

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR17-08

Title

Civil Practice and Procedure: Writ of Execution

Action Requested

Review and submit comments by April 28, 2017

Proposed Rules, Forms, Standards, or Statutes

Revise forms EJ-130 and MC-012; approve form MC-013-INFO

Proposed Effective Date

January 1, 2018

Proposed by

Civil and Small Claims Advisory Committee
Hon. Raymond M. Cadei, Chair

Contact

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Executive Summary and Origin

The Civil and Small Claims Advisory Committee is proposing revisions to two forms and approval of a new optional form to facilitate use of the *Writ of Execution* (form EJ-130). The committee's proposal responds to suggestions received over the years, including suggestions made in response to proposed revisions to form EJ-130 that were circulated for comment in 2016.

Background

Most writs of execution are prepared by parties on the Judicial Council's *Writ of Execution* (form EJ-130) and presented to the court clerk to be issued. Although the use of the form is not mandated, the form is the most frequently used format in which such writs are presented to the court. The committee has received a number of suggestions for revising this form from court administrators, levying officers, private practitioners, and legal aid offices. In 2016, the committee circulated a proposal to revise the form in response to these suggestions.¹ The committee received many comments on the proposal. Some changes proposed in 2016 were well received by commentators. The comments on other changes proposed in 2016 raised additional issues. The committee considered these comments and is now circulating a revised proposal for public comment.

¹ The Invitation to Comment can be viewed here: <http://www.courts.ca.gov/documents/SPR16-10.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 These proposals are circulated for comment purposes only.

The Proposal

The committee is proposing changes to three different sections of the *Writ of Execution* (form EJ-130), and one section of the *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012), which are described below. A proposal for a new optional form, *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO), is also described below.

Proposed Revisions to Form EJ-130

Identifier for limited versus unlimited case, check boxes at the top of the form. Form EJ-130 was amended a few years ago to implement a bill that required that a writ of execution, possession, or sale to specify, among other things, whether the case is a limited or unlimited civil action. (Code Civ. Proc. § 699.520). The intent of this latter designation is to permit the sheriff to determine what appeals period applies (30 or 60 days) if a claim of exemption is sought by the judgment debtor. In an effort to make the form easier for self-represented litigants to use, check boxes were added to the form, next to the title, to indicate the type of case: limited, unlimited, small claims, or other.

The committee has been informed that some sheriff's offices refuse to accept a form that has the "small claims" box checked even though, by law, a small claims case is a limited civil action. The proposal circulated in 2016 included a revision to these check boxes, eliminating the separate check box for small claims cases and revising the check box for limited civil cases to state: "limited cases (including small claims)." It would also have eliminated the "other" check box. This proposed revision was well received by commentators in 2016. This same revision is incorporated into the current proposal. A further proposed minor revision is made to the "unlimited civil case" check box to indicate it includes "family and probate cases." This should help self-represented litigants determine the correct box to check.

"Attorney For." The caption on form EJ-130 currently has the required "ATTORNEY FOR (name)" line. Unlike on other forms, there is currently a check box next to this item in the caption. The purpose of the check box is unclear and may be creating confusion. The committee therefore proposes to delete the check box next to "ATTORNEY FOR" in the caption.

Item 3, Identifying judgment creditor or assignee of record. One of the comments the committee received in response to the proposal circulated in 2016 was that assignees of record are confused about how to fill out item 3 of the form, which currently asks the filer to indicate if he or she is judgment creditor or an assignee of record. The assignees of record consider themselves to be have become the "judgment creditor" by acquiring all rights to an interest in the judgment. Therefore, some of the assignees check both boxes, as judgment creditor and assignee of record, which can cause confusion in the clerk's office. To address this concern, the committee proposes to add the word "original" in front of "judgment creditor" both in item 3 and

in the attorney box at the top of the form. This is intended to clarify that assignees should check only the assignee box.

Item 4, Identifying type of legal entity. Another comment received in 2016 suggested that confusion arises because item 4 (and corresponding items 21 and 23b) requires a party to identify, for judgment debtors not a natural person, the type of legal entity “stated in judgment.” That information, while typically listed in the complaint, is not always included in the judgment itself. The statute that led to the addition of this item on the form, Code of Civil Procedure section 699.510(c), does not require that the information regarding type of business entity be found in the judgment. The committee therefore proposes to remove the reference to the type of entity “stated in judgment” from the form.

Items 11–20, Calculations of amount to enforce judgment. This section of the EJ-130 form is used to calculate the total amount the levying officer is to collect. The committee has received comments over the past few years that this part of the form is nonintuitive and confusing, particularly for determining how partial payments are credited toward the amount owed, and how interest is to be calculated or credited. The proposal circulated for comment in 2016 included a reorganization of this section of the form. The committee also sought and received comments on whether the current generic references in this section of the form to “memo” and “affidavit” regarding costs should be replaced with references to the *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012). Those that responded in 2016 generally agreed that references on the EJ-130 form should be changed to expressly refer to mandatory form MC-012. The committee also received comments suggesting additional revisions and/or new forms to address the calculation of credits to interest and principal when partial payments are made over time and suggesting revisions to form MC-012.

The committee is proposing a number of revisions to this section of form EJ-130 in response to these comments, including:

- Above items 11–20: adding the following heading “*Items 11–17 per form MC-012 or filed affidavit (CCP 685.050, 695.220).*”
- Item 11: changing “Total judgment” to “Total judgment (*as entered or renewed*).”
- Item 12: changing “Costs after judgment” to “Costs after judgment (*CCP 685.090(b)*).”
- Item 14: changing “Credit” to “Credit to principal (*after crediting interest*).”
- Item 16: changing “Interest after judgment” to “Accrued interest (*remaining due*).”

A central problem with the current EJ-130 form is that it instructs the levying officer to add ongoing interest at the legal rate on a “subtotal” that includes the total judgment amount minus *all* credits for payments received. That calculation does not take into consideration whether some of the payments received may have been credited toward the accrued interest. The proposed revisions are intended to respond to this problem by clarifying the calculation of the amounts enforced by the levying officer. These proposed revisions are also intended to correspond to the statutory definitions and revisions proposed, which are discussed below, to the form MC-012. In

addition, as discussed below, the committee is proposing a new form MC-013 that includes information about these calculations.

Possession of real property. Item 24 on form EJ-130, regarding a Writ of Possession of real property, embodies an assumption that the underlying action is one for unlawful detainer. Specifically, item 24 requires the completion of subparts indicating whether a Prejudgment Claim of Right of Possession has been served, even though the law requires service of that form only in an unlawful detainer action. (See Code Civ. Pro. § 715.010(5)–(7).) As a result, it is not possible for a judgment creditor who has obtained judgment for possession in another kind of action (such as quiet title or ejectment) to fill out the form completely.

To address this problem, the committee proposes to revise item 24 to include a check box as to whether or not the underlying action is an unlawful detainer action and, if so, to require that subparts (1) or (2), relating to service of a Prejudgment Claim of Right of Possession, be completed.

Special Rules for Unlawful Detainers Involving Foreclosed Property. Comments were received on the proposal circulated in 2016 urging the committee to revise form EJ-130 to address occupants’ right to remain in possession of real property after a foreclosure. The source this right to retain possession is in Code of Civil Procedure section 1161b. This statute, which sunsets December 31, 2019, gives a periodic tenant 90 days to vacate. (Code Civ. Proc., § 1161b.) A tenant for a fixed term may remain until the expiration of the term, subject to some exceptions. (Code Civ. Proc., § 1161b.) To reflect these rights, the committee proposes the following revisions and additions to form EJ-130 designed to inform both the levying officer and any occupant in possession of the possible right to continued occupancy of real property after an unlawful detainer action on foreclosed property:

- **Adding item 24a (1)(a) to indicate foreclosed property.** To clarify that a tenant may resist eviction up to the point of lockout and advise the levying officer that a tenant may raise a claim for a right of possession up to the time of the enforcement of the writ, the following language has been added to a revised item 24a (1):

“The unlawful detainer resulted from a foreclosure. An occupant not named in the judgment may file a Claim of Right to Possession at any time up to and including the time of lockout, regardless of whether a Prejudgment Claim of Right to Possession was served. (See CCP § 1174.3(a)(2)).”

- **Making the items regarding daily rental value and hearing on objections to enforcement of the judgment applicable in to foreclosed property.** As currently structured, the daily rental value and the date(s) when the court “will hear objections to enforcement of the judgment” are only needed if the Prejudgment Claim of Right to Possession was NOT served in compliance with Code of Civil Procedure section 415.46. The

committee is proposing revisions to indicate that these also apply in the case of a foreclosed property under new item 24a(1)(a).

- **Revisions to NOTICE TO PERSON SERVED.** The NOTICE that appears at the bottom of page 2 of form EJ-130 currently focuses on the negative consequences if one fails to vacate real property. In response to the proposal circulated in 2016, several commentators, noted that, without any mention of a right to remain in foreclosed property, the “person (tenant) served” will not be informed of some important possible rights to resist immediate eviction, including the potential right to remain in possession under Code of Civil Procedure section 1161b. Also, the tenant may object to eviction if no Prejudgment Claim of Right to Possession was served on him or her, and he or she was not named in the judgment (not restricted for foreclosure sales). (See Code Civ. Proc., §§ 415.46, 1174.3(a).) The committee is proposing to revise the NOTICE on form EJ-130 to include additional information about these rights. Because the “person served” is unlikely to understand legal language, the proposed additions to the form attempt to express these rights in plain language.

Proposed Revisions to form MC-012

To facilitate the use of form EJ-130, and in response to comments received on the proposal circulated in 2016, the committee is proposing the following revisions to form MC-012:

- Item 4: adding an acknowledgment showing how the payments received are being credited first towards *interest* and then to *principal* with a breakdown of these amounts. Currently, this item, “Acknowledgment of Credit,” does not indicate how the “credit” for payments received must be calculated. The computation of the amount of “credit” claimed (i.e., *credit* for payments that reduce the judgment *principal* after crediting interest) is required on item 14 of form EJ-130. (See Code Civ. Proc., § 695.220(c), (d).)
- Item 5: adding a new item, “Principal Remaining Due.” This amount is defined by statute as the “principal amount of the judgment” (including costs after credits) and the computation is required on item 15 of form EJ-130. (See Code Civ. Proc., § 680.300.) By requiring inclusion of this information on form MC-012, which is mandatory, the calculation of the principal balance remaining due is provided by the *declarant* under *penalty of perjury*.
- Item 6 (formerly 5): revising this item clarify that the declaration of “accrued interest” means the amount that has accrued but remains *unpaid and due* at the present date (i.e., after credits for partial satisfactions and other credits). (See Code Civ. Proc., §§ 685.010–685.050, 695.220(c).)

These proposed revisions are intended to show the calculation and breakdown of payments credited towards interest and then towards principal. They are also designed to assist parties in complying with the statutory requirement that the information must be provided to the court on a declaration signed under penalty of perjury. Other revisions are intended to make the language on the form less confusing and more consistent with information requested on the EJ-130.

New form MC-013-INFO

The committee is proposing a new form, *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO) to provide information regarding the amounts that can be recovered by the judgment creditor under the law. The proposed new form also describes how to credit payments received from the debtor towards interest, costs, and judgment principal, and refers the creditor to form MC-012 to request that interest and costs be included in the enforceable amount. In addition the form explains how accrued interest on a judgment is calculated with various formulas and examples, including the steps for crediting partial payments. The proposal for a new form responds to concerns raised by several comments received on the proposal circulated in 2016 that the monetary computation of interest and credits on the EJ-130 form is confusing, particularly for self-represented litigants and where partial payments are made at different times.

Alternatives Considered

The committee considered recommending adoption of the previously circulated revisions to form EJ-130. However, it determined that additional revisions to the items relating to the computation of interest and credits, and other form proposals, are important to facilitate use of form EJ-130 in response to comments received.

Implementation Requirements, Costs, and Operational Impacts

These forms are completed by the parties, but must be reviewed and issued by court clerks. Therefore, self-help centers and clerks will need training to recognize and understand the revised items. The hope is that, once initial training is completed, the revised forms will be easier for parties to complete correctly and for court clerks to review, ultimately benefitting the courts. Should the forms be issued as part of electronic case management systems, the electronic forms will need to be revised within those systems.

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?
- Will the revisions to items 11–20 on the *Writ of Execution* (form EJ-130) make the form easier for parties to complete and for courts to review?
- Will the specific reference on the *Writ of Execution* (form EJ-130), above items 11–20, to the *Memorandum of Costs After Judgment, Acknowledgement of Credit, and Declaration of Accrued interest* (form MC-012) make the EJ-130 form easier to complete?
- Will the revisions to items 1 through 6 on the *Memorandum of Costs After Judgment, Acknowledgement of Credit, and Declaration of Accrued interest* (form MC-012) make the form easier for parties to complete both forms and easier for courts to review?
- Will the revisions to item 24(a)(1) make it easier to understand which tenants in possession can raise a claim of a right to possession for purposes of Code of Civil Procedure section 1174.3(a)(2)?

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).
- Would 2 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

1. Proposed revised form EJ-130, at pages 8–10
2. Proposed revised form MC-012, at pages 11–12
3. Proposed new form MC-013-INFO, at pages 13–14

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):

ORIGINAL JUDGMENT CREDITOR ASSIGNEE OF RECORD

FOR COURT USE ONLY

DRAFT

02/17/17

**Not Approved by
Judicial Council**

CASE NUMBER:

Limited Civil Case
(including Small Claims)

Unlimited Civil Case
(including Family and Probate)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

Plaintiff:

Defendant:

EXECUTION (Money Judgment)

WRIT OF **POSSESSION OF** **Personal Property**

SALE **Real Property**

1. **To the Sheriff or Marshal of the County of:**

You are directed to enforce the judgment described below with daily interest and your costs as provided by law.

2. **To any registered process server:** You are authorized to serve this writ only in accordance with CCP 699.080 or CCP 715.040.

3. (Name):
is the **original** judgment creditor assignee of record whose address is shown on this form above the court's name.

4. **Judgment debtor** (name, type of legal entity if not a natural person, and last known address):

Additional judgment debtors on next page

9. See next page for information on real or personal property to be delivered under a writ of possession on sold under a writ of sale.

10. This writ is issued on a sister-state judgment.

Items 11–17 per form MC-012 or filed affidavit (CCP 685.050, 695.220)

11. Total judgment (as entered or renewed)	\$
12. Costs after judgment (CCP 685.090)	\$
13. Subtotal (add 11 and 12)	\$
14. Credit to principal (after crediting interest)	\$
15. Subtotal (subtract 14 from 13)	\$
16. Accrued interest (remaining due) (per CCP 685.050) (not on GC 6103.5 fees)	\$
17. Fee for issuance of writ	\$
18. Total (add 15, 16, and 17)	\$

5. **Judgment entered** on (date):

6. Judgment renewed on (dates):

7. **Notice of sale** under this writ

a. has not been requested.

b. has been requested (see next page).

8. Joint debtor information on next page.

19. **Levying officer:**

a. Add daily interest from date of writ (at the legal rate on 15) (not on GC 6103.5 fees) \$

b. Pay directly to court costs included in 11 and 17 under (GC 6103.5, 68637; CCP 699.520(i)) \$

20. The amounts called for in items 11–19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.

[SEAL]

Issued on (date): _____ Clerk, by _____, Deputy

NOTICE TO PERSON SERVED: SEE PAGE 3 FOR IMPORTANT INFORMATION.

Plaintiff: Defendant:	CASE NUMBER:
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21. Additional judgment debtor (*name, type of legal entity if not a natural person, and last known address*):

22. Notice of sale has been requested by (*name and address*):

23. Joint debtor was declared bound by the judgment (CCP 989–994)

<p>a. <i>on (date)</i>:</p> <p>b. name, type of legal entity if not a natural person, and last known address of joint debtor:</p> <p style="margin-left: 40px;"> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> </p>	<p>a. <i>on (date)</i>:</p> <p>b. name, type of legal entity if not a natural person, and last known address of joint debtor:</p> <p style="margin-left: 40px;"> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> </p>
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c. Additional costs against certain joint debtors are itemized: Below On Attachment 23c

24 (Writ of Possession or Writ of Sale) **Judgment** was entered for the following:

a. Possession of real property: The complaint was filed on (*date*):

The action was for unlawful detainer (**check 1 or 2**).

(1) The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.

(a) The unlawful detainer resulted from a foreclosure. An occupant not named in the judgment may file a Claim of Right of Possession at any time up to and including the time of lockout, regardless of whether a Prejudgment Claim of Right of Possession was served. (See CCP 1174.3(a)(2).)

(2) The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.

(3) If the unlawful detainer resulted from a foreclosure under item 24a(1)(a) above, or if the Prejudgment Claim of Right of Possession was not served in compliance with CCP 415.46 under item 24a(2) above, answer the following:

(a) The daily rental value on the date the complaint was filed was \$

(b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (*specify*):

b. Possession of personal property.

If delivery cannot be had, then for the value (*itemize in 24e*) specified in the judgment or supplemental order.

c. Sale of personal property.

d. Sale of real property.

e. The property is described: Below On Attachment 24e

Plaintiff: Defendant:	CASE NUMBER:
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NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (form EJ-150).

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will demand that you turn over the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

EXCEPTION IF RENTAL HOUSING UNIT WAS FORECLOSED. If the residential property that you are renting was sold in a foreclosure, you have additional time before you must vacate the premises. If you have a lease for a fixed term, such as for a year, you may remain in the property until the term is up. If you have a periodic lease or tenancy, such as from month-to-month, you may remain in the property for 90 days after receiving a notice to vacate. A blank form *Claim of Right to Possession and Notice of Hearing* (form CP10) accompanies this writ. You may claim your right to remain on the property by filling it out and filing it.

EXCEPTION IF YOU WERE NOT SERVED WITH A FORM CALLED PREJUDGMENT CLAIM OF RIGHT TO POSSESSION. If you were not named in the judgment for possession and you occupied the premises on the date on which the unlawful detainer case was filed, you may object to the enforcement of the judgment against you. You must file the form *Claim of Right to Possession and Notice of Hearing* (form CP10). A blank form accompanies this writ. You have this right whether or not the property you are renting was sold in a foreclosure.

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): _____	FOR COURT USE ONLY DRAFT 12/13/2016 Not Approved by Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
Plaintiff: _____ Defendant: _____	
MEMORANDUM OF COSTS AFTER JUDGMENT, ACKNOWLEDGMENT OF CREDIT, AND DECLARATION OF ACCRUED INTEREST	CASE NUMBER: _____

1. I claim the following costs after judgment incurred within the last two years (*indicate if there are multiple items in any category*):

	<u>Dates Incurred</u>	<u>Amount</u>
a. Preparing and issuing abstract of judgment	_____	\$ _____
b. Recording and indexing abstract of judgment	_____	\$ _____
c. Filing notice of judgment lien on personal property	_____	\$ _____
d. Issuing writ of execution, to extent not satisfied by Code Civ. Proc. § 685.050 (<i>specify county</i>):	_____	\$ _____
e. Levying officers fees, to extent not satisfied by Code Civ. Proc., § 685.050 or wage garnishment	_____	\$ _____
f. Approved fee on application for order for appearance of judgment debtor, or other approved costs under Code Civ. Proc., § 708.110 et seq.	_____	\$ _____
g. Attorney fees, if allowed by Code Civ. Proc., § 685.040	_____	\$ _____
h. Other: _____ (<i>Statute authorizing cost</i>):	_____	\$ _____
i. Total of claimed costs for current memorandum of costs (<i>add items a-h</i>)	_____	\$ _____
2. All previously allowed postjudgment costs	_____	\$ _____
3. Total of all postjudgment costs (add items 1 and 2):	_____	\$ _____

4. **Credits to Interest and Principal:** I acknowledge total payments to date in the amount of: \$ _____ (including returns on levy process and direct payments). The payments received are applied first to the amount of accrued interest, and then to the judgment principal (including postjudgment costs allowed) as follows: (1) Credit to accrued interest: \$ _____; (2) Credit to judgment principal \$ _____.

5. **Principal remaining due:** The amount of judgment principal remaining due is \$ _____ . (See Code Civ. Proc., § 680.333.)

6. **Accrued interest remaining due:** I declare interest accruing (at the legal rate) from the date of entry or renewal and on balances from the date of any partial satisfactions (or other credits reducing the principal) remaining due in the amount of \$ _____ .

7. I am the: judgment creditor agent for the judgment creditor attorney for the judgment creditor.
I have knowledge of the facts concerning the costs claimed above. To the best of my knowledge and belief, the costs claimed are correct, reasonable, and necessary, and have not been satisfied.

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

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

NOTICE TO THE JUDGMENT DEBTOR

If this memorandum of costs is filed at the same time as an application for a writ of execution, any statutory costs, not exceeding \$100 in aggregate and not already allowed by the court, may be included in the writ of execution. The fees sought under this memorandum may be disallowed by the court upon a motion to tax filed by the debtor, notwithstanding the fees having been included in the writ of execution. (Code Civ. Proc., § 685.070(e).) A motion to tax costs claimed in this memorandum must be filed within 10 days after service of the memorandum. (Code Civ. Proc., § 685.070(c).)

Page 1 of 2

Short Title:	CASE NUMBER:
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PROOF OF SERVICE

Mail **Personal Service**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is:

3. I mailed or personally delivered a copy of the *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* as follows (complete either a or b):

a. **Mail.** I am a resident of or employed in the county where the mail occurred.

(1) I enclosed a copy in an envelope AND

(a) **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.

(b) **placed** the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

(2) The envelope was addressed and mailed as follows:

(a) Name of person served: _____

(b) Address on envelope: _____

(c) Date of mailing: _____

(d) Place of mailing (*city and state*): _____

b. **Personal delivery.** I personally delivered a copy as follows.

(1) Name of person served: _____

(2) Address where delivered: _____

(3) Date delivered: _____

(4) Time delivered: _____

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

Date: _____

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

INFORMATION SHEET FOR CALCULATING INTEREST AND AMOUNT OWED ON A JUDGMENT

What can the judgment creditor recover?

Under California law, the amount recoverable by a judgment creditor includes:

- The total amount of the judgment entered by the court (principal), plus costs;
- Costs approved by the court after judgment; and
- Accrued interest on the total amount.

DRAFT

01/24/17

Not Approved by
Judicial Council

Costs After Judgment

A judgment creditor is entitled to reimbursement for the “reasonable and necessary” costs of enforcing a judgment. These costs must be reported to the court within two years of the date incurred. Once approved by the court, costs become part of the judgment. (For information on recovering costs and a detailed list of costs that can be recovered, see California Code of Civil Procedure §§ 685.040, 685.050, 685.070(b), and 685.090; see also “Requesting Costs and Interest” below).

Accrued Interest (*See Code Civ. Proc. §§ 685.010, 685.020(a), and Cal. Const., art. XV, § 1.*)

Interest accrues on unpaid judgment amounts at the legal rate of 10% per year (7% if the judgment debtor is a state or local government entity). Costs approved by the court are included as part of the judgment amount and begin to accrue interest from the date ordered. Also, upon renewal of a judgment, interest begins to accrue on the day the renewed judgment is entered. If the judgment is payable in installments, interest accrues from the date each installment is due.

Requesting Costs and Interest

To have costs and interest added to the enforceable amount owed, the judgment creditor must file and serve a *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012). On this form, the judgment creditor must include the exact amount of all costs and accrued interest. This means the judgment creditor is responsible for calculating the amount of interest that accrues on the judgment. It is useful to update this calculation after receiving payments.

Crediting payments received

Any payments received by the judgment creditor must be “credited” in a specific order. After specific costs go directly to the levying officer and to the court for fees, the judgment creditor is required to credit payments received first toward *accrued interest* and then toward the *judgment principal* (including costs approved by the court after entry of the judgment).

Calculation of Interest on Judgment and Amount Due

Following are various formulas and examples to assist with the calculation of interest on a judgment using a 10% interest rate:

- **Calculating Daily Interest on a judgment using 10% interest rate**

Following is the formula for figuring out the amount of interest earned per day on a judgment.

Formula: Total amount of judgment owed x 10% (or 0.10) = interest earned per year.

Divide that number by 365 = daily interest earned.

Example: Judgment debtor owes the judgment creditor \$5,000 (the “judgment principal”).

$$\$5,000 \times 0.10 = \$500$$

$$\$500/365 = \$1.37 \text{ daily interest}$$

The amount of interest earned will be \$1.37 per day as long as the unpaid amount remains \$5,000.

- **Calculating the Total Amount Due, Including Interest, on the date of payment**

Step 1: Calculate the amount of interest owed on the date of payment. This amount will equal the daily interest rate calculated above, multiplied by the number of days since the court entered the final judgment.

- Figure out the total number of days that have passed since the court entered the final judgment up to the day of payment.
- Multiply the total days by the amount of daily interest. The result is the amount of interest owing on the day of payment.

Example: Assume \$5,000 judgment was entered on June 1 and paid on September 8. 100 days from the entry of the judgment have passed.

The daily interest is \$1.37 (see above calculation).

$\$1.37 \text{ per day} \times 100 \text{ days} = \137 interest owed on the date of payment.

The judgment debtor owes \$137 in interest on the principal of \$5,000 on the date of payment.

Step 2: Add the amount of interest that has accrued to the amount of the judgment.

$\$5,000 \text{ judgment amount} + \$137 \text{ interest} = \$5,137$.

The judgment debtor owes a total of \$5,137 on the 100th day after the court entered the judgment.

- **Applying Partial Payments and Recalculating the Amount Due**

If the judgment debtor does not pay all that is owed at one time, the partial payments the debtor makes are applied to the interest *first* and then to the judgment amount (the principal) owed.

Example: After 200 days, the judgment debtor pays \$1,000 on the original judgment principal of \$5,000.

Step 1: Calculate the amount of interest owed on the date of payment

Following the above example: $\$1.37 \text{ per day} \times 200 \text{ days}$. After 200 days, \$274 in interest will have accrued on the \$5,000 judgment ($200 \text{ days} \times \1.37 per day).

Step 2: Apply payment to interest

The debtor paid \$1,000, which must first be used to pay the \$274 of accrued interest.

That leaves a \$726 payment toward the \$5,000 principal ($\$1,000 - \$274 = \$726$).

Step 3: Apply remainder to principal

The remaining credit of \$726 is applied to the \$5,000 judgment principal.

($\$5,000 - \$726 = \$4,274$). The judgment debtor now owes \$4,274 on the judgment after crediting the payment.

Step 4: Calculate the new daily interest rate

Daily interest would then accrue at a rate of \$1.17/day.

$\$4,274 \times 10\% = \427.40 interest earned per year.

$\$427.40/365 = \1.17 interest earned per day.

Step 5: After 100 days, a payment of \$500 is made

The amount of interest that accrues in the next 100 days:

$100 \text{ days} \times \$1.17 = \$117$

The payment of \$500 must first be credited towards the interest of \$117, a balance of \$383 to be credited against the principal ($\$500 - \$117 = \$383$).

The credit of \$383 is then subtracted from the judgment principal of \$4,274, leaving an unpaid balance of \$3,891.

The new daily interest would then accrue at a rate of \$1.07/day.

$\$3,891 \times 10\% = \$389.10/365$.

After another 100 days, the amount of accrued interest is \$107 (100 days x 1.07).