - a. on (date):
  - b. by (name):
  - c.  Enter default of defendant(s) (name(s)):
  - d.  I request a judgment under Civil Code section 1788.60 and Code of Civil Procedure section 585 against defendant(s) (name(s)):

*(Testimony may be required. Check with the clerk regarding whether a hearing date is needed or whether the court will enter a judgment on an affidavit.)*

- e.  Default was previously entered on (date):

	<u>Amount</u>	<u>Credits acknowledged</u>	<u>Balance</u>
a. Demand of complaint* . . . . .	\$	\$	\$
b. Interest . . . . .	\$	\$	\$
c. Costs (see reverse) . . . . .	\$	\$	\$
d. Attorney fees . . . . .	\$	\$	\$
e. <b>TOTALS</b> . . . . .	\$	\$	\$

(\* Shall be established by business records, authenticated through a sworn declaration, submitted herewith. (Civ. Code, §§ 1788.58(a)(4), 1788.60(a).))

3. This action is not barred by the applicable statute of limitations (Civ. Code, § 1788.56).
4. **Requirements for the complaint.** The court shall not enter a default judgment unless the complaint contains ALL of the following allegations (Civ. Code, §§ 1788.58, 1788.60):
  - a. A statement that the plaintiff is a debt buyer;
  - b. A short, plain statement explaining the consumer transaction(s) that gave rise to the underlying debt;
  - c. A statement that the plaintiff is EITHER the sole owner of the debt OR has the authority to assert the rights of all owners of the debt;
  - d. A statement of the debt balance at charge-off and an explanation of the amount and nature of, and reason for, all post-charge-off interest and fees, if any;
  - e. The date of the default OR the date of the last payment;
  - f. The name and address of the charge-off creditor at the time of charge-off and the charge-off creditor's account number associated with the debt;

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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4. g. The name and last known address of the debtor as they appeared in the charge-off creditor's records at the time the debt was sold;
  - h. The names and addresses of all persons or entities that purchased the debt after charge-off, including the plaintiff debt buyer; and
  - i. A statement that the plaintiff has complied with Civil Code section 1788.52.
5. **Requirements for default judgment under the Fair Debt Buying Practices Act.** The court shall not enter a default judgment unless ALL of the following documents are submitted with this request for default judgment (*Civ. Code, § 788.60(a)-(c)*):
- a. A copy of the contract or other document described in Civil Code section 1788.52(b), authenticated by a sworn declaration; AND
  - b. Business records, authenticated by a sworn declaration, to establish:
    - (1) that the plaintiff is EITHER the sole owner of the debt OR has the authority to assert the rights of all owners of the debt;
    - (2) the debt balance, including the balance at charge-off; and the amount and nature of, and reason for, any post-charge-off interest and fees;
    - (3) the date of the default OR the date of the last payment;
    - (4) the name and address of the charge-off creditor at the time of charge off, and the account number associated with the debt;
    - (5) the name and last known address of the debtor at the time of the sale of the debt; and
    - (6) the names and addresses of all persons or entities that purchased the debt after charge-off, including the plaintiff debt buyer.

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

(TYPE OR PRINT NAME)

\_\_\_\_\_  
 (SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

<b>FOR COURT USE ONLY</b>	(1) <input type="checkbox"/> Default entered as requested on <i>(date)</i> :
	(2) <input type="checkbox"/> Default NOT entered as requested <i>(state reason)</i> :
	Clerk, by _____, Deputy

6. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant  did  did **not** for compensation give advice or assistance with this form. If declarant has received **any** help or advice for pay from a legal document assistant or unlawful detainer assistant, state
- |  |                               |
|--|-------------------------------|
| a. assistant's name:                   | c. telephone no.:             |
| b. street address, city, and zip code: | d. county of registration:    |
|  | e. registration no.:          |
|  | f. expires on <i>(date)</i> : |
7.  **Declaration under Code Civ. Proc., § 585.5** (*required for entry of default under Code Civ. Proc., § 585(a)*). This action
- a.  is  is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
  - b.  is  is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
  - c.  is  is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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8. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was

- a.  **not mailed** to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (*names*):
- b.  **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
  - (1) Mailed on (*date*):
  - (2) To (*specify names and addresses shown on the envelopes*):

I declare under penalty of perjury under the laws of the State of California that the foregoing items 6, 7, and 8 are true and correct.

Date:

(TYPE OR PRINT NAME)		(SIGNATURE OF DECLARANT)
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9. **Declaration of nonmilitary status (required for a judgment).** No defendant named in item 1c of the application is in the military service as that term is defined by either the Servicemembers Civil Relief Act, 50 U.S.C. Appen. § 3911(2), or Military and Veterans Code section 400(b).

10. **Memorandum of costs (required if money judgment requested).** Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

- a. Clerk's filing fees ..... \$
- b. Process server's fees ..... \$
- c. Other (*specify*): .....
- d. .... \$
- e. **TOTAL** ..... \$ \_\_\_\_\_
- f.  Costs and disbursements are waived.
- g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing Items 9 and 10 are true and correct.

Date:

(TYPE OR PRINT NAME)		(SIGNATURE OF DECLARANT)
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